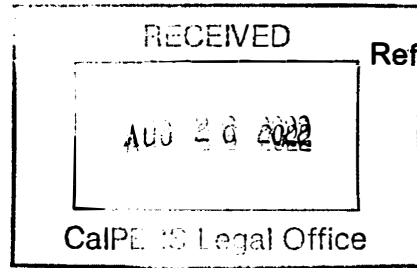


**ATTACHMENT C**

**RESPONDENTS ARGUMENTS**

August 6, 2022

Cheree Swedensky, Assistant to the Board  
CalPERS Executive Office  
P.O. Box 942701  
Sacramento, CA 94229-2701



Ref No. 2021-1040

Subject: In the Matter of the Appeal of Lifetime Monthly Benefit Payable Upon the Deaths of Kim M. Gardner and Hayley M. Gardner by ROBERT J. GARDNER, Respondent, and RYAN E. GARDNER, Respondent.

Dear Tonya Huchins, and the CalPERS board of appeals,

The intent of my letter is without consideration for the board to designate the decision as precedent, in whole or in part, if it is adopted. It is important for me here to highlight what a great person my Mom has always been, her legacy, and the sheer light of a person she truly was every day.

Only recently, I have been able to start to look back at photos, remember all the great memories and how uniquely special my Mom was raising me, and all the great times we had as a family. She was everything a young person could ever ask for in a Mom. My Mom always put her family first, and worked hard and sacrificed so we could be taken care of. When she got sick, I truly thought with everything I had that she was going to be okay. How could she not, she has always taken great care of herself, lived with great purpose and faith, and was truly the most kind hearted and caring person you would ever know.

One of my earliest memories is when I was a little kid in kindergarten, and I already liked baseball. She would take me to the store and buy the baseball team emblem magazine and the card pack that had all the team emblems in it so I could complete the book. I remember driving down our street opening up a pack of emblems. I remember her smiling and me being so happy. When we moved up to Lakeport, both my parents were working their fingers to the bone to put us on good footing. My Dad was a custom home builder, but it was a small town, and things didn't always happen fast. My Mom started working at the local Safeway, and worked the early 3am shift in the bakery. That is why we had health insurance, and helped us take small steps forward as we were a young family just trying to settle into a completely new place. After almost 10 years in Northern California, she wanted to be closer to her parents in Orange County, and there was more work there for my Dad too, so in the Fall of '98, we moved back to Southern California. My Mom went back to school to earn her Computer Certificate, which was needed to work in Administration for the School District. I remember when she got hired at [REDACTED] Unified School District, where she spent the first few years of her career. She was ecstatic, and so happy she would be doing a job she really loved, and be able to contribute more for our family, doing a job she truly enjoyed. She made such a huge positive impact on everyone she worked with. She was one of those special people who always came into the work environment

with a smile, no matter the situation or circumstance, or adversity we might have been facing, she always let her best shine through. I think that was because she understood that by being a positive light, others would follow and she would make the world a better place around her. While others are trying to figure out ways to cut corners, my Mom always took the time to do things right, and make others feel valued.

During the application process when I was applying to college, she helped me so much, making sure I had all the necessary documentation in on time, which I wouldn't have if she was not watching out for me. She knew the importance for me just getting there. She knew I would do well once I was there, but I definitely needed the extra help and dedication from her to make sure I had everything submitted on time. Once I had moved, I remember every time I went to a new apartment, she would make sure I had the little things, like kitchenware and cleaning items I had never used before, because my Mom had taken care of that.

Where you really saw her dedication was when it came to [REDACTED]. My Mom and [REDACTED] were as close as you can get, and years before when my Mom transferred to [REDACTED], [REDACTED] would eventually be able to attend High School, with her Mom working in the Administration Office. They saw each other every day, and both [REDACTED] and my Mom loved it so much. They would always tell us how they would see each other every day, and I don't think a day went by that they didn't cherish that. [REDACTED] graduated High School in 2011, those 4 years were special for them.

When [REDACTED] turned 21, and used to go out, my Mom would stay up as late as it took for [REDACTED] to get home. I'm honestly not sure how she did that, because I would have never been able to do it. That was the mother in her, she was so concerned about her kids, always checking on us, to a fault at times. That amount of love is immeasurable, a higher capacity of love that I don't think you can relate to unless you are the most loving mother to your kids. I know it was especially hard on [REDACTED] when my Mom passed. [REDACTED] was completely crushed, she was still at that age when it's hard to fathom losing your Mom. Even though I may have been in a sort of denial, I had 38 years with my Mom, [REDACTED] only had 26. That was her Mom, and I don't think [REDACTED] was equipped to deal with that. Looking back, I should have been more aware of what [REDACTED] was experiencing, it was devastating for me, but it was different for [REDACTED].

