

**ATTACHMENT H**

**ADDITIONAL PLEADINGS FILED PRIOR TO CLOSURE OF THE RECORD**

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6  
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CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

8	In the Matter of the Appeal Regarding	)	CASE NO. 2015-0373
9	Death Benefits Payable Upon the Death	)	
	of GRANTLAND LEE JOHNSON by	)	OAH NO. 2015081045
10	LEE TURNER JOHNSON,	)	CalPERS Closing Brief
11	Respondent.	)	
12		)	Hearing Date: October 6, 2015 at
		)	9:00 am
13		)	Hearing Location: Sacramento
		)	Prehearing Conf.: None Scheduled
14		)	Settlement Conf.: None Scheduled

15 |  
16 CalPERS' files this Hearing Brief in its official capacity, and not otherwise.

17 **STATEMENT OF THE ISSUE**

18 This appeal is limited to the issue of whether Respondent Lee Turner Johnson  
19 (Respondent Johnson) is eligible for the Option 2 lifetime monthly benefits although,  
20 her deceased spouse, Grantland Johnson (Decedent Johnson), failed to modify his  
21 Option benefits to leave a share for Respondent Johnson.

22 **STATEMENT OF FACTS**

23 Decedent Johnson was employed by the California Health and Human Services  
24 Agency as the Secretary of the California Health and Human Services Agency.

1 Decedent Johnson submitted his application for service retirement on November  
2 12, 2003. (Exhibit 6.) Decedent Johnson elected Option 2 as his Option benefit and  
3 designated his then wife, Charlot Bolton ("Ms. Bolton"), as the beneficiary of the Option  
4 benefits. (Exhibit 6.) In the same application, Decedent Johnson designated his  
5 daughter, C. Bolton-Johnson as the beneficiary of the Lump Sum Retired Death  
6 Benefits. Decedent Johnson also named Ms. Bolton the spouse entitled to receive the  
7 Survivor Continuance benefits. (Exhibit 6).

8 On December 4, 2003, CalPERS sent a First Payment Acknowledgement Letter  
9 (Acknowledgement Letter) to Decedent Johnson, informing him of his monthly  
10 retirement benefits based on the election of Option 2 benefits. The letter specifically  
11 notified Decedent Johnson that :

12 "[i]f a former spouse was named, you must have a court order that awards you  
13 the entire interest in your CalPERS benefits before you can name a new spouse  
14 as beneficiary. You may modify your election upon divorce, annulment or legal  
15 separation if you have a court order that awards you the entire interest in your  
16 CalPERS benefits. To request a modification of election to name a new  
17 beneficiary for a lifetime option allowance, please contact the Benefit Services  
18 Division for information about a recalculation of allowance and the required  
19 documentation." (Exhibit 7).

20 Decedent Johnson separated from Ms. Bolton eleven years prior to their  
21 divorce, which was finalized in October 21, 2013. (Transcript p. 23:7-10; Exhibit 90.)  
22 Decedent Johnson started a personal relationship with Respondent Johnson in 2004.  
23 (Transcript p. 19:2-5.)

24 On February 15, 2013, Decedent Johnson contacted CalPERS and requested  
25 information concerning change of beneficiary. (Exhibit 8, p. 8.) In response to his  
26 request, Decedent Jonson was mailed Publication 98, Changing Your Beneficiary or  
27 Monthly Benefit After Retirement. (Exhibits 9W & 11; Transcript 131:11-25; 132:1-11.)

28 Publication 98 includes a copy of the Application to Modify Option and/or Life

1 Option Beneficiary (Application). (Exhibit 11.) The member must submit the  
2 Application and necessary documents to change the option or name a new beneficiary.  
3 (Exhibit 11 p. 21; Transcript 179:10-22.) Within 60 days of receipt of the completed  
4 Application, CalPERS then mails the member the "Modification of Original Election at  
5 Retirement" document (Election Document), specifying the recalculated retirement  
6 allowance choices. (*Id.*) The member must elect an option and return the Election  
7 Document to CalPERS within the specified timeframe. (*Id.*)

8 Section 5 of the Application, certification of the member, notifies the member  
9 that this Application "is a request for an election form to modify my option and name a  
10 new beneficiary(ies). I further understand that my new option/beneficiary change will  
11 not be processed until the properly completed election form is submitted to CalPERS."  
12 (Exhibit 9H, p.3; Exhibit p. 21 & 23.) Publication 98 also specifies that the member and  
13 the new beneficiary "must be alive on the effective date." (Exhibit 11 p. 22.)

14 On August 8, 2013, CalPERS received a Summons Joinder on behalf of Ms.  
15 Bolton, a written notice claiming a portion of Decedent Johnson's retirement allowance  
16 due to the marriage dissolution with Decedent Johnson. (Exhibit 9S.) As a result,  
17 CalPERS informed Decedent Johnson that one-half of his allowance will be withheld  
18 until CalPERS receives a "court order resolving the community property claim." (Exhibit  
19 9Q, p. 6.)

20 On October 24, 2013, Decedent Johnson and Respondent Johnson contacted  
21 CalPERS and Decedent Johnson requested a copy of the December 4, 2003  
22 Acknowledgement Letter. (Exhibit 8, p. 5.)

23 On June 23, 2014, Decedent Johnson wrote a letter to CalPERS naming  
24 Respondent Johnson the beneficiary of all death benefits and removing Ms. Bolton and  
25 Patrice Bolton Johnson. (Exhibit 9M; received by CalPERS on July 3, 2014.) In the

1 letter, Decedent Johnson specifically stated that “[a] court judgment or marital agreement  
2 will soon be filed and sent to you. . .” (*Id.*)

3 On July 25, 2014, CalPERS sent a letter to Decedent Johnson rejecting the  
4 June 23, 2014 beneficiary designation, informing him that an incorrect or invalid form  
5 had been submitted. (Exhibits 8, p. 5; 9L; Transcript p. 140;4-12.) CalPERS mailed  
6 Decedent Johnson the Post Retirement Lump Sum Beneficiary Designation form and  
7 requested the form be completed and submitted to CalPERS. (Exhibits 9K & 9L:  
8 Transcript pp. 140:13-25; 141:1-12.)

9 On August 06, 2014, Respondent Johnson contacted CalPERS and was  
10 assisted by Kevin Abram, CalPERS’ employee at the Member Contact Center, on how  
11 to complete the Application. (Exhibit 8, p. 5; Transcript pp. 100:17-25; 101; 102:1-3.)  
12 Respondent Johnson was also advised about the amount of time it takes CalPERS to  
13 process the Application. (*Id.*) Mr. Abram testified that it is his practice to inform the  
14 caller concerning the required documents that must be submitted with the Application.  
15 (Transcript pp. 106:9-12; 107:1-6.)

16 On August 07, 2014, CalPERS received Decedent Johnson’s completed Post-  
17 Retirement Lump Sum Beneficiary Designation Form (Lump Sum Beneficiary Form),  
18 designating Respondent Johnson the beneficiary of the lump sum benefits. (Exhibit 9I;  
19 Transcript p. 141:13-21.) The form included an information and instructions page,  
20 which stated:

21 “The death benefits paid to your beneficiary depend on the retirement option  
22 you selected when you retired and the benefits contracted by your former  
23 employer. Please order or download What You Need to Know About Changing  
24 Your Beneficiary Or Monthly Benefit after Retirement for a description of the  
25 benefits. The Post Retirement Lump Sum Beneficiary Designation form is used  
to designate and beneficiary(ies) for your lump sum benefits only.” (Exhibit 9I,  
p. 4).

1           Thereafter, Decedent Johnson was notified by CalPERS' Forms Department  
2 that the Lump Sum Beneficiary Form has been processed and the lump sum  
3 beneficiary designation was accepted. (Exhibit 9G; Transcript 151:1-13.)

4           On August 7, 2014, CalPERS also received Decedent Johnson's Application,  
5 signed August 3, 2014, with a copy of the Notice of Entry of Judgment, terminating the  
6 marriage of Decedent Johnson and Ms. Bolton effective November 9, 2013. (Exhibit  
7 9H.) The Application form submitted by Decedent Johnson was the same version  
8 included in Publication 98, which was sent to by CalPERS in February 15, 2013.

9 (Transcript 157:4-6.) A court order or a Marital Settlement Agreement (MSA)  
10 concerning the community property interest in pension benefits was not attached.

11           On September 09, 2014, Respondent Johnson notified CalPERS concerning  
12 Decedent Johnson's death. Decedent Johnson's Application was rejected because of  
13 his death and he failed to submit the proper documentation. (Transcript 178:13-23.)

14           On September 19, 2014, Respondent Johnson submitted an application for Post-  
15 Retirement Survivor Benefits of Decedent Johnson to CalPERS. (Exhibit 3.)

16           On February 11, 2015, five months after Decedent Johnson's death,  
17 Respondent Johnson sent CalPERS the Certified Final Judgment on Property and the  
18 MSA for Decedent Johnson. (Exhibit 10.) The MSA was approved by the court on  
19 December 31, 2014, approximately three months after Decedent Johnson's death.  
20 (Exhibit 10.)

21           On February 17, 2015, CalPERS informed Respondent Johnson that the  
22 Community Property hold is being removed because Decedent Johnson was awarded  
23 the entire interest in his CalPERS pension benefits. (Exhibit 9B). The letter noted that  
24 Decedent Johnson's case is being referred to the Death Benefits Unit to process the  
25 death benefits. (Exhibit 9B).

1 On March 4, 2015, CalPERS notified Respondent Johnson of its final  
2 determination. (Exhibit 4.) CalPERS provided an explanation that pursuant to the  
3 Lump Sum Beneficiary Form, Respondent Johnson is entitled to 100% of the lump sum  
4 death benefits in the amount of \$2000.00, Decedent Johnson's accumulated  
5 contributions at retirement in the amount of \$2,858.71, a one-time prorated allowance,  
6 and the community property allowance which was being withheld. (Exhibit 4 p. 2-3.)  
7 Respondent Johnson; however, was not entitled to the monthly Option benefit (Exhibit  
8 4.)

9 On August 1, 2015, Respondent Johnson appealed CalPERS determination  
10 that that she is ineligible to receive the monthly Option benefit. (Exhibit 11.)

#### 11 **BURDEN OF PROOF**

12 Government Code section 20060 states:

13 Retirement means the granting of a retirement allowance  
14 under this part.

15 Government Code section 20123 states:

16 Subject to this part and its rules, the board shall determine  
17 and may modify benefits for service and disability.

18 Regulation 555 provides, in relevant part, as follows:

19 The Executive Officer is hereby authorized to act on any  
20 application for retirement for disability or service. The  
21 Executive Officer may refer the question of an applicant's  
22 entitlement to any benefit to a hearing officer for hearing.

23 Regulation 555.1 provides, in relevant part, as follows:

24 Any applicant dissatisfied with the action of the Executive  
25 Officer on his application may appeal such action to the  
Board by filing a written notice of such appeal. An appeal  
shall contain a statement of the facts and the law forming the  
basis for appeal ...

1           In this matter, CalPERS made the determination that Respondent Orona is only  
2 entitled to 50% of the entire death benefits, to which he appealed. Accordingly, as the  
3 appeal is presented to the hearing officer, it is controlled by the provisions of the  
4 Administrative Procedure Act (APA) and relevant case law.

5           In *McCoy v. Board of Retirement* (1986) 183 Cal. App. 3d 1044, 1051, the Court  
6 of Appeal considered the issue of burden of proof in an administrative hearing  
7 concerning retirement benefits and found as follows:

8                         As in ordinary civil actions, the party asserting the affirmative  
9                         at an administrative hearing has the burden of proof,  
10                         including both the initial burden of going forward and the  
11                         burden of persuasion by a preponderance of the evidence.

12           In the absence of a statutory provision to the contrary, the applicant for a benefit  
13 has the burden of proof as the moving party to establish a right to the claimed  
14 entitlement or benefit, and that burden is unaffected by the general rule that pension  
15 statutes are to be liberally construed. (1 Cal. Public Agency Practice, sec. 39.03 [9];  
16 *see also, Glover v. Board of Retirement* (1989) 214 Cal. App. 3d 1327, 1332.)

17           CalPERS, a governmental agency, exercised its official duty in responding to  
18 Respondent Orona's application for Decedent's retirement benefits and made a  
19 determination that he is only entitled to half of the death benefits. CalPERS is entitled  
20 to the presumption that this official duty was regularly performed, which places the  
21 burden to rebut this presumption upon respondent. (See Evid. Code sec. 664;  
22 *Roelfsema v. Department of Motor Vehicles* (1995) 41 Cal. App. 4th 871; *Coffin v.*  
*Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal. App. 4th 471, 476.)

23           For all the foregoing reasons, Respondent Orona has the burden of proof,  
24 including both the initial burden of going forward and the burden of persuasion by a  
25 preponderance of the evidence. *McCoy, supra*, at p. 1051.



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**ARGUMENT**

**I.**  
**DECEDENT JOHNSON FAILED TO SUBSTANTIALLY COMPLY WITH**  
**GOVERNMENT CODE SECTION 21462**

**A. Statutory Scheme**

The Legislature has set different rules for changing beneficiary designations based on the retirement benefits involved and the retirement status of the member.

**1. Lump Sum Death Benefits:**

To change a beneficiary designation for lump sum death benefits, Government Code section 21490(a)<sup>1</sup> simply states “. . . a member may, at any time, including, but not limited to, at any time after reaching retirement age, designate a beneficiary to receive the benefits as may be payable to his or her beneficiary or estate under this part, by a writing filed with the board.”

**2. Lump Sum Benefits under Option Settlement:**

Government Code Section 21453 provides that beneficiary designations under Options 2 are irrevocable from the time of the first payment on account of the retirement allowance. Sections 21454 and Section 21464 provide two exceptions to this rule. Section 21454 allows the member to modify his optional settlement by designating a new beneficiary to receive a lump sum benefit:

“Notwithstanding Section 21453, an election of optional settlement 2 . . . in which a spouse is designated as the beneficiary, may be modified as provided in this section in the event of a dissolution . . . in which the division of the community property awards the total interest in the retirement system to the retired member. The modification shall provide that payment shall be continued during the retired person's lifetime in accordance with the optional settlement then in effect but that no monthly allowance shall be paid following the retired person's death, and in lieu thereof there shall be paid in a lump sum to the member's estate or a beneficiary designated by him or her the amount, if any,

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<sup>1</sup> Gov't Code § 20000 et seq., are further statutory references are to the Government Code.

1 by which the member's accumulated contributions at retirement exceed the total  
2 payments made to the retired person to the date of his or her death.

3 3. Monthly Benefits under Option Settlement:

4 Section 21464 allows the member to change the optional settlement or beneficiary  
5 to provide the beneficiary with a monthly benefit. Section 21464 provides in pertinent  
6 part that:

7 "Notwithstanding any other provision of this part, a member who elected to  
8 receive optional settlement 2, 3, or 4, involving a life contingency of the  
9 beneficiary, may, . . . if a former spouse was named, in the event of a  
10 dissolution . . . in which the judgment dividing the community property awards  
11 the total interest in the retirement system to the retired member, elect to have  
12 the actuarial equivalent reflecting any selection against the fund resulting from  
13 the election as of the date of election of the allowance payable for the remainder  
14 of the member's lifetime under the optional settlement previously chosen  
15 applied to a lesser allowance during the member's remaining lifetime under one  
16 of the optional settlements specified in this article and name a different  
17 beneficiary. The election shall be made within 12 months following the death of  
18 the beneficiary who predeceased the member or within 12 months of the date of  
19 entry of the judgment dividing the community property of the parties, or within 12  
20 months following marriage if the spouse is named as beneficiary. *The election  
21 shall become effective on the date specified on the election*, provided that this  
22 date is not earlier than the day following receipt of the election in this system  
23 pursuant to this section.

24 A member who has a qualifying event . . . on or after January 1, 1988, and who  
25 fails to elect within 12 months, shall retain the right to make an election under  
this section. However, this election shall become effective no earlier than 12  
months after the date it is filed with the board, provided that neither the member  
nor the designated beneficiary die prior to the effective date of the election.

**This section shall not be construed to mean that designation of a new  
beneficiary causes the selection of an optional settlement. An optional  
settlement shall be selected by a member in a writing filed by the member  
with the board. (Emphasis added.)**

22 B. Substantial Compliance with a Statute

23 Subsequent case law addressing section 21490 and/or lump sum benefits have  
24 held that statutory technical requirements, when designating or changing a beneficiary,  
25 do not have to be followed. (*Hudson*, 255 Cal. App 2d 89, 92, citing *Lyles v. Teachers*

1 Retirement Board (1963) 219 Cal.App.2d 532, 529-530; *Watenpaugh v. State*  
2 *Teachers' Retirement System* (1959) 51 Cal.2d 675, 681; *Gallaher v. State Teachers'*  
3 *Retirement System* (1965) 237 Cal.App.2d 510, 517-518; *Wickter v. County of Los*  
4 *Angeles* (1960) 177 Cal.App.2d 390, 397.) Case law addressing lump sum benefits  
5 provides that statutory compliance is satisfied if there is a clear manifestation of intent  
6 in writing to designate or change a beneficiary and an affirmative act in furtherance of  
7 the intent. (*Gallaher*, 237 Cal. App. 2d 510, 518; *Watenpaugh*, 51 Cal.2d 675, 681;  
8 *Hudson*, 255 Cal. App 2d 89, 92; *Coughlin v. Board of Administration, Public*  
9 *Employees' Retirement System* (1984) 152 Cal. App. 3d 70, 72.)

10 The court; however, has also stated that "[s]ubstantial compliance with a statute  
11 is dependent on the meaning and purpose of the statute." (*Freeman v. Vista De Santa*  
12 *Barbara Associates LP*, 207 Cal.App.4th 791, 793.) Thus, pursuant to section 21464,  
13 the requirements for changing a beneficiary designation for monthly benefits are  
14 significantly different and more stringent than changing a lump sum beneficiary under  
15 sections 21490 or 21453. Although there is much case law addressing section 21490  
16 and lump sum benefits, the courts have not yet to address option settlements,  
17 particularly in the context of death benefits. However, the plain text of of section 21464  
18 makes it clear that a designation of a new beneficiary is not sufficient to change an  
19 optional settlement; rather the member must select an optional settlement, in writing  
20 and file it with the Board. (Section 21462.) Thus, while designating a new beneficiary  
21 may be sufficient under sections 21490 or 21453, section 21462 requires more.

22 1. The Member Must Select the Option Settlement and be living on the effective date.

23 Ambiguity or uncertainty in the meaning of pension legislation may not be  
24 resolved in favor of a member if it would be inconsistent with the clear language and  
25 purpose of the statute. Thus, "courts must not blindly follow such rule of construction

1 where it would eradicate the clear language and purpose of the statute and allow  
2 eligibility for those for whom it was obviously not intended." (*Barrett v. Stanislaus*  
3 *County Employees Retirement Assn.* (1987) 189 Cal. App. 3d at p. 1593, 1608–1609;  
4 *Hudson v. Board of Admin. of Public Employees' Retirement System* (1997) 59 Cal.  
5 App. 4th at p. 1310, 1324-25.)

6 Legislative history of section 21462 clearly demonstrates that the Legislature  
7 intended the member to select the option and the member and beneficiary must be  
8 alive on the effective date. The Enrolled Bill Report, for Assembly Bill 553, specifically  
9 states that "[b]oth the member and the beneficiary must be living on the election's  
10 effective date in order for the election to be valid." (Attachment 1, Cal. Public  
11 Employees Retirement System, Enrolled Bill Rep. on Assembly Bill No. 553 (1987-  
12 1988 Reg. Sess.) prepared for Governor Deukmejian (Aug. 20, 1987) p. 1.) Legislative  
13 history shows that the Legislature was particularly concerned about "death-bed  
14 elections." (*Id.* at p.2.) This requirement is reiterated in Publication 98, which was sent  
15 to Decedent Johnson. (Exhibit 11, p. 21.)

16 Furthermore, from the simple reading of the statute, it becomes apparent that it  
17 is the member who must make the election. Even the case cited by Respondent in his  
18 opening argument, supports this interpretation. (Transcript 10:18-19.) In citing section  
19 21462, the court in *In Re Marriage of Cooper*, 160 Cal.App.4th 574, 579 stated that ". .  
20 . *the member* may select a new optional settlement and "name a different beneficiary."  
21 (Emphasis added.) Here, Decedent Johnson failed to submit any writing with  
22 CalPERS selecting an Option and CalPERS cannot assume which option benefit he  
23 would select.

