

ATTACHMENT C

RESPONDENT'S ARGUMENT

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March 23, 2024

Board Services Unit Coordinator
California Public Employees' Retirement System
P.O. Box 942701
Sacramento, CA 94229-2701

Re: Respondent's Argument in the Matter of the Appeal Regarding Final Compensation Calculation of KELLEY M. WILLIAMS, Respondent and COUNTY OF INYO, Respondent
Agency Case No.2022-0798 OAH No. 2023050015

Dear Members of the CalPERS Board of Administration:

Thank you for allowing me this opportunity to submit my written argument **AGAINST** the Proposed Decision made by Administrative Law Judge, Alan R. Alvord, in the above-named matter. The purpose of the appeal process is to provide an opportunity for all of the facts in the matter to be brought forward for discussion and consideration before a final determination can be made.

I appreciate the thoughtful effort Administrative Law Judge Alan R. Alvord took in detailing his Proposed Decision. Through his careful review of the evidence and testimony that was provided during my 1.5-day appeal hearing, Judge Alvord brings forward an overabundant amount of undisputable facts that cannot be ignored. These facts visibly confirm and justify my appeal claim by proving the following:

- 1) the results of the equity study conducted on the Inyo County Emergency Services Manager (ESM) position clearly justified the reclassification of the position Salary Range from 78 Step E to Salary Range 82 Step E;
- 2) the Inyo County Board of Supervisors approved an amendment to the ESM contract on November 17, 2020, to reclassify the ESM position Salary Range from 78 E to Salary Range 82 E, retroactive to July 2020;
- 3) Inyo County staff testified that the County intended the ESM Salary Range 82 E reclassification to be permanent and was **NOT** temporary or COVID related; and,
- 4) Inyo County staff testified that the County intended to (and did in fact) report the Pay Range 82 Step E payrate on behalf of the ESM, retroactive to July 2020, as compensation and compensation earnable, eligible for full Longevity and Value of Employer Paid Member Contribution (VEPMC) retirement benefits.

The County of Inyo (as a CalPERS contracted agency) was **GROSSLY NEGLIGENT** in its obligatory responsibility to follow Statutory and Regulatory Requirements for Publicly Available Pay Schedule requirements. During the January 30, 2024 appeal hearing, the prior Inyo County Deputy Personnel Director (now Assistant County Administrative Officer) Sue Dishion, testified that the County of Inyo **FAILED TO POST A PUBLICLY AVAILABLE PAY SCHEDULE** that was in compliance with the Public Employees Retirement Law (PERL), Public Employees' Pension Reform Act of 2013 (PEPRA) and Title 2 of the California Code of Regulations (CCR). In January of 2020, Inyo County Upper

Management **FAILED** in their responsibility to adequately communicate and distribute to their front-line staff, important CalPERS Payroll Circulars (Circular Letter: 200-003-20) that contained time sensitive Statutory and Regulatory Requirements for Publicly Available Pay Schedules.

Due to the fact that the County of Inyo **FAILED** to meet the requirement of providing CalPERS with a Publicly Available Pay Schedule in compliance with the PERL, PEPRA and Title 2 of the CCR, the CCR's state "*CalPERS may determine in its sole discretion an amount that will be considered as pay rate.*" CalPERS has an obligation to ethically and morally "do the right thing". CalPERS has been provided several substantiating documents and listened to hours of testimony, all of which confirms my claim that the Longevity and VEPMC benefits that were previously reported and paid to CalPERS on my behalf were calculated correctly, based on the ESM reclassified Salary Range 82 Step E, which included retroactive pay to July of 2020.

The County of Inyo has **FAILED TO PERFORM THEIR RESPONSIBILITIES AS A GOVERNMENT AGENCY THAT CONTRACTS WITH CALPERS**. The County of Inyo **FAILED** to protect me, a hard-working employee that dedicated 20 years of my life providing excellent public service to the County of Inyo. The County of Inyo **FAILED** to protect my retirement benefits that they admittedly agree I should receive at a Salary Range 82 Step E. As a direct consequence and result I am losing my rightfully earned and contracted for retirement benefits. Despite this, unfortunately, the County of Inyo, who is responsible for this parody, is not being held accountable for their incompetency and they are paying no consequences whatsoever for their own negligence.

