

No. S226779

SUPREME COURT
FILED

IN THE SUPREME COURT

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OF THE STATE OF CALIFORNIA

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Deputy

FRANK FLETHEZ,
Plaintiff and Respondent,



v.

**SAN BERNARDINO COUNTY EMPLOYEES
RETIREMENT ASSOCIATION,**
Defendant and Appellant.

After a Decision by the Court of Appeal,
Fourth Appellate District, Division One
Case No. D066959

[San Bernardino Co. Super. Ct. (Hon. David Cohn, J.)
No. CIVDS 121542]

**REPLY BRIEF FOR PLAINTIFF AND
RESPONDENT FRANK FLETHEZ**

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No. S226779

SUPREME COURT OF THE STATE OF CALIFORNIA

FRANK FLETHEZ,)	No. S226779
)	
Plaintiff and Respondent,)	
)	
vs.)	
)	
SAN BERNARDINO COUNTY)	
EMPLOYEES RETIREMENT)	
ASSOCIATION,)	[San Bernardino Co.
)	Super. Ct. No. CIVDS
Defendant and Appellant.)	1212542; 4th Civil No.
)	D066959]

I. INTRODUCTION.

Frank Flethez (Plaintiff Flethez), a former employee of the County of San Bernardino, and the San Bernardino County Employees Retirement Association (SBCERA) face off before this Court as to the question of whether Plaintiff Flethez is entitled to a full award of prejudgment interest

pursuant to section 3287(a) of the Civil Code¹ on the retroactive lump sum payment portion of his disability retirement. Plaintiff Flethez contends that interest runs from the date following the day for which he last received regular compensation² to the date of payment, while SBCERA contends that prejudgment interest only begins to run from the date that SBCERA's board of retirement (the board) should have granted his application for benefits retroactive all the way back to that date. Each party has filed a brief defending his or its respective position. Plaintiff Flethez responds herein to the Answer Brief on the Merits (Answer Br.) filed by SBCERA.

**II. THE STATUTORY SCHEME REQUIRES PREJUDGMENT
INTEREST AWARDS ON RETROACTIVE PAYMENTS OF
DISABILITY BENEFITS AS A MATTER OF COURSE.**

A. Preface.

Although the parties meet each other's arguments more or less squarely and rigorously dispute Plaintiff Flethez' entitlement to interest pursuant to section 3287(a) of the Civil Code on the lump sum retroactive

¹ Cal. Civ. Code § 3287(a) (West Supp. 2015) [hereinafter section 3287(a) or § 3287(a)].

² In essence, the date that the employee last received regular compensation means his last day of work, but instances do arise (including this one) where such is not the case.

disability retirement benefits that he or she received pursuant to section 31724 of the Government Code,³ that battle is largely beside the point. For the operation of section 31724 mandates that interest on these retroactive pension payments will **always** be required if, as here, the employee's entitlement to benefits is resolved by the courts and not the by board.

**B. A Side Trip Through The Barren Wastes
of Administrative Adjudication.**

By statute, a disability retirement pension, once granted, is effective as of the date of the application or the deemed date therefor, see § 31724, and of necessity retroactive payments of the retiring employee's pension benefits will be required as the board of retirement cannot possibly process and grant the retirement application on the very day that it is filed.

However, the consequent delay of the payment of pension benefits is not wrongful, because delay is inherent in any system for the distribution of benefits—an administrative determination of eligibility takes time. See AFL-CIO v. Unempl. Ins. Appeals Bd., 23 Cal. 4th 1017, 1037, 920 P. 2d 1314, 1326, 96 Cal. Rptr. 2d 109, 121 (1996) (stating that until the agency erroneously determines that an applicant is ineligible for benefits, thus

³ Cal. Gov't Code § 31724 (West 2008) [hereinafter section 31724 or § 31724].

requiring him or her to seek review by way of administrative mandamus in the Superior Court, “no wrongful withholding of benefits attributable to the administrative process occurs”); see also id. at 1034, 920 P.2d at 1324, 56 Cal. Rptr. 2d at 119 (stating that interest may not be awarded “merely because at some point in the administrative process someone made an error that the administrative agency . . . itself corrected”).