24 **2. The Member Must Submit the Necessary Documents.**

25 Section 21462 requires the member must submit a court order or MSA

1 demonstrating he has full interest in his retirement benefits and an Election Document  
2 to change his election. The section 21462 is very clear and does not provide for any  
3 exceptions. Decedent Johnson's failure submit a court order or MSA in a timely  
4 manner was more than a mere technicality. Decedent Johnson failed to submit the  
5 necessary documents allowing CalPERS to move forward, process his Application and  
6 provide him the Election Document.

7       The Election Document form which Respondent did not submit is the agreement  
8 between the member and CalPERS by which they indicate their irrevocable agreement  
9 to modify their Option benefit. It must be signed by the member and notarized.  
10 (Transcript p. 119:18-24.) Once accepted by CalPERS, Decedent Johnson would have  
11 had a reduction in his retirement benefits from the effective date until the remainder of  
12 his life. (Section 21462) Once effective, the agreement is irrevocable. The failure to  
13 submit a timely and complete Application not only prevented CalPERS from removing  
14 the community property hold, but also omitted the actual and most critical component  
15 of the election process, the Election Document itself, whereby Decedent Johnson  
16 elects a new Option of his liking, signs and agrees the modification is irrevocable.

17       Even if accompanied by the necessary documents, the mere submission of an  
18 Application is not sufficient to change Decedent Johnson's Option benefits. The  
19 Application does not notify CalPERS as to which option Decedent Johnson would  
20 select. (Transcript p. 175:7-10.) Furthermore, more than half of the members who  
21 submit Applications choose not to change their election. (Exhibit 14.) Thus, Decedent  
22 Johnson failed to substantially comply with section 21462 by failing to submit a  
23 document changing the option benefits.

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II.  
**RELIEF CANNOT BE GRANTED UNDER THE MISTAKE STATUE**

**A. The Mistake Statute**

Respondent has not met her burden. Respondent failed to establish that Decedent Johnson's failure to timely submit a completed Application and an Election Document changing his Option benefit was a result of mistake, inadvertence, surprise, or excusable neglect.

Section 20160, subdivision (a), provides in pertinent part, that subject to subdivisions (c) and (d), the Board may, in its discretion and upon any terms it deems just, correct the error or omission of any active or retired member, provided that all of the following facts exist:

- 1 The request, claim or demand to correct the error or the omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.
- 2 The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in section 473 of the Code of Civil Procedure.
- 3 The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

"Failure by a member or a beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an 'error or omission' correctable under" Government Code Section 20160. (section 20160(a).) Furthermore, the burden of establishing the right to correction is on the party seeking it. (section 20160(d).)

**B. The Standard**

"[T]he mere recital of mistake, inadvertence, surprise or excusable neglect is not sufficient to warrant relief. Relief on grounds of mistake, inadvertence, surprise or excusable neglect is available only on a showing that the claimant's

1 failure to timely present a claim was reasonable when tested by the objective  
2 'reasonably prudent person' standard. The definition of excusable neglect is  
3 defined as "neglect that might have been the act or omission of a reasonably  
4 prudent person under the same or similar circumstances. [citation] There must be  
5 more than the mere failure to discover a fact; the party seeking relief must  
6 establish the failure to discover the fact in the exercise of reasonable diligence.  
7 [citation] The party seeking relief based on a claim of mistake must establish he  
8 was diligent in investigating and pursuing the claim [citation] and must establish  
9 the necessary elements justifying relief by the preponderance of the evidence.  
10 [Citation.]" (*Dep't of Water & Power v. Superior Court* (2000) 82 Cal.App. 4th  
11 1288, 1293.)

12 In order to qualify for relief under Code of Civil Procedure section 473,  
13 subdivision (b), respondent has the burden of establishing that the result she wishes to  
14 avoid resulted from an act or omission that would have occurred notwithstanding the  
15 exercise of reasonable diligence as an ordinary prudent person would in conducting  
16 important business. (*Davis v. Thayer* (1980) 113 Cal. App. 3d 892, 906, ["If he did  
17 read it and disregarded its allegations he was guilty of careless and indifferent conduct.  
18 His conduct in permitting the matter to go to default was not the result of mistake,  
19 inadvertence, or surprise. It was solely the consequence of neglect, a neglect which  
20 we find to be inexcusable.]")

21 Furthermore, a party may not excuse his/her failure to do a thing due to the  
22 press of other business. (*Davis v. Thayer, supra*, 113 Cal.App.3d at p. 909.)

23 **Respondent Fails To Meet The Standard**

24 First, it is questionable whether Respondent even has standing to obtain relief  
25 under the mistake statute because Decedent Johnson had the sole authority to submit

1 an Application and sign an Election Document to modify the Option benefits and name  
2 a new beneficiary.<sup>2</sup> Even if it is accepted that Respondent Johnson has standing, she  
3 did not seek relief within a reasonable time (or even 6 months). Respondent Johnson  
4 did not send CalPERS the MSA until a year and six months after Decedent Johnson  
5 submitted his incomplete Application to CalPERS and six months after his death.

6 Respondent Johnson fails to offer any valid reasons for Decedent Johnson's  
7 failure to submit a complete Application. She presents a vague contention of an  
8 illness; however, these assertions do not constitute grounds for relief.

9 1. Decedent Johnson was informed and aware of the requirements and his neglect is  
10 inexcusable.

11 Decedent Johnson's failure to file both timely and correctly was due to his  
12 inexcusable neglect. From the very start, Decedent Johnson and Respondent  
13 Johnson were informed that the process for modifying the Option benefit requires  
14 necessary documents and could take months.

15 The Acknowledgement Letter, which was sent to Decedent Johnson on  
16 December 4, 2013 and then again on October 24, 2013 specifically states that "[i]f a  
17 former spouse was named, you must have a court order that awards you the entire  
18 interest in your CalPERS benefits before you can name a new spouse as beneficiary.  
19 You may modify your election upon divorce . . .if you have a court order that awards  
20 you the entire interest in your CalPERS benefits." (Exhibit 7.) The letter informs  
21 Decedent Johnson to contact the Benefit Services Division for "information about the  
22 recalculation of allowance and the required documentation." (*Id.*)

23 Publication 98, which was sent to Decedent Johnson in February 2013, upon

24 <sup>2</sup> See *Lee v. Bd. of Admin.* (1982) 130 Cal. App.3d 122, 133, "[g]enerally, the party claiming estoppel is the  
25 party who has relied to his detriment upon the words or conduct of another. Plaintiff has made no such  
reliance; she is simply seeking to enforce what she contends is a benefit another intended she receive."



1 his request, includes the Application, lists the required documents, sets out the step by  
2 step procedure and states the specific time limits involved in the process. (Exhibit 11  
3 pp. 21-22.) Furthermore, Section 5 of the Application, signed by Decedent Johnson,  
4 notifies him that the Application is merely a request for an Election form and the option  
5 will not be modified until a completed Election form is submitted. (Exhibit 9H, p.3.)  
6 Publication 98 also sets out the relevant timeframe. (Exhibit 11, p. 21.) Respondent  
7 Johnson was also advised by Mr. Abram concerning the amount of time it takes  
8 CalPERS to process the Application. (Exhibit 8, p. 5; Transcript pp. 100:17-25; 101;  
9 102:1-3.)

10         Despite being fully informed by CalPERS, as late as February 2013, and  
11 receiving multiple advisements concerning the time frame to process the Application  
12 and the documents required, Decedent Johnson did not submit an Application until  
13 November 2014. (Exhibit 9H.) Respondent Johnson even testified that she and  
14 Decedent Johnson discussed their plans during the last four years of his life.  
15 (Transcript, p. 23:2-5.) Although Respondent Johnson acknowledges having received  
16 Publication 98, speaking to Mr. Abram on how to complete the Application, she and  
17 Decedent Johnson failed to submit a court order with the Application. (Transcript  
18 178:13-23.) Even if Decedent Johnson had been confused as to what was required to  
19 be filed and when, he was fully cognizant of the need to submit a court order or MSA to  
20 remove the community property hold. (Exhibit 9M.) An MSA however, was not  
21 obtained by the court until after his death. (Exhibit 10.)

22 2. Decedent Johnson's illness does not excuse his neglect.

23         Respondent Johnson indicates that the delay in filing the Application was a  
24 result of Decedent Johnson being in and out of the hospital during the past five years  
25 prior to his death in 2014. (Transcript 22:23-25; 23:1-5.) In *Davis v. Thayer* (1980)

1 113 Cal.App.3d 892, 909, the defendant in a civil case sought relief from a default  
2 judgment under Code of Civil Procedure section 473, claiming she was under the  
3 doctor's care due to a heart attack, medication, and was caring for a terminally ill  
4 husband and elderly mother. The court; however, held that defendant had failed to  
5 present sufficient evidence to grant relief. The court has also held that conclusory  
6 assertions of anxiety, depression, and financial hardships are insufficient to excuse  
7 failure to respond to a court documents. (*Kim v. Westmoore Partners, Inc.* (2011) 201  
8 Cal.App.4th 267, 280-281.)

9 Here, there is insufficient evidence to demonstrate that Decedent Johnson was  
10 incompetent or completely inept to obtain the necessary court order or MSA and file a  
11 complete Application prior to his death. Even if evidence supports such a contention,  
12 CalPERS is bound by section 21462 and could not have moved forward without a  
13 complete Application.

14 Furthermore, Respondent Johnson testified that she was named the power of  
15 attorney in 2012 and the executor "regarding a number of items of his business. . ."  
16 Thus, Respondent Johnson could have compiled the necessary documents and  
17 assisted him in providing a complete Application to CalPERS.

18 Decedent Johnson's failure to submit a complete application was not a result of  
19 excusable mistake, neglect, surprise or inadvertence. Decedent Johnson knew about  
20 the process and the requirements, yet failed to comply and modify his option benefits  
21 prior to his death.

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III.

**EQUITABLE ESTOPPEL IS NOT AVAILABLE TO PROVIDE RESPONDENT A BENEFIT OTHERWISE UNAVAILABLE UNDER THE PERL**

Estoppel is an equitable doctrine, seeking to prevent a person or entity from profiting from its wrongdoing. (*California School Employees Association v. Jefferson Elementary School District* (1975) 45 Cal.App.d 683.) Respondent Johnson fails to meet the necessary elements of equitable estoppel. Furthermore, Estoppel cannot provide Respondent Johnson a benefit otherwise unavailable under the express provisions of the PERL. (*Chaidez v. Board of Administration of California Public Employees' Retirement System* (2014) 223 Cal.App.4th 1425, 1432, review denied (May 14, 2014.)

A. Respondent Fails to Meet the Necessary Elements of Estoppel.

A party asserting the doctrine of equitable estoppel must establish: (1) the party to be estopped was apprised of the facts; (2) the party to be estopped intended or reasonably believed that claimant would act in reliance on its conduct; (3) the claimant was ignorant of the true state of facts; and (4) the claimant actually and reasonably relied on the conduct of the party to be estopped to his detriment. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.) Where estoppel is sought to be asserted against a governmental entity, a fifth element must be established - 5) the interests of a private party must outweigh by effect on public interests and policies. (*Id.* at 496-97.) It is the burden of the party asserting estoppel to affirmatively establish each of its elements. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn.5. ["[W]here one of the elements of an estoppel is missing there can be no estoppel."]; *People ex rel. Franchise Tax Bd. v. Superior Court* (1985) 164 Cal. App.3d 526, 552.)

Respondent Johnson fails to present any evidence demonstrating any wrongdoing by CalPERS. Respondent Johnson and Decedent Johnson contacted

1 CalPERS on several occasions. Each time CalPERS was contacted, CalPERS was  
2 responsive and provided the correct information concerning process and requirements  
3 for modifying the Option benefits, including a copy of the Acknowledgement Letter and  
4 Publication 98. (Exhibits 9W & 11; Transcript 131:11-25; 132:1-11.) The record  
5 demonstrates that CalPERS staff, Mr. Abram assisted Respondent Johnson on how to  
6 complete the Application, informed her about the time limits and documents that must  
7 be submitted with the application. (Exhibit 8, p. 5; Transcript pp. 100:17-25; 101;  
8 102:1-3; 106:9-12; 107:1-6.) There is no evidence indicating CalPERS provided  
9 incorrect or misleading information to Decedent Johnson.

10 Respondent Johnson fails to establish any of the elements stated above.  
11 Furthermore, Respondent Johnson lacks standing because she is not a party who  
12 would be entitled to rely on the information provided by CalPERS. (*Lee*, 130 Cal.  
13 App.3d 122, 134.) Thus, based on the record before the court, Equitable estoppel is  
14 inapplicable.

15 **B. Respondent Can Not Invoke Estoppel In this Case to Obtain A Benefit Contrary to**  
16 **the Law**

17 Retirement benefits for CalPERS members are entirely creatures of statute.  
18 (*City of San Diego v. San Diego City Employees' Retirement System* (2010) 186  
19 Cal.App.4<sup>th</sup> 69, 78-79; *Hudson v. Posey* (1967) 255 Cal.App.2d 89, 91.) The California  
20 Legislature has clearly stated that CalPERS does not have the power to award  
21 benefits beyond those authorized by statute. (See, Government Code § 20160 (stating  
22 CalPERS shall correct its mistake, and must not "provide the party seeking correction  
23 with a status, right, or obligation not otherwise available" under the retirement laws.)

24 It is well-settled, that equitable estoppel cannot be used to override a statute or  
25 to enlarge a governmental entity's statutory authority, nor can "the authority of a public

1 officer cannot be expanded by estoppel" because doing so "would have the effect of  
2 granting to the state's agents the power to bind the state merely by representing that  
3 they have the power to do so." (*Boren v. State Pers. Bd.* (1951) 37 Cal.2d 634, 643.)  
4 Even an erroneous assertion by an employee, although none was made here, cannot  
5 serve as a basis for extending a benefit where one is not otherwise authorized by law.  
6 (*Page v. City of Montebello* (1980) 112 Cal.App.3d 658, 669.)

7 In *Lee* the alleged beneficiary attempted to invoke estoppel by arguing the  
8 pamphlets distributed by CalPERS were misleading and failed to properly notify the  
9 members concerning their death benefits. The court held that "[E]stoppel cannot be  
10 applied . . . where the subject matter involved is as detailed and complex, as is the  
11 retirement scheme set up for state employees. In light of the myriad of 'optional  
12 settlement' . . . , distribution and types of benefits . . . , and other provisions regarding  
13 retirement . . . , the information presented in the PERS literature could not be anything  
14 more than a rudimentary overview of the system and how it operates." (*Lee*, 130 Cal.  
15 App.3d 122, 134.)

16 Here, the PERL only allows the member to elect a new option, providing a  
17 lesser allowance during the member's remaining lifetime, and name another  
18 beneficiary. (Section 21462.) Decedent Johnson did not complete the Application  
19 process and thereby did not elect an option benefit that would reduce his allowance  
20 during his lifetime. CalPERS has no authority to go beyond the provisions of section  
21 21462 and allow Respondent Johnson to make the election after Decedent Johnson's  
22 death.

23 Providing Respondent Johnson the Option benefits would require CalPERS to  
24 assume Decedent Johnson would have elected an option after receiving the Election  
25 Document, assume which option benefit Decedent Johnson would elect, arbitrarily pick

1 an effective date (the election is effective from the date first day of the month following  
2 receipt of the completed election document), then apply a reduction to allowance until  
3 the date of his death. "[E]stoppel will not be applied where it is based on surmise or  
4 questionable inference." (Lee, 130 Cal. App.3d 122,135.) Not only will CalPERS be  
5 required to violate the express provisions of section 21462, it would also have the  
6 burden of speculating Decedent Johnson's intent, which is unascertainable from the  
7 record. Thus, equitable estoppel is unavailable because the necessary elements are  
8 lacking and providing the benefits would violate the express provisions of the PERL.

9 **CONCLUSION**

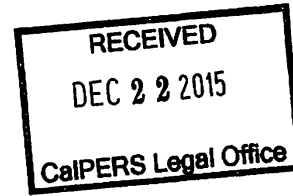
10 Pursuant to legal authority, CalPERS correctly determined Respondent Johnson  
11 is not entitled to the Option benefits. Decedent Johnson failed to re-select an Option  
12 benefit and name Respondent Johnson the new beneficiary. CalPERS respectfully  
13 urges this Court to uphold its determination.

14 Respectfully submitted,

15  
16 Dated:

12/18/15

17   
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11  
12 **BOARD OF ADMINISTRATION**  
13  
14 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

15 In the Matter of the Appeal Regarding Death  
16 Benefits Payable Upon the Death of  
17 GRANTLAND LEE JOHNSON by

18 LEE TURNER JOHNSON,

19 Respondent.

20 CASE NO. 2015-0373  
21 OAH NO. 2015081045

22 **RESPONDENT LEE TURNER**  
23 **JOHNSON'S CLOSING BRIEF**

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page(s)

I. INTRODUCTION..... 1

II. STATEMENT OF FACTS ..... 2

III. LEGAL STANDARD..... 7

IV. ARGUMENT ..... 8

    A. Grantland Johnson Clearly Intended To Designate Mrs. Johnson As His  
    Beneficiary For CalPERS Medical, Dental and Option 2 Benefits .....8

    B. CalPERS Has The Authority To Correct The Omitted Election Form Under  
    Government Code section 20160, subdivision (a)..... 11

    C. Grantland Johnson Substantially Complied With Government Code  
    Section 21462 ..... 15

    D. Statutory Compliance Was Impossible Based on Grantland Johnson’s Death..... 17

    E. CalPERS Breached Its Fiduciary Duty By Failing To Provide Timely,  
    Complete And Accurate Material Information ..... 18

V. CONCLUSION ..... 20



**TABLE OF AUTHORITIES**

**CASES**

Page(s)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

<i>Arnaiz, Ltd. v. County of San Joaquin</i> (2002) 96 Cal.App.4th 1357 .....	11
<i>Bowen v. Bd. of Retirement</i> (1986) 42 Cal.3d 572.....	7
<i>Cal-Air Conditioning, Inc. v. Auburn Union Sch. Dist.</i> (1993) 21 Cal.App.4th 655.....	15
<i>Cazares v. Saenz,</i> (1989) 208 Cal.App.3d 279.....	18
<i>City of Oakland v. Public Employees Retirement System</i> (2002) 95 Cal.App.4th 29.....	19
<i>Cordell v. City of Los Angeles</i> (1944) 67 Cal.App.2d 257.....	7
<i>Costa v. Superior Court</i> (2006) 37 Cal.4th 986.....	15
<i>Credit Managers Assn. of So. Calif. v. Nat. Independent Business Alliance</i> (1984) 162 Cal.App.3d 1166.....	12
<i>Eichelberger v. City of Berkeley</i> (1956) 46 Cal.2d 182.....	7
<i>Gorman v. Cranston</i> (1966) 64 Cal.2d 441 .....	7
<i>Hearn v. Howard</i> (2009) 177 Cal.App.4th 1193 .....	12
<i>In re Application of Smith</i> (Mar. 31, 1999) PERS Prec. Dec. No. 99-01.....	19
<i>In re Marriage of Benjamins</i> (1994) 26 Cal. App. 4th 423.....	18
<i>In re Marriage of Cooper</i> (2008) 160 Cal.App.4th 574 .....	8, 9

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
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14  
15  
16  
17  
18  
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20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES, Cont.**

Page(s)

*Jenner v. City Council*  
 (1958) 164 Cal.App.2d 490..... 7

*McCoy v. Bd. of Retirement*  
 (1986) 183 Cal.App.3d 1044..... 7

*McKenzie v. City of Thousand Oaks*  
 (1973) 36 Cal.App.3d 426..... 18

*Pimentel v. Conselho Supremo De Uniao Portugueza Do Estado Da California*  
 (1936) 6 Cal.2d 182..... 9

*Shapiro v. Clark*  
 (2008) 164 Cal.App.4th 1128 ..... 12

**STATUTES**

California Civil Code  
 Section 3531 ..... 18

California Code of Civil Procedure  
 Section 473 ..... 2,11,12

California Evidence Code  
 Section 210 ..... 7

California Government Code  
 Section 20160 ..... 11,14,20  
 Section 21462 ..... 14,15,16,17,18,19  
 Section 21456 ..... 8  
 Section 21492 ..... 8

1     **I. INTRODUCTION**

2             Grantland Johnson had completed every step for designating his wife, Lee Turner Johnson  
3     ("Respondent" or "Mrs. Johnson"), as the beneficiary for his CalPERS medical, dental and lifetime  
4     option 2 benefits, but died before he could submit the final form. Despite his unequivocal and  
5     repeated statements to CalPERS, clearly expressing that he was designating Mrs. Johnson for these  
6     benefits, CalPERS is rejecting this request and denying medical, dental and option 2 benefits (the  
7     "benefits") to his widow based on a technicality: Grantland Johnson did not submit a form, entitled  
8     the "Modification of Original Election at Retirement," and died before the effective date of the  
9     election. To be sure, based on the evidence presented in this matter, there is no question that  
10    Grantland Johnson would have submitted that form had he been able to stay alive.