To further show the County of Inyo's high level of **INCOMPETENCE**, Upper Management decided to downgrade and reclassify the ESM position back to Salary Range 78 in 2022, after I retired as the ESM. Upper Management **AGAIN FAILED** to properly guide staff through the importance of maintaining the integrity of the earlier reclassification of the ESM from Salary Range 78 to 82. Inyo County Upper Management obviously did not understand or even realize the consequences that would result from that action, which unfortunately, has left the complications associated with this unguided decision to fall solely on me. Again, my retirement benefits are in jeopardy due to the **GROSS NEGLIGENCE, INCOMPETENCE AND MISGUIDED ACTIONS** on behalf of Inyo County's Upper Management.

Due to the County of Inyo's clear gross negligence, it has put us here today, two (2) years, three (3) months and twenty-three (23) days into my retirement without receiving the totality of my retirement benefits. The County of Inyo has jeopardized my retirement benefits and has left me, unjustly on my own, to fight for these benefits that have already been paid to CalPERS and are rightfully owed to me. Inyo County could have joined me in my appeal and taken full responsibility for their **GROSS NEGLIGENCE** but, instead, Inyo County's Counsel chose to tell me "Inyo County wants to wish you well. This is really an issue between you and CalPERS. Inyo County doesn't really have a dog in this fight!" Is this the attitude that CalPERS wants to support, an attitude that leaves hard-working public servants feeling abandoned and helpless? One where, clearly and admittedly, the County was at fault to the detriment of the employee resulting in potential lost benefits. This clearly is not right nor equitable.

Mistakes may happen, but here, the County of Inyo Upper Management attempted to cover up their incompetence by trying to manipulate the truth and alter facts during the testimony phase of the hearing.....which is punitive in nature. Substantiating evidence proved otherwise, and it is

inconceivable that CalPERS would condone this behavior by continuing to deny me of my full retirement benefits.

CalPERS claims that ***“It’s agency is about people. It’s about the dedicated individuals who serve, or have served, California at the state, regional, and local level through a career in public service. For over nine decades CalPERS has built retirement and health security for these public servants.”*** CalPERS Vision statement reads ***“A respected partner, providing a sustainable retirement system and health care program for those who serve California”***. CalPERS Mission Statement is ***“Deliver retirement and health care benefits to members and their beneficiaries.”***

If the above statements by CalPERS are true, then why is CalPERS fighting so hard to deny me my full retirement benefits, benefits which have already been appropriately reported and paid to CalPERS. Considering all the corroborated factual evidence that has been provided to CalPERS throughout the appeal process, CalPERS’ final compensation determination has remained unchanged, and they continue to unjustly deny me my benefits. I believe that this action sets up a very harmful precedence to future employees. Especially considering the admissions by the County of Inyo, and documented proof of their intent, that the ESM retirement benefits would be (and were) calculated, reported and paid to CalPERS based on the Salary Range 82 E retroactive to July 2020,

CalPERS is allowing Inyo County, and any other future contracted County, City or public agency, the ability to go unpunished for their unethical **“BAD BEHAVIOR”**. Allowing this misconduct to go unaddressed, opens the door for others to avoid the fiscal responsibility associated with the calculation and oversight of the retirement benefits they are supposedly managing and reporting on behalf of their employees. CalPERS needs to protect and support ***“ALL of the dedicated individuals who serve, or have served, California at the state, regional, and local level through a career in public service.”*** Why should the front-line workers, the hardworking boots on the ground public servants, be penalized and punished for the **INCOMPETENCE OF UPPER MANAGEMENT**.

There are a couple of inaccuracies within Judge Alvord’s Proposed Decision that I feel are important for me to clarify with your Board. Under the **LEGAL CONCLUSIONS** section of the Proposed Decision, (Page 16 Item No. 16), it is stated ***“... the Range 82 Steps E and F salary was an attempt to improperly convert on-call or standby pay, which may not be included in final compensation, into respondent’s includable payrate”***. This statement is incorrect and my testimony of January 30, 2024, will confirm this. The equity study report determined that the Emergency Services Manager (ESM) position had been undercompensated and the position should be paid at a salary range that was equitable to the high level of responsibility and complexity of duties that were assigned to the position. During my contract re-negotiations, I requested that the salary be reclassified to Salary Range 84. The County rejected my request stating that the County was required to remain consistent with the equity study’s recommendation, which was to reclassify the ESM position at the salary Range 82. I agreed to the Range 82 E with the stipulation that the reclassification **be retroactive to July 2020** and that I would **no longer be required** to provide Stand-By or On-call services. The County agreed to both of these stipulations. **The reclassification of the ESM salary from Salary Range 78 Step E to Salary Range 82 Step E was in NO WAY tied to “converting on-call or stand-by” to earnable wages.**

