

**ITEM 5**  
**INCORRECT REDUCTION CLAIM**  
**PROPOSED DECISION**

Government Code Sections 3502.5 and 3508.5

Statutes 2000, Chapter 901 (SB 739)

California Code of Regulations, Title 8, Sections 32132, 32135, 32140, 32149, 32150, 32160,  
32168, 32170, 32175, 32176, 32180, 32190, 32205, 32206, 32207, 32209, 32210, 32212, 32310,  
32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, 60070

Register 2001, Number 49

*Local Government Employee Relations*

Fiscal Year 2010-2011

17-0130-I-01

City of Monrovia, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This Incorrect Reduction Claim (IRC) challenges the State Controller's Office (Controller's) reduction of costs claimed for fiscal year 2010-2011, but incurred in fiscal year 2009-2010, by the City of Monrovia (claimant) for the *Local Government Employee Relations* program. In January 2012, the claimant filed a reimbursement claim requesting reimbursement for contracted legal services related to the *Local Government Employee Relations* program, totaling \$229,627. The cover sheet and each page of the claim form (FAM-27) indicates that the claim was filed for fiscal year 2010-2011. However, attached to the reimbursement claim are invoices for legal services incurred in fiscal years 2009-2010, 2010-2011, and 2011-2012, totaling \$229,627. The Controller reduced the costs incurred in fiscal years 2009-2010 and 2011-2012 from the 2010-2011 claim, and notified the claimant of the reduction on September 29, 2014, after the statutory deadline to submit a reimbursement claim for fiscal year 2009-2010 had passed.

This IRC challenges only the reduction of \$50,459 (less an undisputed 10 percent penalty) incurred in fiscal year 2009-2010.<sup>1</sup> Although the claimant never filed a 2009-2010 reimbursement claim, the claimant requests that the Commission find that the Controller incorrectly denied the claimant's request to accept the 2010-2011 reimbursement claim, which contained documentation supporting costs actually incurred in fiscal year 2009-2010, as a late-

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<sup>1</sup> Exhibit A, IRC, pages 4, 45 (September 8, 2016 letter from the claimant to the Controller acknowledging that the late penalty would apply to the claimed costs for fiscal year 2009-2010).

filed 2009-2010 reimbursement claim, because of an alleged “clerical error” in filing a multi-year claim.

As indicated herein, staff recommends that the Commission deny this IRC.

### **Procedural History**

On January 27, 2012, the claimant filed its fiscal year 2010-2011 reimbursement claim and included documentation for costs incurred in fiscal years 2009-2010 and 2011-2012.<sup>2</sup>

The claimant filed its fiscal year 2011-2012 reimbursement claim on January 30, 2013.<sup>3</sup>

In an email dated September 29, 2014, the Controller notified the claimant of the reduction of costs incurred during fiscal years 2009-2010 and 2011-2012, that were included on the fiscal year 2010-2011 form.<sup>4</sup> In a reply email dated September 29, 2014, the claimant requested that the claimant’s fiscal year 2009-2010 costs of \$50,459 not be disallowed due to the its “simple accounting/clerical error.”<sup>5</sup>

In a September 30, 2014 email, the Controller stated that it was bound by the claiming requirements in the Parameters and Guidelines, and that the claimant did not file a reimbursement claim for fiscal year 2009-2010, and that the deadline to do so had passed.<sup>6</sup>

In an October 31, 2014 adjustment letter, the Controller formally notified the claimant of the reduction for costs incurred in fiscal year 2009-2010.<sup>7</sup> In a September 8, 2016 letter, the claimant asked the Controller to reconsider its reduction for fiscal year 2009-2010.<sup>8</sup> In its reply letter of October 20, 2016, the Controller denied the claimant’s request to reconsider the reduction.<sup>9</sup>

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<sup>2</sup> The claimant states that the filing date is January 30, 2012, (Exhibit A, IRC, pages 5, 50), but the Controller states that the filing date is January 27, 2012 (Exhibit B, Controller’s Comments on the IRC, page 8). The record indicates that the claim was signed on January 19, 2012, and shows an “LRS Input” date from the Controller on January 30, 2012 (Exhibit B, Controller’s Comments on the IRC, page 12).

<sup>3</sup> Exhibit B, Controller’s Comments on the IRC, page 16 (fiscal year 2011-2012 reimbursement claim).

<sup>4</sup> Exhibit A, IRC, page 44 (email from the Controller). The original reduction was for costs incurred in fiscal years 2009-2010 and 2011-2012, but because the claimant refiled its 2011-2012 claim, only the reduction for costs incurred in fiscal year 2009-2010 is in dispute.

<sup>5</sup> Exhibit A, IRC, pages 43-44; Exhibit B, Controller’s Comments on the IRC, page 31 (email from the claimant to the Controller).

<sup>6</sup> Exhibit A, IRC, page 43. Exhibit B, Controller’s Comments on the IRC, page 32 (email from the Controller to the claimant).

<sup>7</sup> Exhibit B, Controller’s Comments on the IRC, page 37.

<sup>8</sup> Exhibit A, IRC, pages 45-46 (letter from the claimant to the Controller).

<sup>9</sup> Exhibit B, Controller’s Comments on the IRC, page 33 (email from the Controller to the claimant).

The claimant filed the IRC on August 15, 2017,<sup>10</sup> and the Controller filed comments on the IRC on December 22, 2017.<sup>11</sup>

Commission staff issued the Draft Proposed Decision on June 30, 2020.<sup>12</sup> The claimant filed comments on the Draft Proposed Decision on July 21, 2020.<sup>13</sup>

### **Commission Responsibilities**

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>14</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitution and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>15</sup>

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>16</sup>

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<sup>10</sup> Exhibit A, IRC.

<sup>11</sup> Exhibit B, Controller's Comments on the IRC, page 1.

<sup>12</sup> Exhibit C, Draft Proposed Decision.

<sup>13</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision.

<sup>14</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>15</sup> *County of Sonoma v. Commission on State Mandates* (2000), 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>16</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>17</sup> In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>18</sup>

### **Claims**

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

| <b>Issue</b>   | <b>Description</b>  | <b>Staff Recommendation</b>   |
|--|---|---|
| Did the claimant timely file the IRC?  | At the time the claimant was notified of the reduction of costs incurred in fiscal year 2009-2010, section 1185.1 of the Commission's regulations required IRCs to be filed no later than three years after the Controller's final audit report, or other notice of adjustment that complies with Government Code section 17558.5(c). <sup>19</sup> | <i>Timely filed</i> – The Controller notified the claimant of the reduction by a September 29, 2014 email. The notification complies with Government Code section 17558.5(c). The IRC was filed on June 8, 2017, less than three years from the date the Controller notified the claimant of the reduction, so the IRC is timely filed.         |
| Is the Controller's reduction of \$50,459 from the claim filed for fiscal year 2010-2011 correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support? | In its 2010-2011 reimbursement claim, the claimant included costs incurred in 2009-2010 and 2011-2012. The claimant disputes the reduction of costs incurred in 2009-2010. The claimant alleges that it committed a "clerical error" in its multi-year filing as follows: "[a]t the time [when the 2010-2011 claim was filed], the City had         | <i>Correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support</i> – The Government Code does not allow multi-year annual reimbursement claims, and places the burden on the claimant to file reimbursement claims by the statutory deadline for costs incurred in a single fiscal year. Moreover, the |

<sup>17</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>18</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

<sup>19</sup> Former California Code of Regulations, title 2, sections 1185.1(c), 1185.2(a) (Register 2014, No. 21). Section 1185.1(c) was amended, operative October 1, 2016, to clarify the notice requirement.

| Issue | Description  | Staff Recommendation   |
|-------|--|--|
|       | <p>inadvertently filed the multi-year claim and did not realize it would cause the claim to be ineligible.”<sup>20</sup> Based on this alleged clerical error, the claimant argues that the Controller should accept the 2010-2011 claim as a late 2009-2010 claim and allow the costs claimed.</p> <p>Government Code section 17560(a) provides that a claimant may “file an annual reimbursement claim that details the costs actually incurred for that fiscal year.” In addition, the Parameters and Guidelines for this program require that “actual costs for one fiscal year shall be included in each claim,” and that “[a]ctual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.”<sup>21</sup></p> <p>Government Code section 17568 states that “<i>in no case</i></p> | <p>Parameters and Guidelines, which require source documentation for one fiscal year, are regulatory and binding on the claimant.”<sup>24</sup></p> <p>Here, the claimant’s 2010-2011 reimbursement claim includes costs totaling \$50,459, which are supported by invoices showing that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.”<sup>25</sup> The claimant admits that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.”<sup>26</sup> Thus, the \$50,459 are not “actual costs” for the 2010-2011 claim year, and the reduction of those costs from the 2010-2011 reimbursement claim is correct as a matter of law.</p> <p>In addition, the Controller’s decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim is correct as a matter of law and not arbitrary, capricious, or</p> |

<sup>20</sup> Exhibit A, IRC, page 5.

<sup>21</sup> Exhibit A, IRC, page 29 (Parameters and Guidelines).

<sup>24</sup> Exhibit A, IRC, page 29 (Parameters and Guidelines). *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

<sup>25</sup> Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling \$50,459).

