ATTACHMENT B

STAFF’S ARGUMENT
STAFF'S ARGUMENT TO DENY THE PETITION FOR RECONSIDERATION

Joseph Paul Ruiz (Respondent) petitions the Board of Administration to reconsider its adoption of the Administrative Law Judge's (ALJ) Proposed Decision dated May 24, 2017. For reasons discussed below, staff argues the Board deny the Petition and uphold its decision.

Respondent provided consulting services for Respondent City of Industry (City) and was classified by the City as an independent contractor. The City is a public agency that contracts with CalPERS for retirement benefits for eligible City employees. Records indicate that Respondent first performed services for the City as far back as 1983; however, regular part-time consulting services were not performed in earnest until 1999. In 2015, Respondent requested that CalPERS designate him as a member, contending he should have been classified as an employee of the City.

At the hearing, Respondent presented no evidence indicating the City exercised any control over his performance of services. There was no evidence that Respondent ever received supervision, review, or oversight of his work by anyone. The ALJ concluded that according to the common law employment test, the City exercised control only as to the result of Respondent's work but not the means by which it was accomplished, meaning an independent contractor relationship existed. The ALJ further concluded that even if Respondent was an employee, employment status alone is not enough to qualify for CalPERS membership; and, that Respondent failed to establish that he worked either full-time or the requisite hours of part-time service to be eligible for membership.

At the hearing, Respondent focused almost entirely on the adequacy of the investigation conducted by CalPERS staff in reaching the ultimate determination that no employment relationship existed. In requesting reconsideration, Respondent again attacks the adequacy of the investigation rather than proffering any evidence to establish an employment relationship. In the Proposed Decision, the ALJ noted, "Respondent did not submit any evidence during the hearing that he had not already submitted to PERS during its investigation and his appeal. Moreover, the issue in this case is the correctness of PERS’s ultimate determination, not the process its staff used."

No new evidence has been presented by Respondent that would alter the analysis of the ALJ. The Proposed Decision that was adopted by the Board at the August 16, 2017, meeting was well reasoned and based on the credible evidence presented at hearing. Staff argues that the Board’s decision be upheld and Respondent’s petition be denied.

September 20, 2017

CHRISTOPHER PHILLIPS
Senior Staff Attorney