In addition, the Step F component was used by the payroll clerk for posting/coding purposes only to “add the agreed upon retroactive pay” for the months of July-November 2020 to the ESM base

Salary Range 82 E, until the retroactive pay component was paid in full and to ensure Longevity and Value of Employer Paid Member Contribution (VEPMC) benefits on the retroactive pay was properly captured, calculated, paid and reported to CalPERS. This testimony was given by Inyo County staff member, Sue Dishion, and is detailed under the **RESPONDENT RENEGOTIATES HER CONTRACT** section of the Proposed Decision, (Page 7, Item No. 19).

If CalPERS chooses not to reverse its “inaccurate” final compensation determination, if CalPERS does not agree to pay me my full retirement benefits based on the Salary Range 82 Step E and retroactively documented to July 2020, if CalPERS does not hold the County of Inyo accountable for their GROSS NEGLIGENCE, then it can be assumed that CalPERS is condoning Inyo County’s bad behavior and incompetence, and supports Inyo County’s lack of moral ethics and remorse when it comes to taking responsibility for their inappropriate actions. All of which is to the detriment of those who are employed by the County of Inyo or any other public entity.

CalPERS, through their lack of action, will be releasing the County of Inyo of their obligation and responsibility as a contracted public agency to abide by the Statutory and Regulatory Requirements. Punishing the hard-working employee is not the way to resolve the County’s gross negligence and incompetence. CalPERS reform laws aren’t intended to punish the hard-working “get it done, show up every single day, front-line worker”. CalPERS’ current final compensation determination is doing just that. CalPERS needs to continue their activism to provide for the millions of public employees whose pensions they oversee. Through these efforts, CalPERS would be making sure hard-working public employees, and their retirement benefits, are protected.

The Honorable Judge Alan R. Alvord summarized his PROPOSED DECISION by stating the following: *“The issue in this case was not whether respondent’s range 82 rate of compensation was appropriate or whether she earned her pay. The county clearly valued respondent’s emergency services expertise and sought to reward her for both her knowledge and her hard work. The salary increase was justified by an equity study. The evidence showed that respondent was a dedicated and hard-working public servant.”*

Unfortunately, Honorable Judge Alvord was forced to make the decision to deny my appeal, and deny me my retirement benefits, based solely upon CalPERS rigid interpretation of the laws and regulations on what it considers to be an acceptable “Publicly Available Pay Schedule”. Evidence showed that the County of Inyo was **GROSSLY NEGLIGENT** and **FAILED** to provide CalPERS with a regulatory compliant Publicly Available Pay Schedule. However, as stated in the California Code of Regulations, *“WHENEVER AN EMPLOYER FAILS TO MEET THE REQUIREMENTS FOR A PUBLICLY AVAILABLE PAY SCHEDULE, the Board, in its **SOLE DISCRETION**, may determine an amount that will be considered to be payrate, taking into consideration **ALL INFORMATION IT DEEMS RELEVANT.**”* During the course of the hearing, multiple “documents that were approved by the Inyo County Board of Supervisors (the governing Board) in accordance with requirements of Public Meetings laws and maintained by the employer” were provided to CalPERS to substantiate the claim that the ESM Final Compensation Determination should be calculated using the Salary Range 82-E, retroactive to July 2020. The CCR’s indicate that CalPERS **has the discretion** to make an exception. Had CalPERS changed its Final Compensation Determination to reflect the Salary Range 82 E, due to all of the evidence and substantiating documents that was presented during the hearing(s), I believe Judge Alvord’s Proposed Decision would have ruled in my favor. If CalPERS stands firm on “there are NO exceptions”, then the CCR Regulatory language is flawed.

I am fortunate that I kept good records and I have the ability, determination, and strength to fight for my rights. And I have done so on my own. The stress and the costs associated with witness fees and testimony transcripts, continue to be impactful as we progress into each step of the appeal process. I am not looking for anything more than what is due to me, what is rightfully mine, and what has **already been reported and paid to CalPERS by the County of Inyo.**

I thank you for your time today and consideration to **“do the right thing”**.

Sincerely,
Kelley M. Williams