<sup>26</sup> Exhibit A, IRC, pages 43-44 (September 29, 2014 email from the claimant to the Controller); Exhibit B, Controller’s Comments on the IRC, page 31 (email from the claimant to the Controller).

| Issue | Description   | Staff Recommendation  |
|-------|---|---|
|       | <p>shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560.”<sup>22</sup> And Government Code section 17561(d)(3) states that “<i>in no case</i> may a reimbursement claim be paid if submitted more than one year after the filing deadline specified in the Controller’s claiming instructions on funded mandates.”<sup>23</sup></p> <p>The deadline to file a late 2009-2010 reimbursement claim was February 15, 2012.</p> | <p>entirely lacking in evidentiary support. The evidence shows that the Controller complied with the law and followed usual procedures when accepting the 2010-2011 reimbursement claim, and there is no evidence that the Controller was aware of the claimant’s mistake until a desk audit was initiated in September 2014.<sup>27</sup> Neither the Commission, nor the Controller, have the authority to allow filing a 2009-2010 reimbursement claim after the deadline in Government Code sections 17561(d)(3) and 17568, which state that “<i>in no case</i>” shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560, or the deadline in the Controller’s claiming instructions.<sup>28</sup> The claimant did not meet the February 15, 2012 deadline in this case to file a 2009-2010 reimbursement claim under section 17568.</p> |

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<sup>22</sup> Emphasis added.

<sup>23</sup> Emphasis added.

<sup>27</sup> Exhibit A, IRC, page 50 (2010-2011 reimbursement claim); Exhibit B, Controller’s Comments on the IRC, page 7.

<sup>28</sup> Emphasis added.

## **Staff Analysis**

### **A. The claimant timely filed this IRC within three years from the date the claimant first received from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim.**

At the time the claimant was notified of the Controller's Desk Review, section 1185.1 of the Commission's regulations required IRCs to be filed no later than three years after the Controller's final audit report, or other notice of adjustment that complies with Government Code section 17558.5(c). The Controller notified the claimant of the reduction by email, addressed to the claimant's Financial Division Manager and dated September 29, 2014. The notification specifies the claim components and amounts adjusted, and the reasons for the adjustments,<sup>29</sup> and thereby complies with the notice requirements in section 17558.5(c). Because the claimant filed the IRC on August 15, 2017, less than three years from the date of the Controller's emailed notice, staff finds that the IRC was timely filed.

### **B. The Controller's reduction of costs incurred in 2009-2010 from the fiscal year 2010-2011 reimbursement claim and the Controller's decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim, are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.**

The claimant filed a 2010-2011 annual reimbursement claim, with the face sheet and each page of the claim form (FAM-27) showing that the claim, totaling \$229,627, was for 2010-2011 fiscal year costs.<sup>30</sup> The claim, however, included documentation supporting costs incurred in fiscal years 2009-2010 through 2011-2012.<sup>31</sup> The Controller approved reimbursement for the 2010-2011 costs, and reduced the costs for 2009-2010 and 2011-2012 because reimbursement claims for those fiscal years had not been filed and the 2009-2010 and 2011-2012 documentation did not support that costs were incurred in fiscal year 2010-2011.<sup>32</sup> The claimant only disputes the reduction of the fiscal year 2009-2010 costs totaling \$50,459.<sup>33</sup>

Staff finds that the Controller's reduction to the fiscal year 2010-2011 claim (for costs incurred in 2009-2010) is correct as a matter of law. The Government Code does not allow filing multi-year annual reimbursement claims, and has always placed the burden on the claimant to file

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<sup>29</sup> Exhibit A, IRC, page 44 (email from the Controller).

<sup>30</sup> Exhibit A, IRC, pages 50-52 (2010-2011 reimbursement claim).

<sup>31</sup> Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling \$50,459); pages 71-111 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2010-2011, totaling \$147,355.29); and pages 112-120 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2011-2012, totaling \$31,812.65). Exhibit B, Controller's Comments on the IRC, pages 22-24 (Controller's Summary of Invoices Included in FY 2010-11 Claim).

<sup>32</sup> Exhibit A, IRC, page 44 (email from the Controller).

<sup>33</sup> Exhibit A, IRC, page 4.

annual reimbursement claims by the statutory deadline for costs incurred in a single fiscal year.<sup>34</sup> Government Code 17560(a) provides that reimbursement for state-mandated costs may be claimed in an annual reimbursement claim “that details the costs actually incurred for that fiscal year.” In addition, the Parameters and Guidelines for the *Local Government Employee Relations* mandate state: “Actual costs for *one fiscal year* shall be included in each claim.”<sup>35</sup> The Parameters and Guidelines further state that “[t]o be eligible for mandated cost reimbursement for any given fiscal year, only actual costs may be claimed,” and that “[a]ctual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.”<sup>36</sup> Parameters and guidelines are regulatory and are binding on the claimant.<sup>37</sup>

Here, the 2010-2011 reimbursement claim includes costs totaling \$50,459, which are supported by invoices showing that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.<sup>38</sup> The claimant admits that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.<sup>39</sup> Thus, the \$50,459 are not “actual costs” for the 2010-2011 claim year. Therefore, the Controller’s reduction of costs from the claim filed for fiscal year 2010-2011 is correct as a matter of law because the documentation provided with the claim does not support that costs were incurred in fiscal year 2010-2011, as required by Government Code section 17560 and the Parameters and Guidelines.

In addition, the Controller’s decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. Although 2009-2010 invoices were attached to the 2010-2011 reimbursement claim, there is no evidence that the Controller had notice or was aware of the 2009-2010 costs until the desk review of the 2010-2011 claim in September 2014.<sup>40</sup> The 2010-2011 reimbursement claim was filed on January 27, 2012.<sup>41</sup> The evidence shows that the

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<sup>34</sup> Government Code sections 17560 and 17568 (that were originally added by Stats. 1986, ch. 879).

<sup>35</sup> Exhibit A, IRC, page 29 (Parameters and Guidelines). Emphasis added.

<sup>36</sup> Exhibit A, IRC, page 29 (Parameters and Guidelines).

<sup>37</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

<sup>38</sup> Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling \$50,459).

<sup>39</sup> Exhibit A, IRC, pages 43-44 (September 29, 2014 email from the claimant to the Controller); Exhibit B, Controller’s Comments on the IRC, page 31 (email from the claimant to the Controller).

<sup>40</sup> Exhibit B, Controller’s Comments on the IRC, page 7.

<sup>41</sup> The claimant states that the filing date was January 30, 2012, (Exhibit A, IRC, pages 5, 50), but the Controller states that the filing date was January 27, 2012 (Exhibit B, Controller’s Comments on the IRC, page 8). The record indicates that the claim was signed on



Controller receives several thousand claims during the annual claim submission period, which are simply receipted and logged.<sup>42</sup> Page one of the reimbursement claim form submitted by the claimant (the FAM-27) states that the claim is for fiscal year 2010-2011 costs and the form is signed under penalty of perjury certifying that the claim is true and correct.<sup>43</sup> Thus, the claim was logged as a fiscal year 2010-2011 claim.<sup>44</sup> Pursuant to Government Code section 17558.5, the Controller had three years after the reimbursement claim was filed to initiate an audit, which was timely initiated here in September 2014 when the alleged mistake was discovered by the Controller. Thus, there is no evidence, as suggested by the claimant, that the Controller was arbitrary or capricious “in waiting three years” to notify the claimant of the claimant’s alleged mistake. The evidence shows that the Controller’s actions complied with the law and the Controller’s usual procedures for accepting annual reimbursement claims.

Moreover, neither the Commission nor the Controller have the authority to now allow the filing of a 2009-2010 reimbursement claim since the deadline in Government Code sections 17561 and 17568 has lapsed. Government Code section 17561(d)(3) plainly states that “*in no case* may a reimbursement claim be paid if submitted more than one year after the filing deadline specified in the Controller’s claiming instructions on funded mandates.”<sup>45</sup> Similarly, Government Code section 17568 states that “*in no case* shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560.”<sup>46</sup> The deadline in this case to file a 2009-2010 reimbursement claim under sections 17560 and 17568, certified and signed under penalty of perjury, expired on February 15, 2012, one month after the 2010-2011 reimbursement claim was filed.<sup>47</sup>

Based on this record, the only reimbursement claim filed was for fiscal year 2010-2011, which was correctly reduced by the Controller based on the documentation for actual costs incurred in that fiscal year.

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January 19, 2012, and shows an “LRS Input” date from the Controller on January 30, 2012 (Exhibit B, Controller’s Comments on the IRC, page 12).

<sup>42</sup> Exhibit B, Controller’s Comments on the IRC, page 7.

<sup>43</sup> Exhibit A, IRC, page 50.

<sup>44</sup> Exhibit B, Controller’s Comments on the IRC, page 7.

<sup>45</sup> Emphasis added.

<sup>46</sup> Emphasis added.

<sup>47</sup> Government Code section 17560(a) states that “[a] local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year. Government Code section 17568 allows a valid reimbursement claim to be submitted after that deadline, and in such cases, the Controller is required to reduce the claim by ten percent. Section 17568 further states, however, that “*in no case* shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560.” Emphasis added.

**Conclusion**

Staff concludes that the Controller's reduction is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

**Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision to deny the IRC. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM**

Government Code Sections 3502.5 and 3508.5; Statutes 2000, Chapter 901 (SB 739)

California Code of Regulations, Title 8, Sections 32132, 32135, 32140, 32149, 32150, 32160, 32168, 32170, 32175, 32176, 32180, 32190, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, 60070, Register 2001, Number 49

Fiscal Year 2010-2011

Filed on August 15, 2017

City of Monrovia, Claimant

Case No.: 17-0130-I-01

*Local Government Employee Relations*

DECISION PURSUANT TO  
GOVERNMENT CODE SECTION 17500  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7.

