



June 30, 2020

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Ms. Natalie Sidarous
State Controller's Office
Local Government Programs and
Services Division
3301 C Street, Suite 740
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing

Local Government Employee Relations, 17-0130-I-01

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

City of Monrovia, Claimant

Dear Ms. Chinn and Ms. Sidarous:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision by **July 21, 2020**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

¹ 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.

Ms. Chinn and Ms. Sidarous

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If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, September 25, 2020**, at 10:00 a.m. via Zoom. The Proposed Decision will be issued on or about September 11, 2020.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list and so that detailed instructions regarding how to participate as a witness in this meeting on Zoom can be provided to them. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey", with a stylized flourish at the end.

Heather Halsey
Executive Director

ITEM ____
INCORRECT REDUCTION CLAIM
DRAFT 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

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 2009-2010.¹ 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-

¹ 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 2011-2012.²

The claimant filed its fiscal year 2011-2012 reimbursement claim on January 30, 2013.³

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.⁴ 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.”⁵

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.⁶

In an October 31, 2014 adjustment letter, the Controller formally notified the claimant of the reduction for costs incurred in fiscal year 2009-2010.⁷ In a September 8, 2016 letter, the claimant asked the Controller to reconsider its reduction for fiscal year 2009-2010.⁸ In its reply letter of October 20, 2016, the Controller denied the claimant’s request to reconsider the reduction.⁹

² 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).

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

⁴ 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.

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

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

⁷ Exhibit B, Controller’s Comments on the IRC, page 37.

⁸ Exhibit A, IRC, pages 45-46 (Claimant’s letter to Controller).

⁹ Exhibit B, Controller’s Comments on the IRC, page 33 (Controller’s email to claimant).

The claimant filed the IRC on August 15, 2017,¹⁰ and the Controller filed comments on the IRC on December 22, 2017.¹¹

Commission staff issued the Draft Proposed Decision on June 30, 2020.¹²

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.¹³ 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."¹⁴

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.¹⁵

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.¹⁶ In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations requires that any assertions

¹⁰ Exhibit A, IRC.

¹¹ Exhibit B, Controller's Comments on the IRC, page 1.

¹² Exhibit C, Draft Proposed Decision.

¹³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁴ *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.

¹⁵ *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.

¹⁶ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

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.¹⁷

Claims

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

Issue	Description	Staff Recommendation
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). ¹⁸	<i>Timely filed</i> – The Controller notified the claimant of its desk review 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 desk review, 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 inadvertently filed the multi-year claim and did not realize it would cause the claim to	<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 Parameters and Guidelines require source documentation for one fiscal year, and are

¹⁷ 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.

¹⁸ 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>the ineligible.”¹⁹ 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.”²⁰</p> <p>The law allows relief from an order taken against a party as a result of a clerical error,²¹</p>	<p>regulatory and are binding on the claimant.²³</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 2010-2011.²⁴ The claimant admits that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.²⁵ Thus, the \$50,459 are not “actual costs” for the 2010-2011 claim year.</p> <p>In addition, the courts have made it clear that “clerical errors,” which can be subject to later correction, do <i>not</i> include errors made because of a failure to correctly interpret the law or apply the facts.²⁶ Based on this record, the claimant erred in its interpretation of the law that a multi-year filing would be</p>

¹⁹ Exhibit A, IRC, page 5.

²⁰ Exhibit A, IRC, page 29 (Parameters and Guidelines).

²¹ Code of Civil Procedure section 473.

²³ 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.

²⁴ Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling \$50,459).

²⁵ Exhibit A, IRC, pages 43-44 (September 29, 2014 email from claimant to Controller); Exhibit B, Controller’s Comments on the IRC, page 31 (email from the claimant to the Controller).

²⁶ *In re Eckstrom’s Estate* (1960) 54 Cal.2d 540, 545.

Issue	Description	Staff Recommendation
	but courts have made it clear that “clerical errors,” which can be subject to later correction, do <i>not</i> include errors made because of a failure to correctly interpret the law or apply the facts. ²²	acceptable. ²⁷ There is no evidence that the claimant committed a “clerical error.” Therefore, the reduction is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

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,²⁸ 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 \$50,459 (less an undisputed 10 percent penalty) from the claim filed for fiscal year 2010-2011 is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support because the documentation provided with the claim does not support that those costs were incurred in fiscal year 2010-2011, as required by Government Code section 17560 and the Parameters and Guidelines, and there is no evidence of a clerical error that could be subject to correction.

