

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Adekunle Aderonmu (Respondent) was employed by the City of Hawthorne (City) as the City Attorney. The City contracted with CalPERS to provide retirement benefits to its eligible employees. By virtue of his employment, Respondent was a local miscellaneous member of CalPERS. The City terminated Respondent's employment effective March 29, 2013. The City continued to report payroll for Respondent to CalPERS until September 20, 2013. Respondent service retired effective December 11, 2013. CalPERS reviewed Respondent's account and communicated with the City and determined that the compensation paid to Respondent by the City between March 29, 2013 and September 20, 2013, did not constitute compensation earnable, and therefore could not be included in Respondent's final compensation for purposes of calculating Respondent's service retirement allowance. CalPERS provided Respondent and the City with notice of its determination. Respondent appealed the determination and a hearing was held on October 22, 2015.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support his case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent's questions and clarified how to obtain further information on the process. Respondent is an attorney, licensed to practice law in California.

At the hearing, Respondent testified that his employment agreement with the City of Hawthorne included a severance package of three (3) month's salary. After the City Council terminated Respondent's employment, on March 29, 2013, the City Council hired a replacement City Attorney and reported that individual's compensation to CalPERS, while simultaneously and incorrectly reporting payroll to CalPERS for Respondent until September 20, 2013. Respondent claimed CalPERS should not use the March 29, 2013 termination date in determining what is properly included in his final compensation because the City Council's termination was unlawful and invalid. Respondent claimed that his final compensation should include the money paid to him between April and September 2013.

CalPERS' witness explained that the payroll incorrectly reported by the City for Respondent for approximately six (6) months could not be considered as part of his final compensation, for purposes of calculating his service retirement allowance, for several reasons. First, after termination, Respondent no longer provided services to the City and therefore, any money paid to Respondent by the City could not be "compensation earnable."<sup>1</sup> Second, there was only one City Attorney position, and the City correctly

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<sup>1</sup> Gov. Code section 20636 – "Compensation Earnable"

(a) "Compensation earnable" by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752.5.

(b)(1) "Payrate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules...

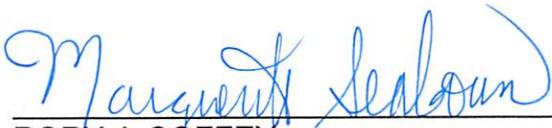
reported to CalPERS the compensation paid to the individual who replaced Respondent as City Attorney. Third, the money paid to Respondent by the City between March 29, 2013 and September 20, 2013, consisted of severance pay (which was the equivalent of salary, but not salary) as well as pay for unused sick leave, vacation and other leave credits.

The Administrative Law Judge (ALJ) found that "Whether or not Respondent's termination was lawful or valid, he ceased working full time for the City as of March 29, 2013. Any compensation the City paid him after that date was part of his severance package and is not included in his 'final compensation' for purposes of determining his retirement allowance benefits." (See Legal Conclusion No. 10.)

The ALJ concluded that Respondent's appeal should be denied. The Proposed Decision is supported by the law and the facts. Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The member may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

December 16, 2015

*for*   
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RORY J. COFFEY  
Senior Staff Attorney