

OFFICE OF ADMINISTRATIVE HEARINGS  
**RECEIVED**  
**10/17/2016**  
mpeterso

1 SHELDON 'KYLE' SCARBER  
2 Pro Per

3 [REDACTED]  
4 For Respondent  
5 SHELDON 'KYLE' SCARBER, In Pro Per

6 **BOARD OF ADMINISTRATION**  
7 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

9 **In the Matter of the Cancellation of the**  
10 **Application for Industrial Disability**  
11 **Retirement of**

12 **SHELDON 'KYLE' SCARBER,**

13 **Respondent**

) **AGENCY CASE NO. 2015-0243**  
) **OAH NO. 2016-050434**  
)  
) **CLOSING ARGUMENT – RESPONDENT**  
) **SHELDON 'KYLE' SCARBER**  
)  
) **Hearing Date: September 15, 2016**  
) **Hearing Location: Fresno, CA**  
)  
) **Administrative Law Judge:**  
) **Honorable Coren D. Wong, Presiding**

14  
15  
16 **To OFFICE OF ADMINISTRATIVE HEARINGS (Honorable Coren D. Long, Presiding**  
17 **Administrative Law Judge, hereafter referred to as ALJ); and ELIZABETH YELLAND, Esq. – Board of**  
18 **Administration, California Public Employees' Retirement System, hereafter referred to as (CalPERS),**  
19 **(attorney for CalPERS and defaulted Respondent, the California Highway Patrol, hereafter referred to as**  
20 **(CHP)).**

21  
22 **NOTICE IS HEREBY GIVEN** that on this date, October 17, 2016, Respondent, **SHELDON 'KYLE'**  
23 **SCARBER**, hereafter referred to as **Respondent**, hereby does provide his closing argument, in a timely  
24 manner, resulting from the Hearing held on September 15, 2016.

25  
26 This closing argument is respectfully submitted on behalf of Respondent, subsequent to the CalPERS  
27 denial of Application for Industrial Disability Retirement, hereafter referred to as (IDR), Hearing held  
28 before the Honorable Coren D. Wong.

RESPONDENT'S  
EXHIBIT  
N  
PENGAD 800-631-6988

1 Although the initial action referenced the CHP as a Respondent as well, the CHP defaulted from the  
2 Hearing and therefore will not be served this closing argument as a party in the service.

3  
4 Respondent respectfully moves for dismissal of actions against him, reversal of the denial of his  
5 application for IDR and default on behalf of CalPERS based on the factual grounds for the relief listed  
6 below. Furthermore, Respondent respectfully requests the ALJ recommend approval of Respondent's  
7 Application for IDR based on intentional omissions; due process; lack of discovery; intentional delay and  
8 procedural errors.

9  
10 **COMES NOW** Respondent, representing himself in pro per, should immediately prevail, with prejudice,  
11 in a sua sponte dismissal based on certain aspects of the case, or of the case in its entirety based on the  
12 findings that CalPERS proceeded in bad faith by intentionally violating the U.S. Constitution, specifically  
13 the Fifth and Fourteenth Amendments; the California Constitution, specifically Article I, Declaration of  
14 Rights, Section 7; Due Process; Discovery; Intentional Delay; and Bad Faith.

15  
16 In support of the request, Respondent argues CalPERS proceeded in a manner which is indicative of bad  
17 faith actions based on the following, which were brought forward before and during the Hearing:

18  
19 1. **Due Process.** The Fifth and Fourteenth Amendments to the United States Constitution and the  
20 California Constitution, Article I, Declaration of Rights, Section 7, ensures that no person is deprived of  
21 his life, liberty, or property without due process of law; more specifically substantive and procedural due  
22 process as it pertains to civil, governmental, benefit Hearings (proceedings), which includes the right of  
23 the individual to be aware of evidence against him. As previously argued, on September 3, 2013  
24 (approximately six months after Respondent's initial filing), CalPERS requested seven documents from  
25 the CHP to assist them with their determination of IDR and an additional information request regarding  
26 supporting documents relating to disability. The CHP provided CalPERS with two of the seven requested  
27 documents and did not respond to the request for additional information.