In a nutshell, this principle declares that retirees “may not argue that their benefits have been *wrongfully* withheld until the Board erroneously determines they are ineligible requiring them to seek administrative mandamus review in [the] superior court”. Id. at 1037, 920 P.2d at 1326, 56 Cal. Rptr. at 121 (emphasis in the original). “Until then, no wrongful withholding of benefits or delay attributable to the administrative process occurs.” Id. But if the retiree is forced to resort to the courts to get his due, no such limitation exist. That the Superior Court may award interest under section 3287(a) in a mandamus action brought to recover disability retirement benefits wrongfully denied by the board is “settled law”. Weber v. Bd. of Ret., 52 Cal. App. 4th 1440, 1445, 73 Cal. Rptr. 2d 769, 772 (1998).

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C. Retroactive Benefits and Retroactive Interest.

Indeed, the structure of the system authorizing and generating disability retirements requires that interest attach to the retroactive lump sum portion of a disability retirement award. Section 31724 declares that the retirement “shall be effective as of the date [that the] application [for the retirement] is filed with the board”, and the deemer clause⁴ thereof declares that, if the application was delayed by inability to ascertain the permanency of the employee’s incapacity⁵ until the date following the day for which the employee last received regular compensation, that date “will be deemed to be the date the application was filed”. Thus, the statute contemplates that the award of pension benefits will always be partially retroactive inasmuch as it will be effective on the date of application or the deemed date of application, either of which necessarily will precede the date that the application was granted.

The award thus becomes the property of the retiree as of one of the two statutory effective dates. The retiree’s dominion over the retroactive portion of the award is absolute and unqualified. Even by the Board’s

⁴ (See Br. for Pl. & Resp’t Frank Flethez at 16 n.7 [hereinafter Pl.’s Br.])

⁵ The deemer clause also applies if the employee’s application “was delayed by administrative oversight”, but what exactly this provision means is rather unclear.

definition of vesting, “the removal of all contingencies to the right to receive a benefit”, (Answer Br. at 24), therefore, the retroactive payment is fully and completely vested “as of” one of these dates, notwithstanding the fact that these two dates precede the actual date on which it was approved.

The Legislature thus has constructed a system in which the retiree is routinely entitled to interest on the retroactive lump sum portion of his or her disability retirement benefits. The effective date of a disability retirement, whichever it be, will result in a lump sum retroactive payment which will constitute a vested monetary obligation in an amount certain. The tripartite criteria of section 3287(a) governing an award of prejudgment interest, see Tripp v. Swoap, 17 Cal. 3d 671, 682, 552 P.2d 749, 757, 131 Cal. Rptr. 789, 797 (1976) (“(1) There must be an underlying monetary obligation, (2) the recovery must be certain or capable of being made certain by calculation, and (3) the right to recover must vest on a particular day.”), implicitly overruled on other grounds, AFL-CIO v. Unempl. Ins. Appeals Bd., 23 Cal. 4th 1017, 1042-43, 920 P.2d 1314, 1329, 56 Cal. Rptr. 2d 109, 124 (1996), and explicitly overruled on other grounds, Frink v. Prod., 31 Cal. 3d 166, 180, 643 P.2d 476, 484, 181 Cal. Rptr. 893, 901 (1982), will be satisfied as a matter of course.

Here, as in Tripp, the system has been designed to secure to those

entitled to pension benefits “the full payment thereof from the date (they were) first entitled thereto” regardless of the length of time taken to process their application. Id. (quoting Mooney v. Pickett, 26 Cal. App. 3d 431, 435, 102 Cal. Rptr. 708, 711 (1972) (parentheses in Mooney) (internal quotation omitted)). Consequently, “[t]he same public policy that favors the award of retroactive benefits would appear to favor the award of prejudgment interest on such benefits”. Id. As this Court recognized in the context of an interest award on retroactive salary payments, absent a wrongful suspension the employee would have obtained the benefits of the monies paid on their due dates, and “he thus lost the natural growth and productivity of the withheld salary in the form of interest”. Id. (quoting Mass v. Bd. of Educ., 61 Cal. 2d 612, 625, 394 P.2d 579, 588, 39 Cal. Rptr. 739, 748 (1964)).