11            In fact, by the time he died on August 19, 2014, Grantland Johnson and Mrs. Johnson believed  
12    that they had done everything required of them to complete the process for designating her as his new  
13    beneficiary for medical, dental and option 2 benefits. He had clearly informed CalPERS in writing  
14    that he wanted Mrs. Johnson to be named as the beneficiary of all CalPERS retirement benefits and  
15    death benefits as soon as it received a judgment and final settlement agreement resolving marital  
16    property disputes with his former wife. Mrs. Johnson submitted those documents to CalPERS as  
17    soon as they became available.

18            Grantland Johnson and Mrs. Johnson also informed CalPERS by telephone that Grantland  
19    Johnson sought to designate Mrs. Johnson as his beneficiary for medical, dental and option 2 benefits  
20    and wanted to be sure that they properly completed the forms for accomplishing that objective. As  
21    part of that telephone call, CalPERS instructed them on how to complete the forms and later sent  
22    Grantland Johnson a letter stating that his "Beneficiary Designation form" had been accepted. Mrs.  
23    Johnson was not informed of any problem concerning Grantland Johnson's attempted beneficiary  
24    and option 2 election, and that his request had been rejected, until February 2015, almost six months  
25    after he died.

26            Basic principles of equity and fairness, and the unique and extenuating circumstances of this  
27    case dictate that Mrs. Johnson should receive the benefits that Grantland Johnson set out to provide  
28    for her. Furthermore, Grantland Johnson's intent; issues of mistake, inadvertence, surprise and

1 excusable neglect under Code of Civil Procedure section 473; doctrines of substantial compliance  
2 and impossibility; and CalPERS' fiduciary duty to its members also demand that Mrs. Johnson should  
3 be designated as Grantland Johnson's beneficiary for medical, dental and option 2 benefits.

4 Grantland Johnson and Mrs. Johnson worked diligently to strictly follow the technical  
5 procedural requirements for changing Grantland Johnson's beneficiary designation for option 2  
6 benefits. However, Grantland Johnson's significant and persistent health problems and a contested  
7 marital property settlement related to his divorce, significantly impacted and hindered his ability to  
8 complete the process more expeditiously. Furthermore, his manifest intent and diligent efforts to  
9 elect a new beneficiary for his option 2 benefits satisfy the objective and purpose underlying  
10 Government Code section 21462's statutory requirements, which CalPERS argues Grantland  
11 Johnson failed to meet. It was also impossible for Grantland Johnson to meet the formal requirements  
12 of the statute to the extent the statute presumes that a member is alive to submit a Modification of  
13 Original Election at Retirement form. Lastly, CalPERS breached its fiduciary duty to Grantland  
14 Johnson by failing to provide complete, correct and unambiguous information for designating a new  
15 beneficiary for Grantland Johnson's medical, dental and option 2 benefits.

16 Grantland Johnson dedicated his life to public service, as a member of the Sacramento City  
17 Council, Sacramento County Board of Supervisors and as President Bill Clinton's appointed Region  
18 IX director for the U.S. Department of Health and Human Services. He was also appointed as  
19 Secretary of Health and Human Services by Governor Gray Davis. Grantland Johnson was  
20 committed to ensuring greater access to health care and protecting the state's most vulnerable  
21 populations, including children and the elderly. It is a cruel and tragic irony here that one of his final  
22 requests, that his wife who is 70 years old receive medical, dental and option 2 benefits, is being  
23 denied for failing to submit a final form to a government agency.

24 For the reasons described below, Mrs. Johnson should be designated as Grantland Johnson's  
25 beneficiary for medical, dental and option 2 benefits.

26 **II. STATEMENT OF FACTS**

27 Grantland Johnson and Lee Turner Johnson first met professionally in 1996 and developed a  
28 personal relationship in 2004. (Ex. A to Decl. of Ian J. Barlow in Supp. of Respondent Lee Turner

1 Johnson's Closing Brief ("Barlow Decl.") at 18:6-19:5.)<sup>1</sup> Their relationship continued to grow closer  
2 over the years, and they were engaged by March 2012. (Ex. B at p. 2 (referring to Mrs. Johnson as  
3 "fiancé").) By this time, Grantland Johnson had been separated from his estranged wife, Charlot  
4 Bolton, for nearly a decade. (Ex. C.) Also in March 2012, Grantland Johnson gave Lee Turner  
5 Johnson power of attorney and named her executor of his will. (Tr. 19:19-21; 20:7-20; Ex. B at  
6 0000.)

7 Less than a year later, he contacted CalPERS by telephone to inquire about changing his  
8 CalPERS beneficiary designation (Tr. 52:7-18) and a short time after that, on April 8, 2013, he  
9 initiated divorce proceedings from Ms. Bolton. (Ex. C.) Division of property was contested and a  
10 judgment of dissolution as to marital status only was entered on November 9, 2013. (*Id.*) He and  
11 Lee Turner Johnson previously decided to wait on marriage due in part to Grantland Johnson's health  
12 problems related primarily to diabetes, which required frequent dialysis and a series of annual  
13 surgeries, one of which involved a serious operation related to Charcot disease in 2010. (Tr. 21:18-  
14 22:13.)

15 Less than a week after his divorce, Grantland Johnson took formal steps to remove his former  
16 wife as a beneficiary of his CalPERS benefits; he wrote a letter to CalPERS on November 13, 2013  
17 requesting that CalPERS remove Charlot Bolton from his CalPERS Health Plan and provided  
18 CalPERS with a copy of the divorce judgment. (Ex. D.) He married Lee Turner Johnson on  
19 November 15, 2013. (Tr. 26:4-8.) A few weeks later, on December 12, 2013, Grantland Johnson  
20 sent another letter to CalPERS requesting that CalPERS add Lee Turner Johnson to his CalPERS  
21 Health Plan, and included a copy of their marriage certificate. (Ex. E.) These would be among the  
22 first in a series of efforts with CalPERS to ensure that Mrs. Johnson was designated as the named  
23 beneficiary for his CalPERS benefits.

24 Grantland Johnson wrote another letter to CalPERS on June 23, 2014 requesting that  
25 CalPERS designate Mrs. Johnson as the new beneficiary for all of his CalPERS benefits—including  
26 medical, dental and lifetime option 2 benefits and death benefits—which were previously designated

27 \_\_\_\_\_  
28 <sup>1</sup> All citations to the October 6, 2015 Hearing Transcript, attached as Exhibit A to the Barlow Declaration, are referred to herein as "Transcript."

1 for his former wife. He stated in no uncertain terms that he wanted his

2 wife Lee Anne Turner Johnson, to be named as the *beneficiary [of] my CalPERS*  
3 *retirement and all death benefits* [previously named for his former spouse and  
daughter].

4 As of November 15, 2013, we were legally married. A court judgment or marital  
5 agreement will soon be filed and sent to you, finalizing all property with my former  
6 wife . . . *Upon receipt of this final settlement agreement, please immediately change*  
*all of my retirement benefit[s] and all death benefit[s] to my wife, Dr. Lee Turner*  
*Johnson.*

7 (Ex. F (emphasis added).)

8 CalPERS responded over a month later. On July 25, 2014, CalPERS informed Grantland  
9 Johnson that his request had been submitted on an “incorrect or invalid form” and provided him with  
10 a single “new form” to “re-submit,” the Post Retirement Lump Sum Beneficiary Designation form  
11 (“Lump Sum Form”). (Ex. G; Ex. H at pp. 1-4; Tr. 31:5-8.) CalPERS’ July 25, 2014 response letter  
12 made no reference to the Application to Modify Option and/or Life Option Beneficiary form (“Option  
13 Beneficiary Modification Form”), the Modification of Original Election at Retirement form or any  
14 timelines or requirements for completing the requested designation. (Ex. G; Tr. 29:8-16.)

15 By the time CalPERS sent its July 25, 2014 response letter, Grantland Johnson was in the  
16 Kaiser Intensive Care Unit (“ICU”). (Tr. 28:12-13.) Mrs. Johnson testified that while it was “not yet  
17 clear that [Grantland Johnson] was dying, it was an “extremely intense time.” (Tr. 28:20-21.)  
18 Grantland Johnson had undergone and was recovering from surgery on his leg and groin in late-2013,  
19 and was bedridden for approximately two months. (Tr. 23:25-24:3; 72:8-10.) He continued to  
20 recover from a surgery-related wound between March and May 2014. (Tr. 72:10-18.) In addition,  
21 Grantland Johnson was “in and out of [the] hospital through June and July, on top of [undergoing]  
22 four dialysis a week and constant doctor appointments.” (Tr. 58:9-12.)

23 Grantland Johnson told Mrs. Johnson that he wanted to complete the forms for designating a  
24 new lifetime option 2 beneficiary (Tr. 35:6) and his childhood friend, Herb Anderson, who was with  
25 Grantland Johnson and Mrs. Johnson in the ICU at the time, left to retrieve the forms from Grantland  
26 Johnson’s home. Mrs. Johnson remained with Grantland Johnson in the hospital room. (Tr. 38:9-  
27 11; 58:24-59:2; 84:2-3.)

28 Grantland Johnson called CalPERS with Mrs. Johnson to discuss the Option Beneficiary

1 Modification Form in early-August 2014. (Tr. 33:19-20.) While speaking with the CalPERS  
2 representative, Grantland Johnson was alert and gave permission for Mrs. Johnson to speak to  
3 CalPERS on his behalf. (Tr. 33:19-23.) They called because the Option Beneficiary Modification  
4 Form was complicated and wanted to be certain that it was completed correctly. (Tr. 33:19; 33:24-  
5 34:3.) Over the phone, Mrs. Johnson informed CalPERS that Mr. Johnson was in the ICU and that  
6 his condition was “not very good.” (Tr. 34:15-16.) Mrs. Johnson expressly told CalPERS that Mr.  
7 Johnson was calling to designate her as his new beneficiary for lifetime option 2 benefits. (Tr. 37:9-  
8 12; 84:15-20.) In addition, as part of that call Grantland Johnson clearly re-affirmed that the option  
9 that he wanted to designate for the Option Beneficiary Modification Form was “Option 2.” (Tr.  
10 35:19-21.) The CalPERS representative walked Grantland Johnson and Mrs. Johnson through the  
11 Option Beneficiary Modification Form and at the end of the call told Mrs. Johnson not to worry, and  
12 that her “husband’s wishes will be honored no matter what.” (Tr. 36:10-11; 86:23-87:1.)

13 At or around that time, Grantland Johnson signed both the Option Beneficiary Modification  
14 Form and the Lump Sum Form. Mrs. Johnson was designated as the beneficiary on both of these  
15 forms. (Ex. H at p. 1; Ex. I at p. 1.) As part of their review of the Option Beneficiary Modification  
16 Form, both Grantland Johnson and Mrs. Johnson read the Certification of Participant statement in  
17 Section 6: “I understand this form is a request for an election form to modify my option and name a  
18 new beneficiary(ies).” (Ex. I at p. 3.) This was interpreted to mean that they were signing *the* form  
19 to name a new beneficiary. In other words, the “Option Beneficiary Modification Form” *is* “the  
20 request for an election,” and not a separate request for yet an additional form to complete the  
21 modification or election. (Tr. 38:22-39:11.) Mrs. Johnson sent the forms to CalPERS by certified  
22 mail on or around the same day that they were signed. (Tr. 39:15-19.)

23 CalPERS confirmed that it received Grantland Johnson’s completed Option Beneficiary  
24 Modification Form shortly thereafter, on August 7, 2014. (Tr. 165:20-22.) On August 14, 2014,  
25 CalPERS sent a letter to Grantland Johnson confirming that his “Beneficiary Designation form” had  
26 been accepted and described Mrs. Johnson as the primary “100.00%” beneficiary. (Ex. J.) At this  
27 point, Mrs. Johnson believed that there were no other forms that Grantland Johnson had to complete  
28 to designate her as the new beneficiary for medical, dental and option 2 benefits. (Tr. 41:19-22.)

1           Indeed, CalPERS never informed Grantland Johnson and Mrs. Johnson during the early-  
2 August telephone call that any additional forms were needed to effectuate Grantland Johnson's  
3 request to designate a new beneficiary for his lifetime option 2 benefits. (Tr. 37:17-19.) CalPERS  
4 also made no mention of a Modification of Original Election at Retirement form ("Election Form").  
5 (37:17-19.) CalPERS also never discussed any timelines within which any additional forms needed  
6 to be submitted to complete the requested beneficiary change. (37:24-38:02).

7           Similarly, despite receiving multiple requests and inquiries from Grantland Johnson about  
8 designating a new beneficiary for his CalPERS medical, dental and option 2 benefits, CalPERS' July  
9 25, 2013 and August 14, 2014 written responses made no reference to any Option Beneficiary  
10 Modification Form, Election Form, or any timelines or requirements for completing and submitting  
11 such forms. In addition, while a December 4, 2003 CalPERS letter to Grantland Johnson confirms  
12 his election to receive the option 2 allowance and states that his election may be modified in part by  
13 divorce if a court order awards the entire interest in CalPERS benefits to the member, the letter does  
14 not: 1) state that the member must be alive when the court order is issued, 2) refer to the Option  
15 Beneficiary Modification Form, 3) refer to the Election Form, or 4) describe what happens in the  
16 event the member is not alive to submit an Election Form. (Ex. K at pp. 1-4.)

17           Grantland Johnson died on August 19, 2014. A little over two weeks later his former wife  
18 signed the marital property settlement. (Ex. C at 0000.) The agreement was submitted in October  
19 2014, and judgment on the property division and marital settlement agreement was filed on December  
20 31, 2014. (Tr. 43:3-5, Ex. C at 0000.) Due to a backlog and delays in the court, a copy of the  
21 judgment was not available until January 2015. (Tr. 43:5-7.) Mrs. Johnson immediately provided  
22 CalPERS with copies of the final judgment and marital settlement (Tr. 43:8-10.) On February 11,  
23 2015, she submitted a certified copy of the judgment and marital settlement, which awarded the entire  
24 interest of the CalPERS plan to Grantland Johnson, as well as copies of Grantland Johnson's will  
25 designating her as executor, grant of power of attorney, and referenced the verified marriage  
26 certificate that CalPERS had on file for her and Grantland Johnson. (Ex. L at 0000.)

27           At or around this time, Mrs. Johnson called CalPERS to receive an update on the status of her  
28 benefits and the forms that Grantland Johnson had previously submitted in light of the fact that the



1 certified judgment and marital settlement had now been submitted. During that call, and  
2 approximately six months after Grantland Johnson submitted the Option Beneficiary Modification  
3 Form, she learned for the first time of “an election form” and that she would not be designated as  
4 beneficiary for Grantland Johnson’s medical, dental and option 2 benefits. (Tr. 48:19-49:6; 74:2-7,  
5 Ex. M at pp. 1-2.)

6 On March 4, 2015, CalPERS informed Mrs. Johnson that Grantland Johnson’s request to  
7 recalculate his option 2 benefit was denied because “(b)oth the member and the new beneficiary must  
8 be alive on the effective date. Unfortunately, Mr. Johnson passed away before he was awarded full  
9 interest in his retirement benefits and before a recalculation election document could be provided to  
10 him.” (Ex. N at p. 3.)

11 **III. LEGAL STANDARD**

12 “Pension legislation must be liberally construed and applied to the end that the beneficent  
13 results of such legislation may be achieved. Pension provisions in our law are founded upon sound  
14 public policy and with the objects of protecting, in a proper case, the pensioner and his dependents  
15 against economic insecurity. In order to confer the benefits intended, such legislation should be  
16 applied fairly and broadly.” (*Bowen v. Bd. of Retirement* (1986) 42 Cal.3d 572, 577, citing *Cordell*  
17 *v. City of Los Angeles* (1944) 67 Cal.App.2d 257, 266; accord, *Gorman v. Cranston* (1966) 64 Cal.2d  
18 441, 444; *Eichelberger v. City of Berkeley* (1956) 46 Cal.2d 182, 188.)

19 The “strict rules of evidence which obtain in the courts are not enforced in administrative  
20 proceedings [citations]. . . .” (*McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1053 [228  
21 Cal.Rptr. 567] (“*McCoy*”), citing *Jenner v. City Council* (1958) 164 Cal.App.2d 490, 496 [331 P.2d  
22 176].) As a general rule, evidence is relevant if it has “any tendency in reason to prove or disprove  
23 any disputed fact that is of consequence to the determination of the action.” (Cal. Evid. Code, § 210.)  
24 “[T]he party asserting the affirmative at an administrative hearing has the burden of proof, . . . .”  
25 (*McCoy, supra*, 183 Cal.App.3d at 1051 fn.5.)

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1 **IV. ARGUMENT**

2 **A. Grantland Johnson Clearly Intended To Designate Mrs. Johnson As His**  
3 **Beneficiary For CalPERS Medical, Dental and Option 2 Benefits**

4 Grantland Johnson manifestly intended to designate Mrs. Johnson as his beneficiary for  
5 medical, dental and lifetime option 2 benefits. His clear and uncontroverted intent should be  
6 effectuated.

7 The California Court of Appeal has previously analyzed the CalPERS member's intent in  
8 allocating option 2 benefits. In *In re Marriage of Cooper* (2008) 160 Cal.App.4th 574 [73 Cal.Rptr.3d  
9 71] ("*Cooper*"), appellant member retired from employment and selected option 2, "which 'consists  
10 of the right to have a retirement allowance paid a member until his or her death and thereafter to his  
11 or her beneficiary for life.'" (*Id.* at p. 577 (quoting Gov. Code § 21456).) He designated his wife  
12 (respondent) as beneficiary. (*Cooper, supra*, 160 Cal.App.4th at p. 577.) The option 2 designation  
13 is irrevocable unless, upon dissolution of marriage, "the total interest in the retirement plan were  
14 awarded to appellant." (*Ibid.*, citing Gov. Code §§ 21492, 21456.) Appellant and respondent  
15 divorced and it was determined that the community had an interest in the CalPERS pension benefits.  
16 (*Cooper, supra*, 160 Cal.App.4th at p. 577.) However, respondent sought approval of a proposed  
17 domestic relations order ("DRO") that awarded her the entirety of the option 2 benefit. (*Id.* at p. 578.)

18 The trial court approved the proposed DRO. (*Ibid.*) Appellant then requested to buy out  
19 respondent's community property share of the option 2 benefit so that he could revoke respondent as  
20 his option 2 beneficiary. (*Ibid.*) The trial court denied the buy out request, reasoning that the option  
21 2 benefit would then not be available to anyone upon appellant's death and that a windfall would  
22 result to the pension plan. (*Id.* at pp. 578-79.) Appellant filed a motion for reconsideration, arguing  
23 that there would be no windfall to CalPERS if he was permitted to buy out respondent's share and  
24 revoke her as beneficiary because he could simply select a different beneficiary, such as his daughter,  
25 in her place. (*Id.* at p. 579.)

26 The court of appeal found that the trial court erred in allocating the option 2 benefit to  
27 respondent in part because it was contrary to appellant's intent. "[T]here is no evidence that in 1995  
28 appellant *intended* to forever relinquish his community property interest in the option 2 survivor

1 benefit, . . .” (*Id.* at p. 581, emphasis added.) Furthermore, CalPERS agreed that it would not receive  
2 a windfall in part because after buying the respondent out the appellant would be able to name a  
3 different beneficiary. (*Ibid.*, citing Gov. Code § 21462.) The court held that “discretion here may  
4 reasonably be exercised” by allowing a “buyout [that] will enable appellant to revoke his designation  
5 of respondent as the option 2 beneficiary.” (*Cooper, supra*, 160 Cal.App.4th at p. 581.)

6 The California Supreme Court similarly found the policyholder’s intent to be significant in  
7 determining whether to permit a beneficiary change after the policyholder’s death. In *Pimentel v.*  
8 *Conselho Supremo De Uniao Portuguesa Do Estado Da California* (1936) 6 Cal.2d 182 [57 P.2d  
9 131] (“*Pimentel*”), Antonio Pimentel, while on his deathbed, told his friend, Manuel Cardoza, that he  
10 wanted his brother, J.C. Pimentel (appellant), to be designated as beneficiary in place of his children  
11 and that appellant should take the policy to Freitas, an attorney, to prepare the change of beneficiary.  
12 (*Id.* at p. 184.) Freitas prepared an agreement, drafted a change of beneficiary statement and appellant  
13 signed the agreement designating him as the new beneficiary. (*Ibid.*) The documents were then taken  
14 to Antonio Pimentel at the hospital, where he signed the change of beneficiary statement before  
15 Freitas as a notary and instructed Freitas to take all necessary steps to complete the new beneficiary  
16 designation. (*Ibid.*) Freitas asked the insurer about the required next steps and instructed appellant  
17 to retrieve the policy from his office “and receive further instructions.” (*Id.* at pp. 184-85.) Instead,  
18 appellant sent his daughter to retrieve the policy. She retrieved the policy from Freitas’ secretary  
19 without any instruction on the further steps required to effectuate the beneficiary change. Appellant  
20 believed the matter was completed and placed the new policy in his safety deposit box. (*Id.* at p.  
21 185.)