28

1 2. **Discovery.** Beginning on May 14, 2014, Respondent exercised due diligence, reasonable and good  
2 faith attempts to resolve informally any dispute concerning discovery, having initially requesting to obtain  
3 discovery in accordance with the Civil Discovery Act, Code of Civil Procedure section 2017.010, et seq.  
4 Respondent made several attempts to obtain discovery from CalPERS, both in written form and verbally,  
5 to obtain materials or information (all of which are permissible within the scope of discovery), which  
6 enabled CalPERS to determine a ruling (finding) regarding the denial of Respondent's Application for  
7 IDR (Reference CalPERS Exhibit 7, page 5, "Discovery"), and to assist Respondent in preparation for  
8 appeal/Hearing. Furthermore, Respondent spoke to Ms. Jeanlaurie Ainsworth, Senior Staff Attorney  
9 assigned to the case and verbally requested discovery. All requests were ignored until the actual day of  
10 the Hearing in which CalPERS produced a binder containing 16 Exhibits to proceed against Respondent.  
11 This unconceivable action significantly placed Respondent, acting in Pro Per, in a vicarious position of  
12 harm to proceed with the Hearing pitting an experienced attorney against a lay person. This was not a  
13 harmless error.

14  
15 In a correspondence letter dated May 5, 2016, signed by Ms. Yelland (CalPERS Exhibit 2, page 2, lines  
16 7-9), Ms. Yelland states, "...you...will be given full opportunity to cross-examine all witnesses testifying  
17 against you. You are expected to be ready to proceed with your case at the time of hearing." She further  
18 states (lines 11-12), "...this means that CALPERS' decision will be upheld irrespective of any evidence  
19 that may or may not be introduced in your absence." By failing to adhere to discovery, how can a  
20 practicing attorney or lay person in response to these statements, directions and warnings cross-examine  
21 witnesses or adequately prepare for a case when the applicable codes or laws relating to discovery have  
22 been intentionally ignored? The violations of discovery are codified within the following Code of Civil  
23 Procedure sections:

24  
25 2023.010. Misuses of the discovery process include, but are not limited to, the following:

- 26 (d) Failing to respond or to submit to an authorized method of discovery.  
27 (e) Making, without substantial justification, an unmeritorious objection to discovery (as evidenced by no  
28 responsiveness).

1 (f) Making an evasive response to discovery.  
2

3 2023.030. To the extent authorized by the chapter governing any particular discovery method or any other  
4 provision of this title, the court, after notice to any affected party, person, or attorney, and after  
5 opportunity for hearing (CalPERS no response to discovery was raised at the onset of Hearing), may  
6 impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery  
7 process:

8 (b) The court may impose an issue sanction ordering that designated facts shall be taken as established in  
9 the action in accordance with the claim of the party adversely affected by the misuse of the discovery  
10 process. The court may also impose an issue sanction by an order prohibiting any party engaging in the  
11 misuse of the discovery process from supporting or opposing designated claims or defenses.

12 (c) The court may impose an evidence sanction by an order prohibiting any party engaging in the misuse  
13 of the discovery process from introducing designated matters in evidence.

14 (d) The court may impose a terminating sanction by one of the following orders:

15 (1) An order striking out the pleadings or parts of the pleadings of any party engaging in the misuse of  
16 the discovery process.

17 (2) An order staying further proceedings by that party until an order for discovery is obeyed.

18 (3) An order dismissing the action, or any part of the action, of that party.

19 (4) An order rendering a judgment by default against that party.

