# ATTACHMENT B

# STAFF'S ARGUMENT

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Catherine Atkinson (Decedent) was employed by the City of Oakdale as a Law Enforcement Dispatcher. Respondent Charlene Mota (Respondent Mota) is Decedent's sister. Respondents James Atkinson, Daniel Atkinson and Amanda Schmitt (Respondent Children) are Decedent's natural born children and parties to this appeal. Decedent died on July 13, 2012. At the time of her death, Decedent was divorced, actively employed and had not filed a beneficiary designation (PERS-BSD-241) form with CalPERS. As a result of her death, pre-retirement lump sum basic death benefits, in the amount of $71,943.29, became payable to Decedent's beneficiaries.

Due to the lack of a beneficiary designation form or any other writing on file, CalPERS initially determined the Respondent Children were entitled to the death benefits pursuant to Government Code section 21493. Government Code section 21493 sets forth the order of statutory beneficiaries, providing the children receive the benefits if there is no spouse. Based on the statutory order, the Respondent Children were entitled to equal shares of the benefits.

CalPERS, thereafter, received additional evidence from Respondent Mota, including a hand-written holographic will, dated November 7, 2011, addressed to "Char," signed by Decedent, and bequeathing the CalPERS benefits to Respondent Mota. Based on the new information, CalPERS determined Respondent Mota was the proper beneficiary pursuant to Government Code section 21490 and relevant case law. Government Code section 21490 states a member may designate a beneficiary at any time by a writing filed with the Board. CalPERS accepted the hand-written holographic will as a writing filed with the Board, designating Respondent Mota as the beneficiary. Respondent Children disagreed with CalPERS' determination and requested an appeal.

The issue in this case is whether, in the absence of a beneficiary designation form, CalPERS can consider the holographic will, filed after Decedent's death, as a valid writing filed with the Board.

This matter was heard before an Administrative Law Judge (ALJ) on March 17, 2014. The record was left open through April 18, 2014 (although the Proposed Decision states April 18, 2013). CalPERS and Respondent Mota submitted closing briefs and Respondent Children submitted additional evidence. Oral argument was heard on April 29, 2014 (although the Proposed Decision states April 29, 2013). Respondent Charlene Mota appeared in pro per, while the Respondent Children were represented by Attorney Ellen Holloway.

Prior to hearing, CalPERS explained the hearing process to Respondent Mota and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process handbook. CalPERS answered Respondent's questions and clarified how to obtain further information on the process.

A CalPERS Retirement Program Specialist II, testified regarding the case review process and the basis for CalPERS determination.

Respondent Mota and her daughter testified that Decedent repeatedly stated she wanted Respondent Mota to receive the CalPERS benefits. They further testified that upon Decedent's death, the Coroner found a hand-written letter, addressed to Respondent Mota and disposing of Decedent's CalPERS benefits. Respondent Mota's sister and niece also testified at the hearing. Respondent Children did not testify and did not present any witnesses at the hearing. They did, however, file declarations regarding the nature of their relationship with Decedent.

Respondent Children argued 1) death benefits may only be distributed pursuant to the statutory scheme prescribed in Government Code section 21493; 2) only the CalPERS Beneficiary Designation (PERS-BSD-241) form may be considered a writing filed with the Board, as wills and trusts may not be considered a writing filed with the Board; 3) any beneficiary designation must be filed prior to the member's death; 4) the holographic will at issue cannot be considered a valid writing filed with the Board as it was not lodged, not authenticated, and was contested.

The ALJ disagreed and rejected Respondent Children's argument that Government Code section 21493 must be strictly followed. The ALJ held that pursuant to Government Code section 21490 and relevant case law, a will or a trust may be considered "a writing filed with the Board." Case law also provides that a writing may be filed after the member's death. The ALJ noted that based on the evidence presented, particularly the testimony concerning Decedent's statements, Decedent intended Respondent Mota receive her death benefits and Decedent acted in furtherance of her intent by drafting the holographic will.

The Proposed Decision is supported by law and the facts. Because the Proposed Decision applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. The Respondent Children may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

August 20, 2014

PREET KAUR
Staff Attorney