

ATTACHMENT C

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

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8 BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

9 In the Matter of the Application for
10 Benefits Payable Upon the Death of
11 MARK A. SOTO by

) Case No. 2014-0370
)
) OAH No. 2014060606

12 ANNETTE SOTO,

) **RESPONDENT ANNETTE SOTO'S**
) **ARGUMENT**

13 Respondent,

14 and

15 Marina Soto Hernandez,

16 Respondent.
17)
18)

19 **Respondent SOTO** hereby submits this Argument to the Board of Administration of the
20 California Public Employees Retirement System in Response to Respondent HERNANDEZ' Petition
21 for Reconsideration.

22 1. Respondent Hernandez claims the administrative law judge ("ALJ") was not prepared to hear
23 the case, that he was not familiar with the facts of the case and not sufficiently versed in the legal and
24 factual issues that he was to determine. This is simply untrue. The ALJ was adequately prepared to hear
25 the matter. Prior to trial commencing, the ALJ reviewed the case file, including Respondent Soto's
26 appeal and CalPERS' Statement of Issues. As such, the ALJ was just as familiar with the case as the
27 original assigned ALJ. Moreover, Respondent Hernandez has provided no evidence to substantiate her
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1 allegation that the ALJ was not sufficiently versed in the legal issues he heard. More importantly,
2 Respondent Hernandez did not object to ALJ Timothy Aspinwall hearing her case. Respondent
3 Hernandez had an opportunity to object and failed to do so. She can't argue after a verdict has been
4 rendered against her that ALJ Aspinwall was not qualified to hear her case. This argument should have
5 been made at the outset which she failed to do.

6 2. Respondent Hernandez is simply throwing out red herrings to try and manipulate the facts in
7 her favor. Ms. Soto did originally file for divorce but then elected to amend it to a legal separation. This
8 was Ms. Soto's legal right to do so. The fact that Ms. Soto changed it to a legal separation and the reason
9 why she did so have no bearing on whether Mark Soto failed to file a notice of beneficiary with
10 CalPERS. Although the ALJ did not hear from Mr. Soto's attorney, the ALJ heard testimony from
11 Respondent Hernandez that Mark Soto's attorney told him to change his beneficiary. Fact is that Mark
12 Soto never changed his beneficiary with CalPERS. This fact is undisputed. Ms. Modin stated at trial that
13 at the time of Mark Soto's death he did not have a named beneficiary on file (CT, V1, P. 29, 7-9).
14 In addition, whether Respondent Hernandez supported Mr. Soto is irrelevant to the issue at hand.
15 Finally, Respondent Hernandez claims that she found the June 14, 2010 letter in a box where Mark Soto
16 kept his personal papers. What Respondent Hernandez fails to mention is that she searched through four
17 (4) boxes that Mark Soto had in his room, at her house. Mark Soto was going through a bankruptcy and
18 he had placed his personal papers in those four (4) boxes. (CT, V2, P. 80, 6-14). Respondent Hernandez
19 also fails to mention the fact that it took her over six (6) weeks to locate the letter from within one of the
20 four boxes that were located in her house.

21 3. The ALJ properly considered and relied on expert testimony from Ms. Nanette Barto.
22 Respondent Hernandez attempts to discredit Ms. Barto in her Request for Reconsideration although she
23 failed to do so at the trial. In fact, in the ALJ's Proposed Decision he discusses the Expert Witnesses
24 testimony and he mentions Ms. Barto's findings in two paragraphs. When the ALJ discussed CalPERS'
25 Expert Witness, Mr. Joseph Merydith, the ALJ discussed Mr. Merydith's findings in five (5) paragraphs.
26 In the end of the ALJ's Proposed Decision, he states, "Taken together, the expert testimony of Mr.
27 Merydith and Ms. Barto and their respective reports credibly demonstrate by a preponderance of
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1 evidence that Mr. Soto did not write or sign Q1 [June 14, 2010] . Clearly, Respondent Hernandez' claim
2 that the ALJ did not rely on Mr. Merydith's testimony at all is without merit. There is no evidence what
3 so ever to support Respondent Hernandez' unfounded claim. To the contrary, the proposed decision
4 clearly shows that the ALJ considered Mr. Merydith's testimony.