D. Principles Rising To Defend A Just Cause.

1. The Statutory Purpose.

Plaintiff Flethez’s construction of the operation of section 31724 as mandating that interest be awarded on retroactive payments of disability retirement benefits affords simple justice to the employee. At the same time, this construction serves the primary purpose of the County Employees Retirement Law of 1937 [the CERL], to promote “the betterment of [county] government”. Pathe v. City of Bakersfield, 225 Cal. App. 2d 409, 415, 63

Cal. Rptr. 220, 223 (1967).

[The] objective [of the CERL] is not only to recognize the public obligation to certain employees who after long and faithful service become incapacitated by age or physical disabilities, but it is also to make certain that these employees will be replaced by more capable employees for the betterment of the public service without undue hardship on the employees removed.

Id. (citing Packer v. Bd. of Ret., 35 Cal. 2d 212, 215, 217 P.2d 660, 662 (1950) (“one of the primary purposes of offering a pension, as additional compensation, is to induce competent persons to enter and remain in public service”)).

Without undue hardship! The retroactive implementation of disability retirements ensures that the employee will transition from that state to retiree without loss of the pension benefit he or she has earned, that is, without undue hardship. But to the extent that the employee is not granted prejudgment interest on his or her retroactive benefit, that purpose is frustrated. See Austin v. Bd. of Ret., 209 Cal. App. 3d 1528, 1534, 258 Cal. Rptr. 106, 109 (1989) (observing that, absent interest, the claimant loses the natural growth and productivity of the withheld payments).

The task of this Court when interpreting statutory provisions “is to select the construction that comports most closely with the Legislature’s

apparent intent with a view towards promoting rather than defeating the statutes' general purpose . . . ”. Poole v. Orange Cnty. Fire Auth., 61 Cal. 4th 1378, 1385, 354 P.3d 346, 350, 191 Cal. Rptr. 3d 551, 555 (2015) (quoting Copley Press v. Superior Court (Cnty. of San Diego), 39 Cal. 4th 1272, 1291, 141 P.3d 288, 300, 48 Cal. Rptr. 3d 183, 197 (2008)). For the same reasons that the retroactive payment of disability retirement benefits serves the general purpose of the CERL, as it obviously does,⁶ an award of interest on those payments surely does so also. Plaintiff Flethez' construction of the operation of section 31724 therefore should carry the day.

2. Fiduciary Duty.

Section 31724 must be read to provide for interest on the retroactive lump sum payments it requires for another reason as well. That is, far from creating a windfall for employees, as SBCERA asserts, (see Answer Br. at 9), it preserves for the employee what is rightfully his or hers. Recall that the pension becomes effective as of the date of application or the deemed date of application. From that day forward the payments, including the

⁶ “A fair reading of [the] CERL demonstrates [that] it protects [employees] by assuming [that he or she] receives benefits for the entire period of eligibility, not just commencing on the eligibility determination.” Weber, 62 Cal. App. 4th at 1453, 73 Cal. Rptr. 2d at 776.

retroactive payments, are his or hers. The employee is therefore entitled to “natural growth and productivity of the [lump sum retroactive payments] in the form of interest”. Mass, 61 Cal. 2d at 625, 394 P.2d at 588, 39 Cal. Rptr. at 748.

But SBCERA would transfer this natural growth and productivity to the retirement board (itself) or, more precisely, to the remainder of the members of the Association for whom it manages the retirement funds. See Cal. Const. art. XVI, § 17 (“the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of money and administration of the system”). Those members would be unjustly enriched to the extent that they would enjoy the use of the retiree’s money from the date that his or her disability retirement became effective to the date that the retroactive payments are made. However, such shabby treatment of any member of the Association is strictly forbidden. “There is no denying [that SBCERA], as trustee administering the retirement benefits, is a fiduciary who must administer the trust in good faith and deal fairly with the members.” Weber, 62 Cal. App. 4th at 1451, 73 Cal. Rptr. 2d at 776 (citing Hittle v. Santa Barbara Cnty. Empls. Ret. Ass’n, 39 Cal. 3d 374, 392, 703 P.2d 73, 84, 216 Cal. Rptr. 733, 743-44 (1985)). The board will have custody of the sums produced by the growth and productivity of

the payments that will be retroactively made to Plaintiff Flethez; it can retain those sums which would then bolster the accounts of other members of SBCERA, despite their utter lack of any claim or entitlement thereto, or it can pay them to Plaintiff Flethez as interest on what is, after all, **his** money. But the former would surely be a breach of SBCERA's fiduciary duty to treat its members with scrupulous fairness and impartiality.

