

ATTACHMENT C

RESPONDENT'S ARGUMENT

JACOB A. KALINSKI, SBN 233709
RAINS LUCIA STERN ST. PHALLE & SILVER, PC
16130 Ventura Blvd., Suite 600
Encino, CA 91436
Tel: (747) 221-7100
Fax: (747) 221-7101
E-mail: JKalinski@RLSlawyers.com

Attorneys for Respondent
Noe Yanez

BOARD OF ADMINISTRATION

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Appeal of Forfeiture of
Benefits of

NOE YANEZ,

Respondent,

and

CITY OF LONG BEACH,

Respondent.

AGENCY CASE NO. 2023-0619

OAH NO. 2024040631

RESPONDENT'S ARGUMENT

Respondent Noe Yanez urges the Board of Administration (“Board”) for the California Public Employees Retirement System (“CalPERS”) to reject the Proposed Decision of Hearing Officer Ji-Lan Zang (“Proposed Decision”) because CalPERS has failed to establish that any felony committed by Respondent was job-related as required by Government Code section 7522.72. In doing so, Respondent incorporates all of the briefing previously filed in this case and adds additionally as set forth below.

I. YANEZ’S GUILTY PLEA TO COUNT 9 DOES NOT ESTABLISH THAT IT WAS A JOB-RELATED FELONY

Count 9, for “False Imprisonment by Fraud and Deceit,” to which Yanez pled guilty, states in full:

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 NOE YANEZ, who did unlawfully violate the personal liberty of [redacted] said violation being effected by violence, menace, fraud, and deceit.

“This crime is not barred by the statute of limitations pursuant to Penal Code section 801.5 and 803(c) in that (1) the offense was discovered on 4/22/12 during an interview with victim [redacted]; (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]. Additionally, the basis for this charge is misconduct by a public officers (sic) or employee and a police officer is a public officer or employee.

(CalPERS’ Exhibit 3, A43.)

ALJ Zang concluded that, in pleading guilty to Count 9, Yanez admitted that the crime was job-related. (Proposed Decision, p. 14.) However, ALJ Zang is incorrect.

A. *Yanez’s Guilty Plea Did Not Reference That His Crime Was Job-Related.*

There is not a single word in the entire transcript of Yanez’s plea agreement which indicates that Yanez’s commission of Count 9 crime is job-related. (CalPERS’ Exhibit 18.) Moreover, in a criminal prosecution, in the event of a substantial ambiguity in a plea bargain, the ambiguity is required to be resolved in favor of the defendant under the well-known rule

that the defendant is entitled to the benefit of every reasonable doubt, whether it arises out of a question of fact or as to the true interpretation of words or the construction of language used in a statute. (*People v. Daugherty* (1981), 123 Cal.App.3d 314, 319.) There is no ambiguity here, but to the extent there is, it must be resolved in Yanez's favor. He simply did not admit to the job-relatedness of any crime to which he pled guilty.

B. Yanez's Guilty Plea Admits Only The Elements of the Crime.

A defendant who knowingly and voluntarily pleads guilty demonstrates that he knows of the violation and is prepared to admit each of its elements. (*People v. West* (1970) 3 Cal.3d 595, 612.) However, "absent an indication that a defendant admitted the truth of particular facts, the stipulation to a factual basis for the plea does not 'constitute[] a binding admission for all purposes.'" (*People v. Rivera* (2021) 62 Cal.App.5th 217, 235; citing *e.g.*, *People v. Saez* (2015) 237 Cal.App.4th 1177, 1206–1207 [stipulation to factual basis did not constitute admission of additional facts necessary to render prior conviction a strike].)

In *People v. Saez* (2015) 237 Cal.App.4th 1177, 1206, the Court held, "' [a] guilty plea 'admits every element of the crime charged ... ,' **but no more.**" (Emphasis added.) Significantly, the Court in *People v. Saez* cited as support for this proposition, *People v. Wallace* (2004) 33 Cal.4th 738, 749, which confirms that a guilty plea admits only the elements of the offense unless there is a specific acknowledgment of additional facts.

In *People v. Wallace*, the California Supreme Court affirmed the Court of Appeal's determination that the trial court erred in looking beyond a defendant's no contest plea to a magistrate's evaluation of evidence in order to strike a prior-conviction allegation. (*People v. Wallace, supra*, 33 Cal.4th 738 at pp. 749-750.) In coming to its conclusion, the Supreme Court found it important that, "defendant specifically acknowledged on the record during his no contest plea that he understood his offenses would constitute strikes under the Three Strikes law in any subsequent prosecution." (*Id.* at 750; cf., *People v. Cortez* (1999) 73 Cal.App.4th 276, 278, where the Court held that a guilty plea to assault with a deadly weapon under California Penal Code section 245(a)(1) admits only the elements of the offense, and is therefore insufficient to invoke the Three Strikes Law). Unlike the defendant in *People v.*

Wallace, Yanez did not acknowledge on the record during his plea that his felony was job related. As such, as in *People v. Cortez*, Yanez only admitted to the elements.