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.²⁹ The claim, however, included documentation supporting costs incurred in fiscal

²² *In re Eckstrom’s Estate* (1960) 54 Cal.2d 540, 545.

²⁷ Exhibit A, IRC, page 5. The IRC states that “[a]t the time [it filed the 2010-2011 claim], the City had inadvertently filed the multi-year claim and did not realize it would cause the claim to be ineligible.”

²⁸ Exhibit A, IRC, page 44 (email from the Controller).

²⁹ Exhibit A, IRC, pages 50-52 (2010-2011 reimbursement claim).

years 2009-2010 through 2011-2012.³⁰ 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 2010-2011.³¹ The claimant only disputes the reduction of the fiscal year 2009-2010 costs totaling \$50,459.³²

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.³³ 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.”³⁴ 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.”³⁵ Parameters and guidelines are regulatory and are binding on the claimant.³⁶

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 2010-2011.³⁷ The claimant admits that the costs were incurred in fiscal year 2009-2010, and not

³⁰ 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).

³¹ Exhibit A, IRC, page 44 (email from the Controller).

³² Exhibit A, IRC, page 4.

³³ Government Code sections 17560 and 17568 (that were originally added by Stats. 1986, ch. 879).

³⁴ Exhibit A, IRC, page 29 (Parameters and Guidelines). Emphasis added.

³⁵ Exhibit A, IRC, page 29 (Parameters and Guidelines).

³⁶ *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.

³⁷ Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling \$50,459).

in fiscal year 2010-2011.³⁸ 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.

However, the claimant alleges that it committed a “clerical error” in its multi-year filing, which the Controller should allow to be corrected. The claimant states: “[a]t the time [when it filed the 2010-2011 claim], the City had inadvertently filed the multi-year claim and did not realize it would cause the claim to be ineligible.”³⁹ Based on this “clerical error,” the claimant argues that the Controller should accept the 2010-2011 claim as a late 2009-2010 claim and allow the costs because: (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.⁴⁰

The law in civil actions allows relief from an order taken against a party as a result of a clerical error, but courts have made it clear that “clerical errors,” which can otherwise be subject to later correction, do *not* include errors made because of a failure to correctly interpret the law or apply the facts.⁴¹ The record indicates that the claimant erred in its interpretation of the law that a multi-year filing would be acceptable.⁴² There is no evidence that the claimant made a “clerical error,”

Nor does the law authorize deeming a claim as timely filed when it was not, even when notice is timely provided that a claim would be filed.⁴³

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.

³⁸ Exhibit A, IRC, pages 43-44 (September 29, 2014 email from claimant to Controller); Exhibit B, Controller’s Comments on the IRC, page 31 (email from the claimant to the Controller).

³⁹ Exhibit A, IRC, page 5.

⁴⁰ Exhibit A, IRC, page 7.

⁴¹ Code of Civil Procedure section 473(b); *In re Eckstrom’s Estate* (1960) 54 Cal.2d 540, 545.

⁴² Exhibit A, IRC, page 5. The IRC states that “[a]t the time [it filed the 2010-2011 claim], the City had inadvertently filed the multi-year claim and did not realize it would cause the claim to be ineligible.”

⁴³ Code of Civil Procedure section 473. *Nathanson v. Superior Court* (1974) 12 Cal.3d 355, 364-367, 369-370.

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:

Member	Vote
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) 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 late penalty) incurred in fiscal year 2009-2010.⁴⁴ 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.⁴⁵

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 and not arbitrary, capricious, or entirely lacking in evidentiary support. 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.⁴⁶ 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,

⁴⁴ 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).

⁴⁵ 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."

⁴⁶ Government Code sections 17560 and 17568 (that were originally added by Stats. 1986, ch. 879).

when they were incurred, and their relationship to the reimbursable activities.”⁴⁷ Parameters and guidelines are regulatory in nature and are binding on the claimant.⁴⁸ 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 2010-2011.⁴⁹ The claimant admits that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.⁵⁰ Thus, the \$50,459 are not “actual costs” for the 2010-2011 claim year.