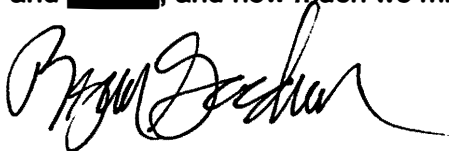
It won't do much good to lament how unfair life can be. My Mom worked so hard for so many years, and she was really looking forward to retirement. She fully earned every minute of having that time, and so did my Dad. She always talked about how they would get a trailer and travel the United States. They both had no desire to go outside the US, they loved it here and had so much to see. That was everything for my Mom to look forward to, and it was time that my Dad and Mom deserved. I would do anything to be able to give that to my Mom, but I can't do that. She sacrificed everything for me, and gave everything to us.

I recently got married, and neither my Mom, nor [REDACTED] were able to go. I could not fully process that until after the wedding. She would have given literally anything to be at my wedding, and I'm so sorry she wasn't able to be there. The last time I saw my Mom smile is when I proposed to [REDACTED]. At that time, my Mom was in a wheelchair, and could barely sit up long enough to go

outside for even 10 minutes. Even then, I thought a miracle would happen, if anybody deserved a miracle for a lifetime of being a great person, and doing the right thing, it was my Mom. Surely, the Lord understood that. [REDACTED] took a video that day, and I would have never expected she wouldn't be there either. Getting married without them present was something I wasn't prepared for, and I'm just recently able to understand how that affected me. My Dad and I will lean on each other, but it has taken a tremendous toll on each of us, and has taken all we have to stay optimistic. But we will, because we know my Mom, and [REDACTED], and my brother [REDACTED], would have wanted that. They were all such strong individuals in their own right, and it would be impossible not to carry on with a smile, knowing they were looking down on us, and expecting nothing less.

As a family, we had to go through a lot of heartache, but it brought us closer together. We always told each other, I love you, and I'm grateful for that. I am proud of my Mom's accomplishments to the School District, and I know her presence in the Administration office contributed to the positive environment and a successful first two decades of the history of the school. This is a situation you surely don't come across often, as there is no precedent. Therefore whatever is the right thing, should be done. Whatever is the right thing to do in this situation for my Mom, is certainly the right thing to do. My Mom was kind, quiet, optimistic, positive, thoughtful, caring, and tougher than she knew. She always put others first, almost to a fault. Even though our faith has been seriously shaken, we choose to have faith, and know they are watching over us as angels, with no worries the physical world puts on us. My brother [REDACTED] is also with them, and I know my Mom is finally at ease being with them both.

Thank you for your consideration, and for taking the time to remember my Mom, and [REDACTED], and [REDACTED], and how much we miss them every day.

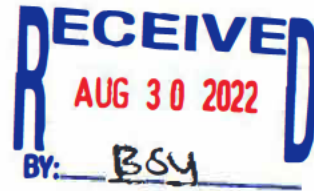
A handwritten signature in black ink, appearing to read "Ryan Gardner". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ryan Gardner

August 18, 2022

To: Cheree Swedensky, Assistant to the Board

Calpers Executive Office



From: Robert Gardner

Re: Ref. No. 2021-1040

In the Matter of the Appeal of Lifetime Monthly Benefit Payable Upon the Death of Kim M. Gardner and Hayley M. Gardner By ROBERT J. GARDNER, Respondent, and RYAN E. GARDNER, Respondent.

Ms. Swedensky,

Let this serve as cover letter for the "Respondent's Argument" letter which is attached. As instructed in the letter from Tonya Hutchins, our personal information has been redacted in the "Respondent's Argument". I did not redact the identity of the Calpers employee referred to, as that was not specified in the instructions. If indeed that is legally necessary to be redacted, you may do so as required.

Please notify me immediately if the letter and format I have submitted is in any way insufficient, otherwise I will assume it is appropriate for its purpose.

It would be appreciated to know how long after the Board's regular meeting of September 21, 2022 that the decision will be rendered, and when we can expect to hear from the Board. I will be changing addresses on October 11, 2022. Until then, my address is as follows.

[REDACTED]

After October 11, my address will be as follows.

[REDACTED]

My email address is: [REDACTED]

Thank You.

Sincerely,

A handwritten signature in black ink that reads "Robert Gardner".

Robert Gardner

[REDACTED]

## **Respondents argument**

I would like to thank the Board of Administration for this opportunity to appeal the determination of the administrative judge in this rare case. As your letter states, the decision "has no force or effect until the board... takes formal action to either adopt it, remand it, or decline to adopt it in favor of its own decision. "

As the board must know from letters, documents and testimony, our family has been devastated by two recent events. My wife [REDACTED], who I was married to for over 40 years, passed away from cancer October 11, 2020. I needed to retire early to care for [REDACTED] for her last six months as she courageously fought her nemesis.