*(Adopted September 25, 2020)*

**DECISION**

The Commission in State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on September 25, 2020. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the IRC by a vote of [vote will be included in the adopted Decision], as follows:

| <b>Member</b>  | <b>Vote</b> |
|--|-------------|
| Lee Adams, County Supervisor   |             |
| Mark Hariri, Representative of the State Treasurer, Vice Chairperson                   |             |
| Jeannie Lee, Representative of the Director of the Office of Planning and Research     |             |
| Gayle Miller, Representative of the Director of the Department of Finance, Chairperson |             |
| Sarah Olsen, Public Member   |             |
| Carmen Ramirez, City Council Member  |             |
| Jacqueline Wong-Hernandez, Representative of the State Controller                      |             |

## **Summary of the Findings**

This IRC challenges the Controller's reduction of costs claimed for fiscal year 2010-2011, but incurred in fiscal year 2009-2010, by the City of Monrovia (claimant) for the *Local Government Employee Relations* program. In January 2012, the claimant filed a reimbursement claim requesting reimbursement for contracted legal services related to the *Local Government Employee Relations* program, totaling \$229,627. The cover sheet and each page of the claim form (FAM-27) indicate that the claim was filed for fiscal year 2010-2011. However, attached to the reimbursement claim are invoices for legal services incurred in fiscal years 2009-2010, 2010-2011, and 2011-2012, totaling \$229,627. The Controller reduced the costs incurred in fiscal years 2009-2010 and 2011-2012 from the 2010-2011 claim, and notified the claimant of the reduction on September 29, 2014, after the statutory deadline to submit a reimbursement claim for fiscal year 2009-2010 had passed.

This IRC challenges only the reduction of \$50,459 (less an undisputed late penalty) incurred in fiscal year 2009-2010.<sup>48</sup> Although the claimant never filed a 2009-2010 reimbursement claim, the claimant requests that the Commission find that the Controller incorrectly denied its request to accept the 2010-2011 reimbursement claim, which contained documentation supporting costs actually incurred in fiscal year 2009-2010, as a late 2009-2010 reimbursement claim under Government Code section 17568, because of an alleged "clerical error" by filing a multi-year claim.

The Commission finds that the IRC was timely filed within three years of the date the Controller notified the claimant of the reduction.

The Commission further finds that the Controller's reduction to the fiscal year 2010-2011 claim (for costs incurred in 2009-2010) is correct as a matter of law. The Government Code does not allow filing multi-year annual reimbursement claims, and has always placed the burden on the claimant to file annual reimbursement claims by the statutory deadline for costs incurred in a single fiscal year.<sup>49</sup> In addition, the Parameters and Guidelines for the *Local Government Employee Relations* mandate state that "[a]ctual costs for *one fiscal year* shall be included in each claim," and that "[a]ctual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities."<sup>50</sup> Parameters and guidelines are regulatory in nature and are binding on

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<sup>48</sup> Exhibit A, IRC, pages 4, 45 (September 8, 2016 letter from the claimant to the Controller acknowledging that the late penalty would apply to the claimed costs for fiscal year 2009-2010).

<sup>49</sup> Government Code sections 17560 and 17568 (that were originally added by Stats. 1986, ch. 879). Government Code section 17560(a) states that "[a] local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year. Government Code section 17568 allows a valid reimbursement claim to be submitted after that deadline, and in such cases, the Controller is required to reduce the claim by ten percent. Section 17568 further states, however, that "*in no case* shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560." Emphasis added.

<sup>50</sup> Exhibit A, IRC, page 29 (Parameters and Guidelines).

the claimant.<sup>51</sup> Here, the claimant's 2010-2011 reimbursement claim includes costs totaling \$50,459, which are supported by invoices showing that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.<sup>52</sup> The claimant admits that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.<sup>53</sup> Thus, the \$50,459 are not "actual costs" for the 2010-2011 claim year.

In addition, the Commission finds that the Controller's decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. Although 2009-2010 invoices were attached to the 2010-2011 reimbursement claim, there is no evidence that the Controller had notice or was aware of the 2009-2010 costs until the desk review of the 2010-2011 claim in September 2014.<sup>54</sup> The 2010-2011 reimbursement claim was filed on January 27, 2012.<sup>55</sup> The evidence shows that the Controller receives several thousand claims during the annual claim submission period, which are simply receipted and logged.<sup>56</sup> Page one of the reimbursement claim form submitted by the claimant (the FAM-27) states that the claim is for fiscal year 2010-2011 costs and the form is signed under penalty of perjury certifying that the claim is true and correct.<sup>57</sup> Thus, the claim was logged as a fiscal year 2010-2011 claim.<sup>58</sup> Pursuant to Government Code section 17558.5, the Controller had three years after the reimbursement claim was filed to initiate an audit, which was timely initiated here in September 2014 when the alleged mistake was discovered by the Controller. Thus, there is no evidence, as suggested by the claimant, that the Controller was arbitrary or capricious "in waiting three years" to notify the claimant of the claimant's alleged mistake. The evidence shows that the Controller's actions complied with the law and the Controller's usual procedures for accepting annual reimbursement claims.

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<sup>51</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

<sup>52</sup> Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling \$50,459).

<sup>53</sup> Exhibit A, IRC, pages 43-44 (September 29, 2014 email from the claimant to the Controller); Exhibit B, Controller's Comments on the IRC, page 31 (email from the claimant to the Controller). See also Exhibit D, Claimant's Comments on the Draft Proposed Decision, pages 1-2.

<sup>54</sup> Exhibit B, Controller's Comments on the IRC, page 7.

<sup>55</sup> The claimant states that the filing date is January 30, 2012, (Exhibit A, IRC, pages 5, 50), but the Controller states that the filing date is January 27, 2012 (Exhibit B, Controller's Comments on the IRC, page 8). The record indicates that the claim was signed on January 19, 2012, and shows an "LRS Input" date from the Controller on January 30, 2012 (Exhibit B, Controller's Comments on the IRC, page 12).

<sup>56</sup> Exhibit B, Controller's Comments on the IRC, page 7.

<sup>57</sup> Exhibit A, IRC, page 50.

<sup>58</sup> Exhibit B, Controller's Comments on the IRC, page 7.

Moreover, neither the Commission nor the Controller have the authority to now allow the filing of a 2009-2010 reimbursement claim since the deadline in Government Code sections 17560 and 17568 has lapsed. Government Code section 17561(d)(3) plainly states that “*in no case* may a reimbursement claim be paid if submitted more than one year after the filing deadline specified in the Controller’s claiming instructions on funded mandates.”<sup>59</sup> Similarly, Government Code section 17568 states that “*in no case* shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560.” The deadline in this case to file a 2009-2010 reimbursement claim under sections 17560 and 17568, certified and signed under penalty of perjury, expired on February 15, 2012, one month after the 2010-2011 reimbursement claim was filed.

Therefore, the Commission denies this IRC and finds that the Controller’s reduction of costs from the fiscal year 2010-2011 reimbursement claim for costs incurred in 2009-2010 and the Controller’s decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim, are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

## COMMISSION FINDINGS

### I. Chronology

- 01/27/2012 The claimant filed its fiscal year 2010-2011 reimbursement claim that included costs and documentation for fiscal years 2009-2010 and 2011-2012.<sup>60</sup>
- 01/30/2013 The claimant filed its fiscal year 2011-2012 reimbursement claim.<sup>61</sup>
- 09/29/2014 The Controller notified the claimant via email of the reduction of costs incurred for fiscal years 2009-2010 and 2011-2012 that were included on the fiscal year 2010-2011 form.<sup>62</sup>
- 09/29/2014 The claimant emailed the Controller to request that the claimant’s costs of \$50,459 incurred in fiscal year 2009-2010 not be disallowed due to its “simple accounting/clerical error.”<sup>63</sup>

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<sup>59</sup> Emphasis added.

<sup>60</sup> The claimant states that the filing date is January 30, 2012, (Exhibit A, IRC, pages 5, 50), but the Controller states that the filing date is January 27, 2012 (Exhibit B, Controller’s Comments on the IRC, page 8). The record indicates that the claim was signed on January 19, 2012, and shows an “LRS Input” date from the Controller on January 30, 2012 (Exhibit B, Controller’s Comments on the IRC, page 12).

<sup>61</sup> Exhibit B, Controller’s Comments on the IRC, page 16 (fiscal year 2011-2012 reimbursement claim).

<sup>62</sup> Exhibit A, IRC, page 44 (email from the Controller). The original reduction was for costs incurred in fiscal years 2009-2010 and 2011-2012, but because the claimant refiled its 2011-2012 claim, only the reduction for costs incurred in fiscal year 2009-2010 is in dispute.