E. Summary.

In sum, the rational and the instinctive response to the dispute before the Court as well as the result mandated by a fair reading of the relevant statute is to recognize that the employee's undeniable right to retroactive benefits carries with it the right to interest on those benefits when their payment is delayed. When that delay is structurally caused, when the payments are necessarily retroactive, interest should be structurally required as well. Sound principles of statutory interpretation support this construction, which consequently should prevail.

III. THE CRITERIA OF SECTION 3287(a) ARE SATISFIED.

A. Preface.

Plaintiff Flethez believes that the foregoing analysis is dispositive. Section 31724 requires retroactive lump sum payments of disability

retirement benefits, and it naturally requires interest on those retroactive payments as well. (See discussion supra Part II.C.) But SBCERA explores each of the three criteria that an award of interest pursuant to section 3287(a) must satisfy at length. (See Answer Br. at 17-30 (vesting); id. at 35-39 (certainty); id. at 39-42 (prevented by law).) Plaintiff Flethez responds to those arguments herein.

B. Vesting.

SBCERA first delves into the concept of vesting at considerable length and with much gusto, (see Answer Br. at 19-30), but its analysis is gravely flawed. The retiree's pension benefits are inherently vested long before the board of retirement acts upon his or her application for disability retirement and in fact from the very inception of his or her employment.

As Tripp, declares, see 17 Cal. 3d at 682, 552 at 757, 131 Cal. Rptr. at 797, the right to recover the underlying monetary obligation must be vested. But “[i]t is well settled that retirement benefit rights including pensions whether for age and service, disability or death are vested”. Dickey v. Ret. Bd., 16 Cal. 3d 745, 748, 548 P. 2d 689, 696, 129 Cal. Rptr. 289, 291 (1976). Pension rights are considered to be part of the compensation paid to public employees as an incentive to public service, and they “vest at the time of their employment”. See id. at 748-49, 548 P.2d at 691, 129 Cal. Rptr. at

291. Simply stated, “the right to a pension becomes a vested one upon acceptance of employment by an applicant”. Id. at 749, 548 P.2d at 691, 129 Cal. Rptr. at 291 (quoting Dryden v. Bd. of Pension Comm’rs, 6 Cal. 2d 575, 579, 59 P.2d 104, 106 (1936)); accord Petrillo v. Bay Area Rapid Transit Dist., 197 Cal. App. 3d 798, 807, 243 Cal. Rptr. 74, 79 (1988) (declaring that public employees have “a vested right to disability retirement if they suffer a work-related disability”); Watkins v. City of Santa Ana, 189 Cal. App. 3d 393, 396, 234 Cal. Rptr. 406, 408 (1987) (“public employees have a vested contractual right to a reasonable disability retirement pension”).

“[T]he *right* to the benefit vests upon acceptance of employment although the right may be lost upon occurrence of a condition subsequent such as lawful termination of employment before it matures . . . or may not be enforceable because of the non-occurrence of one or more conditions precedent[.]” Dickey, 16 Cal. 3d at 749 548 P.2d at 691, 129 Cal. Rptr. at 291 (emphasis in the original). That is, pension rights vest “prior to the time when the obligation to pay matures”. Miller v. State, 18 Cal. 3d 808, 816, 557 P.2d 970, 974, 135 Cal. Rptr. 386, 391 (1977); Wallace v. City of Fresno, 42 Cal. 2d 180, 183, 265 P.2d 884, 886 (1954) (“This right arises before the happening of the contingency which makes the pension payable

. . .”); see Watkins, 189 Cal. App. 3d at 396, 234 Cal. Rptr. at 408 (“The right to the pension arises before the happening of the contingency making it payable”); see also Marzec v. Cal. PERS, 236 Cal. App. 4th 889, 920, 187 Cal. Rptr. 3d 452, 474 (2015) (holding that the plaintiffs were not entitled to service retirement benefits because they had retired before age fifty and that therefore their right to such benefits had never matured).

