

ATTACHMENT A

THE PROPOSED DECISION

**BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

NOE YANEZ,

Respondent,

and

CITY OF LONG BEACH,

Respondent.

Agency Case No. 2023-0619

OAH No. 2024040631

PROPOSED DECISION

Ji-Lan Zang, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 6 and September 11, 2025.

Mehron Assadi, Attorney, and Austa Wakily, Senior Attorney, represented Kimberlee Pulido (complainant), Retirement Benefit Services Division, Board of Administration, California Public Employees' Retirement System (CalPERS).

Jacob A. Kalinski, Attorney at Law, represented respondent Noe Yanez (respondent).

Respondent City of Long Beach (City) did not appear at the hearing.

Oral and documentary evidence was received, and argument was heard. At the hearing, the ALJ received exhibits containing confidential medical information and sealed them pursuant to a protective order.

At the hearing, complainant moved to amend the Accusation by interlineation by deleting the phrase "for the period from June 4, 2008, through April 20, 2012," from page A10, line 13, and inserting the phrase "for the period from January 1, 2009, through April 20, 2012," in its place. Respondent did not object to the amendment, and the ALJ granted the motion to amend.

The ALJ held the record open for simultaneous closing briefs from all parties due October 24, 2025, and reply briefs from all parties due November 14, 2025. Parties timely submitted their briefs. CalPERS' closing brief was marked for identification as Exhibit 23; respondent's closing and reply briefs were marked for identification as Exhibits R22 and R23, respectively. CalPERS did not file a reply brief. The record closed and the matter was submitted for decision on November 14, 2025.

On December 8, 2025, the ALJ re-opened the record for supplemental briefs from both parties for reasons set forth in the Order Reopening the Record for Further Briefing (Order). Parties timely submitted supplemental briefs in accordance with the Order. CalPERS' supplemental closing and reply briefs were marked for identification as Exhibits 24 and 25, respectively; respondent's supplemental closing brief was marked for identification as Exhibit R24. The record closed and the matter was submitted for decision on January 23, 2026.

FACTUAL FINDINGS

Jurisdiction and Issue

1. CalPERS is a defined benefit plan administered under the Public Employees' Retirement Law, Government Code section 20000 et seq. (All further references are to the Government Code unless otherwise designated.)
2. Respondent became a CalPERS member through his employment with City on June 2, 2003. He was last employed on April 20, 2012, in the position of Police Officer. By virtue of his employment, respondent is a state safety member of CalPERS.
3. On February 22, 2013, respondent was convicted, based on his guilty pleas, of multiple felonies.
4. CalPERS concluded respondent's felony convictions had arisen out of his employment with City and that he was subject to forfeiture of benefits, including a reduction of his service credit, contributions, and interest in his CalPERS account. In a letter dated November 30, 2022, CalPERS notified respondent and City of its determination that a portion of respondent's service credit will be forfeited based on his felony convictions. (Ex. 4.)
5. In letter dated December 30, 2022, respondent, through counsel, filed an appeal and requested a hearing to challenge CalPERS' determination. (Ex. 5.)
6. On March 27, 2024, complainant filed the Accusation in her official capacity. (Ex. 1)

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Respondent's Felony Convictions

7. On February 14, 2013, a Second Amended Felony Complaint (Complaint) was filed in the Los Angeles County Superior Court against respondent. The Complaint alleged 51 felony counts for violations of Penal Code sections 236 (false imprisonment); 261, subdivision (a)(2) (forcible rape); 261.5, subdivision (c) (unlawful sexual intercourse with a minor); 288a, subdivision (b)(1) (oral copulation of a person under 18 years old); 288.3, subdivision (a) (contact with minor for sexual offense); 288.4, subdivisions (a)(1), and (b) (arranging meeting with a minor for lewd purposes); 289, subdivision (h) (sexual penetration by foreign object); 311.4, subdivision (c) (using minor for sex acts); 311.11, subdivision (a) (possession of matter depicting a minor engaging in sexual conduct); and 647.6, subdivision (a)(1) (child molestation). The Complaint also alleged a violation of Business and Professions section 25658, subdivision (a) (sale of alcoholic beverage to a minor). (Super. Ct., L.A. County, 2013, No. BA397305). (Ex. 3.)