However, the claimant alleges that it committed a “clerical error” in its multi-year filing, which the Controller should allow to be corrected. The claimant states: “[a]t the time [when it filed the 2010-2011 claim], the City had inadvertently filed the multi-year claim and did not realize it would cause the claim to be ineligible.”⁵¹ Based on this “clerical error,” the claimant argues that the Controller should accept the 2010-2011 claim as a late 2009-2010 claim and allow the \$50,459 incurred in fiscal year 2009-2010 because: (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.⁵² The law allows relief from an order taken against a party as a result of a clerical error,⁵³ but courts have made it clear that “clerical errors,” which can otherwise be subject to later correction, do *not* include errors made because of a failure to correctly interpret the law or apply the facts.⁵⁴ Based on this record, the claimant erred in its interpretation of the law that a multi-year filing would be acceptable.⁵⁵ There is no evidence that the claimant made a “clerical error.”

⁴⁷ Exhibit A, IRC, page 29 (Parameters and Guidelines).

⁴⁸ *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.

⁴⁹ Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling \$50,459).

⁵⁰ Exhibit A, IRC, pages 43-44 (September 29, 2014 email from claimant to Controller); Exhibit B, Controller’s Comments on the IRC, page 31 (email from the claimant to the Controller).

⁵¹ Exhibit A, IRC, page 5.

⁵² Exhibit A, IRC, page 7.

⁵³ Code of Civil Procedure section 473(b).

⁵⁴ *In re Eckstrom’s Estate* (1960) 54 Cal.2d 540, 545.

⁵⁵ Exhibit A, IRC, page 5. The IRC states that “[a]t the time [when it filed the 2010-2011 claim], the City had inadvertently filed the multi-year claim and did not realize it would cause the claim to be ineligible.”

Nor does the law authorize deeming a claim as timely filed when it was not, even when notice is timely provided that a claim would be filed.⁵⁶

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

Therefore, the Commission denies this IRC and finds that the Controller's reduction is correct as a matter of law and not arbitrary, capricious or entirely lacking in evidentiary support.

⁵⁶ Code of Civil Procedure section 473. *Nathanson v. Superior Court* (1974) 12 Cal.3d 355, 364-367, 369-370.

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 2011-2012.⁵⁷
- 01/30/2013 The claimant filed its fiscal year 2011-2012 reimbursement claim.⁵⁸
- 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.⁵⁹
- 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."⁶⁰
- 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.⁶¹
- 10/31/2014 The Controller formally notified the claimant of the reduction for costs incurred in fiscal year 2009-2010 via an adjustment letter.⁶²

⁵⁷ 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).

⁵⁸ Exhibit B, Controller's Comments on the IRC, page 16 (fiscal year 2011-2012 reimbursement claim).

⁵⁹ 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.

⁶⁰ 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 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)).

⁶¹ Exhibit A, IRC, page 43. Exhibit B, Controller's Comments on the IRC, page 32 (email from the Controller to the claimant).

⁶² Exhibit B, Controller's Comments on the IRC, page 37.

09/08/2016 The date of the claimant's letter asking the Controller to reconsider its reduction for fiscal year 2009-2010 costs.⁶³

10/20/2016 The Controller denied the claimant's request to reconsider the reduction.⁶⁴

08/15/2017 The claimant filed the IRC.⁶⁵

12/22/2017 The Controller filed comments on the IRC.⁶⁶

06/30/2020 Commission staff issued the Draft Proposed Decision.⁶⁷

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 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:

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));

⁶³ Exhibit A, IRC, pages 45-46 (Claimant's letter to Controller).

⁶⁴ Exhibit B, Controller's Comments on the IRC, page 33 (Controller's email to claimant).

⁶⁵ Exhibit A, IRC.

⁶⁶ Exhibit B, Controller's Comments on the IRC, page 1.

⁶⁷ Exhibit C, Draft Proposed Decision.