That pension rights are indubitably vested in this sense raises the question of just what the term **vest** means in this context. Mass declares that the salary payments that the plaintiff there had been denied “became vested as of the dates they accrued”. 61 Cal. 2d at 625, 394 P.2d at 588, 39 Cal. Rptr. at 748. The question thus becomes the meaning of the term **accrue**. Tripp answers that question by stating that “[f]or purposes of awarding interest each payment of benefits should be viewed as vesting on the date it becomes due”. 17 Cal. 3d at 683, 552 P.2d at 757, 131 Cal. Rptr. at 797. The date of accrual and the date that an obligation falls due are thus one and the same, and when each occurs the right to recover the damages in the form of interest inflicted by the failure to pay that obligation vests.

“The Civil Code requires vesting . . . only in order to fix with sufficient certainty the time when the obligation accrues so that interest should not be awarded on an amount before it is due.” Mass, 61 Cal. 2d at

625, 394 P.2d at 587, 39 Cal. Rptr. at 747. Thus, if there exists “any obligation whatsoever”, the salary payments become “vested as of the dates they accrued”, id. at 625, 394 P.2d at 587-88, 39 Cal. Rptr. at 747-48, regardless of whether the obligation was ruled upon before or after the date they fell due. In sum, “[e]ach salary payment . . . accrued on a date certain”. Id. at 625, 394 P.2d at 588, 39 Cal. Rptr. at 747. On that date certain the right to the payment vested, and the board could breathe easily in the assurance that interest was now due and payable.

SBCERA asserts that “[i]nterest does not run under section 3287(a) until the right to the benefit actually vests”. (Answer Br. at 30.) True enough, but as in Mass where the right to salary benefits vested before the legal duty to reinstate the plaintiff was established, see 61 Cal. 2d at 625, 394 P.2d at 747, 39 Cal. Rptr. at 587, vesting has a purpose and meaning as used in Civil Code section 3287(a) that is inconsistent with the SBCERA analysis.

C. Certainty.

SBCERA then argues that Plaintiff Flethez’ claim lacked the certainty that is required of a monetary obligation if it is to serve as the basis for an award of prejudgment interest. (See Answer Br. at 35-39.) But this argument is wide of the mark. The uncertainties that SBCERA specifies do

not render Plaintiff Flethez' claim for an award of interest untenable.

Section 3287(a) creates a right to recover interest on “damages certain, or capable of being made certain by calculation”. Uncertainty as to the damages sought therefore precludes an award of prejudgment interest, see, e.g., Stein v. S. Cal. Edison Co., 7 Cal. App. 4th 565, 573, 8 Cal. Rptr. 2d 907, 911 (1992) (“When the amount of damages cannot be resolved except by account, verdict or judgment, interest prior to judgment is not available.”), but the critical uncertainty relates to amount of damages and not to the question of whether the damages are owed, i.e., to the question of liability. Wisper Corp v. Cal. Commerce Bank, 44 Cal. App. 4th 948, 960, 57 Cal. Rptr. 2d 141, 148 (1996). Otherwise put, “[d]enial of liability on the main theory does not make the [amount of] damage uncertain within the meaning of section 3287[(a)]”. Stein, 7 Cal. App. 4th at 572, 8 Cal. Rptr. 2d at 911.

SBCERA acknowledges this distinction in the abstract, (see Answer Br. at 35), but then proceeds to ignore it. SBCERA asserts that it could not have ascertained whether Plaintiff Flethez' claim was valid and, if so, it could not ascertain the amount due until it received and evaluated the pertinent medical evidence. (See Answer Br. at 36-37.)

Specifically, SBCERA first needed to determine whether [Plaintiff Flethez] was permanently incapacitated for the

performance of duty. If he was, SBCERA next needed to determine whether he had been continuously incapacitated since his separation from employment; if not, his application would be untimely If both of these burdens were met, SBCERA would then need to determine whether [Plaintiff Flethez's] incapacity arose out of his employment and was therefore service-connected, as a service-connected disability retirement is more generous than a non-service-connected disability retirement. Once established, these facts entitled [Plaintiff Flethez] to a disability retirement allowance retroactive to his actual application date.

[Then] SBCERA needed to make a separate determination whether [Plaintiff Flethez] had in fact been unable to ascertain the permanency of his incapacity at the time of his separation from employment, thus entitling him to additional retroactive benefits dating back to 2000, rather than merely to his first application in 2008.

(Id. at 37 (statutory citations and quotation marks omitted).)

Well and good! But these determinations all relate to whether Plaintiff Flethez would receive a disability retirement, and what its effective date would be, that is, to the question of SBCERA's liability for his pension. If the binary question of whether Plaintiff Flethez was incapacitated was answered in his favor, and if the binary question of whether he had been continuously incapacitated since the end of his employment was also answered in his favor, he would be entitled to a disability retirement. The wonks in the back room of the CERL office could then calculate the precise amount due to Plaintiff Flethez down to the last penny in fifteen minutes or less. And if the binary question of whether Plaintiff Flethez' disability arose

out of his employment was answered in his favor, then he would be entitled to a service connected disability retirement. Again, the CERL wonks could calculate the precise amount due to Plaintiff Flethez in no time flat. And if the binary question of whether Plaintiff Flethez had been unable to ascertain the permanency of his incapacity when he left his employment was answered in his favor, he would be entitled to additional retroactive payments. And once again the calculator crowd could determine the exact amount of those payments just as quickly.

Indeed, in this case SBCERA stipulated to Plaintiff Flethez' incapacity and challenged only whether he was entitled to the benefit of the deemer clause. At this point SBCERA knew full well the amount of Plaintiff Flethez' pension and back pay; they had already paid it! And SBCERA knew or could have easily have calculated the amount of the interest due on the retroactive payments at issue.

Moreover, SBCERA's argument proves too much. For if determining whether liability can be established renders an otherwise certain sum uncertain, then section 3287(a) becomes a virtual nullity. In every instance entitlement will be unclear until after the medical evidence is reviewed. If the necessity of establishing the predict for a disability retirement renders the lump sum retroactive payment uncertain, then interest on those payments

will **never** be required, even in those situations where SBCERA concedes that it is. (See Answer Br. at 9; see also Weber v. Bd. of Ret., 62 Cal. App. 4th 1440, 1445, 73 Cal. Rptr. 2d 769, 772 (1998) (describing the propriety of the award of interest by the Superior Court when benefits have been withheld as “settled law”).)

This reading of the certainty criterion simply cannot be. A statute must not be construed in a fashion that renders it a nullity, see Tuolumne Jobs & Small Bus. Alliance v. Superior Court (Wal-Mart Stores), 59 Cal. 4th 1029, 1037, 330 P.3d 912, 917, 175 Cal. Rptr. 3d 605, 606 (2014), and interpretations that lead to absurd results are to be avoided, see People v. Leiva, 58 Cal. 4th 498, 518, 297 P.3d 870, 882, 154 Cal. App. 3d 634, 649-50, (2013). Clearly, the mundane requirement that liability be found does not ipso facto render the amount of that liability uncertain. See Olson v. Cory, 36 Cal. 3d 390, 402, 873 P.2d 720, 728, 197 Cal. Rptr. 843, 851 (1983) (ruling that uncertainty over legal issues did not prevent the amounts due from being certain).

The argument that the monetary obligation at issue was uncertain is thus pure balderdash. The scope of SBCERA’s liability may have been at issue, but the amounts due when that liability eventually was found manifestly were not.

D. Prevented By Law.

SBCERA concludes by asserting that it was prevented by law from paying Plaintiff Flethez his retirement benefits prior to the date on which it granted his disability retirement application and that therefore interest would not run during this period. (See Answer Br. at 39-42.) But SBCERA misconstrues the meaning of section 3287(a) criterion in this regard, and its argument consequently fails.

After declaring a general right to prejudgment interest, section 3287(a) excepts from its ambit those situations in which the “debtor is prevented by law, or by the creditor from paying the debt”. Consequently, “where the defendant has been prevented from making payment by reason of a judgment, order, statute, or judicial process directing it to hold the amount due, there is no liability for interest” has long been settled law, Perkins v. Benguet Consol. Mining Co., 55 Cal. App. 2d 720, 769, 132 P.2d 70, 99 (1942), albeit “rarely involved”, Tenzera, Inc. v. Osterman, 205 Cal. App. 4th 16, 23, 140 Cal. Rptr. 3d 96, 101 (2012). Absent a specific court order, creditor act or law of this sort, the exception does not apply. See id.

Moreover, the hyper-expansive reading of the prevented by law exception offered by SBCERA once again would wreak havoc with well established law. That law declares that interest should run from the date of

the damage and not the date that the damage is ameliorated. See, e.g., San Diego Deputy Sheriffs Ass'n v. San Diego Cnty. Sheriffs Dep't, 68 Cal. App. 4th 1084, 1095 n.5, 80 Cal. Rptr 2d 712, 719 n. 5 (1998) (stating that both Mass and Goldfarb⁷ concluded that interest was recoverable on salary payments from the date that the salary accrued, not from the date the employer had the legal duty to reinstate the employee, “because ‘[e]ach salary payment . . . accrued on a date certain” and unless the employer were relieved of liability altogether, “the salary payments vested as of the date they accrued”’) (brackets, ellipsis and emphasis in the original); see Pl’s Br. at 14-16 (quoting and discussing the holding in Mass that prejudgment interest runs from the date of accrual to the date of judgment). Further, Austin reached much the same conclusion when presented with this argument, observing that “logically concluded, ‘[it] would preclude awards of interest pursuant to Civil Code section 3287(a) in all cases wherein governmental entities denied persons benefits to which they were entitled, contrary to the specific language of the section providing that it is applicable to recovery of damages and interest from any . . . debtor, including”’ a comprehensive host of governmental entities, among them public agencies.

⁷ Goldfarb v. Civ. Serv. Comm’n, 225 Cal. App. 3d 633, 275 Cal. Rptr. 284 (1990).

Austin, 209 Cal. App. 3d at 1534, 258 Cal. Rptr. at 109.

For these reasons the prevented by law exception to the prejudgment interest mandate of section 3287(a) is narrowly construed and should be sparingly applied. Just because there exist procedures for the determination of government benefits and those procedures must be followed does not mean that the government agency is prevented by law from meeting its obligations within the meaning of section 3287(a).

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IV. CONCLUSION.

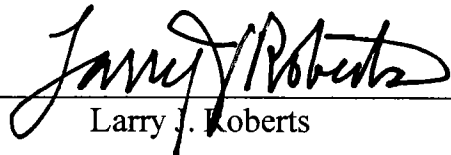
For the foregoing reasons, as well as for the reasons previously stated, Plaintiff Flethez is entitled to an award of interest on the lump sum retroactive disability retirement payments he received. Accordingly, the judgment of the Court of Appeal must be reversed and the judgment of the Superior Court awarding such interest must be affirmed.

Dated: 12 November 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

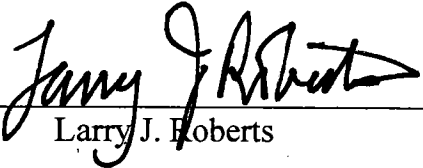
WITH APPELLATE RULES 8.204(b)(2)(3)(4)

Plaintiff-Respondent Frank Flethez certifies that his brief is in a proportionately spaced type face (Times New Roman) of 13 point, that it is double spaced, and that it contains 4,871 words.

Dated: 12 November 2015

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 404 Enclave Circle #208, Costa Mesa, CA 92626

That on November 12, 2015, I served the foregoing document described as: **REPLY BRIEF FOR PLAINTIFF AND RESPONDENT FRANK FLETHEZ** on all interested parties as follows:

(X) by placing () the original (X) a true copy thereof enclosed in sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE

(X) **(BY MAIL)** I deposited such envelope(s) in the mail at 3101 W. Sunflower Ave., Santa Ana, CA 92799.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. The envelope was mailed with postage thereon fully prepaid. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing as stated in the Declaration.

Executed on November 12, 2015 at Costa Mesa, California.

I declare under penalty of perjury, under the laws of the State of California that the above is true and correct.


Diane Castillo

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