22 To effectuate a change of beneficiary, the insurer required that the change be made by  
23 written indorsement upon the back of the policy, acknowledged before a notary  
24 public, authenticated by the signature of the secretary of the [insurer] and the seal of  
25 the [insurer] . . . The certificate, with the change duly made, was required to be  
forwarded to the secretary to be presented by him to the directors at their first regular  
session, another certificate to be issued if the change was found to have been made in  
due form.

26 (*Ibid.*) “None but the first two requirements were met . . . the steps left undone were the forwarding  
27 of the certificate to the secretary . . . and the various ministerial actions to be taken by the officers of  
28 the insurer.” (*Id.* at pp. 185, 187.) The policyholder died before the change in beneficiary form was

1 mailed. (*Id.* at pp. 187, 189.)

2 The California Supreme Court held that

3 where the [policyholder] makes every reasonable effort under the circumstances,  
4 complying as far as he is able with the rules, and there is a *clear manifestation of intent*  
5 *to make the change*, which the insured has put into execution as best he can, *equity*  
6 *should regard the change as effected.*

7 (*Id.* at p. 189, emphasis added.) The court found that the only question presented related to the fact  
8 that the beneficiary change request form was “not actually mailed prior to the death” of the  
9 policyholder. (*Ibid.*) ““If the [policyholder] had himself mailed the letter, and thereafter died before  
10 [it] reached the office of the company . . . it would be held that the beneficiary had been changed.  
11 We do not think the result should be any different in the case at bar.” (*Ibid.*, citation omitted) The  
12 court concluded that, having “complied so far as he was able with the rules . . . it must be held, under  
13 the equitable principles considered above, that there was an effective change of beneficiary.” (*Id.* at  
14 p. 189.)

15 Here, Grantland Johnson’s intent was expressed clearly and repeatedly to Mrs. Johnson and  
16 CalPERS. For example:

- 17 • He contacted CalPERS in February 2013 to inquire about changing his beneficiary  
18 designation (Tr. 52:7-18.);
- 19 • He removed Charlot Bolton from his CalPERS health plan and informed CalPERS of his  
20 divorce and, on December 12, 2013, informed CalPERS that he wanted to add Mrs.  
21 Johnson to his CalPERS health plan and informed CalPERS of his marriage to Mrs.  
22 Johnson (Tr. 54:14-16; Ex. D at pp. 1-2.);
- 23 • He told Mrs. Johnson that he wanted to be sure that she was taken care of and wanted her  
24 to have his CalPERS medical, dental and option 2 benefits (Tr. 21:1-3; 81:1-3; Ex. O pp.  
25 1-3.)
- 26 • He sent a letter to CalPERS on June 23, 2014 expressly requesting that Mrs. Johnson be  
27 added as the beneficiary for “all of [his] retirement benefit[s] and all death benefit[s]” that  
28 were previously named for his former spouse and daughter, which would include his  
CalPERS medical, dental and lifetime benefits under option 2, and instructed that  
CalPERS make the change immediately upon receiving a final marital property settlement  
agreement with his former wife (Ex. F.);
- He said that he wanted to fill out the forms for designating Mrs. Johnson as his new  
beneficiary and instructed his long-time friend, Herb Anderson, to retrieve the forms from  
his home (Tr. 35:6; 38:9-11; );
- He called CalPERS from the ICU with Mrs. Johnson in early-August for guidance on how  
to correctly fill out the Option Beneficiary Modification Form (cite);
- As part of that telephone call he re-iterated that he was selecting “option 2” benefits and  
CalPERS was again informed that he wanted to designate Mrs. Johnson as his new  
beneficiary for option 2 benefits (Tr. 35:19-22; 37:9-12; 58:24-59:2; 84:2-3);

- 1           • He signed the Option Beneficiary Modification Form and Lump Sum Form after Mrs.  
2           Johnson “told him what the [CalPERS representative] said regarding honoring his  
3           wishes.” (Tr. 39:15-16.); and  
4           • Upon signing the forms, he urged that they be mailed that day and they were sent by  
5           certified mail (Tr. 36:5-6; 39:19).

6           Furthermore, Mrs. Johnson submitted a certified copy of the final judgment and marital  
7           property settlement agreement as soon as it was available. Grantland Johnson’s only incomplete step  
8           was to submit the Election Form before he died.

9           For these reasons, Grantland Johnson’s intent is clear and should be effectuated. Indeed, it  
10          would be patently unfair and unjust to reject his substantial efforts and unmistakable objective of  
11          designating Mrs. Johnson as his beneficiary for medical, dental and option 2 benefits.

12           **B. CalPERS Has The Authority To Correct The Omitted Election Form Under**  
13           **Government Code section 20160, subdivision (a)**

14          Under Government Code section 20160, subdivision (a),<sup>2</sup> the CalPERS board may, “in its  
15          discretion and upon any terms it deems to be just,” correct the errors or omissions of retired members  
16          or their beneficiaries. (*Ibid.*) They can correct such errors or omissions if:

17           (a)(1) The request, claim, or demand to correct the error or omission is  
18           made by the party seeking correction within a reasonable time after  
19           discovery of the right to make the correction, which in no case shall  
20           exceed six months after discovery of this right.

21           (a)(2) The error or omission was the result of mistake, inadvertence,  
22           surprise, or excusable neglect, as each of those terms is used in Section  
23           473 of the Code of Civil Procedure.

24           (a)(3) The correction will not provide the party seeking correction with  
25           a status, right, or obligation not otherwise available under this part.

26          (*Id.*, § 20160, subds. (a)(1)-(a)(3).) Furthermore, an “error or omission” is correctable where the  
27          member or beneficiary undertook an inquiry “that would be made by a reasonable person in like or  
28          similar circumstances . . . .” (*Id.*, § 20160, subd. (a).)

29           **1. The Error or Omission Was the Result of Mistake,**  
30           **Inadvertence, Surprise or Excusable Neglect**

31          Code of Civil Procedure section 473, subdivision (b) “is to be liberally construed.” (*Arnaiz,*  
32          *Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1368 [118 Cal.Rptr.2d 71].) “A ‘mistake’  
33          justifying relief may be either a mistake of fact or a mistake of law.” (*Ibid.*) Mistake may be found

34          <sup>2</sup> All statutory references herein relate to the California Government Code unless otherwise indicated.

1 where a party's conduct is based on "an erroneous conviction" and would not occur "but for the  
2 erroneous conviction." (*Id.* at p. 1369.) "Surprise" refers to "some condition or situation in which a  
3 party . . . is unexpectedly placed to his injury, without any default or negligence of his own, which  
4 ordinary prudence could not have guarded against." (*Credit Managers Assn. of So. Calif. v. Nat.*  
5 *Independent Business Alliance* (1984) 162 Cal.App.3d 1166, 1173; *Hearn v. Howard* (2009) 177  
6 Cal.App.4th 1193, 1206.) In addition, "excusable neglect" is determined by whether the party  
7 seeking correction has shown a reasonable excuse for the default. (*Shapiro v. Clark* (2008) 164  
8 Cal.App.4th 1128, 1141-42.) "'To warrant relief under section 473 a litigant's neglect must have  
9 been such as might have been the act of a reasonably prudent person under the same circumstances.  
10 The inadvertence contemplated by the statute does not mean mere inadvertence in the abstract. If it  
11 is wholly inexcusable it does not justify relief.'" (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193,  
12 1206.)

13 Here, Grantland Johnson's Election Form was not submitted because of his untimely death.  
14 Furthermore, his ability to attend to marital matters and CalPERS benefits in the years leading up to  
15 his death—the time period during which he sought to designate Mrs. Johnson as his new  
16 beneficiary—was significantly hindered by serious debilitating health problems. Over the last five  
17 years of his life, he underwent surgeries "every single year," was "in and out of [the] hospital, and  
18 [had] dialysis three times a week." (Tr. 21:18-20.) He was seeing "doctors all the time." (Tr. 21:20-  
19 21.) In 2010, Grantland Johnson had kidney failure and had a serious and life-threatening operation  
20 to rebuild his foot due to Charcot disease. (Tr. 21:25-22:4.) Over the next few years "[h]e was often  
21 bedridden and immobile . . . And the operations go on and get more involved as time goes by,  
22 including extra dialysis treatments, . . ." (Tr. 22:10-13.) Grantland Johnson and Lee Turner Johnson  
23 were engaged as of 2012 (Ex. B at 0000), but their marriage plans "ended up getting extended" due  
24 to Grantland Johnson's health issues. (Tr. 21:18-22.)

25 This was also the context in which Grantland Johnson was navigating CalPERS' systems and  
26 procedures for designating Mrs. Johnson as his new beneficiary. While he expressly informed  
27 CalPERS on June 23, 2014 that he wanted Mrs. Johnson to be named as his beneficiary for all  
28 CalPERS benefits previously designated for his former wife and daughter, and directed CalPERS to

1 immediately transfer all such benefits to Mrs. Johnson upon its receipt of the final marital property  
2 settlement agreement, Grantland Johnson was in the ICU by the time CalPERS responded to his  
3 request. (Ex. G at 0000; Ex. H at 0000; Tr. 31:5-6.) Mrs. Johnson testified that while it was “not yet  
4 clear that [Grantland Johnson] was dying,” it was an “extremely intense time.” (Tr. 28:20-21.)

5 His poor health and ongoing treatment prevented him from being able to use a computer to  
6 access CalPERS forms and perform CalPERS-related research. (Tr. 72:4-18.) Grantland Johnson’s  
7 eyesight was also poor at around this time. (Tr. 92:10-13.) As a result, his access to immediate  
8 information was delayed and depended upon help from CalPERS’ representatives, Mrs. Johnson and  
9 close friends. Furthermore, his ability to acquire the entire interest of his CalPERS benefits was held  
10 up in a marital community property dispute. Although Grantland Johnson initiated divorce  
11 proceedings on *April 8, 2013*, his former spouse did not sign the marital settlement agreement relating  
12 to property rights until September 4, 2014, a little over two weeks after Grantland Johnson died. (Ex.  
13 B at 0044.)

14 CalPERS also did not provide Grantland Johnson with clear direction on how to designate a  
15 new beneficiary. As an initial matter, after Grantland Johnson expressly requested, on June 23, 2014,  
16 that CalPERS designate Mrs. Johnson as his new beneficiary for all of his CalPERS benefits,  
17 CalPERS responded over a month later, on July 25, 2014, by sending only one of the three forms  
18 required for changing his beneficiary. It sent the Lump Sum Form, but failed to include, and made  
19 no reference to, the Option Beneficiary Modification Form and Election Form. (Ex. G; Ex. H at pp.  
20 1-4; Tr. 29:8-16; 31:5-8.) Furthermore, the certification provision at the bottom of the Option  
21 Beneficiary Modification Form includes an ambiguous statement that reads: “I understand this form  
22 is a request for an election form to modify my option and name a new beneficiary(ies).” (Ex. I at 1-  
23 3.) However, that statement can reasonably be, and was, interpreted to mean that the Option  
24 Beneficiary Modification Form *is* the request for an election form, and not a separate request for yet  
25 an additional form to complete the desired modification. (Tr. 38:22-39:11.)

26 In addition, CalPERS made no reference to an Election Form when Grantland Johnson and  
27 Mrs. Johnson spoke with it by telephone in early-August 2014. As part of that telephone call, they  
28 had requested guidance for properly completing the Option Beneficiary Modification Form and

1 designating Mrs. Johnson as Grantland Johnson's new beneficiary for medical, dental and option 2  
2 benefits. (Tr. 35:19-21; 37:9-12; 84:15-20.) Indeed, CalPERS told Mrs. Johnson that her "husband's  
3 wishes will be honored no matter what" (Tr. 36:10-11; 86:23-87:1) and sent a letter, on August 14,  
4 2014, confirming that his "Beneficiary Designation form" had been accepted. The letter referred to  
5 Mrs. Johnson as the primary "100.00%" beneficiary. (Ex. J.)

6 Based on the above interactions with CalPERS, it is unsurprising that Mrs. Johnson believed  
7 that there were no other forms that Grantland Johnson had to complete in order to designate her as a  
8 new beneficiary. (Tr. 41:19-22.) Grantland Johnson and Mrs. Johnson acted diligently and  
9 reasonably in navigating a complex process under extremely difficult circumstances. His inability to  
10 submit the Election Form and any delays in the beneficiary designation process on his part are  
11 excusable and should be corrected.

12 **2. Mrs. Johnson Immediately Sought to Address the Error or Omission**  
13 **and Any Correction Will Not Provide Her with a Status or Right that is**  
14 **Otherwise Unavailable**

15 Mrs. Johnson first discovered that CalPERS had not and would not designate her as Grantland  
16 Johnson's beneficiary for medical, dental and option 2 benefits during a telephone call with CalPERS  
17 in mid-February 2015. In response, she immediately sent a letter to CalPERS on February 14, 2015,  
18 requesting that CalPERS address the error. (Tr. 48:19-49:6; 74:2-7, Ex. M at 1-2.) Mrs. Johnson's  
19 request was transmitted well within the six month statutory period under section 20160, subdivision  
20 (a)(1). Mrs. Johnson wrote:

21 I know Grantland signed Option 2 for monthly benefits to [his] surviving spouse.  
22 As such, I would be eligible for his Medical/Dental plan for life. I intently await  
23 word from you on this matter, as it has been very very stressful to me. Somehow  
24 those I have spoken with do not seem to notice that his beneficiary changes were  
25 made and signed before his death so I am therefore eligible for monthly benefits and  
26 medical/dental benefits.

27 (Ex. M at 0049.)

28 Furthermore, pursuant to section 20160, subdivision (a)(3), the requested correction will not  
provide Mrs. Johnson with any more than she would otherwise be afforded had the Election Form  
been submitted by Grantland Johnson. She is requesting to be designated as Grantland Johnson's  
beneficiary for his CalPERS medical, dental and option 2 benefits, consistent with what he manifestly  
intended, expressed and set out to achieve.



1 Accordingly, CalPERS should exercise its discretion to correct the omitted Election Form.

2 **C. Grantland Johnson Substantially Complied With section 21462**

3 California courts have long held that a governmental requirement may be satisfied if the party  
4 seeking relief has substantially complied with the purpose or objective of the requirement.

5 ““Substantial compliance . . . means actual compliance in respect to  
6 the substance essential to every reasonable objective of the statute.’  
7 Where there is compliance as to all matters of substance *technical*  
8 *deviations are not to be given the stature of noncompliance.*  
9 *Substance prevails over form.* When the plaintiff embarks [on a  
10 course of substantial compliance], every reasonable objective of [the  
11 statute at issue] has been satisfied.”

12 (*Cal-Air Conditioning, Inc. v. Auburn Union Sch. Dist.* (1993) 21 Cal.App.4th 655, 668 [26  
13 Cal.Rptr.2d 703], citations omitted, first emphasis omitted and second emphasis added.); *Costa v.*  
14 *Superior Court* (2006) 37 Cal.4th 986, 1017 n.24 (“each *objective or purpose* of a statute must be  
15 achieved in order to satisfy the substantial compliance standard,” but not “‘actual compliance’ with  
16 every specific statutory requirement”) (emphasis added).)

17 Under section 21462, subdivision (a)(1), if a member who elected to receive an option 2  
18 settlement receives a judgment awarding the total interest in the retirement system following  
19 dissolution of marriage, the member may

20 elect to have the actuarial equivalent reflecting any selection against  
21 the fund resulting from the election as of the date of election of the  
22 allowance payable for the remainder of the member’s lifetime under  
23 the optional settlement previously chosen applied to a lesser  
24 allowance during the member’s remaining lifetime under one of the  
25 optional settlements specified in this article and name a different  
26 beneficiary.

27 (*Ibid.*) In addition, under section 21462, subdivision (b), the election must be made “within 12  
28 months of the date of entry of the judgment . . . or within 12 months following marriage if the spouse  
is named as beneficiary . . .” (*Ibid.*)

Section 21462, subdivision (c) states in relevant part:

[A] member who has a qualifying event on or after January 1, 1988,  
and who fails to elect within 12 months, shall retain the right to make  
an election under this section. However, this election shall become  
effective no earlier than 12 months after the date it is filed with the  
board, provided that neither the member nor the designated  
beneficiary die prior to the effective date of the election.

(*Ibid.*)

1           CalPERS argues that Grantland Johnson failed to comply with section 21462, and that Mrs.  
2 Johnson should be denied his option 2 benefits, because “[b]oth the member and the new beneficiary  
3 must be alive on the effective date. Unfortunately, Mr. Johnson passed away before he was awarded  
4 full interest in his retirement benefits and before a recalculation election document could be provided  
5 to him.” (Ex. N at p. 3.) However, Grantland Johnson substantially complied with section 21462  
6 and CalPERS’ related procedures.

7           He satisfied the requirements for electing to have re-calculated benefits under option 2 and  
8 naming a different beneficiary under section 21462, subdivision (a) (“section 21462(a)”). He  
9 petitioned for divorce from his former spouse and a judgment was ultimately entered pursuant to a  
10 settlement agreement that “award[ed] the total interest in the retirement system to the retired  
11 member.” (*Ibid.*) Indeed, there is nothing in section 21462(a) requiring that the award of the  
12 retirement benefit interest occur prior to submitting an Option Beneficiary Modification Form,  
13 Election Form or prior to the death of the CalPERS member. Here, because the community property-  
14 related judgment was filed and endorsed by the court on December 31, 2014, nearly four and a half  
15 months after Grantland Johnson’s death, it fell to Mrs. Johnson to submit the judgment to CalPERS.  
16 She did so on January 12, 2015 and again on February 11, 2015. (Tr. 43:8-10; Ex. M at pp. 1-2.)

17           Furthermore, Grantland Johnson “elected” a new beneficiary for his option 2 benefits on  
18 several occasions, consistent with section 21462(a). To be sure, he clearly “elected” to designate  
19 Mrs. Johnson as his new beneficiary for option 2 benefits in his June 23, 2014 letter to CalPERS,  
20 where he stated that he wanted Mrs. Johnson: “to be named as the beneficiary [of] [his] CalPERS  
21 retirement [for which he previously elected an option 2 allowance] and all death benefits [previously  
22 named for his former spouse and daughter]” and instructed that “[u]pon receipt of th[e] final  
23 settlement agreement, please immediately change *all* of my retirement benefit[s] and all death  
24 benefit[s] to my wife, Dr. Lee Turner Johnson.” (Ex. F, emphasis added.) He also later re-elected  
25 option 2 benefits during his telephone call with CalPERS in early-August 2014 and on the Option  
26 Beneficiary Modification Form, pursuant to CalPERS’ instructions. (Tr. 35:19-21; 37:9-12; 84:15-  
27 20.)

28           In addition, he submitted these elections within the 12-month statutory period required under

1 section 21462, subdivision (b). A judgment of dissolution—status only was entered by the court on  
2 November 9, 2013. (Ex. D at p. 1.) In addition, the judgment awarding Grantland Johnson an entire  
3 interest in his CalPERS benefits pursuant to a marital settlement agreement was filed on December  
4 31, 2014. (Ex. C at p. 1.) All of Grantland Johnson’s requests and confirmations designating Mrs.  
5 Johnson as his beneficiary for option 2 benefits occurred between June 2014 and August 2014, well  
6 within 12-months of dissolution and resolution of his related community property matter.

7 While Grantland Johnson did not formally submit an Election Form with recalculated  
8 allowances, and was not alive to do so, he satisfied the objective and purpose of submitting an  
9 Election Form and surviving for a period of time thereafter under section 21462, subdivision (c).  
10 According to CalPERS, the Election Form provides an estimate of the member’s allowance and what  
11 the beneficiary would receive based on the selected option. (Tr. 119:1-7.) CalPERS states that the  
12 Election Form helps it determine “what the new option is and who the new beneficiary is . . .” (Tr.  
13 203:14-16.) Furthermore, CalPERS suggested that the Election Form is important because members  
14 could change their mind about modifying their benefits. (Tr. 150:4-8.)