8. On February 22, 2013, respondent was convicted, based on his guilty plea, of violating Penal Code sections 288.4, subdivision (b) (arranging meeting with a minor for lewd purposes) (Count 1); 311.11, subdivision (a) (possession of matter depicting a minor engaging in sexual conduct) (Count 3); 236 (false imprisonment) (Counts 9 and 30); 311.4, subdivision (c) (using minor for sex acts) (Count 16); and 261, subdivision (a)(2) (forcible rape) (Count 48). (Ex. 17, p. A105.) This judgment is final.

9. At the hearing, CalPERS indicated respondent's guilty plea to Count 9 of the Complaint forms the basis for its determination that respondent's service credit for the period from January 1, 2009, through April 20, 2012, should be forfeited.

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10. Count 9 of the Complaint states:

On or between January 1, 2009 and August 18, 2009, in the County of Los Angeles, the crime of FALSE IMPRISONMENT BY FRAUD AND DECEIT, in violation of PENAL CODE SECTION 236, a Felony, was committed by [respondent], who did unlawfully violate the personal liberty of [redacted name] said violation being effected by violence, menace, fraud, and deceit.

This crime is not barred by the statute of limitations pursuant to Penal Code sections 801.5 and 803(c) in that (1) the offense was discovered on 4/22/12 during an interview with victim [redacted name] (2) by the Long Beach Police Department; (3) Prior to the interview Long Beach PD had no knowledge of the crime; (4) because no one had reported criminal activity by Defendant to [redacted name]. Additionally, the basis for this charge is misconduct by a public officers or employee and a police officer is a public officer or employee.

(Ex. 3, p. A43.)

CalPERS' Determination Concerning Respondent's Felony Convictions

11. Sometime in 2020, CalPERS received a media inquiry from a news organization about respondent's pension status in light of his felony convictions. The news organization also provided to CalPERS several newspaper articles reporting on respondent's felony convictions. After this media inquiry, CalPERS reached out to City

to confirm whether respondent's felony convictions arose out of his employment with City. City neither confirmed nor denied that fact. Sometime in early 2022, CalPERS initiated its own investigation of the matter and by late 2022, obtained the criminal court docket, including the Complaint.

12. Based on the information it obtained from newspaper articles and the Complaint, CalPERS informed respondent, in its November 30, 2022 letter, that his felony convictions subjected his retirement benefit to forfeiture for the period of January 1, 2009, and April 20, 2012. (Ex. 5.) CalPERS subsequently determined that respondent's forfeiture period should begin as of June 4, 2008, based on his conviction under Count 48 of the Complaint. (Ex. 6.) However, as described above, at the hearing, CalPERS amended the Accusation to clarify that it was seeking forfeiture of respondent's service credit for the period of January 1, 2009, through April 20, 2012, based on his guilty plea to Count 9 of the Complaint.

Hearing Testimony

RYAN LEBARON

13. Ryan Lebaron, Deputy Chief of Investigation, Long Beach Police Department (LBPD), testified at the hearing.

14. Deputy Chief Lebaron was not involved in the criminal or internal affairs investigation of respondent. The officers who were involved in those investigations are now retired from LBPD. Deputy Chief Lebaron confirmed that LBPD refused to provide CalPERS with any internal affairs reports or unredacted arrest reports in connection with respondent's felony convictions. Thus, all victim names contained in the arrest reports admitted into the record were redacted. All victim names in the Complaint were redacted as well. However, Deputy Chief Lebaron testified that he reviewed the

unredacted arrest reports regarding the criminal offenses underlying respondent's felony convictions and the Complaint. According to Deputy Chief Lebaron, the arrest report for LBPDP case number 12-25976 (Arrest Report) describes the offense and arrest underlying respondent's felony conviction under Count 9.

15. Deputy Chief Lebaron's testimony regarding the timeline and the alleged criminal conduct described in the Arrest Report match those described in Count 9. Specifically, the Arrest Report indicates that on April 22, 2012, LBPDP detectives executed a search warrant at respondent's home and found a "large number" of LBPDP field interview cards. (Ex. 19, p. A240.) One of these field interview cards contained the name, date of birth, address, home and cell phone number of the victim (Victim) of the false imprisonment charge under Count 9. (*Ibid.*) Victim's age, 16, was circled by hand on the field interview card. (*Ibid.*) A LBPDP detective contacted Victim via the cell phone number listed on the field interview card. (*Ibid.*) Victim alleged that three to four years ago respondent detained her for a traffic stop and completed a field interview card with her personal information. (*Ibid.*) (Victim's statement was not considered for the truth of the matter asserted, but as the allegation underlying the charge of false imprisonment under Count 9 of the Complaint.)