- 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, 2009.⁶⁸ According to the Parameters and Guidelines: “Actual costs for one fiscal year shall be included in each claim.”⁶⁹ 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.⁷⁰

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.⁷¹ The cover sheet and each page of the claim form (FAM-27) indicates that the claim is for fiscal year 2010-2011.⁷² The reimbursement claim form states that “Liebert Cassidy Whitmore (Contract Attorney) Responded to several PERB matters,” and \$229,627 was claimed for those costs.⁷³ 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.⁷⁴ Attached to the reimbursement claim are invoices from Liebert

⁶⁸ 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.

⁶⁹ Exhibit A, IRC, page 29 (Parameters and Guidelines).

⁷⁰ Exhibit A, IRC, page 29 (Parameters and Guidelines).

⁷¹ 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).

⁷² Exhibit A, IRC, pages 50-52 (2010-2011 reimbursement claim).

⁷³ Exhibit A, IRC, pages 50, 52 (2010-2011 reimbursement claim).

⁷⁴ 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.)

Cassidy Whitmore showing costs incurred for legal services in fiscal years 2009-2010, 2010-2011, and 2011-2012, totaling \$229,627.⁷⁵

In September 2014, the Controller initiated a desk review of the 2010-2011 reimbursement claim.⁷⁶ 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.”⁷⁷ 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:

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.⁷⁸

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.

⁷⁵ 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).

⁷⁶ Exhibit B, Controller’s Comments on the IRC, page 7.

⁷⁷ Exhibit A, IRC, page 44; Exhibit B, Controller’s Comments on the IRC, page 30 (email from the Controller to the claimant).

⁷⁸ Exhibit A, IRC, page 44 (email from the Controller).

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.⁷⁹

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.⁸⁰

The claimant filed its fiscal year 2011-2012 reimbursement claim on January 30, 2013,⁸¹ 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 2009-2010.⁸²

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."⁸³ 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

⁷⁹ Exhibit A, IRC, pages 43-44; Exhibit B, Controller's Comments on the IRC, page 31 (email from the claimant to the Controller).

⁸⁰ Exhibit A, IRC, page 43. Exhibit B, Controller's Comments on the IRC, page 32 (email from the Controller to the claimant).

⁸¹ Exhibit B, Controller's Comments on the IRC, page 16 (fiscal year 2011-2012 reimbursement claim).

⁸² Exhibit B, Controller's Comments on the IRC, page 37.

⁸³ Exhibit A, IRC, pages 45-46 (Claimant's letter to Controller).

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 lacking evidentiary support because the details had all been submitted in the original claim, though not correctly transferred to the FAM-27. . . .⁸⁴

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 letter also noted that it was past the deadline to file a claim for fiscal year 2009-2010.⁸⁵

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.”⁸⁶ 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

⁸⁴ Exhibit A, IRC, pages 45-46 (Claimant’s letter to Controller).

⁸⁵ Exhibit B, Controller’s Comments on the IRC, page 33 (Controller’s email to claimant).

⁸⁶ 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 Controller to claimant)).

City's claim to determine that the claim would be reduced by \$50,459 due to clerical errors."⁸⁷ 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,⁸⁸ but by the time it was notified of the error on September 29, 2014, the claiming deadline for 2009-2010 had passed.⁸⁹ 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."⁹⁰

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 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 Draft Proposed Decision, Commission staff found that the Controller should have allowed for the correction of a "mere arithmetic error."⁹¹

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.⁹²

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 2009-2010 reimbursement claim would have already passed. The claimant never filed a fiscal

⁸⁷ Exhibit A, IRC, page 4.

⁸⁸ Exhibit A, IRC, page 45 (letter from claimant to the Controller).

⁸⁹ 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).

⁹⁰ Exhibit A, IRC, page 7.

⁹¹ Exhibit X, Commission on State Mandates, Draft Proposed Decision, *Firefighter Cancer Presumption*, 09-4081-I-01.

⁹² Exhibit B, Controller's Comments on the IRC, page 1.

year 2009-2010 claim, and the Controller had two years to complete its review, once the audit was initiated.⁹³

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 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.⁹⁴

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.⁹⁵ 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."⁹⁶

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

⁹³ Exhibit B, Controller's Comments on the IRC, page 8.

⁹⁴ Exhibit B, Controller's Comments on the IRC, pages 8-9.