20 (e) The court may impose a contempt sanction by an order treating the misuse of the discovery process  
21 as a contempt of court.  
22

23 Additionally, CalPERS failed to present exculpatory evidence, in its possession, which would contribute  
24 to a factual finding in this matter. 1) Prior to any investigation, Respondent was placed on "no duty"  
25 status on December 20, 2012, by his predesignated treating physician for medical reasons (cardio,  
26 hypertension, etc.), and related to his employment. To date, Respondent is required to undergo medical  
27 treatment for his industrial injuries/illness.  
28

1 **3. Intentional delay processing an Application for Disability Retirement.** If the initial Application  
2 dated February 27, 2013, an impending ruling on a claim for disability, would have been processed in a  
3 timely manner, with all applicable documentation, this would be grounds for argument that separation  
4 was the ultimate result of a disabling medical condition. Or by applying the principles of equity, would  
5 have deemed Respondent's right to a disability retirement that was matured and thus survived CalPERS  
6 decision there was a dismissal for cause. By CalPERS intentionally, or otherwise, misplacing said  
7 Application and all required, submitted medical documentation significantly hampered Respondent rights.  
8 The use of dilatory tactics in Respondent's case by unreasonably hindering the disposition of the initial  
9 Application from the time of its filing, which were not unavoidable circumstances, is/was prejudicial  
10 against Respondent. This was not a harmless error.

11  
12 As a result of the intentional delay, Respondent filed for service retirement on August 26, 2013, six  
13 months and one day after receiving no resolution (action) on behalf of CalPERS. It was not until after  
14 April 14, 2014. that Respondent received a letter indicating CalPERS was unable to accept Respondent's  
15 Application based on Haywood v. American River Fire Protection District (1998).

16  
17 **4. Bad faith.** Had CalPERS applied the principles of fairness and equity, and the totality of Respondent's  
18 case, instead of proceeding in a prejudicial manner, Respondent, nor CalPERS, nor would the ALJ have  
19 had to expend time, effort and resources. Additionally, CalPERS, with its submission of evidence on the  
20 day of the Hearing, introduced Statement of Issues (Exhibit 1). Although it was not opposed by  
21 Respondent based on his brief review, some wording is incorrect and is prejudicial against Respondent by  
22 a trier of fact. More prevalent, had Exhibit 1 been provided during the request for discovery, and noticed  
23 Respondent of its intended usage of evidence, Respondent could have subpoenaed necessary personnel to  
24 contradict some of the statements/accusations. For example, on page 3, lines 1-4, CalPERS makes  
25 reference to a hearing that was conducted. Responded questions this when a document of a hearing was  
26 not provided to CalPERS based on documentation presented by Respondent at the Hearing prepared by  
27 CalPERS. Furthermore, on page 3, line 6, it states "...SPB, granted respondent Scarber's offer for  
28

1 *resignation...*” This is factually incorrect. The CHP’s representative from the Office of Attorney  
2 General presented the offer, not Respondent.  
3 These acts were not a harmless error. More specifically, the California Code of Civil Procedure (CCP)  
4 section 473(b) defines “surprise” as “when a party is placed in an injurious legal situation, through no  
5 fault or negligence of their own, that ordinary prudence would not have guarded against it.

6  
7 **PROCEDURAL HEARING ERROR**  
8

9 Respondent argues the Hearing should not have been allowed to proceed and CalPERS should have been  
10 found in default based on the premises (Hearing argument) that CalPERS acted in bad faith, ignored prior  
11 discovery requests and provided discovery on the day of the Hearing. To elaborate, CalPERS Exhibit 13  
12 requesting Official Notice to certain documents (Exhibits), was dated, signed and submitted on September  
13 15, 2016, the same day as the hearing.

14  
15 Under objection of admittance of CalPERS Exhibit 9 (Declaration of Authenticity), Respondent was  
16 unable to challenge the author declaring authenticity because Respondent was not aware of document.  
17 There was no admission by Respondent whom the evidence was offered; Respondent was unable to  
18 examine the lay witness as to personal knowledge of documents, or that it was written in response to a  
19 communication sent to the claimed author.

20  
21 A subsequent conditional offer relating to Respondent’s occupation was presented by attorney Devereux,  
22 a state agency attorney. Respondent was not allowed to present this fact during the Hearing which was a  
23 precursor (setting forth a procedural road map) to future actions by the CHP and decisions by CalPERS.