<sup>63</sup> Exhibit A, IRC, pages 43-44; Exhibit B, Controller’s Comments on the IRC, page 31 (email from the claimant to the Controller). In its comments on the IRC, the Controller said the amount in dispute is \$50,489 (see Exhibit B, Controller’s Comments on the IRC, page 7). However, the

- 09/30/2014 The Controller emailed the claimant stating that it was bound by the claiming requirements in the Parameters and Guidelines, and that the claimant did not file a reimbursement claim for fiscal year 2009-2010, and that the deadline to do so had passed.<sup>64</sup>
- 10/31/2014 The Controller formally notified the claimant of the reduction for costs incurred in fiscal year 2009-2010 via an adjustment letter.<sup>65</sup>
- 09/08/2016 The date of the claimant's letter asking the Controller to reconsider its reduction for fiscal year 2009-2010 costs.<sup>66</sup>
- 10/20/2016 The Controller denied the claimant's request to reconsider the reduction.<sup>67</sup>
- 08/15/2017 The claimant filed the IRC.<sup>68</sup>
- 12/22/2017 The Controller filed comments on the IRC.<sup>69</sup>
- 06/30/2020 Commission staff issued the Draft Proposed Decision.<sup>70</sup>
- 07/21/2020 The claimant filed comments on the Draft Proposed Decision.<sup>71</sup>

## **II. Background**

### **A. The Local Government Employee Relations Program**

The test claim statute and regulations in *Local Government Employee Relations* amended the Meyers-Milias-Brown Act (MMBA) regarding relations between local public agencies and their employees, by adding a method for creating an agency shop arrangement, and expanding the jurisdiction of the Public Employment Relations Board (PERB) to include resolving disputes and enforcing the statutory duties and rights of those public employers and employees subject to the MMBA. The Commission partially approved the Test Claim on December 4, 2006, for the following reimbursable activities:

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documentation the Controller attached to its comments comports with the documentation of the claimant that the amount is \$50,459 (see Exhibit B, Controller's Comments on the IRC, page 22 (summary of invoices) and page 30 (email from the Controller to the claimant)).

<sup>64</sup> Exhibit A, IRC, page 43. Exhibit B, Controller's Comments on the IRC, page 32 (email from the Controller to the claimant).

<sup>65</sup> Exhibit B, Controller's Comments on the IRC, page 37.

<sup>66</sup> Exhibit A, IRC, pages 45-46 (letter from the claimant to the Controller).

<sup>67</sup> Exhibit B, Controller's Comments on the IRC, page 33 (email from the Controller to the claimant).

<sup>68</sup> Exhibit A, IRC.

<sup>69</sup> Exhibit B, Controller's Comments on the IRC, page 1.

<sup>70</sup> Exhibit C, Draft Proposed Decision.

<sup>71</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision.

1. Deduct from employees' wages the payment of dues or service fees required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5, and transmit such fees to the employee organization. (Gov. Code § 3508.5, subd. (b).)
2. Receive from the employee any proof of in lieu fee payments made to charitable organizations required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5. (Gov. Code § 3502.5, subd. (c).).
3. Follow PERB procedures in responding to charges filed with PERB, by an entity *other than* the local public agency employer, concerning an unfair labor practice, a unit determination, representation by an employee organization, recognition of an employee organization, or an election. Mandated activities are:
  - a. procedures for filing documents or extensions for filing documents with PERB (Cal. Code Regs., tit.8, §§ 32132, 32135 (Register 2001, No. 49));
  - b. proof of service (Cal. Code Regs., tit. 8, § 32140 (Register 2001, No. 49));
  - c. responding to subpoenas and investigative subpoenas (Cal. Code Regs., tit. 8, §§ 32149, 32150 (Register 2001, No. 49));
  - d. conducting depositions (Cal. Code Regs., tit. 8, § 32160 (Register 2001, No. 49));
  - e. participating in hearings and responding as required by PERB agent, PERB Administrative Law Judge, or the five-member PERB (Cal. Code Regs., tit. 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, and 60070 (Register 2001, No. 49)); and
  - f. filing and responding to written motions in the course of the hearing (Cal. Code Regs., tit. 8, § 32190 (Register 2001, No. 49)).

The Commission adopted the Parameters and Guidelines for this program on May 29, 2009, authorizing reimbursement, beginning July 1, 2001, for the above activities and certain one-time activities. The Parameters and Guidelines were corrected on June 16, 2009.<sup>72</sup> According to the Parameters and Guidelines: "Actual costs for one fiscal year shall be included in each claim."<sup>73</sup> The Parameters and Guidelines further state:

To be eligible for mandated cost reimbursement for any given fiscal year, only actual costs may be claimed .... Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.<sup>74</sup>

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<sup>72</sup> Exhibit A, IRC, pages 28, 31 (Parameters and Guidelines). The correction is not relevant to this IRC because the provisions regarding filing annual costs and actual costs were not corrected.

<sup>73</sup> Exhibit A, IRC, page 29 (Parameters and Guidelines).

<sup>74</sup> Exhibit A, IRC, page 29 (Parameters and Guidelines).



## **B. Summary of the Controller's Audit**

In January 2012, the claimant filed a reimbursement claim requesting reimbursement for the claimant's payments for contracted legal services related to the *Local Government Employee Relations* program.<sup>75</sup> The cover sheet and each page of the claim form (FAM-27) indicates that the claim is for fiscal year 2010-2011.<sup>76</sup> The reimbursement claim form states that "Liebert Cassidy Whitmore (Contract Attorney) Responded to several PERB matters," and \$229,627 was claimed for those costs.<sup>77</sup> The reimbursement claim form was signed under penalty of perjury by the claimant's Finance Division Manager, and identified "Annette S. Chinn (CRS)" as the contact person for the claim.<sup>78</sup> Attached to the reimbursement claim are invoices from Liebert Cassidy Whitmore showing costs incurred for legal services in fiscal years 2009-2010, 2010-2011, and 2011-2012, totaling \$229,627.<sup>79</sup>

In September 2014, the Controller initiated a desk review of the 2010-2011 reimbursement claim.<sup>80</sup> In an email dated September 29, 2014, the Controller notified the claimant that \$147,355.29 was allowable as costs incurred in fiscal year 2010-2011, but the costs incurred in fiscal years 2009-2010 and 2011-2012 would be denied because "the city can only claim for costs incurred during 2010-2011."<sup>81</sup> The email states:

Please be informed that the City of Monrovia submitted a claim for fiscal year 2010-11 for the Local Government Employee Relations program. The city claimed \$229,627 for contract services. During our desk review it was discovered that the city included \$82,272 of contract costs from fiscal years 2009-10 and 2011-12 with the claim. The city can only claim costs incurred during 2010-11. The table below lists the costs claimed by fiscal year:

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<sup>75</sup> Exhibit A, IRC, pages 50-120 (2010-2011 reimbursement claim). The claimant states that the filing date is January 30, 2012, (Exhibit A, IRC, pages 5, 50), but the Controller states that the filing date is January 27, 2012 (Exhibit B, Controller's Comments on the IRC, pages 8, 12). The claim was signed on January 19, 2012, and shows an "LRS Input" date from the Controller on January 30, 2012 (Exhibit B, Controller's Comments on the IRC, page 12).

<sup>76</sup> Exhibit A, IRC, pages 50-52 (2010-2011 reimbursement claim).

<sup>77</sup> Exhibit A, IRC, pages 50, 52 (2010-2011 reimbursement claim).

<sup>78</sup> Exhibit A, IRC, page 50 (2010-2011 reimbursement claim). Annette S. Chinn of Cost Recovery Systems, Inc., is the claimant's representative for this IRC. (Exhibit A, IRC, page 1.)

<sup>79</sup> Exhibit A, IRC, pages 53-70 (Invoices from Liebert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling \$50,459); pages 71-111 (Invoices from Liebert Cassidy Whitmore for legal services provided in fiscal year 2010-2011, totaling \$147,355.29); and pages 112-120 (Invoices from Liebert Cassidy Whitmore for legal services provided in fiscal year 2011-2012, totaling \$31,812.65). Exhibit B, Controller's Comments on the IRC, pages 22-24 (Controller's Summary of Invoices Included in FY 2010-11 Claim).

<sup>80</sup> Exhibit B, Controller's Comments on the IRC, page 7.

<sup>81</sup> Exhibit A, IRC, page 44; Exhibit B, Controller's Comments on the IRC, page 30 (email from the Controller to the claimant).

| Fiscal Year | Costs Incurred | Note             |
|-------------|----------------|------------------|
| 2009-10     | \$50,459       | Non-Reimbursable |
| 2010-11     | \$147,355.29   |                  |
| 2011-12     | \$31,812.65    | Non-Reimbursable |

The claim will be adjusted to exclude the non-reimbursable contract costs.<sup>82</sup>

In a reply email dated September 29, 2014, the claimant's Finance Division Manager requested that the \$50,459 incurred in fiscal year 2009-2010 not be disallowed due to a "simple accounting/clerical error" of claiming those costs on the wrong fiscal year claim, as follows:

Thank you for your email. In reviewing the documentation submitted, I believe that the costs claimed are reimbursable under the parameters of the mandate and were submitted on time; however, I see that some costs were not filed on the correct paperwork. We respectfully request that you do not disallow our eligible FY 09-10 costs of \$50,459, but pay them from the correct fiscal year. It was a simple accounting/clerical error on the City's part. I understand that late claim penalties would apply to some of the FY 09-10 costs included in the wrong fiscal year claim.

Please accept my apologies for the inconvenience and I thank you for your assistance. Please feel free to contact me if you have any questions or if you need additional information.<sup>83</sup>

In an email dated September 30, 2012, the Controller replied that it was bound by the Parameters and Guidelines and could not accept a claim outside of the reimbursable fiscal years, and that the claimant did not file a claim for fiscal year 2009-2010, as follows:

We are bound by the legal authority of the parameters and guidelines and cannot accept costs that are outside of reimbursable fiscal years. As per the P's and G's, "Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities."

