ATTACHMENT B

STAFF’S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION

Paul M. Lombardo (Respondent) established membership with CalPERS through his employment with the fire department of the City of La Habra on April 4, 1993. By virtue of his employment with the City of La Habra, he became a Local Safety member of CalPERS. Because the City of La Habra’s fire department was absorbed by Respondent Los Angeles County (Respondent County) on July 1, 2005, Respondent ceased working for the City of Habra on July 1, 2005, and began working for Respondent County. Because of his employment with Respondent County, Respondent became a member of the Los Angeles County Employees’ Retirement Association (LACERA).

CalPERS and LACERA are reciprocal retirement systems. Reciprocity is an agreement among public retirement systems to allow members to move from one public employer with one retirement system to another public employer with a different retirement system without losing valuable retirement and related benefit rights. As a result, Respondent retained his CalPERS membership throughout his employment with Respondent County, in spite of the fact that Respondent County is not a CalPERS agency.

Respondent submitted his service retirement application on March 13, 2017, and he retired for service effective March 31, 2017, with 12.305 years of service credit. Respondent has been receiving his retirement benefit since that time.

After receiving Respondent’s service retirement application, CalPERS requested LACERA complete a Retirement Salary Request Form. CalPERS received the completed Retirement Salary Request Form on March 24, 2017. Included in Respondent’s final average compensation in the Retirement Salary Request Form were Sick Buyback totaling $3,386.74, and Vacation Buyback totaling $11,191.61. The Sick Buyback and Vacation Buyback were reported during Respondent’s final compensation period of April 1, 2016 through March 31, 2017.

After receiving and reviewing the Retirement Salary Request Form, CalPERS determined that Sick Buyback and Vacation Buyback could not be included in Respondent’s final compensation under the Public Employees’ Retirement Law (PERL). Although LACERA included the Sick Buyback and Vacation Buyback in the calculation of Respondent’s retirement benefit, CalPERS determined that the Sick Buyback and Vacation Buyback could not be included in its calculation of Respondent’s retirement benefit.

Respondent appealed this determination 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 January 10, 2019. Respondent did not appear at the hearing. When Respondent was contacted by telephone during the January 10, 2019 hearing, Respondent confirmed that he would be available for hearing on January 18, 2019.
Respondent did not appear at the continued January 18, 2019 hearing. Hence, the ALJ
took Respondent’s default.

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.

CalPERS staff testified at hearing in support of CalPERS’ determination. CalPERS staff
testified that, under the PERL, compensation earnable consists of payrate and special
compensation. (Gov. Code § 20636(a).) CalPERS staff testified that under section
20636(b)(1), payrate is the monthly rate of pay or base pay of the member for services
rendered on a fulltime basis. CalPERS staff then explained that the Sick Buyback and
Vacation Buyback do not reflect Respondent’s normal monthly rate of pay, so neither
item qualifies as Respondent’s payrate under section 20636(b)(1).

CalPERS staff then explained that the Sick Buyback and Vacation Buyback do not
qualify as special compensation. (Gov. Code § 20363(c)(1) and (c)(2); 2 CCR, § 571.)
Specifically, CalPERS staff testified that the at-issue items of compensation were not
included the list provided in California Code of Regulations section 571(a) and that to
qualify as special compensation, the item must be identified on this list.

For these reasons, CalPERS concluded the additional compensation was not
“compensation earnable” and should not have been reported to CalPERS as final
compensation for purposes of determining Respondent’s CalPERS monthly retirement
allowance.

CalPERS staff also testified that Respondent’s status as a reciprocal CalPERS member
does not affect what constitutes compensation earnable for CalPERS’ purposes.
Although LACERA included the Sick Buyback and Vacation Buyback as compensation
earnable for Respondent’s LACERA pension, the PERL prevents those items of
compensation from being included in Respondent’s CalPERS compensation. Hence,
the Sick Buyback and Vacation Buyback were both excluded from Respondent’s final
compensation calculation.

After considering all of the evidence introduced, as well as CalPERS’ argument, the ALJ
denied Respondent’s appeal. The ALJ found that the Sick Buyback and Vacation
Buyback neither constituted payrate nor special compensation as defined by the PERL.

In support of her decision, the ALJ analyzed the California Court of Appeal’s decision in
Stillman v Board of Retirement of Fresno County Employees’ Retirement Association
(2011) 198 Cal.App.4th 1355. The ALJ explained that:

Stillman was covered by two reciprocal retirement programs,
the Fresno County Employees’ Retirement System

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1 Unless otherwise noted, all future statutory references are to the Government Code.
(FCERA), governed by the County Employees Retirement Law of 1937 (CERL), and the San Luis Obispo County Pension Trust (SLOCPT). SLOCPT considered employer "pickup" payments as compensation for purposes of calculation of benefits under the SLOCPT retirement program. FCERA did not consider the employer "pickup" payments as final compensation under the CERL. Stillman claimed that FCERA was required to use the definition of "final compensation" employed by SLOCPT, notwithstanding the CERL. The court disagreed with Stillman, and affirmed the trial court's judgment that FCERA was correct in applying the definitions of compensation set forth in the CERL to determine Stillman's retirement benefits. According to the Stillman court, Noncompensation does not become compensation just because it is paid by a reciprocal employer. (Stillman 198 Cal.App.3d at 588.)

Proposed Decision, Paragraph 12, Page 8 – 9.

Applying the court’s reasoning in Stillman to this matter, the ALJ stated that “LACERA’s consideration of respondent’s back sick and vacation pay as compensation is not binding on CalPERS and does not change the meaning of earnable compensation under the PERL.” (See page 9 of the Proposed Decision.)

The ALJ thus concluded that the Sick Buyback and Vacation Buyback shall not be included in the calculation of Respondent’s final compensation for the purposes of determining Respondent’s CalPERS retirement allowance.

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

April 17, 2019

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