24  
25 CalPERS admitted Exhibits 1, 2 (which refers back to Exhibit 1), and 6, presented as evidence on the day  
26 of the Hearing. Each states the denial of Respondents Application for IDR was based on the Haywood  
27 decision. However, CalPERS did not submit the Haywood decision as evidence nor as an exhibit. In the  
28

1 end, Judicial Notice was taken regarding CalPERS Exhibit 15 (Garcia). Respondent made a standing  
2 objection to discovery.

3  
4 **JUDICIAL NOTICE**

5 Contrasting the evidentiary and preclusive effects of judicial findings of fact, CalPERS Exhibit 15  
6 (Garcia, Case No. BS 152305), provided the day of the Respondent's Hearing, was objected to on the  
7 record by the Respondent. The Exhibit was accepted for the purposes of Judicial Notice, which limits the  
8 truth of any facts contained in the record but the contents are not. This procedure is an efficient way to  
9 introduce otherwise admissible evidence and eliminates the need for additional proof. However, in  
10 reviewing this Exhibit, Respondent took notice of substantive differences between Garcia and  
11 Respondent's case. For example, during an evidentiary hearing, Garcia agreed to resign in lieu of  
12 dismissal. If accepted Respondent did not enter into such an agreement with his employer.

13  
14 **PRECEDENTIAL DECISIONS**

15  
16 Facts, employment background and circumstances.

17 Haywood v. American River Fire Protection Dist. (1998).

18 Haywood's employment with American River Fire Protection District (the District) was terminated for  
19 cause following *a series* of increasingly serious disciplinary actions against him. *After his discharge*, he  
20 applied for disability retirement, claiming that stress from the disciplinary actions caused him to suffer a  
21 major depression, which rendered him incapable of performing his usual duties with the District  
22 (emphasis added).

23  
24 The behavior which resulted in Haywood's firing--his unwillingness to faithfully perform his duties--was  
25 not caused by a physical or mental condition, and Haywood had no valid claim for disability retirement  
26 which could have been presented before he was fired. After the termination of his employment, Haywood  
27 filed an application for disability retirement. It was ruled that an unwilling employee, failing to faithfully  
28 discharge his duties, who was terminated based on repeated acts of misconduct despite progressive

1 discipline and he did not appeal his termination. Approximately seven months after termination, he  
2 submitted an Application for IDR, based on the effects of his termination, which was denied. Haywood  
3 challenged his employer's authority and lost when, after a series of disciplinary actions, he was properly  
4 terminated for cause. There is no claim, or evidence which would support a claim that the termination for  
5 cause was due to behavior caused by a physical or mental condition. And there is no claim, or evidence  
6 which would support a claim, of eligibility for disability retirement that could have been presented before  
7 the disciplinary actions were taken.

8  
9 Smith v. City of Napa (2004). In the Smith v. City of Napa matter, on the effective date of his dismissal,  
10 December 15, 2000, Smith filed an application for disability retirement with CalPERS dated August 31,  
11 2000. While his disability application was pending, the City Council affirmed the appeal of his dismissal.  
12 California Public Employees' Retirement System (CalPERS) eventually denied the disability claim, citing  
13 Haywood v. American River Fire Protection Dist. (1998) 67 Cal.App.4th 1292, 79 Cal.Rptr.2d 749  
14 (Haywood ), because plaintiff no longer had an employment relationship with the City. CalPERS referred  
15 the matter to the City for its initial determination of whether the plaintiff satisfied the criterion for a  
16 disability, namely a medical condition resulting in a substantial inability to perform his usual duties.  
17 (Haywood, supra, 67 Cal.App.4th at pp. 1303-1304, 79 Cal.Rptr.2d 749.) Citing Haywood, the City  
18 notified the plaintiff that he was ineligible for a disability retirement as a result of his dismissal for cause  
19 from employment. CalPERS agreed: "You were terminated from employment for reasons that were not  
20 the result of a disabling medical condition. Additionally, the termination does not appear to be for the  
21 purpose of preventing a claim for disability retirement. Therefore, under the Haywood case, you are not  
22 eligible for disability retirement."

