

**ATTACHMENT B**  
**STAFF'S ARGUMENT**

## **STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION**

Decedent Jose D. Torres (Decedent) was employed by the County of Monterey as an agricultural inspector. By virtue of his employment, Decedent was a local miscellaneous member of CalPERS. Decedent passed away on October 4, 2012. At the time of his death, Decedent had not filed a beneficiary designation form with CalPERS.

Respondent Juana Galindo Torres (Respondent Juana Torres) is Decedent's mother. Respondent Jose L. Torres (Respondent Jose Torres) is Decedent's father. Decedent never married and had no children. Decedent had one brother, Fernando Torres. Respondent Juana Torres and Respondent Jose Torres divorced in 1987.

On or around April 20, 2013, Fernando Torres submitted a completed Application for Non-Member Survivor Benefits. The form listed Respondent Juana Torres as Decedent's mother, but did not list Respondent Jose Torres as Decedent's father. Fernando Torres did not claim he was entitled to receive Decedent's survivor benefits, but indicated that Respondent Juana Torres should receive all of the survivor benefits.

On September 25, 2013, CalPERS received documentation from Fernando Torres which purported to demonstrate that Decedent wanted his CalPERS survivor benefits to be provided solely to Respondent Juana Torres. The documents included a beneficiary designation form, dated July 18, 2010, designating Respondent Juana Torres as the sole beneficiary. In addition, the documents included a will dated July 30, 2010, a life insurance policy; and bank account records. All of these documents indicate that it was Decedent's intent to provide all of his assets to Respondent Juana Torres.

On October 23, 2013, the Monterey County Superior Court issued a judgment in the probate of Decedent's estate ruling that all of Decedent's assets should be provided to Respondent Juana Torres. Other than the beneficiary designation form, none of the documents provided to CalPERS contained any reference to Decedent's CalPERS pension or survivor benefits.

On or around February 26, 2014, Respondent Jose Torres submitted a completed Application for Non-Member Survivor Benefits.

On or around November 11, 2014, Fernando Torres submitted Respondent Juana Torres' completed Application for Non-Member Survivor Benefits.

CalPERS reviewed the documents and determined that the authenticity of the beneficiary designation form submitted after the member's death could not be confirmed. The signature on the form did not match Decedent's signature on documents previously submitted to CalPERS. In addition, CalPERS staff believed the handwriting on the form matched that of Fernando Torres. Due to these concerns, as well as the fact the beneficiary designation form was not submitted by the member prior

to his death, CalPERS determined it was not a valid designation for payment of survivor benefits. CalPERS determined that since there was no valid beneficiary designation form on file at the time of Decedent's death, his CalPERS survivor benefits must be payable pursuant to Government Code section 21493. Since there was no spouse or children, it was determined that Respondents Juana Torres and Jose Torres would each be entitled to one-half of the Decedent's CalPERS survivor benefits.

CalPERS notified Respondent Juana Torres of its determination on January 16, 2014. CalPERS notified Respondent Jose Torres of its determination on February 14, 2014.

Respondent Juana Torres appealed CalPERS' determination, exercising her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. The ALJ presided over a one-day hearing in Salinas, California on June 27, 2016. Respondent Juana Torres was represented at the hearing by an attorney. Respondent Jose Torres represented himself at the hearing. At the request of Respondents Juana Torres and Jose Torres, CalPERS provided a Spanish speaking interpreter for the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent Jose Torres and the need to support his case with witnesses and documents. CalPERS provided Respondent Jose Torres with a copy of the administrative hearing process pamphlet. CalPERS answered Respondent Jose Torres' questions and clarified how to obtain further information on the process.

There were two central issues at the hearing: (1) whether the July 18, 2010, beneficiary designation was authentic, and (2) whether other documents can be used to establish Decedent's intent regarding the distribution of his CalPERS survivor benefits.

CalPERS' staff testified at the hearing that CalPERS did not believe it could accept the beneficiary designation form because the member did not file it prior to his death, there was a question as to the authenticity of the Decedent's signature, and it appeared to have been filled out, at least partially, by Decedent's brother, Fernando Torres.

Respondent Juana Torres presented testimony from Fernando Torres that he located the beneficiary designation form after Decedent's death, that he did not sign it or fill it out, and that the Decedent previously told him that it was his intent to provide his CalPERS benefits to Respondent Juana Torres upon his death.