The city did not file a claim for fiscal year 2009-10 and the deadline to file a late claim for 2009-10 or 2011-12 has already passed. I reviewed the 2011-12 claim filed by the city and discovered that some of the costs incurred during 2011-12 have been correctly included with the 2011-12 claim but were also claimed in 2010-11. Please note, the actual costs incurred during fiscal year 2010-11 will be allowed and processed for payment upon availability of appropriation.<sup>84</sup>

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<sup>82</sup> Exhibit A, IRC, page 44 (email from the Controller).

<sup>83</sup> Exhibit A, IRC, pages 43-44; Exhibit B, Controller's Comments on the IRC, page 31 (email from the claimant to the Controller).

<sup>84</sup> Exhibit A, IRC, page 43. Exhibit B, Controller's Comments on the IRC, page 32 (email from the Controller to the claimant).

The claimant filed its fiscal year 2011-2012 reimbursement claim on January 30, 2013,<sup>85</sup> and the costs claimed for 2011-2012 are not in dispute.

In an adjustment letter dated October 31, 2014, the Controller formally notified the claimant of the reduction of costs “claimed outside of reimbursable F.Y.,” which include the costs incurred in fiscal year 2009-2010.<sup>86</sup>

In a September 8, 2016 letter, the claimant’s Finance Division Manager asked the Controller to reconsider the reduction of costs incurred in fiscal year 2009-2010 because “the City had accidentally filed a claim for FY 2009-10, FY 2010-11, and FY 2011-12 in one submission (under the FY 2010-11 period), rather than filing separate claims for each fiscal year.”<sup>87</sup> The claimant continued in relevant part as follows:

At the time the claim was filed, the costs for FY 2009-10 were still eligible for filing and the City properly filed the claim on time. Had we known of the clerical error sooner, we would have immediately corrected the paperwork by submitting a separate late claim for FY 2009-10 in the amount of \$50,459 and attached a proper coversheet (FAM-27), understanding that a 10% late penalty would have been applied to the FY 2009-10 costs.

As soon as we were notified of the reductions, we promptly contacted your office and explained that the reduction was simply due to a clerical error. We also reassured your office that all costs included in the claim were actual eligible costs that were properly documented and submitted by the deadline. Your office responded that the cut would not be restored because the deadline to file FY 2009-10 claims had passed and that “Actual costs must be traceable and be supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities,” as noted in the attached email correspondence. However, we believe that these requirements were, in fact, satisfied and that the City filed the claim in good faith.

We kindly ask that you not preclude the City from reimbursement due to a minor clerical error. Aside from the minor error of combining multiple years into one claim, the costs were properly submitted by the due date, were actual, traceable, and supported by source documents that were included in the claim. Additionally, we believe that the recent decision by the Commission on State Mandates regarding the Incorrect Reduction Claim (IRC) filed by the City of Los Angeles for their “FY 2003-04 Firefighter Cancer Presumption” claim is similar to our situation in that the claimant, the City, made a clerical error when transferring costs from a summary page to the total (FAM-27) page. The Commission ruled in favor of the City and said the Controller’s decision to deny \$516,132 in disability benefit costs as “unclaimed” was incorrect as a matter of law and was

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<sup>85</sup> Exhibit B, Controller’s Comments on the IRC, page 16 (fiscal year 2011-2012 reimbursement claim).

<sup>86</sup> Exhibit B, Controller’s Comments on the IRC, page 37.

<sup>87</sup> Exhibit A, IRC, pages 45-46 (letter from the claimant to the Controller).

lacking evidentiary support because the details had all been submitted in the original claim, though not correctly transferred to the FAM-27. . . .<sup>88</sup>

In a letter dated October 20, 2016, the Controller denied the claimant's request to reconsider and stated that it cannot apply costs to a prior fiscal year claim that was never filed. The Controller also noted that it was past the deadline to file a claim for fiscal year 2009-2010.<sup>89</sup>

### **III. Positions of the Parties**

#### **A. City of Monrovia**

The claimant states that it filed the IRC, solely "to reverse the FY 2009-10 \$50,459 reduction made to the city's claim."<sup>90</sup> The claimant argues that the Controller's reduction of costs incurred in fiscal year 2009-2010 is unfair because the Controller "waited almost three years to audit the City's claim to determine that the claim would be reduced by \$50,459 due to clerical errors."<sup>91</sup> The claimant asserts that had it been notified earlier of the error, it would have submitted a fiscal year 2009-2010 claim and amended its 2010-2011 claim,<sup>92</sup> but by the time it was notified of the error on September 29, 2014, the claiming deadline for 2009-2010 had passed.<sup>93</sup> The claimant believes that its claim should not be denied due to a clerical error, and that it should be allowed to amend a claim that contains actual, eligible, state-mandated costs. The claimant argues: (1) it claimed costs that were eligible, documented, and incurred to comply with a state-mandated program; (2) its costs were not found to be excessive, improper or unreasonable; (3) its costs were submitted to the State by the deadline; and (4) although its FAM-27 form was not filled out properly, its actual submission and its attached support means the claim was properly documented, not just the coversheet. The claimant argues "clerical errors should not be grounds for denial of constitutionally guaranteed mandated costs reimbursement."<sup>94</sup>

The claimant further argues that the Commission should decide this IRC similarly to the Draft Proposed Decision issued on March 18, 2016 for the IRC *Firefighter's Cancer Presumption*, 09-4081-I-01. In that IRC, the City of Los Angeles had attached documented costs to its claim, but had made a clerical error in transferring the cost information to the FAM-27 coversheet. In the

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<sup>88</sup> Exhibit A, IRC, pages 45-46 (letter from the claimant to the Controller).

<sup>89</sup> Exhibit B, Controller's Comments on the IRC, page 33 (email from the Controller to the claimant).

<sup>90</sup> Exhibit A, IRC, page 5. In its comments on the IRC, the Controller said the amount in dispute is \$50,489 (see Exhibit B, Controller's Comments on the IRC, page 7). However, the documentation the Controller attached to its comments comports with the documentation of the claimant that the amount is \$50,459 (see Exhibit B, Controller's Comments on the IRC, page 22 (summary of invoices) and page 30 (email from the Controller to the claimant)).

<sup>91</sup> Exhibit A, IRC, page 4.

<sup>92</sup> Exhibit A, IRC, page 45 (letter from the claimant to the Controller).

<sup>93</sup> Exhibit A, IRC, page 44; Exhibit B, Controller's Comments on the IRC, page 30 (email from the Controller to the claimant). Exhibit A, IRC, page 43 (email from the Controller to the claimant).

<sup>94</sup> Exhibit A, IRC, page 7.

Draft Proposed Decision, Commission staff found that the Controller should have allowed for the correction of a “mere arithmetic error.”<sup>95</sup>

In comments on the Draft Proposed Decision for this IRC, the claimant argues that its error was not due to its incorrect interpretation of the law or rules regarding submission of multiple years of costs in one claim. According to the claimant:

Both the City and consultant have been preparing and submitting these State Mandate Reimbursement claims for many years and we were aware that only one fiscal year of costs should have been submitted per claim. However, the mistake was an inadvertent one. The consultant believed that the data provided to them by the City was only for FY 2010-11 and not for 3 years of costs. Thus, the consultant believed all invoices and costs were for the current year (FY 2010-11) and inadvertently included them all into one claim, and not two separate submissions, as should have been done (one for FY 2009-10 and one for 2010-11). . . . We knew that separate forms should have been filed by fiscal year of costs. It was our error that invoices were from multiple fiscal years. . . . The only error we made was that we did not separate the invoices by fiscal year into two separate claim forms.<sup>96</sup>

The claimant also argues that the court in the *Nathanson* case<sup>97</sup> would “perhaps find differently in our case,” because the costs submitted were “timely filed, eligible and properly documented.”<sup>98</sup> Thus, the claimant says its submission was “not a mere notice, but fully complete with the exception of having a separate FAM-27 claim cover form for FY 2009-10 invoices.”<sup>99</sup>

## **B. State Controller’s Office**

The Controller filed comments on the IRC on December 22, 2017, maintaining that its desk review is correct and that the IRC should be denied.<sup>100</sup>

The Controller argues that it timely reviewed the City’s claim and correctly reduced the amount at issue. As to timeliness, the claimant filed its fiscal year 2010-2011 claim on January 27, 2012, and a late claim for fiscal year 2009-2010 would have been due on February 15, 2012. During the reimbursement claim submission period each February, the Controller receives, logs, and sends a claims transmittal letter acknowledging receipt of the claim for several thousand claims in the local reimbursement system prior to producing a mandated report to the Legislature by April 30th, after which comprehensive desk reviews begin. So even if the Controller had reviewed the claim immediately in May 2012, the February 15, 2012 deadline to file a fiscal year

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<sup>95</sup> Exhibit A, IRC, page 7. Exhibit E, Commission on State Mandates, Proposed Decision, *Firefighter’s Cancer Presumption*, 09-4081-I-01, issued May 11, 2016.

<sup>96</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, pages 1-2.

<sup>97</sup> *Nathanson v. Superior Court* (1974) 12 Cal.3d 355.

<sup>98</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, page 2.

<sup>99</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, page 2.

<sup>100</sup> Exhibit B, Controller’s Comments on the IRC, page 1.