5 4. The ALJ correctly interpreted Mr. Merydith's testimony. At trial, the ALJ directly asked
6 Mr. Merydith to clarify his response to one of Attorney Yelland's questions. Specifically, the ALJ
7 stated, "let me just clarify. Does that mean you're more certain about the body of note then you are
8 about the signature?" (CT, V1, P. 67-68, 24-1). Mr. Merydith responded, "correct." CT, V1, P. 68, 2).
9 The ALJ further stated at trial, "I have a question or two for clarification, ... and you can clarify for me
10 whether I accurately noted what you said." (CT, V2, P. 162, 9-12). The ALJ further went on to ask Mr.
11 Merydith "as to the body of that Q1 [June 14, 2010] document, did you draw any conclusion whether he
12 [Mark Soto] is the author of the body of the Q1 note?" Mr. Merydith responded with "Yes... that he
13 [Mark Soto] did not execute the body of the Q1 note. (CT, V2, P. 162-163, 22-2). Mr. Merydith
14 further testified "... whether or not Mark Soto authored the body of the Q1 note, my finding is that there
15 are indications he did not author." (CT, V2, P. 165, 1-2).

16 After finishing this line of questioning, the ALJ asked Attorney Moss if she had any further
17 questions for Mr. Merydith. Ms. Moss had an opportunity to address the issue once more if she believed
18 the ALJ asked the wrong questions and/or thought the ALJ was incorrect with his understanding of the
19 issues. Ms. Moss informed the ALJ that she did not have any further questions. (CT, V2, P. 166, 1-2).

20 5. There were sufficient examples of Mark Soto's contemporaneous writings to allow both
21 Expert Witnesses to determine whether Mark Soto printed the June 14, 2010 letter or signed it.
22 Respondent Hernandez testified at trial that Mark Soto hand printed the name Dr. Debose in the "For
23 Section" of check number 8403, dated May 3, 2010, approximately 35 days prior to June 14, 2010.(See
24 Ex. 15) (CT V2, P. 95, 13-19). That fact is undisputed. When Mr. Merydith was asked to compare the
25 known handwriting sample from check 8403 and the June 14, 2010 letter he found many dissimilarities.
26 Mr. Merydith testified that numerous "e's" printed on the June 14, 2010 letter were dissimilar to the "e"
27 in Debose (the known handwriting of Mark Soto). Specifically, the "e" in Debose was not similar to the
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1 way the June 14, 2010 “e’s” were written in the words, “request,” state,” “Hernandez,” and “please.” It
2 is dissimilarities like this that caused Mr. Merydith to opine that Mark Soto did not author the hand
3 written portion of the June 14, 2010 letter.

4 6. Respondent Hernandez attempted to convince the ALJ that Mr. Soto was ill and that was the
5 basis for both Expert Witnesses determination that the June 14, 2010 signature was not genuine but a
6 tracing or simulation. Mr. Merydith stated on the record that “If you look at this Mark A. Soto signature,
7 it appears to be labored. It appears to have been executed slowly.” (CT, V1, P. 55, 14-15). Mr. Merydith
8 further testified that the June 14, 2010 signature “... does appear very slow and very labored, and I
9 certainly cannot identify Mark Soto as the author of this signature because of the dissimilarity noted and
10 because of the nature of the signature being, appearing slow and appearing labored.” (CT, V1, P. 57, 3-
11 6). Ms. Barto concurred with Mr. Merydith analysis. When questioned about the June 14, 2010 signature
12 Ms. Barto said, “it’s very awkward, slowly written.” (CT, V2, P. 8, 4-5). Which are attributes of a
13 tracing. Ms. Barto further stated the signature on the June 14, 2010 letter was not “clean, smooth, and
14 straight. It’s because somebody was slowly and awkwardly trying to imitate a signature that did not
15 belong to them.” (CT, V1, P.205, 8-12). “If you’re attempting to trace somebody else’s signature, it’s
16 going to be slow, and it’s going to be awkward....” (Id. at 23-24).

