

**ATTACHMENT B**

**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Robert Sanchez (Respondent) was employed as a Police Sergeant with the San Leandro Police Department (Respondent City). By virtue of his employment, Respondent was a local safety member of CalPERS.

On October 27, 2020, a felony criminal complaint was filed against Respondent in the Alameda Superior Court. The complaint alleged a felony violation of Penal Code section 504 (embezzlement of public funds) occurring between August 2019 and March 2020, and three felony violations of Penal Code section 424 (public officer crimes), all committed while Respondent worked for Respondent City.

On November 20, 2020, Respondent submitted an application for service retirement, and he retired for service effective November 21, 2020.

On June 14, 2021, Respondent pled no contest to violation of Penal Code section 487, subdivision (a) (grand theft), a felony. The parties stipulated that felony grand theft is a lesser-related offense to felony embezzlement which was alleged in the complaint. Imposition of sentence was suspended, and Respondent was placed on probation for two years.

In July 2021, Respondent City submitted a Forfeiture of Benefits Employer Form to CalPERS, informing that Respondent was convicted of a felony on June 14, 2021, and that the earliest date for commission of the felony was August 2019.

On August 18, 2021, CalPERS determined that Respondent's plea of no contest to the felony conviction arose out of the performance of his official duties, resulting in forfeiture of 1.328 years of service credit. Respondent was entitled to continue receiving a retirement benefit based on his remaining 19.334 years of service earned prior to August 15, 2019. As a result of the adjustment, Respondent's monthly service benefit was decreased, thereby creating an overpayment of retirement benefits in the amount of \$10,073.28. Respondent repaid CalPERS the overpayment in 2022.

On October 14, 2022, the Alameda Superior Court denied Respondent's request to reduce his felony conviction to a misdemeanor and his request for a dismissal of the conviction. The Court granted Respondent's request for early termination of probation.

Respondent appealed CalPERS' determination of forfeiture and exercised his right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on December 8, 2022. Respondent was represented by counsel at the hearing. Respondent City did not appear at the hearing, and the matter proceeded as a default against Respondent City only.

The issues for hearing were whether Respondent's no contest plea to a felony violation of Penal Code section 487, subdivision (a) (grand theft) constitutes a felony requiring forfeiture under Government Code section 7522.72 (all subsequent section references are to the Government Code); and whether Respondent's post-conviction relief (early termination of probation) requires CalPERS to restore his retirement benefits.

Respondent argued that he is entitled to reinstatement of his forfeited service credit because he was granted early termination of probation.

CalPERS argued that Respondent was convicted of a felony due to his plea of no contest, and therefore he would only be entitled to a restoration of his retirement benefits upon a final decision reversing his felony conviction pursuant to section 7522.72, subdivision (h). Early termination of probation does not equate to the requisite reversal of the felony conviction.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent was convicted of felony grand theft arising out of or in the performance of his official duties on June 14, 2021, when he entered a plea of no contest, thus he became subject to forfeiture of his retirement benefits. The ALJ reasoned that the legislative intent behind section 7522.72 is to reward faithful public service, and to make criminal activity by public employees unprofitable. To further this legislative intent, section 7522.72, subdivision (h) only allows for restoration of retirement benefits after forfeiture if the underlying felony conviction is reversed and that reversal is final. That did not happen here.

In the Proposed Decision, the ALJ concluded that Respondent's felony conviction requires partial forfeiture (1.328 years) of his retirement benefits.

For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board.

June 20, 2023

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Assistant Chief Counsel