

**ATTACHMENT C**  
**RESPONDENT(S) ARGUMENT(S)**

1 Patrick H. Dwyer, SBN 137743  
 2 P.O. Box 1705  
 3 Penn Valley, CA 95946  
 4 Tel: (530) 432-5407  
 5 Fax: (530) 432-9122  
 6 Email: pdwyer@pdwyerlaw.com  
 7 Attorney for Respondent Philip Thorman

8 **BOARD OF ADMINISTRATION**  
 9 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

10 In the Matter of The Application for an  
 11 Earlier Effective Date of Retirement of:  
 12  
 13 PHILIP M. THORMAN,  
 14 Respondent,  
 15 and  
 16 NEVADA IRRIGATION DISTRICT,  
 17 Respondent.

CASE NO. 2014-0890

OAH NO. 2014110204

18 **RESPONDENT'S ARGUMENT IN**  
 19 **OPPOSITION TO THE BOARD'S**  
 20 **ADOPTION OF THE PROPOSED**  
 21 **DECISION**

Board Hearing: November 18, 2015

22 Pursuant to the Notice of Proposed Decision dated October 5, 2015, and  
 23 confirmation with staff regarding the date for submission of this Argument In  
 24 Opposition, Respondent Philip M. Thorman ("Thorman") submits this Argument in  
 25 opposition to the Board's Adoption Of The Proposed Decision.

26 I. **Opposition**

27 The Proposed Decision concludes on page 8 that:

28 respondent failed to meet his burden of establishing that he delayed  
 filing his application based on an error or omission that resulted from  
 mistake, inadvertence, surprise, or excusable neglect that would  
 warrant relief pursuant to Government Code section 20160.  
 Accordingly, respondent's request for an earlier effective date of  
 disability retirement must be denied.

1           This conclusion is in plain error for the reasons set forth in Respondent's  
2 Reply To CalPERS's Post Hearing Brief. These reasons are:

3           (a) CalPERS failed to tell Thorman at any time that it was *mandatory*  
4 for him to file an application for disability retirement when he first  
5 learned that he *might be permanently disabled* and

6           (b) CalPERS's circulars and pamphlets affirmatively misled Thorman  
7 to believe *that he did not have to file his application* until he had been  
8 found to be permanently disabled.

9           This is a simple case of CalPERS ignoring its duty to its members to properly  
10 inform them about when and how to make a claim. CalPERS knows the law (or its  
11 interpretation of the law) and its obligations. It knows the rules about *when* a  
12 member must file. And although it would have been simple for CalPERS to tell its  
13 membership about the very rule and situation presented in this matter, it never  
14 did. The CalPERS publications admitted into evidence are devoid of any  
15 affirmative warning that a member could lose benefits if a claim is not filed as soon  
16 as there is a *possibility* of permanent retirement. Instead, it is trying to pin the  
17 blame on an innocent member, Mr. Thorman.

18           The very exhibits submitted by CalPERS, in particular Ex. 19 (see Brief, p.  
19 4:8-21), expressly state that Thorman "may" file an application. It does not say that  
20 he "shall" or "must" file as soon as he knows about the *possibility* of permanent  
21 disability. It NEVER informs the member that they could lose an earlier starting  
22 date (without any retroactive effect) if they do not file as soon as they think they  
23 might be or become permanently unable to work. There is simply no affirmative  
24 warning that Thorman had to file or lose retirement benefits.

25           Only CalPERS had full control of the process and it was solely responsible for  
26 the language in the various notices that it sent to Thorman. CalPERS' effort to  
27

1 blame Thorman for the faulty and deficient warning in its own publications is,  
2 frankly, inappropriate. CalPERS, just like a private insurance company, needs to  
3 give its members FULL AND CLEAR NOTICE.

4 II. Conclusion

5 It is wrong for CalPERS to penalize a member for its own failure to give a  
6 simple and clear notice about when a member must file an application. Mr.  
7 Thorman, an honest man, did not want to claim that he was unable to return to  
8 work until he knew that he had no other choice. He tried to get medical help and go  
9 back to productive work. Now, he is being punished for not filing a claim for  
10 permanent retirement until he knew for certain that he would be permanently  
11 retired. Does this make any sense?

12 For these reasons, the Proposed Decision of the administrative law judge  
13 should be disapproved and Thorman's claim for permanent retirement with an  
14 effective date of on or about January 15, 2012, should be approved.

15  
16  
17  
18 Dated: November 6, 2015

Respectfully Submitted

19  
20  
21   
22 Patrick H. Dwyer, counsel for  
23 Respondent Philip Thorman  
24  
25  
26  
27  
28

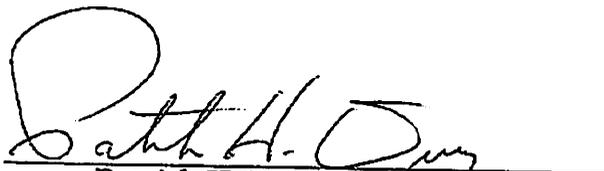
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I hereby certify under penalty of perjury that I am over the age of 18, not a party to this action, and that I caused a copy of the: Respondent's Argument In Opposition to The Board's Adoption of the Proposed Decision to be served by facsimile and US first class mail prepaid, to the address provided along with the Proposed Decision dated October 5, 2015, addressed as follows:

- (a) Cheree Swedensky, Assistant to the Board  
CalPERS Executive Office  
P.O. Box 942701  
Sacramento, CA 94229-2701  
916-795-3972
- (b) Karen Fassler Gillespie, Nevada Irrigation District, 1036 W Main St,  
Grass Valley, CA 95945; gillespie@nidwater.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing certification by Patrick H. Dwyer is true and correct.



Patrick H. Dwyer

Date: November 6, 2015

Located at:

17318 Piper Lane  
Penn Valley, CA 95946