17 Both Forensic Document Examiners concluded that Mark Soto’s signature in the June 10, 2014
18 letter was written in a slowly, awkward and labored manner. All signs that the signature was traced and
19 not signed by Mark Soto himself.

20 More importantly, both Expert Witnesses agreed that there are multiple dissimilarities between
21 the known handwritings of Mark Soto and the June 14, 2010 letter. Mr. Merydith testified that the letter
22 “U” in the June 14, 2010 letter were constructed with a tail. Whereas, the “U’s” in the known
23 handwritings of Mark Soto did not have a tail. (CT, V1, P. 59, 10-12).“You can see on the bottom in K3,
24 on the bottom right, the word you and the last you there’s an example there. And it does not have a tail
25 on that U.” (Id. at 13-15). Ms. Barto agreed with Mr. Merydith. Ms. Barto determined that the “U’s” in
26 the June 14, 2010 letter drug below the baseline creating a tail. (CT, V1, P. 157, 2-6). Whereas, the
27 known handwritings of Mark Soto did not have this similar “U.”

1 Mr. Merydith stated that there were dissimilarities in the construction of the “A’s”. (CT, V1, P.
2 59, 19). “For the most part the A’s in the Q1 (June 14, 2010) document appear to be made in the, like a
3 number two....However, in the known writing of Mark Soto you can see that the “A’s” are not
4 construed like a number two, rather they start over on the left-hand side and make the curl on the left-
5 hand side coming down. But when they get to about three or four o’clock, it stops, and then it moves
6 counter clockwise around and completes the bowl of the A. And these are differences compared to the
7 Q1 (June 14, 2010) document.” (CT, V1, P59-60, 21-5). Ms. Barto concurred with Mr. Merydith. Ms.
8 Barto stated that the A’s in the June 14, 2010 letter stop at the top with an overhang and then loops
9 around clockwise like a number two. (CT, V1, P130, 7-9). Similar to Mr. Merydith, Ms. Barto explained
10 that Mr. Soto “starts his A at the top and in a single stroke fashion he brings the overhang back towards
11 the baseline and then counterclockwise wraps around and below the actual stem of the letter.” (Id. at 17-
12 20).

13 In addition, Mr. Merydith testified that the letter “N” in the June 14, 2010 letter was very
14 different from the letter “N” in the known handwritings of Mark Soto. Mr. Merydith testified that, “you
15 can see that in the Q1 (June 14, 2010) document there are a number of uppercase N’s as well. And I’ve
16 used the red marker to make a, to make boxes around some of these uppercase N’s and you see these
17 throughout this questioned document that the, that the N’s are finished within elongated fashion. The
18 N finishing the body of the N. This is more of an individualizing characteristic. This is something more
19 that sticks out in this writing in Q1 (June 14, 2010), and we do not see that in the known writing of
20 Mark Soto.” (CT. V1, P. 60, 6-14). Ms. Barto testified that the “N’s” in the June 10, 2014 letter were
21 inconsistent to the letter “N” in the known letters of Mark Soto. (CT. V1, p. 145, 1-8).

22 Mr. Merydith also determined the letter “E’s” were dissimilar. Specifically, “The E’s in Q1 (June
23 14, 2010) are made with a small islet and then finishing in a descending fashion; however, in the known
24 documents (Mark Soto) the E’s are, appear to be formed in a two piece fashion. With a C motion and
25 then a crossbar to complete the islet of the E. And so these are differences between the know documents
26 of Mark Soto and the Q1 (June 14, 2010) document...” (Id. at 15-21). Once again, Ms. Barto concurred
27 with Mr. Merydith’s findings. She too determined that Mark “actually uses two strokes” to make his
28 “E.” (CT, V1, P. 140, 16-17). “[Mark] actually creates a C” when he makes his letter E. (Id. at 18).