23  
24 Respondent argues that any/all properly submitted medical reports, 14 critical tasks evaluation findings,  
25 and reports of his predesignated treating physician were unrefuted evidence of an eligibility for disability  
26 retirement. However, these reports were in the possession of CalPERS but ignored, set aside and  
27 intentionally delayed Respondent's Application process.  
28



1 In Smith v. City of Napa, the court repeatedly cautioned that their holding would not apply where the  
2 cause for dismissal was the result of a disabling medical condition, or where the dismissal would be  
3 “preemptive of an otherwise valid claim for disability retirement.” (67 Cal.App.4th at p. 1307, 79  
4 Cal.Rptr.2d 749.) This caveat flows from a public agency's obligation to apply for a disability retirement  
5 on behalf of disabled employees rather than seek to dismiss them directly on the basis of the disability (id.  
6 at p. 1305, 79 Cal.Rptr.2d 749 [citing § 21153]) or indirectly through cause based on the disability  
7 (Patton v. Governing Board (1978) 77 Cal.App.3d 495, 501-502, 143 Cal.Rptr. 593). Additionally, in  
8 Smith v. City of Napa, it was noted that “it is not as if the plaintiff had an impending ruling on a claim for  
9 a disability pension that was delayed, through no fault of his own, until after his dismissal.”

10  
11 Vandergoot facts basically parallel Haywood and Smith. Vandergoot was placed on unpaid leave status.  
12 During his appeal, the Court of Appeal referenced Haywood stating, “As we shall explain, there is an  
13 obvious distinction in public employment retirement laws between an employee who has become  
14 medically unable to perform his usual duties...”

15 The ruling in Respondent’s case can be factually and legally distinguished from the above mentioned  
16 cases. As with Respondent, how would the Court of Appeal have addressed the issue when an employee  
17 has become medically unable, submits all necessary documentation and his Application is ultimately and  
18 significantly delayed or ignored? One would safely assume this does in fact change the facts and  
19 legalities.

20  
21 Respondent facts:

22 Worked honorably and meritoriously for CHP for approximately 26 years with no prior disciplinary  
23 actions or reprimands. Instead he was continuously given jobs and assignments placing him in a high  
24 profile positions within the CHP and other state and federal governmental agencies alike and non-  
25 governmental agencies.

26 With the knowledge of the CHP, Respondent was placed on no-duty status by his predesignated physician  
27 on December 20, 2012, due to work related injury/illness.

28 Filed for IDR in a timely manner.

1 Well documented industrial related injuries and illnesses dating back to 1990 (approximate), not at or post  
2 separation as with Haywood, Smith, and Vandergoot. In retrospect, unlike Respondent's case, these cases  
3 appear that their Application for IDR claims and medical reviews were reviewed and filed in response to  
4 disciplinary action and/or well after separation.

5  
6 During the Hearing on September 15, 2016, based on her own admission, Ms. Yelland stated CalPERS  
7 did not review any medical information (documentation) related to Respondent's case.

8  
9 **SEVERANCE**

10  
11 As noted in CalPERS Board of Administration, Agenda Item 10, dated August 21, 2013, CalPERS in its  
12 argument to make a case precedential, argues that a dismissal constitutes a complete severance of the  
13 employer-employee relationship. And the fact a Respondent reaches a stipulated settlement agreement  
14 with his employer, which is ultimately approved by the State Personnel Board (SPB), is immaterial.  
15 Additionally, it's argued that the character of the disciplinary action does not change because Respondent  
16 elected to settle his case prior to exhausting his appeal right.

17  
18 The Respondent in this case factually disagrees and argues otherwise. Ignoring any other state agency's  
19 final decision in a disciplinary matter should be considered material verses immaterial. When an  
20 employer/employee reach a tentative settlement agreement, during the appeal process, the agreement  
21 (final decision) is required to be stipulated or rejected by an approving authority; as in Respondent's case,  
22 the State Personnel Board (SPB).<sup>1</sup> At that time is a conclusion made. For CalPERS to hypothetically  
23 stop and start a case, at its discretion, while in its appeal process to solely defeat an Application for IDR is  
24 a procedural, administrative and judicial error.

