

ATTACHMENT A
RESPONDENT'S PETITION FOR RECONSIDERATION



1 JENNIFER MILLER MOSS, SBN 79138
2 MOSS & LOCKE
3 701 University Avenue, Suite 100
4 Sacramento, CA 95825
5 TEL: 916-569-0667
6 FAX: 916-569-0665
7 jmillermoss@mosslocke.com

8 BOARD OF ADMINISTRATION

9 CALIFORNIA PUBLIC EMPLOYEE'S RETIREMENT SYSTEM

10 In the Matter of the Application for)
11 Benefits Payable Upon the Death of)
12 MARK A. SOTO, by)
13 ANNETTE SOTO,)
14 Respondent.)
15 and)
16 MARINA SOTO HERNANDEZ,)
17 Respondent.)

CASE NO. 2014-0370
OAH. NO. 2014-060606
RESPONDENT HERNANDEZ'
PETITION FOR
RECONSIDERATION

18 Respondent HERNANDEZ hereby petitions the Board of Administration of the
19 California Public Employees Retirement System for reconsideration of its Decision in this matter
20 dated May 19, 2016, as follows:

21 1. The administrative law judge initially assigned to hear this matter was replaced at the
22 last minute before the hearing and was replaced with a judge who was not prepared to hear the
23 case. The administrative law judge initially assigned was related to one of Respondent Soto's
24 witnesses and Respondent Hernandez believes that this last minute substitution of administrative
25 law judges resulted in the assignment of a judge not familiar with the facts of the case and not
26 sufficiently versed in the legal and factual issues he was to determine.

27 2. The new administrative law judge failed to take into consideration as circumstantial
28 evidence that was not controverted the testimony that: 1) Annette Soto had filed for divorce and

1 only changed her filing to a legal separation to avoid paying spousal support and to keep Mark
2 Soto on her medical insurance; 2) Mark Soto was advised by his attorney to change his
3 beneficiary designation for his CalPERS benefits and that Mark Soto told Respondent Hernandez
4 that he had done that; 3) Respondent Hernandez supported Mark Soto from the time of the legal
5 separation until his death; 4) Respondent Hernandez found the June 14, 2010, letter in a box
6 where Mark Soto kept his personal papers.

7 3. The administrative law judge improperly relied on the testimony of Respondent Soto's
8 expert Nanette Barto who does not have the proper certification as a forensic document
9 examiner, did not have the education, knowledge or technical background to give relevant and
10 reliable expert testimony, used photocopies of documents of poor quality and unknown sources,
11 and *most importantly* admitted that in one instance a slant of a letter contained in the June 14,
12 2010, designation alleged to be printed by Mark Soto was mistakenly slanted by Ms. Barto in her
13 laboratory when it was clear to the naked eye of any observer that the letter was not slanted on
14 the June 14, 2010, designation (in this instance the administrative law judge should have
15 disqualified Ms. Barto as an unreliable witness as Ms. Barto clearly manufactured physical
16 evidence, i.e. the slant of a letter, in support of Ms. Barto's opinion that Respondent Hernandez
17 wrote the June 14, 2010 designation to support the position of Respondent Soto who had hired
18 Ms. Barto as a witness). Any reliance on Ms. Barto is misplaced because her review is not
19 credible due to the reliance on evidence manufactured by her in her laboratory to support her
20 opinion. Ms. Barto's testimony contradicts Mr. Merydith's testimony and the administrative law
21 judge takes them as being aligned. If truth be told the administrative law judge does not rely on
22 Mr. Merydith's testimony at all but was willing to rely on Respondent Soto's expert who
23 admittedly manufactured evidence to support her opinion.

24 4. The administrative law judge incorrectly interpreted the testimony of the CalPERS'
25 expert Mr. Merydith. The administrative law judge made a factual finding that Mr. Merydith
26 testified that a forensic document examiner's level of certainty is measured on a scale of one to
27 nine, with nine indicating the highest level of certainty. He went on to find that on a scale of one
28

1 to nine, Mr. Merydith's level of certainty is a six that Mr. Soto did not write the body of Q1, and
2 a five that Mr. Soto did not sign it.

3 This was not Mr. Merydith's testimony nor is the finding supported by the facts.

4 Mr. Merydith's testified that he could not determine with any degree of certainty as an
5 expert as to whether Mr. Soto's signature on the beneficiary designation identified as Q1 was
6 *genuine, a tracing or a simulation*. This does not support a finding of a preponderance of the
7 evidence that Mark Soto did not sign the June 14, 2010 designation. It is no evidence one way or
8 the other.

9 5. The administrative law judge did not take into account that there were insufficient
10 examples of Mark Soto's contemporaneous printing and signatures to make an accurate
11 determination as to whether Mark Soto printed the June 14, 2010, letter, or signed it. Therefore,
12 there was no preponderance of the evidence that Mark Soto did not print the June 14, 2010, letter
13 or that he did not sign it.

14 6. The administrative law judge failed to take into consideration Mark Soto's health and
15 how his health would have affected his signature and printing ability when there was ample
16 direct testimony from both Respondent Soto that Mark Soto had difficulty holding items and
17 needed assistance at times writing and feeding himself, and testimony regarding his health
18 condition from both Respondent Soto and Respondent Soto's mother. Ms. Barto testified that
19 health would have no effect on handwriting while Mr. Merydith testified that it could have an
20 effect. Mr. Merydith's testimony is supported by journal articles on this issue while Ms. Barto's
21 attempted to support by her own personal observations of a few ill people she has known.

22 7. The administrative law judge improperly applied a scale to Mr. Merydith's opinion
23 that Mr. Merydith repeatedly stated he did not apply a scale to his opinion.

24 8. Respondent Hernandez has located the original June 14, 2010, designation, and this
25 should be submitted for further examination as newly discovered evidence.

26 For the above reasons, Respondent Hernandez petitions the Board of Administration,
27 California Employees' Retirement System to reconsider the adoption of the Proposed Decision
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1 dated March 7, 2016, and/or remand the matter for further hearing before the administrative law
2 judge.

3 Date: May 27, 2016

Respectfully submitted,

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6 JENNIFER MILLER MOSS, Attorney for
Respondent HERNANDEZ
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26 PROOF OF SERVICE
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1 I am a citizen of the United States and am employed in the County of Sacramento,
2 California. My business address is 701 University Avenue, Suite 100, Sacramento, CA 95825. I
am over the age of 18 years and not a party to the above-entitled action.

3 I am familiar with MOSS & LOCKE's business practice whereby each document is
4 placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the
sealed envelope is placed for mailing in the office. Each day's mail is collected and deposited in
5 the U. S. Mail postbox at or before the close of each day's business.

6 On February 5, 2016, I served the within

7 RESPONDENT MARINA HERNANDEZ' POST HEARING CLOSING ARGUMENT

8 BY MAIL on the following:

9 ELIZABETH YELLAND
10 CalPERS - Legal Office
PO Box 942707
Sacramento, CA 94229-2707

11 MATTHEW RITCHIE
12 COLLINS RITCHIE & ERVIN, LLP
331 J Street, Ste. 200
13 Sacramento, CA 95815

14 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct and that this declaration was executed on February 5, 2016, at
15 Sacramento, California.

16 _____
JULIE E. HITT