Furthermore, in *People v. Gaillard* (2024) Cal.App.5th 1206, 1211-1222, the Court held that that only facts admitted or stipulated to could be considered when determining eligibility for resentencing. Similarly here, the Board should not consider any facts unless Yanez specifically stipulated to or admitted them. Here, Yanez did not stipulate or admit to committing a job-related crime. He only admitted to the elements of the crime.

C. *Yanez Did Not Admit the Sufficiency of the Evidence of Penal Code section 803(c).*

In her Proposed Decision, ALJ Zang concluded,

by pleading guilt to Count 9, respondent, as in [People v.] Padfield, admitted to the sufficiency of the 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.

(Proposed Decision, p. 14.)

ALJ Zang is incorrect. *People v. Padfield* involved a criminal defendant who had pled nolo contendere to a charge and was attempting to overturn his conviction of that charge in the Court of Appeal. (*People v. Padfield* (1982) 136 Cal.App.3d 218, 221.) Here Yanez is not attempting to challenge his conviction. Rather, he simply contends, consistent with the law articulated above that his conviction admits only the elements of the crime and nothing else.

A criminal plea does not admit that any statements in a pleading document are true. The following quote from *People v. Hiller* (2023) 91 Cal.App.5th 335, 349-350 (cleaned up) is illustrative:

Courts have consistently differentiated between an admission that a document or recitation contains a factual basis for a plea and an admission that statements in that document or recitation are true. (See *People v. Saez* (2015) 237 Cal.App.4th 1177, 1194–1195, 1206–1208 [189 Cal. Rptr. 3d 72] [by pleading guilty the

defendant admitted elements of crime, but stipulating to the complaint’s factual basis did not constitute admission to additional facts in complaint]; *People v. French* (2008) 43 Cal.4th 36, 51 [73 Cal. Rptr. 3d 605, 178 P.3d 1100] [defense counsel’s statement that witnesses would testify consistent with prosecutor’s recitation of factual basis was not stipulation that recitation was correct]; *People v. Rivera* (2021) 62 Cal.App.5th 217, 235 [276 Cal. Rptr. 3d 390] [stipulation to grand jury transcript as factual basis is not admission of truth of evidence in the transcript]; see also *People v. Flores* (2022) 76 Cal.App.5th 974, 991 [292 Cal. Rptr. 3d 105] [defendant’s stipulation that a preliminary hearing “transcript provided a factual basis for the plea is not a “binding admission for all purposes””].) Defendant thus did not admit facts beyond the elements of the crime of robbery in Washington, as is necessary to make the crime a serious or violent felony in California.

Moreover, our high court has cautioned that sentencing courts “may not determine the ‘nature or basis’” of a prior conviction through their own “conclusions about what facts or conduct ‘realistically’ supported the conviction.” (*People v. Gallardo* (2017) 4 Cal.5th, 120, 136].)

The *Gallardo* court mused, “[a]nd at least in the absence of any pertinent admissions, the sentencing court can only guess at whether, by pleading guilty to a violation of Penal Code section 245, subdivision (a)(1), defendant was also acknowledging the truth of the testimony indicating that she had committed the assault with a knife.” (*Id.* at 137.)

Here too, any conclusion that Yanez impliedly admitted any basis for a specific exception to the statute of limitations would only be a guess. **No case cited by ALJ Zang and none of which we are aware, holds that a guilty plea admits the factual basis of a particular exception to a statute of limitations.**

II. RYAN LEBARON’S TESTIMONY DOES NOT DEMONSTRATE THAT COUNT 9 WAS JOB-RELATED

In her Proposed Decision, ALJ Zang states in Factual Conclusion No. 21:

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.

(Proposed Decision, p. 9.)

Thus, ALJ Zang concludes that, even without the guilty plea to Count 9, CalPERS presented sufficient evidence at the hearing demonstrating respondent's crime of false imprisonment arose out of or was in the performance of his office duties as a patrol officer. (Proposed Decision, p. 14.) However, LeBaron's testimony related to Count 9 was demonstrably incorrect and based on hearsay.

A. *LeBaron's testimony is based on hearsay.*

LeBaron conceded that he was only able to connect the police reports to the charges based on his conversations with other persons. (1 RT 57:21-58:17.) These individuals did not testify at the hearing. As such, LeBaron's testimony, based on hearsay conversations with these individuals, cannot support a finding that Yanez was convicted of a job-related felony.

B. *The police report LeBaron claims is related to Count 9 is for a misdemeanor violation of Penal Code section 647.6, not Penal Code section 236.*

LeBaron testified that the police report for Count 9, to which Yanez pled, is Police Report Number 12-25976. (1 RT 43:23-44:17.) He also testified that the name of the victim of that police report matches up with the name of the victim in Count 9. (1 RT 47:9-17.)

However, it is apparent from the police report that 12-25976 does not match up with Count 9. Report Number 12-25976 shows that it is a report for violation of Penal Code section 647.6 (CalPERS' Exhibit 19, A242), not Penal Code section 236, for False Imprisonment. At the top of the page, right under the Department's address, it states under "Primary Offense" "647.6PC." In the "Administrative Information" section a little lower on the page, it reads, "Annoy Child Under 18," consistent with Penal Code section 647.6. Furthermore, at least upon a first offense, violation of Penal Code section 674.6 is a misdemeanor, not a felony, like violation of Penal Code section 236.

Moreover, a review of the initial Complaint against Yanez shows that a violation of Penal Code sections 647.6(a)(1), a misdemeanor, was charged. (Respondent's Exhibit 6) However, that charge was removed from the First Amended Complaint (Respondent's Exhibit

7). Yanez never pled guilty to violation of Penal Code section 647.6. As such, no police report for Penal Code section 647.6 can prove that a violation Penal Code section 236 was job-related.

Additionally, although her statement is plainly hearsay, when the victim in the report was shown a photograph of the involved police officer, she stated, “I do not recognize or know that person.” (CalPERS’ Exhibit 19, A242.)

C. CalPERS did not match any Field Interview card with the victim of Count 9.

The statement by ALJ Zang that “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” is incorrect.

LeBaron gave testimony attempting to match a field interview card with the victim of the rape charge in Count 48 (See 1 RT 38:19-43:22). However, that testimony is irrelevant. As CalPERS’ attorney stated, “Complainant would like to amend the Accusation to exclude Count 48 as the basis for or as a basis for the felony forfeiture and instead focus only on Count 9 which I believe would have been from January 1st, 2009 through April 20, 2012.” (2 RT 6:20-24.) There is no other testimony linking the victim of Count 9 to a field interview card especially when one considers that LeBaron’s testimony regarding Count 9 was based on the wrong police report as explained above.

III. CONCLUSION

Respondent respectfully requests the Board decline to adopt ALJ Zang’s Proposed Decision and instead rule that CalPERS forfeiture action against Yanez must be set aside.

Dated: February 26, 2026

Respectfully submitted,

**RAINS LUCIA STERN
ST. PHALLE & SILVER, PC**



By: Jacob A. Kalinski
Attorneys for Respondent Noe Yanez

PROOF OF SERVICE

I am employed in the City of Los Angeles, State of California. I am over 18 years of age and not a party to this action. My business address is Rains Lucia Stern St. Phalle & Silver, PC, 16130 Ventura Blvd., Suite 600, Encino CA 91436.

On the date below I served a true copy of the following document(s):

RESPONDENT’S ARGUMENT

on the interested parties to said action by the following means:

- (BY MAIL)** By placing a true copy of the above, enclosed in a sealed envelope with appropriate postage, for collection and mailing following our ordinary business practices. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- (BY OVERNIGHT DELIVERY)** By placing a true copy of the above, enclosed in a sealed envelope with delivery charges to be billed to Rains Lucia Stern St. Phalle & Silver, P.C., for delivery by an overnight delivery service to the address(es) shown below.
- (BY FACSIMILE TRANSMISSION)** By transmitting a true copy of the above by facsimile transmission from facsimile number (310) 393-1486 to the attorney(s) or party(ies) shown below.
- (BY MESSENGER)** By placing a true copy of the above in a sealed envelope and by giving said envelope to an employee of First Legal for guaranteed, same-day delivery to the address(es) shown below.
- (BY HAND DELIVERY)** By personal delivery of a true copy of the above to the attorneys or parties shown below
- (BY E-MAIL or ELECTRONIC TRANSMISSION)** I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable period of time, after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

DATED: February 26, 2026

/s/ Michele Hengesbach
Michele Hengesbach

SERVICE LIST

Matthew G. Jacobs
Austa Wakily
California Public Employees' Retirement System
Lincoln Plaza North, 400 "Q" Street, Sacramento CA 95811
P.O. Box 942707
Sacramento CA 94229-2707
Tele: (916) 795-3675
Fax: (916) 795-3659
Austa.wakily@calpers.ca.gov
(via Email Only)

Personnel Officer
City of Garden Grove
P.O. Box 3070
Garden Grove CA 92842-3070
(via First-Class Mail only)