15 However, in this case, Grantland Johnson affirmed and re-affirmed on several occasions who  
16 he wanted to designate as his new beneficiary and what option he intended to select, option 2. There  
17 is no question based on his unequivocal written and oral statements to CalPERS what he intended to  
18 accomplish, and no indication that he ever sought to designate anyone else as his new beneficiary or  
19 select a different option. He had unequivocally expressed his election to change his beneficiary for  
20 option 2 benefits by the time he died. It is obvious that he would have turned in the final form had  
21 he survived longer. Moreover, given the circumstances under which Grantland Johnson made these  
22 requests, including from the ICU, and his serious health condition, there is also nothing to suggest  
23 that he would have changed his mind based on potentially receiving any reduced monthly benefit.

24 As a result, Grantland Johnson substantially complied with the requirements and procedures  
25 for designating Mrs. Johnson as his new beneficiary for option 2 benefits.

26 **D. Statutory Compliance Was Impossible Based on Grantland Johnson’s Death**

27 Grantland Johnson’s request to designate Mrs. Johnson as his new beneficiary for option 2  
28

1 benefits should also not be denied where specific statutory compliance was impossible. Courts have  
2 held that where it is impossible for a party to comply with a contract, he should not be held responsible  
3 for full compliance. These principles apply equally to this case. (Civ. Code § 3531 (“The law never  
4 requires impossibilities”); *see also In re Daniel S.* (2004) 115 Cal.App.4th 903, 910 [9 Cal.Rptr.3d  
5 646] (“compliance with procedural statute may be excused when it is ‘impracticable, impossible[,]  
6 or futile’ to comply”), quoting *McKenzie v. City of Thousand Oaks* (1973) 36 Cal.App.3d 426, 430  
7 [111 Cal.Rptr.584].)

8 Performance is excused when,

9 ‘a party’s performance is made impracticable without his fault by the  
10 occurrence of an event the nonoccurrence of which was a basic  
11 assumption on which the contract was made, his duty to render that  
12 performance is discharged, unless the language or the circumstances  
13 indicate the contrary.’

14 (*In re Marriage of Benjamins* (1994) 26 Cal.App.4th 423, 432, fn.3 [31 Cal.Rptr.2d 313], citation  
15 omitted); *see also Cazares v. Saenz* (1989) 208 Cal.App.3d 279, 285 [256 Cal.Rptr. 209]  
16 (“[P]erformance is excused when [a] party dies or becomes otherwise incapable of performing”).)  
17 Under Restatement (Second) of Contracts section 262, if “the existence of a particular person is  
18 necessary for the performance of a duty, it is a ‘basic assumption on which the contract was made’  
19 that he will neither die nor be deprived of the necessary capacity before the time for performance.”  
20 (*Ibid.*)

21 Here, Grantland Johnson could not physically comply with the section 21462, subdivision (c)  
22 requirement, that the member submit an Election Form and be alive on the effective date of the  
23 election. Indeed, Grantland Johnson was not alive to submit the Election Form in the first place.  
24 While it is true that, if a retired member is alive and able, he or she must complete the entire process  
25 outlined in Government Code section 21462, the statute is silent as to what happens under the  
26 circumstances in this case. Grantland Johnson’s death made it impossible for him to comply with the  
27 basic statutory presumption in section 21462, subdivision (c), that the retired member is alive to  
28 submit an Election Form.

Because Grantland Johnson being alive is a “basic assumption” upon which the statutory  
requirements are based, his non-compliance is excusable under the doctrine of impossibility.

1           **E.     CalPERS Breached Its Fiduciary Duty By Failing To Provide Timely,  
2           Complete And Accurate Material Information**

3           CalPERS breached its duty to Grantland Johnson, as a CalPERS member, by failing to  
4           provide him with “timely and accurate information” regarding the procedures and documents  
5           required for designating Mrs. Johnson as his new beneficiary for option 2 benefits. (*City of Oakland*  
6           *v. Public Employees Retirement System* (2002) 95 Cal.App.4th 29, 41 [115 Cal.Rptr.2d 151], citing  
7           in part *In re Application of Smith* (Mar. 31, 1999) PERS Prec. Dec. No. 99-01 (“The duty to inform  
8           and deal fairly with members also requires that the information conveyed be complete and  
9           unambiguous”).)

10           There are multiple instances in this case where CalPERS failed to provide Grantland Johnson  
11           and Mrs. Johnson with the information and documents required for designating a new beneficiary for  
12           Grantland Johnson’s medical, dental and option 2 benefits. For example, CalPERS sent a letter to  
13           Grantland Johnson on December 4, 2003 to confirm his option 2 election and stated that his election  
14           may be modified by divorce if a court order awards the member entire interest in CalPERS benefits.  
15           (Ex. K.) But the letter makes no reference to any of the required forms or timelines for carrying out  
16           the modification, nor describe what happens in the event a member is not alive to submit an Election  
17           Form. (*Ibid.*)

18           In addition, Grantland Johnson sent a letter to CalPERS on June 23, 2014 clearly requesting  
19           that it designate Mrs. Johnson as his new beneficiary for all benefits previously designated for his  
20           former spouse and daughter, which includes medical, dental and option 2 benefits. (Ex. F.) In  
21           response, CalPERS sent a letter over a month later, ambiguously stating that he had submitted an  
22           “incorrect or invalid form” and then only provided a Lump Sum Form to “re-submit,” without  
23           enclosing or referencing the Option Beneficiary Modification Form or Election Form. It also made  
24           no reference to any timelines or requirements that he be alive to submit any Election Form. (Ex. G.)

25           In addition, CalPERS failed to reference any Election Form or inform Grantland Johnson or  
26           Mrs. Johnson of any requirements that both of them remain “alive” for a particular duration of time  
27           when they spoke with CalPERS by telephone in early-August. CalPERS neglected to provide this  
28           information despite being aware that Grantland Johnson was attempting to complete the Option

1 Beneficiary Modification Form for making elections under section 21462, calling from the ICU and  
2 in poor health. (Tr. 33:19-34:3; 34:15-16; 37:9-12; 84:15-20.) CalPERS testified that it had a process  
3 available for expediting requests under “extenuating circumstances,” but it made no such offer to  
4 Grantland Johnson during this telephone call or at any other point. (Tr. 152:24-153:4, 165:7-166:11.)  
5 CalPERS also never informed Grantland Johnson or Mrs. Johnson that Grantland Johnson’s efforts  
6 to modify his option 2 beneficiary were in any way incomplete. Mrs. Johnson had to contact  
7 CalPERS in February 2015 to find that out. CalPERS admitted that when a member fails to submit  
8 an Election Form it does nothing to inform the member that it has not been received or that the  
9 requested modification will be incomplete if CalPERS does not receive it. (Tr. 166:22-168:8-15.)

10 Under section 20160, subdivision (b), “[CalPERS] *shall* correct all actions taken as a result  
11 of errors or omissions of . . . this system.” (*Ibid.*, emphasis added.) Furthermore, the “obligations of  
12 th[e] system to and in respect to retired members continue throughout the lives of the respective  
13 retired members, *and thereafter* until all obligations *to their respective beneficiaries* under optional  
14 settlements have been discharged.” (Gov. Code § 20164, subd. (a), emphasis added.) As a result,  
15 CalPERS’ responsibility and fiduciary duty to Grantland Johnson persist even after his death and  
16 until CalPERS has carried out his request designating Mrs. Johnson as his beneficiary for option 2  
17 benefits.

18 As a result, CalPERS has breached its fiduciary duty to Grantland Johnson and must correct  
19 its errors and omissions.

20 V. **CONCLUSION**

21 For the reasons described above, Respondent Lee Turner Johnson is eligible for and should  
22 receive medical, dental and option 2 lifetime monthly benefits.

23 Dated: December 18, 2015

Respectfully submitted,

**KERSHAW, COOK & TALLEY, PC**

25  
26 By: 

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Counsel for Respondent

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11  
12 **BOARD OF ADMINISTRATION**  
13  
14 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

15 In the Matter of the Appeal Regarding Death  
16 Benefits Payable Upon the Death of  
17 GRANTLAND LEE JOHNSON by

18 LEE TURNER JOHNSON,

19 Respondent.

CASE NO. 2015-0373  
OAH NO. 2015081045

**DECLARATION OF IAN J. BARLOW  
IN SUPPORT OF RESPONDENT LEE  
TURNER JOHNSON'S CLOSING  
BRIEF**

20 I, Ian J. Barlow, declare:

21 1. I am an attorney at Kershaw, Cook & Talley PC and counsel for Respondent in  
22 this matter. I submit this declaration in support of Respondent Lee Turner Johnson's Closing  
23 Brief.

24 2. Attached hereto as Exhibit A are true and correct copies of excerpts from the  
25 transcript of the October 6, 2015 Administrative Hearing.

26 3. Attached hereto as Exhibit B is a true and correct copy of the Last Will and  
27 Testament of Grantland Johnson and Notary Acknowledgement (referred to as Respondent's  
28 Exhibit C in the October 6, 2015 hearing transcript).

///

///

1           4. Attached hereto as Exhibit C is a true and correct copy of the Judgment of  
2 Dissolution – Property and accompanying Marital Settlement Agreement (referred to as  
3 Respondent's Exhibit J in the October 6, 2015 hearing transcript).

4           5. Attached hereto as Exhibit D is a true and correct copy of the November 13, 2013  
5 letter from Grantland Johnson to CalPERS (referred to as CalPERS's Exhibit 9o in the October  
6 6, 2015 hearing transcript).

7           6. Attached hereto as Exhibit E is a true and correct copy of the December 12, 2013  
8 letter from Grantland Johnson to CalPERS (referred to as Respondent's Exhibit D in the October  
9 6, 2015 hearing transcript).

10          7. Attached hereto as Exhibit F is a true and correct copy of the June 23, 2014 letter  
11 from Grantland Johnson to CalPERS (referred to as Respondent's Exhibit E in the October 6,  
12 2015 hearing transcript).

13          8. Attached hereto as Exhibit G is a true and correct copy of the July 25, 2014 letter  
14 from CalPERS to Grantland Johnson (referred to as Respondent's Exhibit F in the October 6,  
15 2015 hearing transcript).

16          9. Attached hereto as Exhibit H is a true and correct copy of the Post Retirement  
17 Lump Sum Beneficiary Designation form (referred to as Respondent's Exhibit G in the October  
18 6, 2015 hearing transcript).

19          10. Attached hereto as Exhibit I is a true and correct copy of the Application to  
20 Modify Option And/Or Life Option Beneficiary form (referred to as Respondent's Exhibit H in  
21 the October 6, 2015 hearing transcript).

22          11. Attached hereto as Exhibit J is a true and correct copy of the August 14, 2014  
23 letter from CalPERS to Grantland Johnson (referred to as Respondent's Exhibit I in the October  
24 6, 2015 hearing transcript).

25          12. Attached hereto as Exhibit K is a true and correct copy of the December 4, 2003  
26 letter from CalPERS to Grantland Johnson (referred to as CalPERS's Exhibit 7 in the October 6,  
27 2015 hearing transcript).

28



1           13. Attached hereto as Exhibit L is a true and correct copy of the February 11, 2015  
2 letter from Lee Turner Johnson to CalPERS (referred to as Respondent's Exhibit K in the  
3 October 6, 2015 hearing transcript).

4           14. Attached hereto as Exhibit M is a true and correct copy of the February 14, 2015  
5 letter from Lee Turner Johnson to CalPERS (referred to as Respondent's Exhibit L in the  
6 October 6, 2015 hearing transcript).

7           15. Attached hereto as Exhibit N is a true and correct copy of the March 4, 2015 letter  
8 from CalPERS to Lee Turner Johnson (referred to as CalPERS's Exhibit 4 in the October 6,  
9 2015 hearing transcript).

10           16. Attached hereto as Exhibit O is a true and correct copy of Declaration of Herb  
11 Anderson (referred to as Respondent's Exhibit P in the October 6, 2015 hearing transcript).

12           I declare under penalty of perjury that the foregoing is true and correct. Executed this 18<sup>th</sup>  
13 day of December 2015 in Sacramento, California.

14 

15 \_\_\_\_\_  
16 Ian J. Barlow  
17 *Counsel for Respondent*  
18  
19  
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# **EXHIBIT A**



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A P P E A R A N C E S:

Administrative Law Judge: COREN D. WONG  
2349 Gateway Oaks Drive, Suite 200  
Sacramento, California 95833

For Respondent: KNOX, LEMMON ANAPOLSKY LLP  
BY: IAN J. BARLOW, ESQ.  
300 Capitol Mall, Suite 1125  
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For CalPERS: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT  
SYSTEM  
BY: PREET KAUR  
Staff Attorney  
1300 I Street  
PO Box 944255  
Sacramento, California 94244-2550

Also present: Respondent Lee Turner Johnson  
Nicole Silverman

---o0o---

1 ADMINISTRATIVE LAW JUDGE WONG: Very good. Mr. Barlow.

2 DIRECT EXAMINATION

3 BY MR. BARLOW:

4 Q Ms. Johnson, how long had you known Grantland Johnson  
5 personally before you were married?

6 A I first met Grantland in 1996 when -- in the Bay Area  
7 when he was the Regional Director of Health and Human Services  
8 for Region 9 under President Clinton. And I was a Head Start  
9 Director in Oakland at the Spanish Speaking Unity Council.

10 ADMINISTRATIVE LAW JUDGE WONG: You were Head Start  
11 what?

12 THE WITNESS: Director in Oakland at the Spanish  
13 Speaking Unity Council.

14 ADMINISTRATIVE LAW JUDGE WONG: Thank you.

15 Q BY MR. BARLOW: And did your relationship develop or  
16 grow closer over the years?

17 A He was helping our company, both with Head Start  
18 programs that I was taking on, and also with the -- he was -- he  
19 was helping the company I worked for, both programmatically  
20 regarding us taking on more Head Start programs, and also we  
21 were involved in building the Fruitvale BART, B-A-R-T, capitals,  
22 Transit Village.

23 So in his role as Region 9 -- Region 9 director --  
24 Regional Director for Health and Human Services under President  
25 Clinton, he was helping the company in these ways, along with

1 the City of Oakland.

2           So our relationship was a collegial and business  
3 relationship starting in 1996, and I attended events that he  
4 gave at the region with my boss, et cetera. And it did not  
5 become a personal relationship until 2004.

6 Q           And when did you and Grantland Johnson marry?

7 A           We married in 2013 towards the end of the year, which  
8 is why he didn't file that application until after the marriage,  
9 of course. He could not.

10           ADMINISTRATIVE LAW JUDGE WONG: What was the specific  
11 date?

12           THE WITNESS: We were married on October -- excuse  
13 me -- November the 15th, 2013.

14           ADMINISTRATIVE LAW JUDGE WONG: Thank you.

15 Q           BY MR. BARLOW: And before or around the time that you  
16 decided to marry, did he ever discuss with you how he wanted his  
17 affairs to be arranged upon his death?

18 A           Yes. First of all, in 2012, he was having severe  
19 health problems by then. And he wrote a will naming me as power  
20 of attorney and as executor at that time regarding a number of  
21 items of his business, including his grandmother's, and so on.

22           Also, for some years before we actually married, he  
23 talked to me about wanting to be certain that I became his  
24 beneficiary and to have his medical/dental benefits through his  
25 CalPERS membership. And we talked about that for quite a few

1 years prior, at least three or four years prior to actually  
2 marrying. He told me he wanted to be certain that I was taken  
3 care of.

4 MR. BARLOW: Your Honor, at this time I would like to  
5 introduce Exhibit C.

6 ADMINISTRATIVE LAW JUDGE WONG: Thank you. All right.  
7 The final will and testament of Grantland Lee Johnson dated  
8 March 2nd, 2012, and the notary acknowledgment will be marked  
9 collectively as Exhibit C for identification.

10 (Whereupon, Respondent's Exhibit C  
11 was marked for identification.)

12 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow.

13 Q BY MR. BARLOW: Do you recognize this document?

14 A I do.

15 Q And can you tell me what it is?

16 A It's Grantland's final will and testament, which he  
17 wrote and was signed in March of 2012.

18 Q And --

19 A And he named me as power of attorney and executor in  
20 it.

21 Q Okay. And this is the will that you were referring to  
22 when you spoke a few moments ago?

23 A Yes, exactly.

24 Q Okay. And when did he first talk to you about  
25 designating you as beneficiary for his CalPERS benefits?

1 A Well, he talked to me about it in that -- as I  
2 mentioned, in that he wanted me to have that, and he wanted me  
3 taken care of for some years before we were actually married.  
4 And then when we were married, in 2013, we immediately sent --  
5 he sent in and I was actually put on Delta Dental, I think it  
6 was December of 2013.

7 And it took a couple more months, I think two or  
8 three months, before I was put on medical, simply because  
9 CalPERS, because of my age, wanted me to have Kaiser Senior  
10 Health Advantage. So we effected that. And then I was added to  
11 the medical plan -- I believe it was March, two thousand -- it  
12 took a few months to get that settled -- 2014. I believe it was  
13 March. I had been on the medical plan from then on and dental.

14 Q And around this time, did he also discuss with you his  
15 wishes or intent to designate you as his beneficiary for his  
16 Option 2 benefits?

17 A Absolutely, he did. We talked about it several times  
18 in the years prior that he wanted to do that. For the last  
19 five years, he had operations every single year, and so we were  
20 in and out of hospital, and dialysis three times a week and  
21 doctors all the time. And so it ended up getting extended, the  
22 time before we actually were married.

23 Q And when you say the previous five years, what years  
24 are you talking about?

25 A Well, he died in 2014. And certainly by -- the first



1 serious operation was at 2010 when they rebuilt his foot.  
2 Because of diabetes, he had Charcot disease, and his foot came  
3 apart. And so the first of five -- I'm so sorry --  
4 life-threatening operations was then. But he survived.

5           And it was -- it's all right. I brought one with me.  
6 I am so sorry. I am getting much better than I was.

7           The first was in 2010, November, on the item I  
8 mentioned, and his kidneys failed at that time. The next few  
9 years -- I don't know if you want the kind of information. If  
10 you do, I can cite the operations. He was often bedridden and  
11 immobile and a cast on his legs for 18 months. And the  
12 operations go on and get more involved as time goes by,  
13 including extra dialysis treatments, which I personally took him  
14 to, no matter what my job entailed, every time, so that he would  
15 not be alone, so he would not have to ride Paratransit because  
16 he had congestive heart failure since when he was 40 -- about  
17 44. I wasn't there then, but it was around 42, 44, he had, the  
18 records say quintuple -- I always understood it to be  
19 quadruple -- bypass at -- it wasn't Kaiser. It was, I think,  
20 Sutter, the heart hospital here. Sutter or Mercy. He had that  
21 done in his 40s. He was a congestive heart patient when I met  
22 him. And he had diabetes.

23           So this -- part of the delay was that, every year, we  
24 were in the hospital for operations. And also adjusting to  
25 dialysis with all that entails, fistula cleaning. All of which

1 was hard on the heart. That's the reason.

2 We talked about it throughout that entire four years.  
3 And he was very clear what he wanted. And he was very clear  
4 that we were going to get to that as soon as he was -- we could,  
5 as soon as -- and we did, you know.

6 Q Who was the designated beneficiary at the time?

7 A His wife Charlotte was the benefitted -- who he had  
8 been separated from about -- by the time of the bifurcation, he  
9 had been separated 11 years with no further cohabitation or  
10 communal property. He had given her everything actually.

11 Q But he told you that he wanted to change the  
12 beneficiary?

13 A Yes.

14 Q And were you with him when he started that process?

15 A Which process?

16 Q The process for attempting to change the beneficiaries  
17 for Option 2 benefits?

18 A Absolutely. As I mentioned and you mentioned, he wrote  
19 a letter in June, June 23rd. And then we did get the letter  
20 back from CalPERS, I am sure somebody is going to show me that  
21 stating it was inappropriate form because it was a letter.

22 And then he went -- we were married in November, as I  
23 said. And then we had a big celebration in December,  
24 December 8th.

25 And in that next two weeks, he was told -- this was the

1 fifth of the operations he was told that he was going to lose  
2 his legs -- one leg if they did not operate immediately and do  
3 an entire bypass down his leg. So within a week and a half of  
4 our marriage, we were back in hospital again for -- and that two  
5 surgeons came to us and said the risk of death is extremely  
6 high.

7 Q Okay.

8 A So -- so he -- at that time, all I am trying to explain  
9 is the next step of that was the form that they sent us back  
10 that he would then sign.

11 Q We will get there.

12 A Okay. And it got delayed because we were in hospital  
13 again until Christmas morning, when I brought him home. And  
14 then he was immobile and bedridden for some months as a result  
15 of that.

