

ATTACHMENT A

RESPONDENT'S PETITION FOR RECONSIDERATION

1 JANNAH V. MANANSALA, Bar No. 249376
 2 KERIANNE R. STEELE, Bar No. 250897
 3 GARY P. PROVENCHER, Bar No. 250923
 4 WEINBERG, ROGER & ROSENFELD
 5 A Professional Corporation
 6 1001 Marina Village Parkway, Suite 200
 7 Alameda, California 94501
 8 Telephone (510) 337-1001
 9 Fax (510) 337-1023
 10 E-Mail: jmanansala@unioncounsel.net
 11 ksteele@unioncounsel.net
 12 gprovencher@unioncounsel.net

13 Attorneys for SEIU Local 1000, the exclusive representative of
 14 Respondent LINDA MARTINEZ

15 PUBLIC EMPLOYMENT RELATIONS BOARD

16 STATE OF CALIFORNIA

17 LINDA MARTINEZ,

18 Respondent,

19 v.

20 DEPARTMENT OF SOCIAL SERVICES,

21 Respondent.

22 Agency Case No. 2015-0918 / OAH No.
 23 2016-031210

24 **RESPONDENT MARTINEZ'S
 25 PETITION FOR RECONSIDERATION**

26 Date: July 27, 2016
 27 Time: 9:00 a.m.

28 Linda C. Martinez ("Martinez"), through her representative the Service Employees
 International Union, Local 1000 ("SEIU"), hereby petitions the Board of Administration of the
 California Public Employees Retirement System for reconsideration of its decision in this matter
 dated November 21, 2016 as follows:

1. The Administrative Law Judge erred in concluding that Martinez was terminated
 from employment. Consistent with its obligations under a Settlement Agreement, the Department
 of Social Services ("DSS") requested that the State Personnel Board withdraw the Notice of
 Adverse Action it had previously issued to Martinez. Therefore, the termination did not ever
 occur. Martinez instead resigned from employment in good standing. The CalPERS Board
 ("Board") must determine whether Martinez is medically unable to perform the duties of the

1 position from which she resigned. The Board has no right or authority to consider the Notice of
2 Adverse Action that was rescinded.

3 2. The Board should reject the Court of Appeal decisions *Haywood v. American*
4 *River Fire Protection District* (“Haywood”) (1999) 67 Cal.App.4th 1292 and *Smith v. City of*
5 *Napa* (“Smith”) (2004) 120 Cal.App. 194, and its own decision *Application for Industrial*
6 *Disability Retirement of ROBERT VANDERGOOT* (“Vandergoot”), Precedential Decision 13-01,
7 on the ground that the decisions misinterpret and misapply the PERL, and involve facts
8 distinguishable from the present case.

9 3. Under the California Public Employees’ Retirement Law (“PERL”), Martinez
10 need not be eligible for reinstatement to her former position with the DSS. If the Board
11 determines that an employee is no longer incapacitated for duty in the position held when retired
12 for disability or in a position in the same classification, the Board may immediately cut-off the
13 disability retirement allowance, even if the employee does not reinstate her employment.

14 4. The Board must distinguish the instant matter from the above-cited decisions
15 because in the instant matter the DSS expressly agreed in a Settlement Agreement to preserve and
16 assist with Martinez’s disability retirement application. It violates PERL and public policy for the
17 CalPERS Board to interpret the Settlement Agreement as forfeiting Martinez’s right to disability
18 retirement, when the DSS had no such intention.


19 For the above reasons, Respondent Martinez petitions the Board of Administration to
20 reconsider the adoption of the Proposed Decision dated September 13, 2016, and/or remand the
21 matter for further hearing before the administrative law judge.

22 We reserve the right to present additional arguments to a superior court in support of a
23 writ of mandate.

24 Dated: December 2, 2016

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

25
26
27 By:


KERIANNE R. STEELE
Attorneys for SEIU Local 1000, the exclusive
representative of Respondent LINDA MARTINEZ

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**PROOF OF SERVICE
(CCP §1013)**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On December 2, 2016, I served the following documents in the manner described below:

RESPONDENT MARTINEZ'S PETITION FOR RECONSIDERATION

- (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.
- (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.
- (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by United Parcel Service for overnight delivery.
- (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from smizuhara@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Ms. Austa Wakily
CalPERS
400 Q Street
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 2, 2016, at Alameda, California.


Stephanie Mizuhara

141702\891546