2009-2010 reimbursement claim would have already passed. The claimant never filed a fiscal year 2009-2010 claim, and the Controller had two years to complete its review, once the audit was initiated.<sup>101</sup>

The Controller also states that according to Government Code section 17558.5, an audit must be initiated within three years of when the claim was filed or last amended, but if no payment is made to the claimant, the date to initiate the audit does not begin until the claimant is paid. The Controller notes that no appropriation or payment to the claimant has been made for the fiscal year 2010-2011 claim. And because the desk review began in September 2014, the Controller states that it had until August 2016 to complete its review. The Controller further argues that by including costs for multiple years in its 2010-2011 reimbursement claim, the claimant did not comply with the Parameters and Guidelines. Finally, the Controller alleges that the claimant's reliance on the *Firefighter's Cancer Presumption*, 09-4081-I-01 IRC is misplaced because filing for multiple years in a single claim is not a "mere arithmetic error." Rather, it is a violation of the Parameters and Guidelines.<sup>102</sup>

#### **IV. Discussion**

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>103</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>104</sup>

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to

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<sup>101</sup> Exhibit B, Controller's Comments on the IRC, page 8.

<sup>102</sup> Exhibit B, Controller's Comments on the IRC, pages 8-9.

<sup>103</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>104</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>105</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support....” [Citations.] When making that inquiry, the “ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ”<sup>106</sup>

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>107</sup> In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>108</sup>

**A. The claimant timely filed this IRC within three years from the date the claimant first received from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim.**

The Controller notified the claimant of the reduction by email, addressed to the claimant’s Financial Division Manager and dated September 29, 2014, stating:

Please be informed that the City of Monrovia submitted a claim for fiscal year 2010-11 for the Local Government Employee Relations program. The city claimed \$229,627 for contract services. During our desk review it was discovered that the city included \$82,272 of contract costs from fiscal years 2009-10 and 2011-12 with the claim. The city can only claim costs incurred during 2010-11. The table below lists the costs claimed by fiscal year:

| Fiscal Year | Costs Incurred | Note             |
|-------------|----------------|------------------|
| 2009-10     | \$50,459       | Non-Reimbursable |
| 2010-11     | \$147,355.29   |                  |
| 2011-12     | \$31,812.65    | Non-Reimbursable |

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<sup>105</sup> *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>106</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>107</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>108</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5

The claim will be adjusted to exclude the non-reimbursable contract costs.<sup>109</sup>

The Controller's email, dated September 29, 2014, specifies the claim component (contract services) and amount (\$82,272) adjusted, and the reasons for the adjustments (costs claimed in the wrong fiscal year). Thus, the email complies with the notice requirements in Government Code section 17558.5(c).

At the time the Controller notified the claimant of the reduction, section 1185.1 of the Commission's regulations required that an IRC be timely filed "no later than three years following the date of the Office of State Controller's final audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim" in order to be complete.<sup>110</sup>

The claimant filed the IRC on August 15, 2017, less than three years from the date of the Controller's emailed notice of September 29, 2014. Therefore, the Commission finds that the IRC was timely filed.

**B. The Controller's reduction of costs incurred in 2009-2010 from the fiscal year 2010-2011 reimbursement claim and the Controller's decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim, are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.**

As indicated above, the claimant filed an annual reimbursement claim, with the face sheet and each page of the claim form (FAM-27) showing that the claim, totaling \$229,627, was for 2010-2011 fiscal year costs.<sup>111</sup> The claim, however, includes costs incurred in fiscal years 2009-2010 through 2011-2012.<sup>112</sup> The Controller approved reimbursement for the 2010-2011 costs, and reduced the costs for 2009-2010 and 2011-2012 because reimbursement claims for those fiscal years had not been filed and the 2009-2010 and 2011-2012 documentation did not support that

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<sup>109</sup> Exhibit A, IRC, page 44 (email from the Controller).

<sup>110</sup> Former California Code of Regulations, title 2, sections 1185.1(c), 1185.2(a) (Register 2014, No. 21). Section 1185.1(c) was amended, operative October 1, 2016, to clarify that: "All incorrect reduction claims shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reasons for the adjustment. The filing shall be returned to the claimant for lack of jurisdiction if this requirement is not met."

<sup>111</sup> Exhibit A, IRC, pages 50-52 (2010-2011 reimbursement claim).

<sup>112</sup> Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling \$50,459); pages 71-111 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2010-2011, totaling \$147,355.29); and pages 112-120 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2011-2012, totaling \$31,812.65). Exhibit B, Controller's Comments on the IRC, pages 22-24 (Controller's Summary of Invoices Included in FY 2010-11 Claim).



costs were incurred in fiscal year 2010-2011.<sup>113</sup> The claimant disputes only the reduction of costs totaling \$50,459, which were incurred in fiscal year 2009-2010.<sup>114</sup>

The Commission finds that the Controller's reduction of costs from the fiscal year 2010-2011 claim (for costs incurred in 2009-2010) and the Controller's decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

**1. The Controller's reduction of 2009-2010 costs from the fiscal year 2010-2011 claim is correct as a matter of law.**

Government Code 17560(a) provides that reimbursement for state-mandated costs may be claimed in an annual reimbursement claim "that details the costs actually incurred for that fiscal year" as follows:

A local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim *that details the costs actually incurred for that fiscal year*.<sup>115</sup>

In addition, the Parameters and Guidelines for the *Local Government Employee Relations* mandate state: "Actual costs for *one fiscal year* shall be included in each claim"<sup>116</sup> and:

To be eligible for mandated cost reimbursement for any given fiscal year, only actual costs may be claimed .... Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.<sup>117</sup>

Parameters and guidelines are regulatory in nature and are binding on the claimant.<sup>118</sup>

Here, the claimant's 2010-2011 reimbursement claim includes costs totaling \$50,459, which are supported by invoices showing that the costs were incurred in fiscal year 2009-2010, and not in

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<sup>113</sup> Exhibit A, IRC, page 44 (email from the Controller).

<sup>114</sup> Exhibit A, IRC, page 5

<sup>115</sup> Government Code section 17560, as last amended by Statutes 2007-2008, 3d Ex. Sess., chapter 6, effective February 16, 2008. Emphasis added.

<sup>116</sup> Exhibit A, IRC, page 29 (Parameters and Guidelines). Emphasis added.

<sup>117</sup> Exhibit A, IRC, page 29 (Parameters and Guidelines).

<sup>118</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

fiscal year 2010-2011.<sup>119</sup> The claimant admits that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.<sup>120</sup>

The claimant did not file a 2009-2010 reimbursement claim.<sup>121</sup> Instead,

The City submitted an SB 90 Claim for the Local Government Employee Relations Program No. 298 for three fiscal years (FY 2009-10, FY 2010-11, and FY 2011-12) under one submittal (FY 2010-11 FAM-27). At the time, the City had inadvertently filed the multi-year claim and did not realize it would cause the claim to be ineligible.<sup>122</sup>

Thus, substantial evidence in the record supports the Controller's finding that the \$50,459 claimed in fiscal year 2010-2011 were not actual costs incurred in fiscal year 2010-2011 and thus, the reduction of costs incurred in fiscal year 2009-2010 from the 2010-2011 claim is correct as a matter of law.

**2. The Controller's decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.**

The claimant believes that the Controller should have accepted the 2010-2011 reimbursement claim, which contained documentation supporting costs actually incurred in fiscal year 2009-2010, as a late 2009-2010 reimbursement claim subject to a 10 percent late filing penalty.<sup>123</sup> The claimant contends that the Controller incorrectly denied reimbursement for the \$50,459 incurred in fiscal year 2009-2010 on the following grounds: (1) it claimed costs that were eligible, documented, and incurred to comply with a state-mandated program; (2) its costs were not found to be excessive, improper or unreasonable; (3) its fiscal year 2009-2010 costs were submitted to the State (in the 2010-2011 reimbursement claim) by the late claim deadline; and (4) although its FAM-27 form was not filled out properly, its actual submission and its attached support means the claim was properly documented.<sup>124</sup>

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<sup>119</sup> Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling \$50,459).

<sup>120</sup> Exhibit A, IRC, pages 43-44 (September 29, 2014 email from the claimant to Controller); Exhibit B, Controller's Comments on the IRC, page 31 (email from the claimant to the Controller).

<sup>121</sup> Exhibit B, Controller's Comments on the IRC, page 8.

<sup>122</sup> Exhibit A, IRC, page 5.

<sup>123</sup> Exhibit A, IRC, pages 43-46 (Claimant's September 29 and 30, 2014 emails and September 8, 2016 letter to Controller); Exhibit B, Controller's Comments on the IRC, page 31 (September 29, 2014 email from the claimant to the Controller) and page 33 (Controller's October 20, 2016 email to the claimant).

<sup>124</sup> Exhibit A, IRC, page 7.