16 Q Okay.

17 A I'm sorry if I diverted there.

18 MR. BARLOW: I would like to introduce this letter as  
19 Exhibit D.

20 THE WITNESS: Right.

21 ADMINISTRATIVE LAW JUDGE WONG: The December 12th, 2013  
22 letter from Grantland Johnson will be marked as Exhibit D for  
23 identification.

24 (Whereupon, Respondent's Exhibit D@ was  
25 marked for identification.)

1 name me as his beneficiary with CalPERS retirement and all death  
2 benefits, which he says here were previously named for Charlotte  
3 and Patrice. That was the death benefit part.

4 And he states again, after we had already sent in a  
5 marriage certificate, that we had been legally married on the  
6 date November 15th and so on, that a court judgment on the final  
7 property settlement would be following as soon as we received  
8 it.

9 Q You were there when Grantland Johnson signed this will?

10 A I was.

11 Q You were there when the letter was composed?

12 A I was.

13 Q Did you discuss the letter with him at all as it was  
14 being drafted or around the time that it was being drafted?

15 A Yes.

16 Q What did he say about it?

17 MS. KAUR: Objection. Hearsay.

18 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow.

19 MR. BARLOW: This is being admitted for purposes of  
20 intent, his intent. I am not admitting it for the specific  
21 truth of the matter that is being asserted, specific statements  
22 that were actually uttered.

23 ADMINISTRATIVE LAW JUDGE WONG: If you are trying to  
24 show his intent, don't you necessarily need to rely on the truth  
25 of the matter of his statements? Because that would be what

1 July 25th letter as Exhibit F.

2 ADMINISTRATIVE LAW JUDGE WONG: The July 25th, 2014,  
3 letter will be marked as Exhibit F for identification.

4 (Whereupon, Respondent's Exhibit F  
5 was marked for identification.)

6 Q BY MR. BARLOW: Do you recognize this letter?

7 A I do recognize it.

8 Q Okay. And what do you recognize it as?

9 A It was a letter that was sent back about a month after  
10 the letter we just looked at was sent in by Grantland.

11 Q Okay.

12 A At this time, we were already in the hospital for the  
13 last 23 days of his life. The last 26 days of his life, 23 in  
14 the hospital and three at home.

15 I didn't even see this letter until after -- if I did  
16 see it, it was opened on a table and I believe -- this is the  
17 only part that is blurry for me, only because I believe in this  
18 there was one form, and it is one of the forms that we took to  
19 the hospital for him to sign, along with the other form that I  
20 got. But it was an extremely intense time. He was in the  
21 hospital for 23 days, and I was not yet clear that he was dying.  
22 Neither was he. But it was uncertain if he was going to survive  
23 this one.

24 So this letter came, and I know that I opened it and  
25 put it on a table and later, like, a few days, that was brought

1 to the hospital with the form.

2 Q This was the response letter --

3 A It was the response letter, as I understand it.

4 Q Okay. And can we read the text next to the first  
5 bullet point there?

6 A "An incorrect or invalid form was submitted. Please  
7 complete the enclosed form and resubmit."

8 Q Okay. Does the letter refer to an application to  
9 modify life option beneficiary?

10 A No.

11 Q And does it refer to a modification of original  
12 election at retirement form?

13 A No.

14 Q Does it provide any timelines within which any such  
15 forms should be completed or submitted?

16 A No.

17 Q Okay. At this time, Grantland Johnson had already  
18 submitted a letter informing CalPERS that he wanted to designate  
19 you as his new beneficiary?

20 A Correct. June 23rd.

21 Q And in that letter, it states that CalPERS -- that he  
22 wanted to name you beneficiary of his CalPERS retirement and all  
23 death benefits?

24 A Yes.

25 Q And the form that is referenced at this letter, do you

1 A I did. I was with him.

2 Q On page 4 of the form, what appears on page 4 of the  
3 form?

4 A Some information and instructions.

5 Q Okay. And is it your impression -- or do you know, was  
6 this the form that was attached to -- that accompanied this  
7 letter?

8 A I believe so.

9 Q Okay.

10 MR. BARLOW: At this time, your Honor, I would like to  
11 submit Exhibit H, the Application to Modify Option and/or Life  
12 Option Beneficiary.

13 ADMINISTRATIVE LAW JUDGE WONG: Okay. The application  
14 to Modify Option and/or Life Option Beneficiary is marked as  
15 Exhibit H for identification.

16 (Whereupon, Respondent's Exhibit H  
17 was marked for identification.)

18 Q BY MR. BARLOW: Do you recognize this document?

19 A I do.

20 Q Okay. And what is it?

21 A It's the CalPERS Application to Modify Option and/or  
22 Life Option Beneficiary.

23 Q Okay. And do you know around what time this form was  
24 completed and submitted to CalPERS?

25 A It was completed at Kaiser in ICU.

1 THE WITNESS: Okay. May I tell about them going to get  
2 forms?

3 MR. BARLOW: Sure. You can proceed.

4 THE WITNESS: It might help if I add a couple  
5 sentences, so it's not hearsay.

6 ADMINISTRATIVE LAW JUDGE WONG: It's still hearsay,  
7 but --

8 THE WITNESS: Well, this is an actual action. Not by  
9 Grantland.

10 ADMINISTRATIVE LAW JUDGE WONG: It doesn't take it out  
11 of hearsay.

12 THE WITNESS: Would you wish me to say anything or not?

13 Q BY MR. BARLOW: We can just proceed.

14 A Okay.

15 Q Okay. So as -- did you contact CalPERS at this time at  
16 all?

17 A I did.

18 Q Okay.

19 A With Grantland -- the form was complex, to me. And  
20 Grantland said, Let's call them. We called. And he spoke with  
21 the person first at CalPERS, and said what we were -- he was  
22 filling out, and also said, "I give you permission to speak to  
23 my wife."

24 So at that point, they spoke to me. And I asked some  
25 simply clarifying questions about the form because I found page



1 2 at the top and then page 3 a little bit complicated, and I  
2 wanted to be certain that whatever was being done by Grantland  
3 and signed by Grantland was correct.

4 MS. KAUR: Your Honor, I have the same objection  
5 concerning the testimony just provided, the hearsay objection.

6 ADMINISTRATIVE LAW JUDGE WONG: All right. Mr. Barlow.

7 MR. BARLOW: Your Honor, these are first person  
8 accounts of her conversation with CalPERS.

9 ADMINISTRATIVE LAW JUDGE WONG: So to the extent the  
10 testimony referred to what other people said, it will be  
11 accepted for the effect on the listener rather than truth of the  
12 matter asserted. The objection is overruled.

13 Q BY MR. BARLOW: And what did -- what did you express to  
14 the CalPERS representative when you were on the telephone call?

15 A I said where we were, that we were in ICU at Kaiser.  
16 And I said that the situation was not very good, you know, that  
17 it appeared that my husband was towards end of life. And I said  
18 that we were filling -- he was going to finish filling out this  
19 form, but I needed help, because I wasn't entirely certain. I  
20 needed clarification on what seemed complex.

21 Q As part of that telephone call, did you inform CalPERS  
22 what was trying to be accomplished?

23 A Yes. I actually read to them, it was the Application  
24 to Modify Option and/or Life Option Beneficiary, and expressed  
25 my confusion about a section on page 2.

1 Q Did you express to CalPERS that this was part of an  
2 effort of -- Grantland Johnson's effort to designate you as his  
3 new beneficiary?

4 A Yes, that's exactly what this form is. It's  
5 Application to Modify Option and/or Life Option Beneficiary.  
6 Grantland is the one that said: Get -- I want to do it now.

7 Q And do you remember what -- what CalPERS response was?

8 MS. KAUR: Hearsay objection.

9 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow.

10 MR. BARLOW: This is -- I am not admitting it for the  
11 truth of the matter asserted; only for purposes of the intent --  
12 the impression made on the listener.

13 ADMINISTRATIVE LAW JUDGE WONG: So be accepted for that  
14 purpose only. The objection is overruled.

15 THE WITNESS: I just want to say the gentleman on the  
16 phone was incredibly kind and understanding and patient and  
17 compassionate. I just want to make that statement. He was very  
18 nice to me and helped me with the clarification of where it was.

19 Because I said at that point: Grantland, what is the  
20 option? What is your option for this form?

21 Option 2.

22 And so I told the gentleman. And the gentleman walked  
23 me through it and said: No, you don't belong -- you don't need  
24 to put it there.

25 Then I said, I don't understand the 2W. And I just

1 don't understand that. I know it's hearsay, but I am going to  
2 tell what you he said.

3 He said, Don't worry about that. We calculate that  
4 internally.

5 I said, Thank you. And then I said, I am going to get  
6 these -- my husband wants me to have these in the mail today.

7 He said, That's fine. Put them in the mail get them to  
8 us.

9 And the last -- when I thanked the person, he said to  
10 me: Don't worry. Your husband's wishes will be honored no  
11 matter what.

12 I understand it's hearsay. I am just telling you, as  
13 the listener, that's what was said.

14 Q You don't have to to --

15 A I'm just saying that's what was said.

16 ADMINISTRATIVE LAW JUDGE WONG: Ms. Johnson, the  
17 editorials, we don't need.

18 THE WITNESS: All right.

19 ADMINISTRATIVE LAW JUDGE WONG: Just stick to the  
20 facts.

21 THE WITNESS: The gentleman said -- I thanked him, and  
22 he said: Don't worry. Your husband's wishes will be honored no  
23 matter what.

24 MS. KAUR: Just for the record, objection. Hearsay  
25 objection concerning the statements of Grantland Johnson, as

1 well as the statements of the CalPERS employee.

2 ADMINISTRATIVE LAW JUDGE WONG: The entire testimony  
3 was accepted only for the effect on the listener on that.

4 Q BY MR. BARLOW: As part of that phone call?

5 A Yes.

6 Q So you informed CalPERS that Grantland Johnson was in  
7 poor health?

8 A Very critical health.

9 Q And you informed CalPERS that what was trying to be  
10 accomplished was to -- was for Grantland Johnson to designate  
11 you as his new beneficiary for Option 2 benefits?

12 A Exactly.

13 Q At any point during that conversation did the  
14 CalPERS -- did CalPERS inform you or mention a Modification of  
15 Original Election at Retirement form?

16 A No.

17 Q Did they ever mention that a new election -- or  
18 additional election form would have to be submitted?

19 A No.

20 Q Did they inform you that any additional steps would be  
21 necessary after submitting the Application to Modify Life Option  
22 Beneficiary form?

23 A No.

24 Q Were you told anything about the time within which  
25 these forms had to be submitted or any additional forms had to

1 be submitted?

2 A No.

3 Q But you informed them that his -- but you informed  
4 CalPERS that Grantland Johnson's health condition was dire?

5 A Very dire.

6 Q Was there anybody else in the room at that time?

7 A Yes.

8 Q Who was that?

9 A Herb Anderson, his best friend since grade 3, was  
10 present, and went home and got the forms because they were at  
11 home, and stayed with him in the hospital room after Grantland  
12 signed. Because Grantland told me to go straight to the post  
13 office. And so Herb stayed with him while I went to the post  
14 office.

15 Q I want to refer you to the signature page of the  
16 application form.

17 A Yes.

18 Q Do you see where Grantland Johnson's signature is?

19 A I do.

20 Q And you saw him sign that?

21 A I did.

22 Q Do you see the certification of participant statements?

23 A I do.

24 Q And did you discuss that statement or do you -- what  
25 was understood -- what did you understand by that statement?

1 A We understood that this was the form that needed to be  
2 signed.

3 Q Did you understand this was communicating that any  
4 additional forms had to be submitted?

5 A No knowledge that there were any other forms.

6 Q So when it says that, "This form is a request to an  
7 election form," you believed that that was the request for an  
8 election form?

9 A Yes, the signature was to modify and elect his option.

10 Q But not a request for an additional form?

11 A No understanding that it was.

12 Q Okay. And after you hung up with the CalPERS  
13 representative, did you have any conversations with Grantland  
14 about --

15 A I simply told him what the gentleman said regarding  
16 honoring his wishes. And, of course, and then simply he signed  
17 and I took it to the post office.

18 Q Okay.

19 A Certified.

20 Q And when was the next time you heard from CalPERS after  
21 that? Do you remember?

22 A Well, after Grantland died on August 19th, I knew it  
23 took me a week or two to get to it with the funeral and  
24 internment and -- but I knew that I needed to sign it -- send  
25 the death certificate. That's just common sense. I don't

1 die. We were still in the hospital.

2 Q Okay. And by this time -- by this time, the  
3 Application to Modify the Life Option Beneficiary, that  
4 application had been completed and mailed?

5 A They were mailed at the same time, same day. Same  
6 exact.

7 Q And on that letter, is there any reference to  
8 Modification of Original Election at Retirement form?

9 A No.

10 Q Any reference to timelines within which any forms have  
11 to be completed or submitted?

12 A No.

13 Q Does it state the process for designating a new  
14 beneficiary is in any way incomplete?

15 A No.

16 Q On the letter, who is designated as the new  
17 beneficiary?

18 A I am.

19 Q Did you think there was anything left to do at this  
20 point?

21 A Not in terms of forms. I hadn't heard that from them.  
22 But nothing in forms, I didn't think there was anything.

23 Q Was there any reference to an additional election that  
24 had to be made in this?

25 A No, hm-mmm.

1 THE WITNESS: You mean for the signature?

2 ADMINISTRATIVE LAW JUDGE WONG: Yes.

3 THE WITNESS: It was -- September 2014 is when she  
4 signed after his death, and that then was submitted to the  
5 courts late September, early October 2014. There was a backlog,  
6 I was told by the lawyers, in the court. And so it did not --  
7 the uncertified copy judgment came back in January.

8 But I did understand that I needed -- I sent that to  
9 CalPERS, but was told I needed to send the certified. So we got  
10 that in February 2014. And I immediately submitted it. There  
11 had been a down-sizing of staff in the courts at that time.

12 MR. BARLOW: Okay. Your Honor, I would like to submit  
13 the judgment as Exhibit J. I apologize this packet isn't --

14 MS. KAUR: You have all of her Social Security and  
15 CalPERS numbers on here. You may want to redact those.

16 ADMINISTRATIVE LAW JUDGE WONG: There is a ton of stuff  
17 in here that is going to need to be redacted on or something  
18 needs to be done with it. Just about every document there is  
19 stuff in there.

20 So this is the property judgment.

21 MR. BARLOW: That's correct, your Honor, and the  
22 settlement agreement to the community property dispute.

23 ADMINISTRATIVE LAW JUDGE WONG: The property settlement  
24 judgment will be marked as Exhibit J.

25 //



1 Q That the process for him designating you as his  
2 beneficiary was incomplete?

3 A None.

4 Q Aside from the March 4th -- aside from hearing from  
5 CalPERS on March 4th that the request to designate you as  
6 Grantland Johnson's beneficiary for Option 2 benefits was being  
7 denied, do you ever remember anybody at CalPERS ever informing  
8 you or him that both the member and the new beneficiary must be  
9 alive on the date when the new election was to become effective?

10 A Before the March 4th letter?

11 Q Right.

12 A One phone call. A phone call that I made to Death  
13 Benefits.

14 Q And when was that?

15 A The end of February.

16 Q February 2015?

17 A Yes.

18 Q Okay.

19 A I don't have the exact day of that phone call. But I  
20 phoned to ask because, although I had received the letter about  
21 the lump sum and me being named beneficiary, I hadn't received  
22 anything else. When the final judgment came in with him being  
23 named as complete owner of his benefits, I thought that I should  
24 know something more about the rest of the forms he had sent in  
25 and what the status was.

1           So I phoned and got ahold of Death Benefits. I spoke  
2 to two people, an assistant, and then a woman, Ms. Day-Bolar,  
3 but, I am not certain if she was the head of Death Benefits.  
4 But she was definitely working there. And I spoke with each of  
5 them. At that time in that call with Ms. Day-Bolar is the first  
6 time I heard about an election form.

7 Q           Okay.

8 A           I had not heard of it prior.

9 Q           Okay. And based on your relationship with Grantland  
10 Johnson and what you know -- your knowledge of him, had  
11 Grantland Johnson been aware of the requirement for sending or  
12 submitting a Modification of Original Election at Retirement  
13 form or any additional materials to effectuate his efforts to  
14 designate you as his Option 2 beneficiary, what do you think he  
15 would have done?

16           MS. KAUR: Objection. Calls for speculation.

17           ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow.

18           MR. BARLOW: This is just an effort, your Honor -- this  
19 is her impression of what -- this is her impression based on her  
20 relationship with Grantland Johnson. I am not asking her to put  
21 thoughts into the decedent's mind. It's just based on her  
22 relationship with him.

23           ADMINISTRATIVE LAW JUDGE WONG: Well, you are asking  
24 her to state what he would have done in the future. Isn't that  
25 necessarily speculation?

1 Q But you want to look at the very bottom left corner.

2 A I see.

3 ADMINISTRATIVE LAW JUDGE WONG: Left corner or right  
4 corner?

5 MS. KAUR: Right corner. I'm sorry.

6 THE WITNESS: I got it. All right.

7 Q BY MS. KAUR: So at the very bottom of this page, so  
8 these are CalPERS notes. And at the very bottom of this page,  
9 it states: "Member requesting change of beneficiary and tax  
10 withholding." Do you see that entry?

11 A I do.

12 Q It's February 15, 2013.

13 A Mm-hmm.

14 Q Do you recall Mr. Johnson calling in concerning the  
15 change of beneficiary?

16 A I do not, because in -- at that time, I was going to  
17 work, and he was either at home or with someone looking out for  
18 him. That's a call that he must have made when I was not there.

19 Q And during that time frame, let's say February 2013,  
20 there was discussion -- there was discussion going on between  
21 you and him concerning changing the beneficiary; is that right?

22 A Absolutely. We were preparing for our marriage and he  
23 must have been trying to take care of it then, knowing that we  
24 were soon going to be married.

25 Q And do you know whether he signed any forms or sent in

1 are technically misusing terms.

2 THE WITNESS: I know. I am not a lawyer. I am so  
3 sorry.

4 ADMINISTRATIVE LAW JUDGE WONG: That's okay. I am  
5 trying to determine. So what I am surmising from the evidence  
6 thus far is there must have been -- because marital dissolution  
7 often involves two things. One is the status, meaning the  
8 status of being married and property. And it's very common for  
9 people to bifurcate, and they will determine -- they will  
10 determine the marital status first, to leave property --

11 THE WITNESS: That's what happened.

12 ADMINISTRATIVE LAW JUDGE WONG: So that's what  
13 happened.

14 So I am surmising that November 9th, 2013 is when  
15 status was terminated to make him no longer married?

16 THE WITNESS: Exactly right. Exactly right.

17 ADMINISTRATIVE LAW JUDGE WONG: Thank you. All right.  
18 Ms. Kaur, please continue.

19 Q BY MS. KAUR: And just on that point, if you could turn  
20 to Exhibit 9-0.

21 A Okay.

22 Q And then if you could look at the second page?

23 A Okay.

24 Q Would this in any way help clarify?

25 A Oh, yes, because it was -- it there is. It was filed

1 Q And you did not go into CalPERS to obtain that booklet;  
2 is that correct?

3 A I did not.

4 Q And it's your understanding it was mailed to him at  
5 some point?

6 A Yes.

7 Q And do you recall when you obtained that form out of  
8 that booklet or when you first saw that booklet?

9 A It was in that summertime, the two months or so before  
10 his death. We were in and out of hospital through June and  
11 July, on top of four dialysis a week and constant doctor  
12 appointments.

13 I cannot tell you the exact day or the exact  
14 publication, but I know that I had one and I think it came -- I  
15 am sure it came out of the book. I certainly didn't go on line  
16 or go to the office. Nor did he. I know, indeed, it, was from  
17 a publication.

18 I know, at some point, amidst him passing out  
19 constantly at home and me CPR'ing him -- It was getting a little  
20 bit intense the last couple of months. I know that I had them  
21 and I set them aside in a folder.

22 Q And what triggered or what caused you to go get the  
23 form from the booklet?

24 A The day that we were in ICU and he instructed me that  
25 he wanted to sign those forms right then. I didn't want to

1 leave him. And so I asked his friend who was with us, would  
2 he -- he offered actually to go to the house and pick them up.  
3 I told him where they were.

4 And he brought them back to the hospital while --  
5 because I did not want to leave Grantland. And then the process  
6 of signing and calling CalPERS went on. And then I went  
7 directly to the post office to certify mail them, and his friend  
8 stayed with him until I got back from the post office.

9 Q So you were instructed by him to go get the form from  
10 the booklet?

11 A Was instructed that he wanted to sign the forms right  
12 away. He didn't say booklet. And he didn't say I had to get  
13 them. But he wanted them done. And so we arranged it. I  
14 didn't want to leave. And Herb went and got them.