[REDACTED] worked for almost 20 years at [REDACTED] high school in the attendance office. Indeed, she worked there from the start of the school in temporary trailers before the campus was complete, and she was much loved by all of her co-workers and superiors.

It was only three months after [REDACTED] passed away before our wonderful daughter [REDACTED] was taken from us, on January 15, 2021. [REDACTED] took what she thought was an OxyContin pill. This was actually a tiny pill which had been laced with fentanyl. This was confirmed by the Orange County coroner.

This left my son [REDACTED] and myself in the family. We have both supported each other in these painful and trying times. We are a family of faith, however, and we know [REDACTED] and [REDACTED] are waiting for us in heaven.

No family should have these circumstances occur. But they did. So here we are in this benefits situation.

First, let me state that during the hearing before the administrative law judge, and even now, we do not dispute the information regarding any sequence of events. We do contend that the circumstances of this case are unique. We do believe they justify the board to make an exception.

[REDACTED] paid into her retirement fund for almost 20 years. This trust fund was hopefully to assure a legacy for her children. Her intentions were always noble. We ask the board to consider honoring [REDACTED] intent.

[REDACTED], at age 26 and being a female, would have a much longer payout than her brother [REDACTED], 12 years her senior. Therefore, allowing payments to forward to [REDACTED] would still be much less than had this tragedy not occurred. Surely, calculations and payouts based on actuarial tables do not count on or depend on the double tragedies which have befallen our family to balance the budget. It certainly does not seem fair or moral for [REDACTED] 20 years of work to be used to invest or to pay for other people's payouts. This would be contrary to any sense of justice.

One section of the administrative hearing papers states "To make exceptions to our laws to pay lifetime monthly benefits that are not accounted for in our actuarial calculations.... would be a considerable expense to both Calpers members and employers...". In truth this statement is not

correct in its conclusion. This can be backed up by testimony from Calper's own witness, Ms. Shayne Day-Bolar, staff services manager 1 in the disability and survivor benefits division of Calpers. Ms. Day-Bolar has been employed by Calpers for 27 years and has worked in the disability and survivor benefits division for 19 years.

I was able to question Ms. Day-Bolar, and one question I asked her was if she had extensive experience in testimony in a case such as ours. She answered that in all of her years, she had testified perhaps only a handful of times, less than 10. Ms. Day-Bolar's own words gives true testimony that this occasion to make an exception would not be "a considerable expense to both Calpers members and employers...".

Imagine. A handful of times in 27 years.

In the report issued, it states "we have a fiduciary responsibility to all Calpers members and their beneficiaries." What could be more morally and ethically dutiful in the Board's responsibilities than to make a very rare exception to honor the duty to [REDACTED] and her son [REDACTED] [REDACTED] was a good and longtime Calpers member.

Certainly to dispense compassion and open-minded judgment in rare and meritorious cases, Calpers would not be violating any fiduciary duty. In fact, the discretion to dispense fairness and compassion when warranted would only enhance and solidify any fiduciary duty for all members in the future, on each individual basis, and case by case. This is once again in alignment with the testimony of Ms. Day-Bolar when she verified the infinitesimal number of occurrences which were in any way similar to what occurred to our family, in the last 27 years.

The letter states the board "May, in its discretion and upon any terms it deems just, correct the errors or omissions... if, among other requirements, the error or omission was the result of mistake, inadvertence, surprise...". In our family, our daughter [REDACTED] passing was indeed a terrible surprise which no one could see coming.

In every aspect of life and law, there must be exceptions to every rule when it comes for the sake of righteousness. Surely this rare and family crippling chain of events deserves an exception. Our family has been wounded. Please help us to heal.

This decision will not strike a blow to Calpers or their budget. Ultimately, however, this decision could constitute a life-changing budgetary amount for my son [REDACTED].

As far as precedent, I do not believe the board should designate a decision in our favor as precedent. As the letter I have received which allows me to appeal to the Board states. "Does the decision contain a significant legal or policy determination of general application that is likely to recur?"

In general application, the circumstances are not likely to recur. Only in very rare occasions will the board need to address any cases. This is fact, and is borne out by Calper's own employee, Ms. Day-Bolar, and her testimony regarding the rarity of such similar requests.

The board should therefore be free to judge any cases, as rare as they may be, which may occur in the future, each according to the particular circumstances.

The administrative law judge has put this decision in the Board's hands. It is within your power, to honor [REDACTED], and her intent. I ask the Board to do the honorable thing. Please render a decision in our favor.

Sincerely,

[REDACTED]