16. Deputy Chief Lebaron explained that a patrol officer's official's duties include using field interview cards when conducting stops to document information about individuals, including minors. The field interview card contains the interviewee's personal identifying information, and the back of the card is used to document narratives, such as the nature of the stop or detention. According to Deputy Chief Lebaron, it would be "highly unusual" for a patrol officer to bring field interview cards to his home.

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RESPONDENT

17. Respondent testified at the hearing. Respondent admitted that as a patrol officer, he used field interview cards to document information about individuals, including children. However, he denied ever contacting these children after meeting them while on duty. Respondent claimed that he kept many field interview cards at his home because he stuffed them into his "war bags" (gym bags with extra ammunition or weapons), which sometimes were placed in his garage or in the backseat of his vehicle.

18. Respondent denied committing any of the crimes underlying his felony convictions, specifically forcible rape, possessing child pornography, false imprisonment, or using a minor for sex. Respondent claimed he pled guilty to those charges because his family convinced him to take the plea deal. Regarding Count 9, respondent could not recall ever meeting Victim or detaining any children in 2009.

Analysis

19. Respondent's testimony was not credible. Respondent's explanation of why he would keep a large number of field interview cards at his home was illogical and contradicted his prior statement to the investigating detective. To begin with, the field interview cards were found inside respondent's bedroom, not in his vehicle or in his garage. (Ex. 19, p. A193.) Moreover, according to the arrest report for LBPD case number 12-18478, when interviewed by the investigating detective on April 19, 2012, respondent claimed the numerous field interview cards found inside his bedroom were "for the purposes of creating a scrapbook or album for his retirement in the future." (*Ibid.*) Additionally, respondent was convicted of possession of matter depicting a minor engaging in sexual conduct, false imprisonment, using a minor for sex act, and

forcible rape. His guilty plea is conclusive evidence of the crimes charged against him, and he may not impeach those convictions at this administrative hearing. (See *Arenson v. Fox* (1980) 28 Cal.3d 440 (*Arenson*)). However, although respondent's testimony was dishonest and self-serving, his denials do not form the basis for any affirmative finding that the felony false imprisonment conviction arose out of or in the performance of his official duties as a patrol officer.

20. On the other hand, the testimony of Deputy Chief Lebaron was credible, as it was corroborated by documentary evidence, i.e., the Arrest Report and the Complaint. Moreover, Deputy Chief Lebaron, as an officer who was not involved in respondent's criminal or internal affairs investigations, has no personal interest in the outcome of this case. This lack of bias added to his reliability as a witness. Furthermore, Deputy Chief Lebaron's testimony regarding the official duties of a patrol officer was also credible, due to his experience and training as an officer, and was corroborated by respondent's testimony acknowledging that documenting an individual's information on field interview cards after conducting a stop and interview is a part of a patrol officer's official duties.

21. It is undisputed that respondent pled guilty to Count 9 of the Complaint. This guilty plea is conclusive evidence that respondent committed the crime of false imprisonment against Victim. (See *Arenson, supra*, 28 Cal.3d 440.) Respondent, in his testimony, provided no explanation of how he met Victim. However, the testimony of Deputy Chief Lebaron and the Arrest Report established that Victim's personal information was contained in one of the many field interview cards found in respondent's bedroom. The testimony of Deputy Chief Lebaron and respondent also established that conducting stops, interviewing individuals, and completing field interview cards afterwards are part of a patrol officer's official duties. Given these facts,

it can be reasonably inferred that respondent committed the crime of falsely imprisoned Victim while performing his official duties.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In an administrative hearing concerning retirement benefits, the party asserting the claim has the burden of proof, including both the initial burden of going forward and the burden of persuasion, by a preponderance of the evidence. (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051, fn. 5.) CalPERS, as the party seeking to reduce respondent's retirement benefits, bears the burden of proof, and the standard of proof is a preponderance of the evidence. "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The Felony Forfeiture Statute

2. The California Public Employees' Pension Reform Act of 2013 includes section 7522.72, a provision requiring the forfeiture of public employee pension benefits for certain felony offenses, sometimes referred to herein as the felony forfeiture statute.

3. Section 7522.72, subdivision (a), provides that the felony forfeiture statute applies to any public employee hired before January 1, 2013. Respondent was hired before that date.