The claimant further asserts that “clerical errors should not be grounds for denial of constitutionally guaranteed mandated costs reimbursement.”<sup>125</sup> The claimant argues that the Commission should decide this IRC similarly to the Draft Proposed Decision issued March 18, 2016 on the *Firefighter’s Cancer Presumption*, 09-4081-I-01 IRC, which found that the Controller should have allowed for the correction of a “mere arithmetic error.”<sup>126</sup>

The claimant also argues that the Controller’s decision is unfair and not justified because the Controller waited almost three years to audit the claim, which made it impossible for the claimant to file a timely 2009-2010 claim. The claimant states “had [it] known of the clerical error sooner (not three years later), the City would have immediately corrected and resubmitted the claim within the filing period.”<sup>127</sup>

The Controller maintains that it timely reviewed the City’s claim and correctly reduced the costs at issue, noting that the claimant filed its fiscal year 2010-2011 claim on January 27, 2012, and a late claim for 2009-2010 costs would have been due on February 15, 2012. The Controller states that during the claim submission period each February, it receipts, manages, and logs several thousand claims into the local reimbursement system to produce a mandatory report for the Legislature by April 30th. Comprehensive desk reviews begin after April 30th. Thus, even if the Controller had reviewed the claim in this case immediately in May 2012, the February 15, 2012 deadline for submitting the fiscal year 2009-2010 reimbursement claim had already passed. The claimant never filed a fiscal year 2009-2010 reimbursement claim.<sup>128</sup> In addition, the Controller states that it was within its statutory authority to initiate a desk review in September 2014 and had until September 2016 to complete the review pursuant to Government Code section 17558.5.<sup>129</sup> The Controller further contends that the claimant’s reliance on the Proposed Decision in the *Firefighter’s Cancer Presumption*, 09-4081-I-01 IRC is misplaced because “the inclusion of multiple fiscal years in a single claim is not a ‘mere arithmetic error’; it is instead a matter of non-compliance with the Ps and Gs . . . .”<sup>130</sup>

The Commission finds that the Controller’s decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Government Code places the burden on the claimant to file annual reimbursement claims by the statutory deadline for costs incurred in a single fiscal year. Government Code 17560(a) states that “[a] local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually

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<sup>125</sup> Exhibit A, IRC, page 7.

<sup>126</sup> Exhibit A, IRC, page 7.

<sup>127</sup> Exhibit A, IRC, page 4.

<sup>128</sup> Exhibit B, Controller’s Comments on the IRC, page 8.

<sup>129</sup> Exhibit B, Controller’s Comments on the IRC, page 8.

<sup>130</sup> Exhibit B, Controller’s Comments on the IRC, page 9.

incurred for that fiscal year.<sup>131</sup> Government Code section 17568 allows valid reimbursement claims to be submitted after that deadline, but “*in no case shall a reimbursement claim be paid that is submitted more than one year after the [February 15th] deadline in Government Code section 17560,*” as follows:

If a local agency or school district submits an otherwise valid reimbursement claim to the Controller after the [February 15<sup>th</sup>] deadline specified in Section 17560, the Controller shall reduce the reimbursement claim in an amount equal to 10 percent of the amount that would have been allowed had the reimbursement claim been timely filed, provided that the amount of this reduction shall not exceed ten thousand dollars (\$10,000). *In no case shall a reimbursement claim be paid that is submitted more than one year after the deadline specified in Section 17560.*<sup>132</sup>

Consequently, in order for the claimant to timely request reimbursement for actual costs incurred in fiscal year 2009-2010 pursuant to Government Code sections 17560 and 17568, the claimant was required to file a fiscal year 2009-2010 reimbursement claim on or before February 15, 2011. If the claimant had filed the claim between February 16, 2011, and February 15, 2012, the Controller would have been required to accept the claim and reduce it by 10 percent up to a maximum reduction of \$10,000. If the claimant had filed the claim on or after February 16, 2012, the Controller would have been required to deny the claim in its entirety. The claimant never filed a fiscal year 2009-2010 reimbursement claim.<sup>133</sup>

The claimant asserts that it simply made a “clerical error” by filing a multi-year claim and that the Controller should accept the 2010-2011 reimbursement claim, filed January 2012, which included documentation supporting the costs actually incurred in fiscal year 2009-2010, as a late-filed but timely 2009-2010 reimbursement claim. The claimant equates its “clerical error” with the City of Los Angeles’ mathematical error in the *Firefighter’s Cancer Presumption*, 09-4081-I-01 IRC.

However, the facts in this IRC are distinguishable from the facts in *Firefighter’s Cancer Presumption*, 09-4081-I-01, and the claimant’s reliance on that Proposed Decision is misplaced. In *Firefighter’s Cancer Presumption*, 09-4081-I-01, the claimant timely filed a reimbursement claim for fiscal year 2003-2004, but erroneously failed to include \$516,132 in costs on the FAM-27 claim form, even though that \$516,132 was listed on the Form FCP-2.1 attached to the FAM-27. In adding the costs identified on the attached Form FCP-2.1, the claimant made a mathematical error and obtained a bottom-line total that was \$516,132 less than the actual sum of all of the Total Benefit Payments. The claimant then transferred the error to the Direct Costs

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<sup>131</sup> Government Code section 17560 was last amended by Statutes 2007-2008, 3d Ex. Sess., chapter 6, effective February 16, 2008.

<sup>132</sup> Emphasis added. Government Code section 17568 was last amended by Statutes 2007-2008, 3d Ex. Sess., chapter 6, effective February 16, 2008. See also, Government Code section 17561(d)(3), which plainly states that “*in no case may a reimbursement claim be paid if submitted more than one year after the filing deadline specified in the Controller’s claiming instructions on funded mandates.*” Emphasis added.

<sup>133</sup> Exhibit B, Controller’s Comments on the IRC, page 8.

schedule at the end of Form FCP-2.1 and to the reimbursement claim Form FAM-27.<sup>134</sup> While the audit report was still in draft form, the Controller declined the claimant's request to correct the mathematical error on the reimbursement claim form, even though the Controller agreed that the reimbursement amount requested on the face of the claim was inaccurate and incomplete due to the claimant's arithmetic error, and that the claimant had submitted correct and complete documentation appended to the claim.<sup>135</sup> A Draft Proposed Decision and Proposed Decision were issued finding that the Controller's actions were incorrect as a matter of law and were arbitrary, capricious, and entirely lacking in evidentiary support, but the claimant withdrew the IRC before the Commission hearing. Thus, there is no adopted decision in *Firefighter's Cancer Presumption*, 09-4081-I-01, but the Proposed Decision included the following proposed findings:

- The Controller did not dispute that the claimant timely filed its fiscal year 2003-2004 claim, and that, at the time of the filing, the claimant's Form FCP-2.1 contained a four-page listing of all of the relevant disability benefit costs used to calculate the claimant's reimbursement. The claimant did not attempt to add new or late-filed data. Consequently, the claim for reimbursement of 2003-2004 costs—which included the disputed \$516,132 in disability benefit costs — was timely filed under Section 17560(b).<sup>136</sup>
- Government Code section 17558.5(a) expressly refers to a claimant's ability to "amend" a reimbursement claim. However, the Government Code does not address the specific question of when the Controller may lawfully deny leave to amend. And the Controller did not promulgate regulations on the topic.<sup>137</sup>
- Therefore, by analogy, the claimant's request to correct the mathematical error in a timely-filed reimbursement claim is the functional equivalent of a party to a civil action requesting leave to amend a pleading. Pursuant to Code of Civil Procedure section 473(a)(1), the court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading to correct an inadvertent mistake.<sup>138</sup>
- Based on evidence in the record and applying the standard in Code of Civil Procedure section 473(a)(1), the Proposed Decision found that the Controller's refusal to consider the evidence included in the original claim filing was incorrect as a matter of law and arbitrary, capricious, and entirely lacking in evidentiary support. The claimant's reimbursement claim contained the relevant evidence; the claimant was not adding to or

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<sup>134</sup> Exhibit E, Commission on State Mandates, Proposed Decision, *Firefighter's Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, pages 15 and 16.

<sup>135</sup> Exhibit E, Commission on State Mandates, Proposed Decision, *Firefighter's Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, pages 16, 21, 24.

<sup>136</sup> Exhibit E, Commission on State Mandates, Proposed Decision, *Firefighter's Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, pages 21, 27.

<sup>137</sup> Exhibit E, Commission on State Mandates, Proposed Decision, *Firefighter's Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, page 23.

<sup>138</sup> Exhibit E, Commission on State Mandates, Proposed Decision, *Firefighter's Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, pages 22-23.

increasing its claim, but was merely correcting a mathematical error; and the Controller was not misled or prejudiced by the mistake. The proposed decision recommended that the Commission approve the IRC.<sup>139</sup>

Unlike the facts in *Firefighter's Cancer Presumption*, 09-4081-I-01, a reimbursement claim for fiscal year 2009-2010 costs was never filed in this case, so there is nothing to amend. The claimant filed a reimbursement claim for fiscal year 2010-2011 requesting reimbursement for the claimant's payment of contracted legal services related to the program.<sup>140</sup> The cover sheet and each page of the claim form (FAM-27) indicates that the claim is for fiscal year 2010-2011.<sup>141</sup> The reimbursement claim form states that "Liebert Cassidy Whitmore (Contract Attorney) Responded to several PERB matters," and \$229,627 was claimed for those costs.<sup>142</sup> The reimbursement claim form for fiscal year 2010-2011 was signed under penalty of perjury by the claimant's Finance Division Manager, who certified that the claim was true and correct, and identified "Annette S. Chinn (CRS)" as the contact person for the claim.<sup>143</sup> Attached to the reimbursement claim are invoices from Liebert Cassidy Whitmore, with the invoice dates plainly stated, showing costs incurred for legal services in fiscal years 2009-2010, 2010-2011, and 2011-2012, totaling \$229,627.<sup>144</sup> As stated above, the Government Code does not allow filing multi-year annual reimbursement claims, and has always placed the burden on the claimant to file annual reimbursement claims by the statutory deadline for costs incurred in a single fiscal year.<sup>145</sup> Thus, the only reimbursement claim filed was for fiscal year 2010-2011.

