

ATTACHMENT C

**RESPONDENT'S ARGUMENT REGARDING THE PETITION FOR
RECONSIDERATION**

March 27, 2024

Board Services Unit Coordinator
California Public Employees' Retirement System
Post Office Box 942701
Sacramento, CA 94229-2701

Via US Mail and e-mail

In the Matter of the Appeal of Unused Sick Leave of BLAINE M. MICHAELIS,
OAH No. 2023080587

CalPERS Board Secretary:

“Respondent’s Argument”

The CalPERS audit division has concluded that when a retiree participates in their employer’s unused sick leave incentive program that they have received compensation for their unused sick leave and because of that compensation they cannot receive a retirement service credit for unused sick leave from CalPERS. Despite consistent efforts to find a resolve over the past 28 months, the following issues of my appeal remain unaddressed and therefore still unresolved:

- Government Code Section 20965 sets the procedures and requirements for the administration of the unused sick leave service credit retirement benefit. This code section provides for CalPERS to conduct an audit to ensure that an employer only reports unused sick leave days that were accrued at the normal rate of accrual. *The code section does not direct CalPERS to audit any other factors in defining or determining unused sick leave days for the purposes of deciding benefit eligibility.*
- CalPERS itself knows that GCS 20965 does not provide CalPERS the audit authority to consider final compensation information regarding unused sick leave days in determining the retirement service credit eligibility. To overcome this issue, CalPERS, created a policy (through a Retirement Benefits Circular Letter) to declare that ‘Individuals who elect to be compensated for unused sick leave may not have those

same hours reported to CalPERS for the purpose' of receiving the unused sick leave service retirement benefit. In other words, if GCS 20965 does not give CalPERS the audit authority/direction to consider final compensation information regarding unused sick leave days in determining benefit eligibility – then just create a policy to establish the desired conditions. The contradiction with this approach is that CalPERS cited the authority and direction of GCS 20965 to establish this policy.

- The recent ALJ process and preliminary decision presented to the CalPERS Board pressed the sole point that when a retiree participates in an unused sick leave incentive program at retirement, those hours go to zero, they no longer exist because they have been compensated. Please note that *all* sick leave days – compensated or not go to zero at final paycheck and separation. Using its own logic, CalPERS could also make the determination that uncompensated sick leave days no longer exist and therefore are not to be reported. *The proper way to administer the unused sick leave service credit is to follow the statute. If the statute does not direct an audit of final compensation; or does not establish rules and interpretations regarding participation in an Employer's unused sick leave incentive program, then CalPERS cannot unilaterally apply its discretion and take actions to create and justify their own course of action to deny a statutory benefit.*
- GCS 20965 is a mandatory benefit – it reads like it is serious about recognizing the good work attendance record of an employee in retirement. If through good work attendance, an employee was at work instead of on sick leave, then the purpose of this statute is to provide that employee with a retirement credit equal to those days of unused sick leave. The statute directs that an Employer *shall* submit unused sick leave days accrued at normal accrual rates and CalPERS *shall* convert those days into a service credit. There are no other words for any other action to be taken other than for the Employer to report the days and for CalPERS to convert them into a service credit – period.
- CalPERS' conclusion that a retiree should not be compensated twice for unused sick leave days may be well intended; but CalPERS' position is out of context. Through a contract with CalPERS, an Employer directly pays CalPERS the full cost to implement an Unused Sick Leave Service Credit Retirement Benefit for their employees. *In addition*, that same

Employer also sees the benefits of administering a *separate* Employee Unused Sick Leave Benefit Program for its employees – and that same Employer pays the full cost of that program. This is a situation where there are two separate unused sick leave benefits – administered separately, and both fully funded by the Employer. There is no ‘cost’ or expense to CalPERS – they are kept whole. *If an Employer wants to sponsor and fund an employee unused sick leave benefit program after funding a CalPERS retirement benefit based on unused sick leave days, why should CalPERS insert its judgement and determination that it is their role and responsibility to cancel out a CalPERS retirement benefit? CalPERS is fully funded to implement a separate unused sick leave service credit retirement benefit under contract. Which brings up additional questions for CalPERS – are you compliant with your contracts and financial responsibilities when CalPERS has solely and unilaterally initiated a determined effort to cancel out and not provide the unused sick leave retirement service credit benefit?*

- There is another serious unaddressed matter. In the pre-retirement process of benefit seminars, personal meetings with retiring employees, the CalPERS web page tools to calculate and estimate retirement benefits, and in written summaries of retirement benefits, *CalPERS never told nor presented* potential retirees with information that should they participate in an unused sick leave incentive program with their Employer at retirement they would lose all eligibility to receive the CalPERS unused sick leave service credit retirement benefit – and that if they ever did receive the benefit, even after written approval of the retiree’s final benefits, that CalPERS would conduct an audit to remove that benefit completely and they would collect all benefit payments retroactively. Why did CalPERS choose to withhold this critical benefit eligibility information from employees making retirement decisions? Forgive the strong word, but using an audit process to remove previously approved benefits using withheld information is irresponsible. How can CalPERS ever implement or impose benefit conditions they never explained to potential retirees in the pre-retirement education and decision-making process?
- The unused sick leave incentive program of my Employer compensated me for 55% of my unused sick leave at retirement – because of that CalPERS concluded that I should lose 100% of the unused sick leave

service credit retirement benefit. If CalPERS continues with that interpretation and course of action, *CalPERS should know that retirees have another retirement strategy and option they could pursue where they could receive more than the total value of their unused sick leave and extend their years of service by more than their unused sick leave days.* All they have to do is go on sick leave – let all of their leave continue to accrue and grow, receive full salary, full health insurance benefits and COLA increases and then retire when they have used up every last leave hour. Such a strategy provides a substantially higher retirement benefit at a substantially higher cost for CalPERS and the Employer. In addition, the Employer has to deal with the preventable issues of the cost and organizational disruption to deal with employees being on extended leave as they successfully maximize their unused sick leave and retirement benefits – and there is nothing CalPERS can do about it but process the retirement application when it comes in. I do not think this is good government. Why would CalPERS do anything to open and encourage this option and its consequences – especially when the consequences are preventable.

- CalPERS has the capacity to objectively and responsibly consider and evaluate the issues of my appeal. However, for 28 months CalPERS has chosen to set aside the critical points of my appeal and leave them unanswered and unaddressed. Look at all these outstanding issues and looming unintended consequences – still here after 28 months. An appeal of CalPERS' actions is not complete until CalPERS has provided clear, meaningful, and responsible responses and enacted appropriate remedies to all appeal issues.

Thank you for your consideration.

Sincerely,



Blaine Michaelis