⁹⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁹⁶ *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.⁹⁷ 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.’ ”⁹⁸

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.⁹⁹ 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.¹⁰⁰

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

⁹⁷ *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.

⁹⁸ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

⁹⁹ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁰⁰ 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.¹⁰¹

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.¹⁰²

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 \$50,459 (less an undisputed 10 percent penalty) from the fiscal year 2010-2011 claim is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support because the documentation provided with the claim supports that those costs were not incurred in fiscal year 2010-2011, as required by Government Code section 17560 and the Parameters and Guidelines, and there is no evidence of a clerical error that could be subject to correction.

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.¹⁰³ The claim, however, includes costs incurred in fiscal years 2009-2010 through 2011-2012.¹⁰⁴ 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

¹⁰¹ Exhibit A, IRC, page 44 (email from the Controller).

¹⁰² 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."

¹⁰³ Exhibit A, IRC, pages 50-52 (2010-2011 reimbursement claim).

¹⁰⁴ 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).

years had not been filed and the 2009-2010 and 2011-2012 documentation did not support that costs were incurred in fiscal year 2010-2011.¹⁰⁵ The claimant disputes only the reduction of costs totaling \$50,459, which were incurred in fiscal year 2009-2010.¹⁰⁶

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

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*.¹⁰⁷

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"¹⁰⁸ 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.¹⁰⁹

Parameters and guidelines are regulatory in nature and are binding on the claimant.¹¹⁰

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 2010-2011.¹¹¹ The claimant admits that the costs were incurred in fiscal year 2009-2010, and not in fiscal year 2010-2011.¹¹² Thus, the \$50,459 are not "actual costs" for the 2010-2011 claim year.

¹⁰⁵ Exhibit A, IRC, page 44 (email from the Controller).

¹⁰⁶ Exhibit A, IRC, page 5

¹⁰⁷ Government Code section 17560, as last amended by Statutes 2007-2008, 3d Ex. Sess., chapter 6, effective February 16, 2008. Emphasis added.

¹⁰⁸ Exhibit A, IRC, page 29 (Parameters and Guidelines). Emphasis added.

¹⁰⁹ Exhibit A, IRC, page 29 (Parameters and Guidelines).

¹¹⁰ *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.

¹¹¹ Exhibit A, IRC, pages 53-70 (Invoices from Leibert Cassidy Whitmore for legal services provided in fiscal year 2009-2010, totaling \$50,459).

¹¹² 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).

The claimant did not file a 2009-2010 reimbursement claim.¹¹³ 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.¹¹⁴

When the Controller notified the claimant that it was reducing the 2010-2011 reimbursement claim for the costs incurred in other fiscal years, the claimant requested that the Controller reimburse the \$50,459 incurred in fiscal year 2009-2010 supported by the documentation provided with the 2010-2011 reimbursement claim.¹¹⁵ The Controller denied the claimant's request.¹¹⁶

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.¹¹⁷ In other words, 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.¹¹⁸

The claimant further asserts that "clerical errors should not be grounds for denial of constitutionally guaranteed mandated costs reimbursement."¹¹⁹ The claimant argues that the Commission should decide this IRC similarly to the Draft Proposed Decision issued March 18, 2016 on the *Firefighter Cancer Presumption*, 09-4081-I-01 IRC, which found that the Controller should have allowed for the correction of a "mere arithmetic error."¹²⁰

¹¹³ Exhibit B, Controller's Comments on the IRC, page 8.

¹¹⁴ Exhibit A, IRC, page 5.

¹¹⁵ Exhibit A, IRC, pages 43-44, and Exhibit B, Controller's Comments on the IRC, page 31 (September 29, 2014 email from the claimant to the Controller); Exhibit A, IRC, pages 45-46 (claimant's September 8, 2016 letter to the Controller).

¹¹⁶ Exhibit B, Controller's Comments on the IRC, page 33 (Controller's October 20, 2016 email to the claimant).

¹¹⁷ Exhibit A, IRC, page 7.

¹¹⁸ Exhibit A, IRC, pages 45-46 (Claimant's letter to Controller).

¹¹⁹ Exhibit A, IRC, page 7.