Respondent Jose Torres did not present any testimony or evidence with respect to the validity of the beneficiary designation form.

With respect to this issue, the ALJ found that a beneficiary designation form is not per se invalid simply because it is submitted to CalPERS after a member's death. The ALJ found that Decedent's signature on the will, which was accepted by the Monterey County Superior Court during the probate of Decedent's estate, appears to match Decedent's signature on the beneficiary designation form. The ALJ questioned

CalPERS' determination that the signature was not Decedent's because this conclusion was based on comparing signatures that were not from the same time period. The ALJ did not discuss in the Proposed Decision CalPERS' contention that the writing in the form appeared to be that of Fernando Torres.

With respect to the second issue, CalPERS conceded that it appeared to be the Decedent's intent to leave all of his assets to Respondent Juana Torres. However, CalPERS argued that the PERL, as well as case law interpreting the at-issue statutes, does not allow CalPERS to rely on intent alone to determine the proper recipient of CalPERS survivor benefits. CalPERS argued that Government Code section 21490 requires a clear manifestation in writing of the member's intent with respect to CalPERS benefits, and that general references to assets is not enough. CalPERS argued that because no writing, other than the questionable beneficiary designation form, referenced the Decedent's CalPERS benefits, the benefits must be payable pursuant to Government Code section 21493.

Respondent Juana Torres presented evidence, both in the form of documentary evidence and the testimony of Respondent Juana Torres and Fernando Torres, that it was Decedent's intent for Respondent Juana Torres receive all of his assets, including his CalPERS survivor benefits. Respondent Juana Torres did not submit as evidence any writing, other than the aforementioned beneficiary designation form, that referenced the Decedent's CalPERS benefits.

Respondent Jose Torres offered no evidence at the hearing that it was Decedent's intent that he receive any of his CalPERS survivor benefits. Furthermore, Respondent Jose Torres did not offer evidence regarding whether it was Decedent's intent that Respondent Juana Torres receive all of his CalPERS' survivor benefits.

The ALJ relied on certain case law to support a finding that "the intent of the CalPERS member may be taken into account to determine the beneficiary if there is no effective beneficiary designation." The ALJ found that there was ample evidence of Decedent's intent that his mother be his sole beneficiary. The evidence consisted of the probate court accepting Decedent's will designating Respondent Juana Torres as the sole beneficiary of his estate. The ALJ concluded that "under these circumstances, even setting aside the beneficiary designation filed after decedent's passing, there is overwhelming evidence clearly establishing decedent's intent that his mother be his sole beneficiary."

Staff does not agree that the case law cited by the ALJ gives CalPERS the authority to determine the recipient of CalPERS survivor benefits on intent alone. In each case cited by the ALJ, there was a writing that specifically referenced the benefits that were to be distributed. Staff agrees that the case law stands for the proposition that the statutes do not have to be strictly adhered to, for example the writing does not necessarily have to be filed with CalPERS prior to the member's death; however, staff does not believe that the case law supports a finding that CalPERS can rely on intent alone when there is no specific reference in writing informing as to how the member

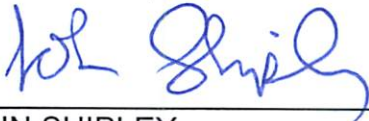
wants CalPERS to distribute his or her CalPERS survivor benefits upon his or her death.

The ALJ concluded that Respondent Juana Torres' appeal should be granted. The ALJ ruled that Respondent Juana Torres should be recognized as the sole beneficiary of the survivor benefits payable on Decedent's account. The ALJ found that CalPERS' determination that the survivor benefits should be distributed pursuant to Government Code section 21493 should be reversed.

It is CalPERS' staff's position that the Proposed Decision with respect to the first issue, the beneficiary designation form, is supported by the law and the facts. It is CalPERS' staff's position that the Proposed Decision with respect to the second issue, CalPERS' ability to distribute survivor benefits on intent alone, is not supported by the law and the facts. Notwithstanding staff's position with respect to the second issue, because the ALJ's decision with respect to the first issue supports the granting of the appeal, Staff argues that the Board adopt the Proposed Decision.

Because the Proposed Decision, with respect to the first issue, applies the law to the salient facts of this case, the risks of adopting the Proposed Decision are minimal. Respondent Jose Torres may file a Writ Petition in Superior Court seeking to overturn the Decision of the Board.

September 21, 2016



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JOHN SHIPLEY  
Senior Staff Attorney