4. Section 7522.72, subdivision (b)(1), provides:

If a public employee is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits, he or she shall forfeit all accrued rights and benefits in any public retirement system in which he or she is a member to the extent provided in subdivision (c) and shall not accrue further benefits in that public retirement system, effective on the date of the conviction.

5. The employee shall forfeit all the rights and benefits earned or accrued from the "earliest date of the commission of any felony described in subdivision (b) to the forfeiture date, inclusive." (§ 7522.72, subd. (c)(1).) The forfeiture date is defined as the date of the conviction. (§ 7522.72, subd. (c)(3).) The felony forfeiture statute also makes clear that pension rights and benefits "attributable to service performed prior to the date of the first commission of the felony for which the member was convicted shall not be forfeited as a result of this section." (§ 7522.72, subd. (c)(1).)

Respondent's Guilty Plea to Count 9 Constitutes Admission of Misconduct in Office

6. The parties do not dispute that respondent pled guilty to Count 9, in violation of Penal Code section 236, false imprisonment, a felony. Under Penal Code section 801, the statute of limitations for felony false imprisonment is three years. However, according to the Complaint, the statute of limitations was tolled and extended to four years after the discovery of the crime pursuant to Penal Code

sections 801.5 and 803, subdivision (c). Specifically, under Penal Code section 803, subdivision (c), the three-year statute of limitations does not apply when “the basis of the [offense] is misconduct in office by a public officer, employee, or appointee

7. CalPERS contends that by virtue of his guilty plea to Count 9 of the Complaint, respondent admitted to every element of the crime, including the basis for extending the statute of limitations, which is misconduct in office. (Ex. 24, p. A330.) Respondent counters that in pleading guilty to Count 9, respondent admitted to only the elements of the crime of false imprisonment, which is defined by Penal Code section 236 as “the unlawful violation of the personal liberty of another.” (Ex. R22, p. B181.) According to respondent, a guilty plea to Count 9 does not constitute an admission to misconduct in office.

8. Neither party’s contention is entirely convincing. Case law does not support CalPERS’ position that respondent admitted to misconduct in office as an element of the crime of false imprisonment. In *People v. Linder* (2006) 139 Cal.App.4th 75, 82 (*Linder*), the Court of Appeal interpreted the burden of proof required to establish the factual basis for extending the statute of limitations under Penal Code section 803, subdivision (g). The Court of Appeal stated:

However, “the statute of limitations is not an ‘element’ of the offense insofar as the ‘definition’ of criminal conduct is concerned.” [Citations.] Although the right to maintain the action is an essential part of the final power to pronounce judgment, that right “constitutes no part of the crime itself.” [Citation.]

(*Linder, supra*, 139 Cal.App.4th 75, 85.)

9. CalPERS contends that the holding in *Linder* applies only if the defense puts the prosecution to its proof. (Ex. 24, p. A332.) Nevertheless, as the Supreme Court explained, the statute of limitations is a procedural defense that has nothing to do with the “internal structure of the crime or its elements.” (*People v. Frazer* (1999) 21 Cal.4th 737, 760, fn. 26 (*Frazer*) overruled on other grounds by *Stogner v. California* (2003) 539 U.S. 607.) The Court of Appeal also confirmed in *Linder, supra*, 139 Cal.App.4th 75, 85, that “[s]ubsequently, in *Frazer*, [citations], the Supreme Court clearly rejected the claim the statute of limitations is an actual element of the underlying offense.” Nothing in *Linder* or *Frazer* suggests that this holding is limited to circumstances where the defense puts the prosecution to its proof.

10. However, in *People v. Padfield* (1982) 136 Cal.App.3d 218 (*Padfield*), defendant entered a plea of nolo contendere to one count of grand theft. On appeal, defendant contended, in part, that prosecution of his crime was barred by a statute imposing a three-year statute of limitations that runs from the date of discovery rather than from the date of the commission of the crime. (*Id.*, p. 222.) The court in *Padfield* reasoned that “when the pleading is facially sufficient, the issue of the statute of limitations is solely an evidentiary one.” (*Id.*, p. 226.) The court held:

By pleading nolo contendere, defendant admitted the sufficiency of the evidence establishing that the statute of limitations was tolled because the thefts were not, and could not with reasonable diligence have been, discovered before [the discovery date]. Having admitted the sufficiency of that evidence by his plea, he cannot now challenge it with a forked tongue on appeal. . . .

(*Id.*, p. 227.)

