ATTACHMENT B

STAFF'S ARGUMENT

STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Respondent Sandra Baron (Respondent) was employed by Respondent Public Utilities Commission (PUC). By virtue of her employment, Respondent was a state miscellaneous member of CalPERS. In 2005, when Respondent began her employment with PUC, PUC erroneously enrolled her in Tier Two. Over five years later, the error was discovered and on February 1, 2011, Respondent was correctly placed into the Tier One category for state employees. For the period where Respondent had been incorrectly placed in the Tier Two category, employee contributions should have been made to CalPERS, and interest associated with such contributions posted to Respondent's account. CalPERS advised Respondent and PUC regarding the unpaid amounts for the First Tier plan. Respondent and PUC initially disagreed as to who was responsible for paying the interest due on the unpaid contributions. Respondent and PUC eventually agreed that PUC would pay the interest and Respondent would pay the principle amount owing. When Respondent advised CalPERS in 2012 that she was ready to pay the arrearages, staff informed her that they were unable to accept her payment due to problems associated with the implementation of a new computer system, referred to as "My|CalPERS." This situation continued until 2014, at which time CalPERS accepted an amount representing the unpaid employee contributions and interest.

Respondent requested of CalPERS that her account be credited with interest that would have accrued to her account if her contributions had been accepted and credited to her account in 2012. Program determined that there was no authority for CalPERS to do so and advised Respondent of the determination. Respondent appealed the determination and a hearing was held on February 14, 2017.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her 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.

The Administrative Law Judge (ALJ) received into evidence copies of relevant documents pertaining to Respondent's status of being enrolled in Tier Two and, later, Tier One, and correspondence between CalPERS and Respondent. A staff witness testified, as did Respondent.

In her Proposed Decision, the ALJ made the following findings:

> PUC had incorrectly enrolled Respondent into the Tier Two category when she began her employment with PUC in 2005. On February 1, 2011, Respondent was correctly placed into the Tier One category, and employee contributions began being made. In an April 16, 2011, letter, staff informed Respondent

that, for the period of February 22, 2005 through January 31, 2011, unpaid employee contributions were calculated to be $9,628.83 and interest on that amount was $2,644.71.

Respondent informed staff that she was negotiating with PUC regarding their payment of interest associated with the unpaid employee contributions, since the initial error in placing Respondent into Tier Two had been made by PUC. Staff granted Respondent a 60-day extension to make the requested payment of First Tier Arrears and waived the calculation and/or collection of additional interest accruing against the First Tier Arrears during the extension. The extension of time to make payment to CalPERS was itself extended, or repeated, multiple times, resulting in a financial savings to Respondent.

In March 2012, an agreement was reached between Respondent and the PUC. Respondent agreed to pay the employee contributions due and the PUC agreed to pay the interest due on the contributions for the period of February 22, 2005 through June 30, 2011. Respondent made repeated attempts to make payment to CalPERS. However, due to system-wide problems following the launch in September, 2011, of the my/CalPERS system, staff was unable to accept payment from Respondent until 2014.

By letter dated October 15, 2014, staff provided Respondent with an election form to complete, indicating the method that she had chosen to pay the First Tier Arrears. This was followed by a letter dated December 17, 2014, informing Respondent that the previous cost letter (April 16, 2011) had been incorrect because the employee contribution rate had been changed, effective November 2, 2010, to eight percent. The corrected lump sum cost was calculated to be $12,065.00.

On December 29, 2014, Respondent provided CalPERS with a check in the amount of $12,065.00. That amount included $2,111.33, which the PUC had previously paid to Respondent, pursuant to their agreement, representing the interest due on the unpaid employee contributions. Respondent, at that time, made a request of staff that she be credited with $2,733.26, which she maintained was the amount of interest that would have been posted to her account had the First Tier Arrears been accepted by CalPERS in 2012 instead of 2014. Staff determined that there was no authority that would allow CalPERS to comply with Respondent's request.

At the hearing, Respondent provided no authority to support her claim that CalPERS should award her interest on funds that were not on deposit or credited to her account.

After considering all of the evidence and testimony, the ALJ concluded as follows:

> But no authority under the PERL was advanced or could be found that would authorize CalPERS to comply with Respondent's request to add money to her account. CalPERS is required to maintain the funds it administers for the benefit of all its members. (See Legal Conclusion No. 3.)

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.

April 19, 2017

for

RORY COFFEY
Senior Staff Attorney