1 As such, Mr. Merydith and Ms. Barto agreed that there were many dissimilarities between the
2 June 14, 2010 letter and the known handwritings of Mark Soto. Thus, ruling him out as the author of
3 the June 14, 2010 letter.

4 7. The Board should not consider any evidence offered by Respondent Hernandez because she
5 committed **PERJURY** in this case. Specifically, Respondent Hernandez testified, under oath that she
6 found the original June 14, 2010 letter. (CT, V2, P. 104, 9-11). Respondent Hernandez further testified
7 under oath that she “handed [the original letter] to PERS.” (Id. at 12-14). Attorney Yelland asked
8 Respondent Hernandez “When you found the original document [June 14, 2010], your recollection is
9 you took it to the CalPERS regional office and gave it to a CalPERS representative there; is that right?”
10 Respondent Hernandez replied, “Yes.” (CT. V2, P. 106, 4-8). Attorney Yelland further asked, “did the
11 [CalPERS] representative then keep the original [June 14, 2010 letter] or keep the copy of Mark’s.”
12 Respondent Hernandez replied, “the original.” Attorney Yelland then asked, “so the last time you saw
13 the original was when you handed it to the CalPERS representative.” Respondent Hernandez replied,
14 “yes.” (CT, V2, P. 108, 13-18).

15 Now, Respondent Hernandez claims she has located the original June 14, 2010 designation letter
16 (see Respondent Hernandez’ Request for Reconsideration Letter, P. 3, ¶ 8.). Based on this newly
17 discovered evidence, Respondent Hernandez is requesting this Board to reconsider her case; A case that
18 has been predicated upon perjury and lies.

19 For the foregoing reasons, Respondent Soto requests the Board to deny Respondent Hernandez’
20 Request for Reconsideration and uphold their May 18, 2016 decision to adopt the ALJ’s proposed
21 decision.

22 Dated: May 31, 2016

Collins, Ritchie & Ervin, LLP

23 By: By: /s/ Matthew S. Ritchie

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25 Matthew Ritchie
26 Attorneys for Respondent
27 Annette Soto
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PROOF OF SERVICE

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. My business address is 331 J Street, Ste. 200, Sacramento, CA 95814.

On the date below, I served a copy, with all exhibits, of the following documents(s):

Respondent Annette Soto's Argument

on the person(s) below, as follows:

Cheree Swedensky, Assistant to the Board
Executive Office
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Sacramento, CA 94229-2701

Jennifer Miller Moss
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Sacramento, CA 95825

- () **BY FACSIMILE** – Based on an agreement of the parties to accept service by facsimile, I caused the document to be sent to the person(s) at the facsimile number listed above on **November 16, 2012**. I did receive a facsimile Transaction Verification Report indicating that the transmission was successful.
- (X) **BY UNITED STATES MAIL** – I enclosed the document in a sealed envelope or package addressed to the person(s) at the address(es) listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this office's practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am employed in the county where the mailing occurred. The envelope or package was placed in the mail in Elk Grove, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 1, 2016, at Sacramento, California.



Shawn Ervin

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PROOF OF SERVICE

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. My business address is 331 J Street, Ste. 200, Sacramento, CA 95814.

On the date below, I served a copy, with all exhibits, of the following document(s):

Respondent Annette Soto's Argument

on the person(s) below, as follows:

Cheree Swedensky, Assistant to the Board
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- (X) **BY FACSIMILE** – Based on an agreement of the parties to accept service by facsimile, I caused the document to be sent to the person(s) at the facsimile number listed above on **June 1, 2016** I did receive a facsimile Transaction Verification Report indicating that the transmission was successful.
- () **BY UNITED STATES MAIL** – I enclosed the document in a sealed envelope or package addressed to the person(s) at the address(es) listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this office's practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am employed in the county where the mailing occurred. The envelope or package was placed in the mail in Elk Grove, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 1, 2016, at Sacramento, California.



Shawn Ervin