15 Q Had you seen the forms in the booklet prior to that  
16 date?

17 A Briefly. I mean, I realized they were forms. And I  
18 put them aside.

19 Q Had you reviewed the booklet?

20 A No.

21 Q Do you have knowledge whether he reviewed the booklet?

22 A I am certain that he did not.

23 Q And how did you become aware that there was forms in  
24 the booklet?

25 A Well, the publication I am thinking of said something

1 Q Around that time, was he able to get online and sit at  
2 the computer and do research?

3 A He never used the on-line system with CalPERS ever.

4 Q Around 2014 was he able to physically sit at a computer  
5 and do research on CalPERS website, download forms?

6 A What month did you say?

7 Q In mid 2014, when he was requesting these forms by --

8 A No, he was not. We had been in hospital right after  
9 our wedding for a life-threatening surgery to save his leg. He  
10 came home and was bedridden for about two months. At which  
11 point they decided, since one area in his groin was not healing,  
12 that they needed to open it up down to the first -- I can't  
13 think of the medical term. There were four layers they had done  
14 all the way down his leg. They had to open it. He had a wound  
15 like this in his groin. We had in home nursing three times a  
16 week to change it. And then they put on -- it's a dry pack.  
17 It's something that suctioned -- debrides the wound to make it  
18 heal. That went on through March, April, May.

19 He was transferring him, helping him in and out of the  
20 shower when he could be covered, into a chair. And so he did  
21 not go to the computer during that time, partly due to being on  
22 antibiotic and insulin, so on and so forth. Whatever he did do  
23 was, you know, working together, making calls, whatever. But he  
24 wasn't mobile and at his computer.

25 Q But you were there when he drafted the June 23rd --

1 informed you about that also?

2 A No. No. As I said, I didn't have any discussion  
3 related to the final judgment and then the subsequent activities  
4 until February 2015, when I called in to Death Benefits. And  
5 then I testified to that, that conversation, where I was  
6 actually told about an election form then. Prior, I had no  
7 knowledge whatsoever or no discussion.

8 Q And if you could turn to Exhibit 8, page 7.

9 A Okay.

10 Q The fourth entry from the very bottom, fourth entry up,  
11 we went over that note, where you --

12 A Right.

13 Q -- spoke to CalPERS staff concerning death benefits?

14 A Yes.

15 Q And that's October 24th, 2013?

16 A Yes.

17 Q And right above, there is a. Note, it's starts off  
18 with Benefits Payments, then it states Participant, then it  
19 says, "V took escalated call. Member requested copy of first  
20 payment acknowledgement letter. Printed and mailed out." And  
21 that is also dated October 24th, 2013.

22 Do you have any -- do you recall being present when  
23 Mr. Johnson requested the first acknowledgement letter?

24 A I don't know what that is.

25 Q Do you recall him requesting any documents from them?



1 THE WITNESS: Yes. There were occasions that it was  
2 discussed. And he told me that he wanted Lee to have his  
3 retirement benefits, receive those benefits.

4 Q BY MR. BARLOW: And were you with him in the ICU in or  
5 around October 2014, Mr. Anderson? August 2014. I am sorry.

6 A What was that date again?

7 Q Sure. In or around August 2014, were you in the ICU  
8 with Grantland Johnson?

9 A Yes.

10 Q Okay. And who else was there with you in or around  
11 that time in early August 2014?

12 A His wife, Lee Johnson.

13 Q And if I can take you back to if you remember a date in  
14 around August 5th or 6th, 2014, do you remember what was  
15 happening on that day?

16 A Well, I know that I was -- I was there. One of the  
17 reasons I know I was there was because there was only a few  
18 people that Lee would be comfortable leaving with Grantland.  
19 She wanted someone with him all the time when he was in the  
20 hospital. And that if -- the only way that she would leave to  
21 either, you know, come home and take a shower or take care of  
22 other, you know, business, would be if there was -- you know,  
23 she would -- she would feel comfortable with me being there.

24 So I had come up -- I live in Oakland. So I had come  
25 up and I had -- was there that morning. And so she was -- there

1 was a conversation about CalPERS, you know, documentation that  
2 needed to be completed. And so I know that I actually went to  
3 their house to pick up the documents. And, you know, while I  
4 was there, it was -- we were on telephone. She was -- Lee was  
5 explaining to me exactly where the documents were. I brought  
6 those back to the hospital.

7           And that was -- I picked those up and brought them back  
8 and they filled them out. And is that what you are referring  
9 to?

10 Q           Yes. Do you know what those documents were for?

11 A           They were CalPERS document that was, you know, needed  
12 to designate Lee as a beneficiary of his -- of his benefits.

13 Q           And that was your understanding of what Lee Johnson and  
14 Grantland Johnson were trying to accomplish with those forms?

15 A           Mmmm... Well, they needed to be completed in order for  
16 Lee to receive, you know, Grantland's benefits. I knew that  
17 they were CalPERS documents and that they needed to be completed  
18 in order for Lee to receive those.

19           And he -- you know, he -- you know, it was one of the  
20 things that was very important to him. I know that. He wanted  
21 to make sure that -- he was getting affairs in order to make  
22 sure that everything was -- was done and completed.

23           I don't -- I don't -- are you asking me the technical  
24 names of the documents, the forms, themselves? Is that what you  
25 are --

1 MR. BARLOW: Well, your Honor, I am asking to the  
2 extent that I am trying to glean his impression of the  
3 situation. I am not admitting it for the truth of the matter  
4 asserted or any specific statements that were conveyed over the  
5 phone. Again, this is going to his impression of what the --  
6 what process was being undertaken at the hospital room at that  
7 time.

8 ADMINISTRATIVE LAW JUDGE WONG: His impressions of what  
9 was going on are not relevant. So I will allow the testimony as  
10 administrative hearsay.

11 Okay. Mr. Barlow, you can answer. Again, if you  
12 remember the question, you can answer it. Otherwise, I can have  
13 it read back.

14 THE WITNESS: Could you read it back, please.

15 ADMINISTRATIVE LAW JUDGE WONG: Sure.

16 If you would read it back, please.

17 (Record read as requested.)

18 THE WITNESS: There was a -- I overheard, mmmm... or  
19 at least from Lee's side... mmmm... asking about the correct  
20 procedures of filling out the documents or making sure that, you  
21 know, what the documents that she had was -- was the correct  
22 one.

23 And I heard her say that the -- whoever she was talking  
24 to said that everything would just be fine and that it was okay;  
25 and that, you know, as I said in the declaration, not to worry,

1 that Grantland's wishes would be honored.

2 MR. BARLOW: At this time, your Honor, I would like to  
3 submit Mr. Anderson's amended declaration as Exhibit N.

4 ADMINISTRATIVE LAW JUDGE WONG: The declaration will be  
5 marked as Exhibit N, as in Nancy.

6 (Whereupon, Respondent's Exhibit N  
7 was marked for identification.)

8 MR. BARLOW: I don't have any further questions at this  
9 time, your Honor.

10 ADMINISTRATIVE LAW JUDGE WONG: Okay.

11 Cross-examination.

12 MS. KAUR: And just for the record, your Honor, this  
13 declaration, I object to.

14 ADMINISTRATIVE LAW JUDGE WONG: It hasn't been moved  
15 yet.

16 MS. KAUR: I apologize.

17 MR. BARLOW: I would like to move -- well, I can wait  
18 until -- if you prefer, your Honor, wait until after  
19 cross-examination.

20 ADMINISTRATIVE LAW JUDGE WONG: Either way.

21 MR. BARLOW: I would like to move this document into  
22 evidence as Exhibit N.

23 ADMINISTRATIVE LAW JUDGE WONG: Any objection to N?

24 MS. KAUR: Yes. I have objection to Paragraph 6 to the  
25 extent it -- there is a discussion concerning statements made by

1 MR. BARLOW: Yes, your Honor.

2 REDIRECT EXAMINATION

3 BY MR. BARLOW:

4 Q Mr. Anderson, were Grantland Johnson and Lee Johnson  
5 discussing the forms as they were being completed?

6 A Yes.

7 Q And at all times during which the forms were being  
8 completed, were they both in the same room?

9 A Yes.

10 Q And you mentioned that Grantland Johnson's eyesight was  
11 poor at around this time. Was that one of the reasons that Lee  
12 Johnson was assisting him with the forms?

13 A Yes.

14 MR. BARLOW: I don't have any further questions, your  
15 Honor.

16 ADMINISTRATIVE LAW JUDGE WONG: Recross?

17 MS. KAUR: No further questions, your Honor.

18 ADMINISTRATIVE LAW JUDGE WONG: Okay. Thank you very  
19 much.

20 Is the -- can the witness be excused?

21 MR. BARLOW: Yes, your Honor.

22 ADMINISTRATIVE LAW JUDGE WONG: Okay. Mr. Anderson,  
23 thank you very much. We appreciate your time today. And we  
24 will go ahead and disconnect at this time.

25 THE WITNESS: Okay. Thank you.

1 A The election form is an estimate of the benefits that  
2 would be selected by the member for their new beneficiary. So  
3 we would take into account the member's age at that time and the  
4 beneficiary's age at that time, and then we would provide the  
5 member pretty much most of the options. So Option 1, 2, 2W, 3,  
6 and 3W. At that time, we would let them know exactly what their  
7 allowance would be if they made the option selection.

8 Q So you would be giving them actual numbers of what  
9 their allowance and what the beneficiary will receive --

10 A Absolutely.

11 Q -- for each option, which is Option 1, Option 2, Option  
12 2W, Option 3, Option 3W; is that correct?

13 A That's correct.

14 Q Could they elect to have additional options provided to  
15 them?

16 A Yes. And that would be selected on that Modification  
17 of Life Option Beneficiary form.

18 Q So once the election form -- so is that election form  
19 sent out to the member?

20 A Yes. If all the documents are received that we need,  
21 then we would process the estimate. And that's the election  
22 document for the member. And they would be required to return  
23 that form to us within 30 days of receipt. And they would need  
24 it notarized.

25 Q So it has to be signed and notarized?

1 indicate?

2 A That indicates an average percentage of members who do  
3 not -- where they actually elect to make that change.

4 Q So just because CalPERS or your unit receives the  
5 application to modify the election benefit doesn't mean the  
6 member will actually go through and elect -- actually go through  
7 and modify their option; is that correct?

8 A Yeah, that's right.

9 Q And based on your experience and knowledge, why is  
10 that?

11 A There is two reasons. One is that member does incur  
12 another reduction to the allowance based on the new information.  
13 And sometimes that reduction -- the member does not want to  
14 change to that new amount to provide for this new beneficiary.

15 And the other, it could be that they simply are unable  
16 to make the 30-day time frame.

17 Q And your unit didn't send Mr. Johnson a letter  
18 informing him that the application is not going to be processed,  
19 didn't send a letter to the beneficiaries. But was another unit  
20 responsible for contacting or being in communication with the  
21 beneficiary concerning the death benefits?

22 A The Death Unit would be responsible for contact  
23 regarding the benefits payable.

24 Q And in terms of the lump sum beneficiary designation,  
25 if you could turn to Exhibit 9-G.

1 Q And what does that require?

2 A That requires that the member -- once the election  
3 document has been provided with the amounts, that he elect what  
4 that option is going to be for the reduction. He then would  
5 have to physically write in that he is aware that this is going  
6 to be his new allowance, and then it would be notarized.

7 Q So here Mr. Johnson had initially when he retired  
8 elected Option 2. He is not required to once again elect Option  
9 2 when he modifies his option; is that correct?

10 A That's correct.

11 Q He could elect any other option?

12 A Mm-hmm, yes.

13 MS. KAUR: I don't have any further questions, your  
14 Honor.

15 ADMINISTRATIVE LAW JUDGE WONG: Cross-examination.

16 MR. BARLOW: Yes, your Honor.

17 CROSS-EXAMINATION

18 BY MR. BARLOW:

19 Q Ms. Owens, you mentioned that applications are --  
20 applications to modify option or life option beneficiaries are  
21 basically taken care of on a first come, first served basis.  
22 Those that are logged first in are the first out?

23 A Yes.

24 Q Okay. So what is your procedure -- what is CalPERS'  
25 procedure for situations that require exceptional timing, where



1 timing is of the essence? In other words, where CalPERS has  
2 been informed that the member that is trying to effectuate a  
3 change in beneficiary designation may die?

4 A Well, it would be expedited.

5 Q So it's not necessarily logged first in, logged first  
6 out?

7 A Not if we were informed that there were extenuating  
8 circumstances.

9 Q In this case, you were informed that there were  
10 extenuating circumstances?

11 A No.

12 MS. KAUR: Objection. Calls for -- misstates the  
13 witness's testimony.

14 ADMINISTRATIVE LAW JUDGE WONG: The form of the  
15 question. Objection is overruled. It's a leading question. So  
16 it's a yes or a no answer.

17 Q BY MR. BARLOW: Are you saying CalPERS was not informed  
18 there were extenuating circumstances here?

19 A Not based on the application.

20 Q Was CalPERS ever informed that Grantland Johnson was in  
21 poor health, dire health?

22 MS. KAUR: Objection. Calls for speculation.

23 Q BY MR. BARLOW: At the time that he was attempting to  
24 modify his beneficiary?

25 MS. KAUR: Objection. Calls for speculation.

1 ADMINISTRATIVE LAW JUDGE WONG: Back on the record.

2 Let the record reflect that Ms. Owens is back on the witness  
3 stand.

4 And I remind you that you are still under oath.

5 Mr. Barlow.

6 MR. BARLOW: Yes, your Honor.

7 Q You testified earlier that when there are extenuating  
8 circumstances, CalPERS protocol -- for example, what I mean by  
9 "extenuating circumstances" is when a beneficiary expresses to  
10 CalPERS or CalPERS is informed that the -- by the member that he  
11 or she is in poor health or that CalPERS becomes aware the  
12 beneficiary is in poor health, is attempting to designate a new  
13 beneficiary. That would be considered an extenuating  
14 circumstance?

15 A Yes.

16 Q And in those circumstances, CalPERS makes an effort to  
17 expedite the process?

18 A Yes.

19 Q I want to turn you to Exhibit 9-H.

20 You noted that this application was received on  
21 August -- by CalPERS on August 7th, 2014, correct?

22 A Yes.

23 Q It wasn't processed until over a month later, correct?

24 A Correct.

25 Q Okay. And is that what you mean by "expedited"?

1 A No.

2 Q Okay. So you would agree that this application was not  
3 expedited?

4 A Yes.

5 Q Okay.

6 A I would agree.

7 Q And had CalPERS been informed that the member, as you  
8 said -- as I mentioned before, was in poor health and was  
9 attempting to designate a new beneficiary, that would be  
10 considered an extenuating circumstance?

11 A Yes.

12 Q Okay. You also mentioned that no rejection letter is  
13 sent when an election is not properly effectuated. Is that  
14 correct?

15 A I don't think I stated that specifically.

16 Q That no rejection letter is sent when the election  
17 process is not completed?

18 MS. KAUR: Objection. Vague, ambiguous.

19 THE WITNESS: I don't think I understand.

20 ADMINISTRATIVE LAW JUDGE WONG: Overruled.

21 THE WITNESS: What you are saying?

22 Q BY MR. BARLOW: When a member attempts to modify his  
23 beneficiary and hasn't completed the process for electing the  
24 new beneficiary, submitting his election form, the election  
25 document that we have been talking about, you mention that no

1 rejection letter is sent in response; is that correct?

2 A If you are talking about if we sent an election  
3 document and the member hasn't returned the election document?

4 Is that what you are referring to?

5 Q Mm-hmm.

6 A No, we don't send them a letter saying, We haven't  
7 received an election document from you.

8 Q Why don't you inform members when the process for  
9 effectuating an election hasn't been properly completed?

10 A We can't assume that we know why they didn't make an  
11 election.

12 Q But can you inform them that the process has not been  
13 completed?

14 A The process isn't completed because they haven't  
15 returned the election form.

16 Q And you don't notify them that this form is  
17 outstanding, that your effort to modify has not been successful?

18 A The election document, that form that we send to  
19 members, says in it that it must be returned within a certain  
20 time frame; otherwise, your election is not made. So that's  
21 pretty clear.

22 Q Well, when an application is incomplete or doesn't have  
23 all the attached documents, you let folks know -- you let the  
24 member know that the application is incomplete, correct?

25 A Correct.

1 Q But when a member attempts -- when a member is now  
2 attempting to complete the election form, you don't notify the  
3 member that the election hasn't been effectuated, correct?

4 A No. We don't let them know that they didn't return the  
5 form for the election.

6 Q So why do you let a member know in one instance, but  
7 not another, that a process hasn't been completed properly?

8 A There is -- the action to complete the election is on  
9 the member's plate. It's their selection. It's their decision  
10 whether or not to move forward. We can't, as helpers, assume  
11 that we understand the reasons why or why not they haven't made  
12 the election. We aren't going to ask them: Was it a reason of  
13 it was too much money, too great a reduction for you? We don't  
14 make those assumptions. If they don't return it, we don't ask,  
15 Why didn't you return it?

16 Q The application is on a member's plate, correct?

17 A Are you talking about the application --

18 Q To Modify Option or Life Option Beneficiary.

19 A If they want it to be.

20 Q Right. And in that application, they have to select  
21 option choices. There is a box for Option 2W, Option 1  
22 combined, a specific percentage to designate for a beneficiary,  
23 for example. These are all choices that member has to make.

24 I am just trying to understand why in one instance  
25 where a member is attempting to complete a process to effectuate

1 A Yes.

2 Q So Ms. Bolton was removed and was Ms. Johnson replaced  
3 as the beneficiary for the option benefits instead?

4 A No.

5 Q And how did you obtain that information or make that  
6 determination?

7 A There was no modification processed to designate a new  
8 beneficiary or option, a new Option 2 or beneficiary.

9 Q And did you look at the information from the  
10 Calculations Unit to make that determination?

11 A The information that was in the file, which includes  
12 the application to modify and the notes indicating that it was  
13 not processed. And that there was no election document in the  
14 file. We look for the election document to determine who the --  
15 what the new option is and who the new beneficiary is if a  
16 modification has been processed.

17 Q Do you look at it to also determine the effective date  
18 of the new option?

19 A Yes.

20 Q And why do you look at that?

21 A Because the effective date needed to be in effect prior  
22 to -- prior to the passing.

23 MS. KAUR: I have no further questions, your Honor.

24 ADMINISTRATIVE LAW JUDGE WONG: Cross-examination.

25 MR. BARLOW: Yes, your Honor.

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA    )  
                                  )     ss.  
COUNTY OF SACRAMENTO   )

I, JAN L. WEISBERG, CSR, hereby certify that I was duly appointed and qualified to take the foregoing matter;

That acting as such reporter, I took down in stenotype notes the testimony given and proceedings had;

That I thereafter transcribed said shorthand notes into typewritten longhand, the above and foregoing pages being a full, true and correct transcription of the testimony given and proceedings had.

\_\_\_\_\_  
JAN WEISBERG

# **EXHIBIT B**



10D NO  
Grantland Johnson

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of SACRAMENTO

On 3/2/12 before me, Marlene Di Pinto  
Date Here Insert Name and Title of the Officer

personally appeared Grantland Lee Johnson  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Marlene Di Pinto  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Final will and testament of Grantland Lee Johnson  
Document Date: 3/2/12 Number of Pages: 1  
Signer(s) Other Than Named Above: None

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Grantland Lee Johnson

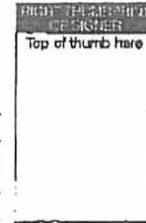
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney In Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney In Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

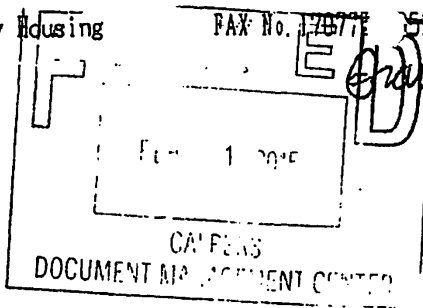


Signer Is Representing: \_\_\_\_\_

FEB/11/2015/WED 03:12 PM Community Housing

FAX No. 170777

P. 006



3/2/2012

**Final Will and Testament of Grantland Lee Johnson**

In the event of my passing, I name and authorize Dr. Lee Turner- Muecke, my fiancé and medical authority as Power of Attorney and Executor of my will to complete the execution and closure of my estate, and the estate of my grandmother, Irene Jefferson with advice and assistance of Herb Anderson of Oakland, CA.