In comments on the Draft Proposed Decision, the claimant clarifies that its error was not due to an incorrect interpretation of the law regarding the submission of multiple years of costs in one claim, but was based on the consultant's belief that the invoices provided were only for fiscal year 2010-2011. According to the claimant:

Both the City and consultant have been preparing and submitting these State Mandate Reimbursement claims for many years and we were aware that only one fiscal year of costs should have been submitted per claim. However, the mistake was an inadvertent one. The consultant believed that the data provided to them by the City was only for FY 2010-11 and not for 3 years of costs. Thus, the

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<sup>139</sup> Exhibit E, Commission on State Mandates, Proposed Decision, *Firefighter's Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, pages 9, 23-25, 33.

<sup>140</sup> Exhibit A, IRC, pages 50-120 (2010-2011 reimbursement claim).

<sup>141</sup> Exhibit A, IRC, pages 50-52 (2010-2011 reimbursement claim).

<sup>142</sup> Exhibit A, IRC, pages 50, 52 (2010-2011 reimbursement claim).

<sup>143</sup> Exhibit A, IRC, page 50 (2010-2011 reimbursement claim).

<sup>144</sup> Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling \$50,459); pages 71-111 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2010-2011, totaling \$147,355.29); and pages 112-120 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2011-2012, totaling \$31,812.65). Exhibit B, Controller's Comments on the IRC, pages 22-24 (Controller's Summary of Invoices Included in FY 2010-11 Claim).

<sup>145</sup> Government Code section 17560.

consultant believed all invoices and costs were for the current year (FY 2010-11) and inadvertently included them all into one claim, and not two separate submissions, as should have been done (one for FY 2009-10 and one for 2010-11).

We are not sure if these circumstances constitute a "clerical" error by legal definition- but it was an honest, inadvertent mistake. It was not due to failure to correctly interpret the law or understand the claiming instructions, as the Draft Decision suggests. We knew that separate forms should have been filed by fiscal year of costs. It was our error that invoices were from multiple fiscal years. We realize that this was a mistake on our part, but again, wish to emphasize that the costs submitted were timely filed, eligible, and properly supported actual costs. The only error we made was that we did not separate the invoices by fiscal year into two separate claim forms.<sup>146</sup>

Despite the error, the claimant argues that the costs submitted were nevertheless "timely filed, eligible and properly documented."<sup>147</sup> Thus, the claimant argues its submission was "fully complete with the exception of having a separate FAM-27 claim cover form for FY 2009-10 invoices."<sup>148</sup>

The claimant's request that the Commission require the Controller to accept its filing as a late 2009-2010 reimbursement claim is analogous to a request made under Code of Civil Procedure section 473, which gives the court discretion, absent a showing of prejudice to the adverse party, to allow a party to amend any pleading to correct a mistake.<sup>149</sup> The courts have held, however, that Code of Civil Procedure section 473 cannot be used to deem a claim as timely filed when it was not, even when notice is timely provided that a claim would be filed.

For example, in *Nathanson v. Superior Court* (1974) 12 Cal.3d 355, the California Supreme Court considered a case in probate where the petitioner (the former wife and daughter of the decedent) filed a creditor's claim against the estate two weeks *after* the expiration of the statutory period for presenting a claim. The creditor's claim requested \$82,000 for child support and for the alleged failure by the decedent to maintain a life insurance policy. Beneath the description of the amount requested in the claim, the petitioner wrote: "For further particulars, reference is hereby made to the verified petition of Zita Nathanson for family allowance before inventory filed on or about October 3, 1972."<sup>150</sup> This quoted language referred to a petition previously filed in the probate proceedings on October 3, 1972, requesting a monthly family allowance from the date of the decedent's death until the filing of an inventory, which alleged that the creditor's claims "anticipated to be filed" against the estate consist of unpaid child support and a claim for the alleged failure of the decedent to maintain a life insurance policy in

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<sup>146</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision, pages 1-2.

<sup>147</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision, page 2.

<sup>148</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision, page 2.

<sup>149</sup> *Board of Trustees of Leland Stanford Jr. University v. Superior Court* (2007) 149 Cal.App.4th 1154, 1163.

<sup>150</sup> *Nathanson v. Superior Court* (1974) 12 Cal.3d 355, 359.

the same amount as presented in the later-filed claim. After the creditor's claim was rejected as late, the petitioner filed a request for an order authorizing filing a late claim based on Code of Civil Procedure section 473, alleging that "through mistake and inadvertence petitioner's claim was not regularly filed with this court in proper form within the statutory four month period for presenting claims," but that notice of her claim had been given to the estate within the claim presentation period when she filed her petition on October 3, 1972. Petitioner therefore requested that the claim be deemed filed since the estate had actual notice of the claim sufficient to give the court jurisdiction. The court denied the request on the following grounds: (1) the probate statute stated that all claims must be filed within the time limited in the notice or be "barred forever"; (2) mere notice of the claim on the part of the estate does not constitute a sufficient filing of a claim; (3) the executor or administrator of the estate has a fiduciary relationship to all parties having an interest in the estate and is required to protect the estate against the collection of a claim that is not filed or presented as required by statute; (4) under Code of Civil Procedure section 473, a creditor's claim that has been properly filed can be amended or corrected after the expiration of the statutory deadline, but implicit in this rule is that the creditor's claim has been timely filed or presented in the first place; and (5) "mere notice to the estate, in the sense of imparting knowledge of the underlying debt to the representative, does not constitute a sufficient claim or demand which can be the basis of an amendment."<sup>151</sup>

This case is similar to *Nathanson*, except that there is no evidence in this case that the Controller had notice or was aware of the 2009-2010 costs until the desk review of the 2010-2011 claim in September 2014.<sup>152</sup> The 2010-2011 reimbursement claim was filed on January 27, 2012.<sup>153</sup> Although 2009-2010 invoices were attached to the 2010-2011 reimbursement claim, the evidence shows that the Controller receives several thousand claims during the annual claim submission period, which are simply receipted and logged.<sup>154</sup> Page one of the reimbursement claim form submitted by the claimant (the FAM-27) states that the claim is for fiscal year 2010-2011 costs and the form is signed under penalty of perjury certifying that the claim is true and correct.<sup>155</sup> Thus, the claim was logged as a fiscal year 2010-2011 claim.<sup>156</sup> Pursuant to Government Code section 17558.5, the Controller had three years after the reimbursement claim was filed to initiate an audit, which was timely initiated here in September 2014. Thus, there is no evidence, as suggested by the claimant, that the Controller was arbitrary or capricious "in waiting three years" to notify the claimant of the claimant's alleged mistake. The evidence

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<sup>151</sup> *Nathanson v. Superior Court* (1974) 12 Cal.3d 355, 364-367, 369-370.

<sup>152</sup> Exhibit B, Controller's Comments on the IRC, page 7.

<sup>153</sup> The claimant states that the filing date is January 30, 2012, (Exhibit A, IRC, pages 5, 50), but the Controller states that the filing date is January 27, 2012 (Exhibit B, Controller's Comments on the IRC, page 8). The record indicates that the claim was signed on January 19, 2012, and shows an "LRS Input" date from the Controller on January 30, 2012 (Exhibit B, Controller's Comments on the IRC, page 12).

<sup>154</sup> Exhibit B, Controller's Comments on the IRC, page 7.

<sup>155</sup> Exhibit A, IRC, page 50.

<sup>156</sup> Exhibit B, Controller's Comments on the IRC, page 7.



shows that the Controller's actions complied with the law and the Controller's usual procedures for accepting annual reimbursement claims.

Moreover, the Commission does not have the authority to correct the type of mistake alleged in this case. The plain language of Government Code 17560 puts the burden on the claimant to file an annual reimbursement claim by the statutory deadline for costs incurred in a single fiscal year. The Controller's annual reimbursement claim form, FAM-27, requires the claimant to sign the claim under penalty of perjury certifying that the costs claimed are true and correct and that the person signing is authorized by the local agency to file a claim with the State. The claimant never filed a reimbursement claim for fiscal year 2009-2010 or a declaration signed under penalty of perjury for that fiscal year. Neither the Commission nor the Controller have the authority to now allow the filing of a 2009-2010 reimbursement claim since the deadline in Government Code sections 17560 and 17568 has lapsed. Government Code section 17561(d)(3) plainly states that "*in no case* may a reimbursement claim be paid if submitted more than one year after the filing deadline specified in the Controller's claiming instructions on funded mandates."<sup>157</sup> Similarly, Government Code section 17568 states that "*in no case* shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560." The deadline in this case to file a 2009-2010 reimbursement claim under sections 17560 and 17568, certified and signed under penalty of perjury, passed on February 15, 2012, one month after the 2010-2011 reimbursement claim was filed.<sup>158</sup>

Therefore, the Controller's decision to not accept the 2010-2011 reimbursement claim as a late 2009-2010 reimbursement claim is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

## **V. Conclusion**

Based on the forgoing analysis, the Commission concludes that the Controller's reduction is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Commission denies this IRC.

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<sup>157</sup> Emphasis added.

<sup>158</sup> Government Code section 17560(a) states that "[a] local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year. Government Code section 17568 allows a valid reimbursement claim to be submitted after that deadline, and in such cases, the Controller is required to reduce the claim by ten percent. Section 17568 further states, however, that "*in no case* shall a reimbursement claim be paid that is submitted more than one year after the deadline in Government Code section 17560." Emphasis added.