11. Here, the Complaint, as the accusatory pleading seeking to avoid the bar of the three-year statute of limitations, was facially sufficient. It alleged facts showing (1) the date on which the crime of false imprisonment was discovered; (2) how and by whom the offense was discovered; (3) the lack of knowledge before the date of discovery; (4) the reason why the offense was not discovered earlier; and (5) the applicability of Penal Code section 803, subdivision (c), based on misconduct in office. (See *People v. Zamora* (1976) 18 Cal.3d 538, 565, fn. 26.) Accordingly, by pleading guilty to Count 9, respondent, as in *Padfield*, admitted to the sufficiency of evidence that the statute of limitations on the false imprisonment charge was tolled and extended because he committed misconduct in office as a police officer. Having admitted the sufficiency of that evidence by his plea in the criminal case, he cannot challenge it now in this administrative hearing. That admission of misconduct in office, in turn, is sufficient to satisfy the “conduct arising out of or in the performance of his or her official duties” requirement under section 7522.72.

Evidence Presented at the Hearing Is Sufficient to Support Forfeiture

12. Even assuming, *arguendo*, that respondent’s guilty plea to Count 9 does not constitute an admission of misconduct in office, CalPERS presented sufficient evidence at the hearing demonstrating respondent’s crime of false imprisonment arose out of or was in the performance of his official duties as a patrol officer.

13. Consideration of Chief Deputy Lebaron’s testimony is critical to this conclusion. Notably, respondent contends that *Hipsher v. Los Angeles County Employees Retirement Association* (2020) 58 Cal.App.5th 671, 704-705 (*Hipsher*), prohibits CalPERS from “rely[ing] on evidence outside of the criminal proceedings, including testimony from individuals such as [Deputy Chief] Lebaron who was not part of either the criminal or administrative investigations of [respondent] when they were

happening.” (Ex. R22, B180.) *Hipsher* places no such limitations on the evidence to be considered in these types of administrative hearings. The Court of Appeal in *Hipsher* determined that section 7522.72 is not an unconstitutional ex post facto law and that a former employee facing forfeiture “is entitled to appropriate administrative due process.” (*Hipsher*, supra, 58 Cal.App.5th at p. 683.) While *Hipsher* required the agency responsible for providing the necessary due process to “comb through the criminal records” to make a preliminary finding, the only direction in the Court of Appeal provided in terms of the administrative appeal process is to “give the employee an opportunity to contest the [agency’s] preliminary finding. . . render a decision, and . . . perhaps provide additional layers of administrative review.” (*Id.*, pp. 704-705.) *Hipsher* is silent on the type of evidence that may be considered at administrative hearings such as the instant proceeding.

14. The Administrative Procedure Act (APA) governs this matter. (Cal. Code Reg., tit 2, § 555.4.) In compliance with section 11513, the provision of the APA governing admissible evidence, Deputy Chief Lebaron was properly called as a witness; the Complaint and the Arrest Report were properly introduced as exhibits and admitted into the evidence (albeit over the objection of respondent’s counsel); and respondent cross-examined Deputy Chief Lebaron. Hearsay evidence of Deputy Chief Lebaron’s conversations with parties who did not testify at the hearing were excluded, but his personal observations and his knowledge about the use of field interview cards as a part of a patrol officer’s official duties were admitted. Therefore, the testimony of Deputy Chief Lebaron, the Complaint, and the Arrest Report were properly considered as evidence in this matter.

15. As set forth in Factual Finding 21, the evidence established that respondent was convicted of felony false imprisonment under Count 9 for conduct

arising out of or in the performance of his official duties as a patrol officer within the meaning of section 7522.72, subdivision (b)(1). (Cf. *Myres v. Bd. of Admin. for Public Employees' Retirement System* (Dec. 26, 2025, A170516) __Cal.App.5th__ [2025 WL 3731539].)

Disposition

16. In sum, CalPERS met its burden of proving by a preponderance of the evidence that respondent's felony conviction under Count 9 qualifies for forfeiture under section 7522.72. The earliest date of respondent's commission of the crime under Count 9 was January 1, 2009. Respondent's last date of employment, April 20, 2012, predates the forfeiture date, or conviction date, of February 22, 2013. Accordingly, respondent's retirement benefits for the period from January 1, 2009, through April 20, 2012, must be forfeited pursuant to section 7522.72.

ORDER

1. The appeal of respondent Noe Yanez is denied.
2. Respondent's retirement benefits for the period from January 1, 2009, through April 20, 2012, are forfeited pursuant to Government Code section 7522.72.

DATE: 02/09/2026



JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings