

ATTACHMENT C

**RESPONDENT'S ARGUMENT REGARDING THE PETITION FOR
RECONSIDERATION**

Dwain Moore

February 1, 2022

Cherec Swedensky, Asst. to the Board
Executive Office

California Public Employees' Retirement System
P. O. Box 942701
Sacramento, CA 94229-2701

Title: Petition for Reconsideration

Ref. No. 2021-0255

Dear CalPERS Board Members:

I am making the final appeal to the board for consideration of my request that my CalPERS' retirement account be restored and compensated from the time that it was wrongly terminated. In granting this decision, I would like the board to consider all the facts in this case which have been extensively detailed in the most recent denial decision. Most importantly, it is my contention that CalPERS made a major error in closing my account by allowing Dathan Moore to use a generic power of attorney document with the omission of "CalPERS" for that transaction. This is the main basis for my claim that CalPERS made an error.

In justifying their recent denial, CalPERS pointed to a statute in the California civil code, Probate Code 4406. The relevant subdivision of this section states:

“(d) Notwithstanding subdivision (c), a third person's refusal to accept an agent's authority under a statutory form power of attorney under this part shall be deemed unreasonable if the only reason for the refusal is that the power of attorney is not on a form prescribe by the third person to whom the power of attorney is presented.”

There is nothing in this statue which gives permission to CalPERS to rely on the validity of a non-CalPERS power of attorney document. To do so would be counter to CalPERS policies and procedures, the basis of which is to ensure the validity and integrity of retirement plan participant's initiated transactions. There are good and sound reasons that the established policies stated that the use of a power of attorney must be on a CalPERS form and contain specific language,

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without any ambiguity or uncertainty, as to the nature of the transaction that is being requested. The CalPERS power of attorney document accomplishes this purpose, a generic power of attorney document does not.

It is my contention that **the previous decision is wrong on the facts and the law.** The stated basis of the decision is that CalPERS received a valid power of attorney document which it was required by law to accept. My contention is that this is an error of the facts and the law. The ERISA and PERS statutes were passed in order to ensure special protection for retirement plans. CalPERS requirement that transactions requests using a power of attorney form had to be on a CalPERS' power of attorney was done in conformity with the requirements of sufficient protection of the employee's interests. The only stated exception was that an alternative power of attorney document must conform with the substances of the CalPERS document by **specifically referencing CalPERS in the body of such a document. The document used to liquidate my retirement account did not meet this exception. The CalPERS Special Power of Attorney form states, "The authority granted pursuant to this power of attorney is expressly limited to decisions relating to my financial and health benefits under the California Public Employees Retirement System...."** Further, CalPERS on its website **specially states:** "NON-CalPERS POWER OF ATTORNEY DOCUMENTS The CalPERS Special Power of Attorney form is specifically designed to help manage CalPERS retirement issues, but we will also accept other power of attorney documents that specifically grant the attorney-in-fact authority to conduct business with us. If your power of attorney document does not contain a durability clause, CalPERS will not be able to honor it if you become incapacitated."

In statement number 18 of the most recent proposed decision it is stated that Ms. Julie Watson approved this substituted power of attorney document after examining one containing an original notary seal, as if such an act cured the defect. **The only thing which would have made the submitted power of attorney valid would be that it included specific language stating that the matters to which it legitimately could be applied was a CalPERS retirement account, which it did not.**

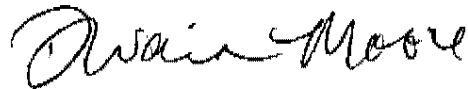
In this particular case, it was not the form that was defected, it was the contents. The required CalPERS form contained specific language referencing matters pertaining to CalPERS. This is evident from an examination of the form. The form that Dathan Moore submitted when requesting liquidation of my

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retirement did not contain any mentioning of CalPERS. It is because of these omissions that rendered it invalid.

Since it appears that the basis of the proposed denial of my claims of restitution and compensation was that CalPERS accepted a valid power of attorney is countered by the facts and the law, I request that my original request be granted without me having to pursue other legal means.

Sincerely,

A handwritten signature in cursive script that reads "Dwain Moore".

Dwain Moore

Attached:

CalPERS Special Power of Attorney

Generic Power of Attorney used by Dathan Moore

COPY

UNIFORM STATUTORY FORM POWER OF ATTORNEY California Civil Code 2475

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA CIVIL CODE SECTIONS 2475-2499.5, INCLUSIVE). IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, **DWAIN DARIUS MOORE**, appoint **DATHAN O. MOORE**, as my agent (attorney-in-fact)

to act for me in any lawful way with respect to the following subjects:

- o Real property transactions.
- o Tangible personal property transactions.
- o Stock and bond transactions.
- o Banking and other financial institution transactions.
- o Business operating transactions.
- o Personal and family maintenance.
- o Retirement plan transactions.
- o Tax matters.

DATHAN O. MOORE is specifically granted powers relating to my bank and credit union accounts to deposit, transfer and withdraw funds. The accounts are identified below:

- o Golden One Credit Union, 1108 O Street, Sacramento, California, Account No: 5673146620-9
- o Bank of America, Elk Grove Branch Savings Account No: 08388-00011
- o San Jose Credit Union, Account No. 567314662


I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation. I agree to indemnify the third party for any claims that arise against the third

COPY

party because of reliance on this power of attorney.

This power of attorney will continue to be effective even though I become incapacitated.

Signed this 23rd day of April, 1996.



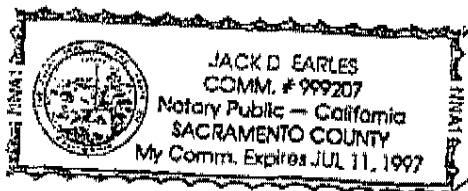
DWAIN DARIUS MOORE
 Social Security Number 567-31-4662


CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

State of California .)
) ss
County of Sacramento)

On this 23 day of April, 1996, before me, Jack D Earles
proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to
this instrument, and acknowledged that he executed it.

NOTARY SEAL






NOTARY PUBLIC

NON-CALPERS POWER OF ATTORNEY DOCUMENTS

The CalPERS *Special Power of Attorney* form is specifically designed to help manage CalPERS retirement issues, but we will also accept other power of attorney documents that specifically grant the attorney-in-fact authority to conduct business with us. **If your power of attorney document does not contain a durability clause, CalPERS will not be able to honor it if you become incapacitated.**

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Fax Cover Sheet

02.04.2022 13:16

To:

Name: Matthew G. Jacobs

From:

Name: Dwain Moore

Email/Number: 805-754-0018

Urgent For Review Please Reply Please Comment

Message:

Please attach this to my previous fax Petition for Reconsideration.
Thank you,
Dwain Moore

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