¹²⁰ Exhibit X, Commission on State Mandates, Draft Proposed Decision, *Firefighter Cancer Presumption*, 09-4081-I-01.

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."¹²¹

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.¹²² 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 17558.5.¹²³ The Controller further contends that the claimant's reliance on the Draft Proposed Decision in the *Firefighter 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"¹²⁴

The Commission finds that the Controller's reduction of 2009-2010 costs, 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 incurred for that fiscal year."¹²⁵ 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 15th] 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

¹²¹ Exhibit A, IRC, page 4.

¹²² Exhibit B, Controller's Comments on the IRC, page 8.

¹²³ Exhibit B, Controller's Comments on the IRC, page 8.

¹²⁴ Exhibit B, Controller's Comments on the IRC, page 9.

¹²⁵ Government Code section 17560 was last amended by was last amended by Statutes 2007-2008, 3d Ex. Sess., chapter 6, effective February 16, 2008.

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.*¹²⁶

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.¹²⁷

Nevertheless, 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 mathematical error in the *Firefighter Cancer Presumption*, 09-4081-I-01 IRC.

However, the facts in this IRC are distinguishable from the facts in *Firefighter Cancer Presumption*, 09-4081-I-01, and the claimant’s reliance on that Proposed Decision is misplaced. In *Firefighter 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 together 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 schedule at the end of Form FCP-2.1 and to the reimbursement claim Form FAM-27.¹²⁸ 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.¹²⁹ A Draft Proposed Decision and Proposed Decision were issued finding for the claimant, but the claimant withdrew the IRC before the Commission

¹²⁶ Emphasis added. Government Code section 17568 was last amended by Statutes 2007-2008, 3d Ex. Sess., chapter 6, effective February 16, 2008.

¹²⁷ Exhibit B, Controller’s Comments on the IRC, page 8.

¹²⁸ Commission on State Mandates, Proposed Decision, *Firefighter Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, <https://csm.ca.gov/matters/09-4081-I-01/doc12.pdf>, pages 15 and 16.

¹²⁹ Commission on State Mandates, Proposed Decision, *Firefighter Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, <https://csm.ca.gov/matters/09-4081-I-01/doc12.pdf>, pages 16, 21, 24.

hearing. Thus, there is no adopted decision in *Firefighter 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).¹³⁰
- 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.¹³¹
- 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.¹³²
- 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 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.¹³³

Unlike the facts in *Firefighter Cancer Presumption*, 09-4081-I-01, a reimbursement claim for fiscal year 2009-2010 costs was never filed in this case and thus there is nothing to amend. The claimant filed a reimbursement claim for fiscal year 2010-2011 requesting reimbursement for the

¹³⁰ Commission on State Mandates, Proposed Decision, *Firefighter Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, <https://csm.ca.gov/matters/09-4081-I-01/doc12.pdf>, pages 21, 27.

¹³¹ Commission on State Mandates, Proposed Decision, *Firefighter Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, <https://csm.ca.gov/matters/09-4081-I-01/doc12.pdf>, page 23.

¹³² Commission on State Mandates, Proposed Decision, *Firefighter Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, <https://csm.ca.gov/matters/09-4081-I-01/doc12.pdf>, pages 22-23.

¹³³ Commission on State Mandates, Proposed Decision, *Firefighter Cancer Presumption*, 09-4081-I-01, issued May 11, 2016, <https://csm.ca.gov/matters/09-4081-I-01/doc12.pdf>, pages 9, 23-25, 33.

claimant's payment of contracted legal services related to the program.¹³⁴ The cover sheet and each page of the claim form (FAM-27) indicates that the claim is for fiscal year 2010-2011.¹³⁵ The reimbursement claim form states that "Liebert Cassidy Whitmore (Contract Attorney) Responded to several PERB matters," and \$229,627 was claimed for those costs.¹³⁶ 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.¹³⁷ 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 \$229,627.¹³⁸ 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.¹³⁹ Thus, the only reimbursement claim filed was for fiscal year 2010-2011, and as stated above, the costs incurred in other fiscal years were correctly reduced by the Controller based on the documentation of actual costs incurred in that fiscal year.

