

**ATTACHMENT B**

**STAFF'S ARGUMENT**

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

In 2013, as part of Respondent Kathryn Mattson's (Respondent) divorce from her former spouse (Spouse), Respondent and Spouse entered into a Stipulated Domestic Relations Order (SDRO). As part of the SDRO, Respondent was awarded as community property one-half of the CalPERS contributions and service credit earned by Spouse during the marriage.

CalPERS received a copy of the SDRO on July 29, 2013, which resulted in the creation of Respondent's nonmember account. Respondent's nonmember account is separate and distinct from Spouse's member account. Respondent's nonmember account is also separate and distinct from her member account, as Respondent is a member in her own right by virtue of her employment with the Simi Valley Unified School District.

By letter dated September 12, 2013, CalPERS notified Respondent of the creation of her nonmember account. The September 12, 2013 letter notified Respondent of the available options for her nonmember account, which were to: 1) receive a refund of her portion of Spouse's contributions to the nonmember account; or 2) retire on the nonmember account.

Included with the September 12, 2013 letter was a copy of CalPERS' Publication 44 titled "A Guide to Completing Your CalPERS Nonmember Service Retirement Election Application" (PUB 44). Page 13 of PUB 44 includes a blank Non-Member Service Retirement Election Application (Application). PUB 44 also explains how CalPERS determines the effective retirement date for a nonmember account.

For a nonmember account, the effective retirement date is the date designated on the application. However, if the application is submitted more than nine months after the requested nonmember retirement date, the effective retirement date is the first day of the month on which CalPERS receives the application.

On October 2, 2013, CalPERS mailed Respondent a blank copy of the Pre-Retired Non-Member Beneficiary Designation form and a blank copy of the Retirement Allowance Estimate Request Form. On October 21, 2013, CalPERS received from Respondent: (1) a completed copy of the Pre-Retired Non-Member Beneficiary Designation form for her nonmember account; (2) a completed copy of the Pre-Retirement Lump Sum Beneficiary Designation for her member account; (3) a completed copy of the Retirement Allowance Estimate Request form for her nonmember account; and (4) a completed copy of the Retirement Allowance Estimate Request form for her member account. The address provided on all four forms was the same address that CalPERS had on file as Respondent's mailing address.

In a letter dated November 21, 2013, CalPERS provided Respondent with retirement allowance estimate requests for her nonmember account based on a service retirement date of May 30, 2014. In a separate letter dated December 12, 2013, CalPERS

provided Respondent with retirement allowance estimates for her member account, also based on a service retirement date of May 30, 2014. The mailing address on both estimate requests matched the address listed on the forms provided by Respondent.

On January 24, 2014, CalPERS sent Respondent a letter requesting she re-submit her member account Pre-Retirement Lump Sum Beneficiary Designation due to the previous one being incomplete. CalPERS received the re-submitted member account Pre-Retirement Lump Sum Beneficiary Designation, with the same address as all the previous forms and correspondence, on February 10, 2014.

CalPERS received Respondent's completed Application on February 23, 2018. The Application requested an effective retirement date of October 1, 2013. A handwritten letter dated February 22, 2018 accompanied the Application. In the letter, Respondent claimed that she was unaware of her eligibility for nonmember retirement because CalPERS may have mailed its correspondence to an incorrect address.

CalPERS responded by letter to the Application on March 27, 2018. CalPERS' letter listed the addresses to which it mailed the previous correspondence, and asked Respondent if the addresses listed were incorrect. CalPERS also asked Respondent to explain her understanding of her rights in relation to her nonmember account.

Through a letter dated April 16, 2018, Respondent claimed that she was unaware of her ability to retire for her nonmember account until she visited the CalPERS Glendale Regional Office on February 22, 2018. Respondent further claimed that she did not receive CalPERS' forms because of a change of address in March 2013.

CalPERS denied Respondent's request for a retirement date of October 1, 2013, as CalPERS determined that Respondent did not make a mistake correctable by Government Code section 20160. CalPERS notified Respondent of its determination by letter dated May 3, 2018.

Respondent appealed this determination and requested a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A hearing was held on August 20, 2019. Respondent did not appear at the hearing.

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

CalPERS staff testified at the hearing in support of CalPERS' determination. Staff testified credibly about the correspondence between CalPERS and Respondent in 2013 and 2014. Respondent's mailing address history with CalPERS was introduced into evidence, and staff explained that none of the correspondence sent by CalPERS to Respondent was returned to CalPERS as undeliverable. Through the introduction of the Customer Touch Point Notes for Respondent's CalPERS account, staff testified to several telephone conversations between Respondent and CalPERS between 2013 and the 2018 Application during which Respondent did not inquire about her

nonmember retirement rights. Staff explained that Government Code section 20160 is not applicable to Respondent's case because Respondent failed to make inquiries about her nonmember account that would have been made by a reasonable person in like or similar circumstances.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent had many opportunities between September 2013 and February 2018 to inquire about her eligibility to retire from her nonmember account. Respondent submitted a nonmember retirement estimate request in 2013, received a response to that estimate request, and had multiple telephone conversations with CalPERS between September 12, 2013, and February 23, 2018. Yet, Respondent never inquired about her eligibility to retire from her nonmember account.

In the Proposed Decision, the ALJ concludes that Respondent failed to make inquiries about her nonmember account that would have been made by a reasonable person in like or similar circumstances. Hence, Respondent did not make a mistake correctable by Government Code section 20160.

For all the above reasons, staff argues that the Proposed Decision be adopted by the Board.

November 20, 2019

---

CHARLES H. GLAUBERMAN  
Senior Attorney