25  
26  
27 <sup>1</sup> The SPB is a neutral body responsible for administering a merit system of civil service employment within  
28 California state government. The SPB's authority to enforce the civil service statutes is set forth in Article VII,  
section 3 of the California Constitution. The Board enforces the civil service laws and SPB rules under Government  
Code sections 18577 and 18701.

1 Pursuant to agreement between the CHP and its employees, disciplinary action(s) may be contested,  
2 through appeal, to the State Personnel Board (SPB). The CHP's "action requested" is not final unless the  
3 employee fails to exercise his/her right to participate in the appeal process, or an agreement is stipulated  
4 by the SPB. Respondent immediately and timely challenged the "*action requested*" discipline against  
5 him. (Reference CalPERS Exhibit 10. 1st paragraph which states "The *action requested*..." (Emphasis  
6 added). Through the appeal process, the CHPs requested action was not considered nor stipulated to by  
7 the SPB; however, the SPB sustained "voluntary resignation for personal reasons" (CalPERS Exhibits 11  
8 and 12). Government Code section 18681 is the legal authority for a despute between an employee and  
9 employer rendering the disposition of a settlement FINAL and BINDING.<sup>2</sup>

10  
11 In short, Respondent has always operated under the rules of fairness. The judicial process expects  
12 defendants and respondents to abide by the known and unknown extensive list of judiciary rules (while  
13 given little leniency to those representing themselves). A legal representative on behalf of CalPERS for  
14 example, should be held to an even higher standard.

15  
16 Based on the totality the legal and circumstantial circumstances, the Respondent's case does not  
17 extinguish his right to an Application for IDR. Based on the miscarriage of justice, totality of events,  
18 background, the bad faith actions of CalPERS, Respondent's case factors significantly outweigh any facts  
19 in precedential cases in favor of approving an Respondent's Application for IDR. In this case, despite  
20 CalPERS intentional and/or unintentional harm, Respondent has proven beyond a reasonable doubt that  
21 his case facts, circumstances, evidence should prevail.

22  
23 **As such, Respondent respectfully and in the interest of justice, requests his denial of Application for**  
24 **IDR should reversed.**

25  
26  
27 <sup>2</sup> Whenever any matter is pending before the Personnel Board involving a dispute between one or more employees  
28 and an appointing power and the parties to such dispute agree upon a settlement or adjustment thereof, the terms of  
such settlement or adjustment may be submitted to the board, and if approved by the board, the disposition of the  
matter in accordance with the terms of such adjustment or settlement shall become final and binding upon the parties  
(Emphasis added).

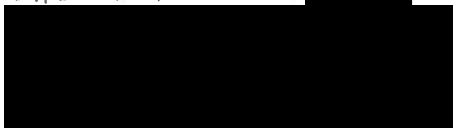
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Dated this 17<sup>TH</sup> day of October, 2016

  
SHELDON 'KYLE' SCARBER  
In Pro Per

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OAH-38

Attorney, or Party without Attorney (Name, State Bar No., and address): SHELDON K. SCARBUR 	FOR ADMINISTRATIVE USE ONLY
Attorney For (Name): <u>PRO PER</u> Office of Administrative Hearings Public Works Contract Arbitration Program 2349 Gateway Oaks Drive, Suite 200 Sacramento California 95833-4231	
Petitioner: <u>CALPERS</u> Respondent: <u>SHELDON K. SCARBUR</u>	
<b>PROOF OF SERVICE OF SUMMONS AND COMPLAINT</b>	OAH CASE NUMBER: <u>2016-050434</u>

(Separate proof of service is required for each party served)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
  - a.  summons
  - b.  complaint
  - c.  cross-complaint
  - d.  other (specify documents): CLOSING ARGUMENT - RESPONDENT SHELDON K. SCARBUR
3. a. Party served pursuant to Code of Civil Procedure § 415.10 et seq. (specify name of party as shown on documents served):  
ELIZABETH YELLARD ; OAH, HONORABLE COREN D. WONG
- b.  Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent and not a person under item 5b whom substituted service was made) (specify name and relationship to the party named in 3a):  
1. ALLYSON MCCAIN, CALPERS - LEGAL SUPPORT SUPERVISOR - LEGAL OFFICE
4. Address where the party was served:  
ELECTRONIC TRANSMISSION
5. I served the party (check proper box)
  - a.  by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): \_\_\_\_\_ (2) at (time): \_\_\_\_\_
  - b.  by substituted service. On (date): \_\_\_\_\_ at (time): \_\_\_\_\_ I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
    - (1)  (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - (2)  (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - (3)  (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.

Form adopted for optional use  
 PWCA Arbitration Program  
 OAH-38

**PROOF OF SERVICE OF SUMMONS AND COMPLAINT**

SHORT TITLE <b>CANCELLATION OF IDR.</b>	CASE NO. <b>2016-050434</b>
--	--------------------------------

- (4)  I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc. § 415.20). I mailed the documents on (date): \_\_\_\_\_ from (city): \_\_\_\_\_  
or  a declaration of mailing is attached.
- (5)  I attach a declaration of diligence stating actions taken first to attempt personal service.
- c.  by mail and acknowledgement of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first class mail, postage prepaid.
- (1) on (date): \_\_\_\_\_ (2) from (city): \_\_\_\_\_  
(3)  with two copies of the *Notice and Acknowledgement of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgement of Receipt* — Judicial Council Form No. POS-015 — Code Civ. Proc. § 415.30.)  
(4)  to an address outside California with return receipt requested. (Code Civ. Proc. § 415.40.)
- d.  by other means (specify means of service and authorizing code section):  
**ELECTRONIC TRANSMISSION**  
 Additional page describing service is attached.  
**DECLARATION OF SERVICE.**
6. The "Notice to the Person Served" (on the summons) was completed as follows:
- a.  as an individual defendant.  
b.  as the person sued under the fictitious name of (specify): \_\_\_\_\_  
c.  On behalf of (specify): **SHELDON H. SCARBOR**  
under the following Code of Civil Procedure section:  
 416.10 (corporation)  415.95 (business organization, form unknown)  
 416.20 (defunct corporation)  416.90 (authorized person)  
 416.40 (association or partnership)  other: \_\_\_\_\_  
 416.50 (public entity)

**Person who served papers**

- a. Name: **STEPHANIE WALKER**  
b. Address: **31888 ANTELOPE LANE SQUAW VALLEY, CA**  
c. Telephone number: **559-332-1003**  
d. The fee for service was: \$ \_\_\_\_\_

e. I am:

- (1)  not a registered process server.  
(2)  exempt from registration under Business and Professions Code section 22350(b).  
(3)  a registered California process server:  
(i)  owner  employee  independent contractor  
(ii) Registration No.: \_\_\_\_\_  
(iii) County: \_\_\_\_\_

7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the date set forth below at: 10/17/16 SQUAW VALLEY, California.

Date:

Stephanie Walker (NAME OF PERSON WHO SERVED PAPERS)      J. Walker (SIGNATURE)

## DECLARATION OF PROOF OF SERVICE BY E-MAIL

Case Name: Application for Cancellation of IDR Application

Case NO. 2015-0243

OAH NO. 2016-050434

I declare:

I am known to Sheldon 'Kyle' Scarber (Respondent), at which this service was made. I am 18 years of age or older and not a party or affiliated to this matter. I am familiar with the practices of transmitting documents via electronic mail.


On October 17, 2016, I served the attached **Closing Argument – Respondent Sheldon 'Kyle' Scarber** by transmitting a true copy via electronic notification to address(es) below. I did not receive within a reasonable time of transmission, any electronic message, or other indication that the transmission was unsuccessful.

Office of Administrative Hearings  
Via E-mail to: sacfilings@dgs.ca.gov

CalPERS  
Elizabeth Yelland  
Senior Staff Attorney  
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 17, 2016, at Squaw Valley, California.

  
\_\_\_\_\_  
Stephanie Walker  
(Declarant)