Moreover, the claimant alleges that a "clerical error" occurred in its multi-year filing, and on this basis, asks the Commission to reverse the Controller's decision denying the claimant's request to accept the claimant's filing as a late 2009-2010 reimbursement claim. This request is similar to a request made under Code of Civil Procedure section 473(b), which allows relief from an order taken against a party as a result of a clerical error. The claimant, however, provides no evidence of a "clerical error." Each page of the FAM-27 is distinctly marked as a "2010-2011" fiscal year claim, and is signed under penalty of perjury.¹⁴⁰ Although the claim form itself provides no indication that the claimant was filing a multi-year claim, the 67 pages of invoices attached to the claim form, which the Controller would not have found until the claim was reviewed, shows that the claim was for multiple years. The claimant's IRC states that "[a]t the time [when it filed the 2010-2011 claim], the City had inadvertently filed the multi-year claim and did not realize it would cause the claim to be ineligible."¹⁴¹ Thus, the record indicates that the claimant purposely claimed costs for fiscal year 2009-2010 in the 2010-2011 reimbursement claim, but the claimant's "error" was in its incorrect interpretation of the law that a multi-year filing would

¹³⁴ Exhibit A, IRC, pages 50-120 (2010-2011 reimbursement claim).

¹³⁵ Exhibit A, IRC, pages 50-52 (2010-2011 reimbursement claim).

¹³⁶ Exhibit A, IRC, pages 50, 52 (2010-2011 reimbursement claim).

¹³⁷ Exhibit A, IRC, page 50 (2010-2011 reimbursement claim).

¹³⁸ 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).

¹³⁹ Government Code section 17560.

¹⁴⁰ Exhibit A, IRC, pages 50-52.

¹⁴¹ Exhibit A, IRC, page 5.

be acceptable. The courts, however, have made it clear that “clerical errors” alleged under Code of Civil Procedure section 473(b) and subject to correction do *not* include those made because of a failure to correctly interpret the law or apply the facts.¹⁴²

In addition, the courts have held 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.”¹⁴³ 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 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.”¹⁴⁴

¹⁴² *In re Eckstrom’s Estate* (1960) 54 Cal.2d 540, 545; see also, *Tokio Marine & Fire Ins. Co. v. Western Pacific Roofing Co.* (1999) 75 Cal.App.4th 110, 117 [When correcting a judgment because of a mistake or inadvertence, the court stated that “The test which distinguishes clerical error from possible judicial error is simply whether the challenged portion of the judgment was entered inadvertently (which is clerical error) versus advertently (which might be judicial error, but is not clerical error)”].

¹⁴³ *Nathanson v. Superior Court* (1974) 12 Cal.3d 355, 359.

¹⁴⁴ *Nathanson v. Superior Court* (1974) 12 Cal.3d 355, 364-367, 369-370.

These grounds apply here. Even if the Controller had actual notice that the claimant's 2010-2011 reimbursement claim included a request for reimbursement of 2009-2010 costs, the court in *Nathanson* held that mere notice does not constitute a sufficiently-filed reimbursement claim. The plain language of Government Code 17560 requires the claimant to file an annual reimbursement claim by the statutory deadline for costs incurred in a single fiscal year. The claimant never filed a reimbursement claim for fiscal year 2009-2010. Moreover, neither the Commission, nor the Controller, have the authority to allow filing a 2009-2010 reimbursement claim after the deadline in Government Code section 17568, which 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 section 17568 expired on February 15, 2012.¹⁴⁵

Therefore, the Controller's reduction of \$50,459 (less an undisputed 10 percent penalty) from the fiscal year 2010-2011 claim is correct as a matter of law and not arbitrary, capricious or entirely lacking in evidentiary support because the documentation provided with the claim does not support that those costs were incurred in fiscal year 2010-2011, as required by Government Code section 17560 and the Parameters and Guidelines and there is no evidence of a clerical error that could be subject to correction.

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.

¹⁴⁵ 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."

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 30, 2020, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued June 30, 2020**

Local Government Employee Relations, 17-0130-I-01

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

City of Monrovia, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 30, 2020 at Sacramento, California.



Jill L. Magee

Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/24/20

Claim Number: 17-0130-I-01

Matter: Local Government Employee Relations

Claimant: City of Monrovia

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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