The following are my directions as to the execution of my personal affects and assets:

1. Complete the sale of the house (Irene Jefferson) at 3613 May St. Sacramento 95898, whose estate I am executor and power of attorney for. (Real Estate broker Andre Tenthorey of Keller Williams)
2. Take the proceeds of this sale to
  - a. reimburse my estate for all repairs to the house in the amount of \$22,000, and to pay off my IRS and Franchise Tax Board taxes with this money.
  - b. To take the amount owed by me to Dr. Lee Turner-Muecke for expenses incurred related to my grandmother's funeral on December 2, 2012 and to help me prepare the house for the market. (Invoices attached)
  - c. To take the remaining balance after the sale is closed with payments to Sacramento County and City of Sacramento in the closure, commission fees, closing fees and any taxes applicable, to disperse the remaining funds, as per the will of my grandmother, to those described in the will. The amount belonging to me goes to pay for my burial expenses first and the remainder to my daughter, Patricia Bolton Johnson, along with any books, CD's, DVD's and personal affects she may want.
  - d. Any remaining personal effects belong to Dr. Turner-Muecke to use or disperse as she wishes.
  - e. Dr. Turner-Muecke has access to my accounts and will settle any amount s owing to my Grandmother's joint account and is full Power of Attorney for and Executor for my estate and that of my grandmother's.

Signed: *Grantland Lee Johnson*  
Grantland Lee Johnson

Date: March 2, 2012

Exhibit B - 2

# EXHIBIT C

FEB/11/2015/WED 03:13 PM Community Housing

FAX No. 1707759653

P. 008

*Grantland Johnson*



The annexed instrument is a correct copy of the original on file in my office. FEB 06 2015

Attest: \_\_\_\_\_

Certified  
Superior Court of Sacramento  
County of Sacramento

By *C. Rainley*  
Clerk

Exhibit C - 1

FEB/11/2015/WED 03:13 PM Com jity Housing

FAX No. 1707759605

P. U.S.

*Grantland JOHNSON*

100 No

OCT 17 2014

FL-180

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>MARK P. GROTEWOHL 244050</b> <b>LAW OFFICES OF MARK GROTEWOHL</b> <b>1610 Executive Court</b> <b>Sacramento, CA 95864</b> TELEPHONE NO.: (916) 925-9180 FAX NO. (Optional): (916) 925-9182 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>Grantland L. Johnson</b>		FOR COURT USE ONLY <div style="border: 1px solid black; padding: 5px; text-align: center;"> <b>FILED/ENDORSED</b>    <b>DEC 31 2014</b>            By: <i>[Signature]</i> <b>L. COX</b>          DEPUTY CLERK       </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SACRAMENTO</b> STREET ADDRESS: <b>3341 POWER INN ROAD</b> MAILING ADDRESS: <b>-8878 as above-</b> CITY AND ZIP CODE: <b>SACRAMENTO, CA 95828</b> BRANCH NAME: <b>WILLIAM R. RIDGEWAY FAMILY RELATIONS</b>		
MARRIAGE OR PARTNERSHIP OF PETITIONER: <b>Grantland L. Johnson</b> RESPONDENT: <b>Charlot Bolton</b>		CASE NUMBER <b>13FL01863</b>
<b>JUDGMENT</b> <input checked="" type="checkbox"/> <b>DISSOLUTION</b> <input type="checkbox"/> <b>LEGAL SEPARATION</b> <input type="checkbox"/> <b>NULLITY</b> <input type="checkbox"/> Status only <input type="checkbox"/> Reserving jurisdiction over termination of marital or domestic partnership status <input checked="" type="checkbox"/> Judgment on reserved issues Date marital or domestic partnership status ends:		

- This judgment  contains personal conduct restraining orders  modifies existing restraining orders.  
 The restraining orders are contained on page(s) \_\_\_\_\_ of the attachment. They expire on (date): \_\_\_\_\_
- This proceeding was heard as follows:  Default or uncontested  By declaration under Family Code section 2336  
 Contested  Agreement in court  
 a. Date: **DEC 31 2014**      WM NEIL SHEPHERD Dept.: \_\_\_\_\_ Room: \_\_\_\_\_  
 b. Judicial officer (name): **COURT COMMISSIONER**  Temporary judge  
 c.  Petitioner present in court  Attorney present in court (name): \_\_\_\_\_  
 d.  Respondent present in court  Attorney present in court (name): \_\_\_\_\_  
 e.  Claimant present in court (name): \_\_\_\_\_  Attorney present in court (name): \_\_\_\_\_  
 f.  Other (specify name): \_\_\_\_\_
- The court acquired jurisdiction of the respondent on (date): **5/8/2013**  
 a.  The respondent was served with process.  
 b.  The respondent appeared.

**THE COURT ORDERS, GOOD CAUSE APPEARING**

- a.  Judgment of dissolution is entered. Marital or domestic partnership status is terminated and the parties are restored to the status of single persons  
 (1)  on (specify date): \_\_\_\_\_  
 (2)  on a date to be determined on noticed motion of either party or on stipulation.  
 b.  Judgment of legal separation is entered.  
 c.  Judgment of nullity is entered. The parties are declared to be single persons on the ground of (specify): \_\_\_\_\_  
  
 d.  This judgment will be entered nunc pro tunc as of (date): \_\_\_\_\_  
 e.  Judgment on reserved issues.  
 f. The  petitioner's  respondent's former name is restored to (specify): \_\_\_\_\_  
 g.  Jurisdiction is reserved over all other issues, and all present orders remain in effect except as provided below.  
 h.  This judgment contains provisions for child support or family support. Each party must complete and file with the court a *Child Support Case Registry Form* (form FL-191) within 10 days of the date of this judgment. The parents must notify the court of any change in the information submitted within 10 days of the change, by filing an updated form. The *Notice of Rights and Responsibilities—Health-Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order* (form FL-192) is attached.

Form Adopted for Mandatory Use  
Judicial Council of California  
FL-180 (Rev. July 1, 2012)

**JUDGMENT**  
(Family Law)

Family Code, §§ 2024, 2340,  
2343, 2345  
www.court.ca.gov



JOHNSON, GRANTLAND

Exhibit C- 2

FEB/11/2015/WED 03:13 PM Cor pcity Housing FAX No. 17077596053 P. 010

*Grantland Johnson v. Bolton*

FL-180

CASE NAME (Last name, first name of each party): Johnson, Grantland v. Bolton, Charlot	PAGE NUMBER: 13FL01863
---	---------------------------

4. i.  The children of this marriage or domestic partnership are:
- (1)  Name \_\_\_\_\_ Birthdate \_\_\_\_\_
- (2)  Parentage is established for children of this relationship born prior to the marriage or domestic partnership
- j.  Child custody and visitation (parenting time) are ordered as set forth in the attached
- (1)  Settlement agreement, stipulation for judgment, or other written agreement which contains the information required by Family Code section 3048(a).
- (2)  *Child Custody and Visitation Order Attachment* (form FL-341).
- (3)  *Stipulation and Order for Custody and/or Visitation of Children* (form FL-355).
- (4)  Previously established in another case. Case number: \_\_\_\_\_ Court: \_\_\_\_\_
- k.  Child support is ordered as set forth in the attached
- (1)  Settlement agreement, stipulation for judgment, or other written agreement which contains the declarations required by Family Code section 4088(a).
- (2)  *Child Support Information and Order Attachment* (form FL-342).
- (3)  *Stipulation to Establish or Modify Child Support and Order* (form FL-350).
- (4)  Previously established in another case. Case number: \_\_\_\_\_ Court: \_\_\_\_\_
- l.  Spousal, domestic partner, or family support is ordered:
- (1)  Reserved for future determination as relates to  petitioner  respondent
- (2)  Jurisdiction terminated to order spousal or partner support to  petitioner  respondent
- (3)  As set forth in the attached *Spousal, Partner, or Family Support Order Attachment* (form FL-343).
- (4)  As set forth in the attached settlement agreement, stipulation for judgment, or other written agreement.
- (5)  Other (specify): \_\_\_\_\_
- m.  Property division is ordered as set forth in the attached
- (1)  Settlement agreement, stipulation for judgment, or other written agreement.
- (2)  *Property Order Attachment to Judgment* (form FL-345).
- (3)  Other (specify): \_\_\_\_\_
- n.  Attorney fees and costs are ordered as set forth in the attached
- (1)  Settlement agreement, stipulation for judgment, or other written agreement.
- (2)  *Attorney Fees and Costs Order* (form FL-348).
- (3)  Other (specify): \_\_\_\_\_
- o.  Other (specify): \_\_\_\_\_

Each attachment to this judgment is incorporated into this judgment, and the parties are ordered to comply with each attachment's provisions. Jurisdiction is reserved to make other orders necessary to carry out this judgment.

Date: \_\_\_\_\_

5. Number of pages attached: 11

JUDICIAL OFFICER  
 SIGNATURE FOLLOWS LAST ATTACHMENT *Page 8*

**NOTICE**

Dissolution or legal separation may automatically cancel the rights of a spouse or domestic partner under the other spouse's or domestic partner's will, trust, retirement plan, power of attorney, pay-on-death bank account, transfer-on-death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar property interest. It does not automatically cancel the rights of a spouse or domestic partner as beneficiary of the other spouse's or domestic partner's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions.

A debt or obligation may be assigned to one party as part of the dissolution of property and debts, but if that party does not pay the debt or obligation, the creditor may be able to collect from the other party.

An earnings assignment may be issued without additional proof if child, family, partner, or spousal support is ordered.

Any party required to pay support must pay interest on overdue amounts at the "legal rate," which is currently 10 percent.



*Grantland Johnson*

**MARITAL SETTLEMENT AGREEMENT**

**I. INTRODUCTORY PROVISIONS**

1.01. IDENTIFICATION OF PARTIES. This agreement is made between GRANTLAND JOHNSON, hereafter referred to as "Husband," and CHARLOT BOLTON, hereafter referred to as "Wife.", hereafter collectively referred to as the "Parties".

1.02. DATE OF MARRIAGE. The parties were married on February 5, 1975 and ever since then have been and are Husband and Wife.

1.03. DATE OF SEPARATION. The date of separation of the parties was April 1, 2002, resulting a marriage of 27 years 1 month in duration.

1.04. IRRECONCILABLE DIFFERENCES. Irreconcilable differences have led to the irremediable breakdown of the marriage, and there is no possibility of saving the marriage through counseling or other means.

1.05. MINOR CHILDREN OF THE MARRIAGE. There are no minor children of the marriage.

1.06. CIRCUMSTANCES OF THE PARTIES. Husband is 65 years of age and fully retired. Wife is 63 years old and is retired. Both parties have pre-existing health conditions that affect their ability to maintain employment.

1.07. DISSOLUTION PROCEEDINGS. Husband filed a Petition for Dissolution of Marriage on April 8, 2013 in the Superior Court of California, County of Sacramento, Case Number 13FL01863.

1.08. PURPOSE OF AGREEMENT. The purpose of this agreement is to make a final and complete settlement of all rights and obligations between the parties, including all property rights, claims for reimbursements and credits and spousal support. The Parties agree that this Agreement will be incorporated and other than those terms specifically excepted, merged into the Judgment of Dissolution Re: Reserved Issues.

1.09. DISSOLUTION - STATUS ONLY. A Judgment of Dissolution-Status Only was previously entered by the court, terminating the parties' marital status effective November 9, 2013.

**II. SPOUSAL SUPPORT**

2.01. ACKNOWLEDGMENT. The parties acknowledge and confirm the following facts.

- a. This is long term marriage subject to the provisions of Fam C § 4336.
- b. Husband is voluntarily retired and self supporting. Wife is also voluntarily retired and self-supporting.

FEB/11/2015/WED 03:14 PM Community Housing

FAX NO. 1707759603

*Samuel Johnson*

- c. Husband is 65 years old and in critically poor health with several pre-existing physical issues limiting his ability to work. Wife is 63 years old and in poor health with pre-existing physical issues limiting her ability to work.

**2.02. WAIVER AND TERMINATION OF JURISDICTION.** Based upon the facts recited in paragraph 2.01 above and the additional factors set forth in Fam C § 4320(a) – (n), each party irrevocably waives the right to receive spousal support from the other at any time. Each party further agrees to termination of the court's jurisdiction to award spousal support to either party at any time in the future. As of the effective date hereof, no court shall have jurisdiction to entertain an application for spousal support submitted by either party. The parties intend the foregoing to constitute the written agreement required by Fam C § 4336 to terminate the Court's jurisdiction over spousal support.

**2.03. WAIVER OF SPOUSAL SUPPORT BY HUSBAND.** Husband has been advised of his rights with regard to spousal support. Husband acknowledges and understands he is under no compulsion to irrevocably waive the right to subsequently seek spousal support from Wife or agree to terminate the court's jurisdiction to award him spousal support in the future; he does so knowingly and voluntarily. Husband further understands that upon termination of the court's jurisdiction over spousal support, no court may grant a request for spousal support regardless of circumstances or economic hardship which subsequently arise

**2.04. WAIVER OF SPOUSAL SUPPORT BY WIFE:** Wife has been advised of her rights with regard to spousal support. Wife acknowledges and understands she is under no compulsion to irrevocably waive the right to subsequently seek spousal support from Husband or agree to terminate the court's jurisdiction to award her spousal support in the future; she does so knowingly and voluntarily. She further understands that upon termination of jurisdiction, no court may grant a request for spousal support regardless of circumstances or economic hardship which subsequently arises.

### III. PROPERTY

**3.01. CHARACTERIZATION.** Husband and Wife agree that the assets and obligations of the parties are those set forth in Exhibits A and B attached hereto. Some of the assets and obligations are community property and some are separate property; no distinction is made as to their characterization because the parties have agreed on the ultimate division of property, regardless of its characterization as community or separate. However, both parties reserve their respective right to submit evidence to the court, and have the court decide, the separate or community property characterization as community or separate if this Agreement is merged into and becomes a Judgment and such Judgment is subsequently set aside, in whole or in part, as to the division of assets and/or obligation described below, or in the event that a creditor makes a claim on the property of a party because of non-payment by the other party of an obligation assigned to him/her in the division of assets and obligation.

**3.02. WIFE'S PROPERTY.** Wife will be awarded and assigned the assets and liabilities listed in Exhibit A attached hereto and incorporated herein as her sole and separate property. Husband hereby transfers and assigns to Wife all of his rights and interest in each asset and



FEB/11/2015/WED 03:14 PM

Community Housing

FAX No. 17077596053

P. 013

*Grant Hand Johnson*

obligation. Wife will pay all obligations assigned to her pursuant to Exhibit A and indemnify and hold Husband harmless from same including all costs and attorney fees to defend any claims asserted by the creditor.

3.04. HUSBAND'S PROPERTY. Husband will be awarded and assigned the assets and liabilities listed in Exhibit B attached hereto and incorporated herein as his sole and separate property. Wife hereby transfers and assigns to Husband all of her rights and interest in each asset and obligation. Husband will pay all obligations assigned to him pursuant to Exhibit B and indemnify and hold Wife harmless from same including all costs and attorney fees to defend any claims asserted by the creditor.

3.05. ADDITIONAL CONSIDERATION. As additional consideration to Wife, Husband has paid and Respondent has received \$900 in addition to the assets otherwise assigned to Wife hereunder pursuant to Exhibit A. No further obligation is owing.

3.06. MUTUAL WAIVER OF APPRAISAL AND RIGHT TO EQUAL DIVISION. In arriving at the valuation of such assets, each party relies on his and her own opinions and judgments as to the value of said property without reliance upon appraisal and hereby waives the right to an accounting and appraisal of assets and debts. The parties further acknowledge the division of community property provided herein does not necessarily represent an equal division, but that each party has considered that fact in entering into this agreement. Accordingly, each party hereby waives the right to an equitable division of the community property. The parties intend this mutual waiver of the right to an equal division of the community property to constitute the requirement of a written agreement by the parties set forth in Fam C § 2550.

3.07. WARRANTY OF FULL DISCLOSURE OF EXISTENCE OF ASSETS. Each party warrants to the other that he or she has no knowledge of any assets other than those disclosed and listed in Exhibit A and Exhibit B attached hereto and incorporated herein.

3.07.1. REMEDY FOR BREACH. If either party has knowledge of any asset other than those disclosed and listed in this agreement, and such asset(s) is characterized as community property, that warrantor will transfer or pay to the warrantee, at the warrantee's election, one of the following:

(a) If the asset is reasonably susceptible to division, a portion of the asset equal to the warrantee's interest in it;

(b) The fair market value of the warrantee's interest in the asset on the effective date of this agreement, plus interest at the rate of 10 percent per annum from the effective date to the date of payment; or

(c) The fair market value of the warrantee's interest in the asset on the date on which the warrantee discovers the existence of the asset, plus interest at the rate of 10 percent per annum from the discovery date to the date of payment.

This provision will not be deemed to impair the availability, in a court of competent jurisdiction, of any other remedy arising from nondisclosure of community assets.

FEB/11/2015/WED 03:15 PM Cor perty Housing

FAA No. 1707596253

1.017

Granland Johnson

**3.08. WARRANTY OF FULL DISCLOSURE OF EXISTENCE OF LIABILITIES.** Each party warrants to the other that he or she neither has incurred nor will incur, on or before the effective date of this agreement, any liability not disclosed and listed in this agreement on which the other is or may become personally liable or that could be enforced at any time against an asset held or to be received under this agreement by the other party.

**3.08.1. REMEDY FOR BREACH.** If either party has incurred or does incur, on or before the effective date of this agreement, any liability not disclosed and listed in this agreement on which the other is or may become personally liable or that could be enforced at any time against an asset held or to be received under this agreement by the other party, that warrantor will fully indemnify the other with respect to the obligation, including, but not limited to, any and all liability on the obligation, attorney fees, and related costs. This provision will not be deemed to impair the availability, in a court of competent jurisdiction, of any other remedy arising from nondisclosure of such liabilities.

**3.09. WARRANTY REGARDING UNDISCLOSED GIFTS OR TRANSFERS.** Each party warrants to the other that he or she has not made any undisclosed gifts or transfers of any community assets with a fair market value over \$250 for less than adequate and reasonable consideration without prior notice to the other party.

**3.09.1. REMEDY FOR BREACH.** If either party has made any undisclosed gift or transfer for less than adequate consideration of any community asset with a fair market value over \$250 without the other party's knowledge, that warrantor will pay to the warrantee a sum equal to half of the fair market value of the asset transferred, with the fair market value to be determined, at the warrantee's election, as of either (a) the effective date of this agreement or (b) the date on which the warrantee discovers the transfer, less any appreciation in the asset's value attributable solely to acts of the transferee(s) and successor(s). The warrantor will further pay to the warrantee interest at the rate of 10 percent per annum from the date elected for determination of the fair market value of the asset to the date of payment. This provision will not be deemed to impair the availability, in a court of competent jurisdiction, of any other remedy arising from undisclosed gifts or transfers for less than adequate consideration.

**3.10. WARRANTY REGARDING AFTER-ACQUIRED LIABILITIES.** Each party warrants to the other that he or she will not incur, after the effective date of this agreement, any liability or obligation for which the other will be or may become personally liable or that could be enforced against an asset held by the other party.

**3.10.1. REMEDY FOR BREACH.** If either party incurs, after the effective date of this agreement, any liability or obligation for which the other will be or may become personally liable or that could be enforced against an asset held by the other party, that warrantor will indemnify the other for any liability on the obligation, attorney fees, and related costs.

#### **IV. REAL PROEPRTY**

**4.01.** The parties acquired during the marriage community property interests in the real properties located at 228 Ormstead Drive and 1773 Bannon Creek Drive, both located in Sacramento, CA. The parties previously divided those interests by agreement. Accordingly, each

*Grantland Johnson*

party hereby irrevocably waives the right to assert any claim against the other with respect to the community property interest in either property, including, but not limited to those for reimbursements, credits or offsets.

4.02. **Repayment or Refinance of Debts.** All debts, secured and unsecured, assigned to a party by the terms of this agreement and for which the other party has ongoing liability shall either be paid in full or otherwise refinanced by the party to whom the debt is assigned.

#### V. RETIREMENT BENEFITS

5.01 **IDENTIFICATION.** Wife has acquired through employment an interest in the Sacramento County Employees Retirement System (SCERS) defined benefit plan, 401(k) and 457(b) defined contribution plan. Husband has acquired through his employment an interest in the California Public Employees Retirement System (CalPERS) defined plan and 401(k) defined contribution plan administered by Amerifunds.

5.02. **WARRANTY.** Each party warrants to the other that, to the best of his or her knowledge after checking with his or her employer, he or she is not a participant or beneficiary in or with respect to any pension or deferred compensation retirement plan other than those disclosed in section 5.01. If either party becomes aware of his or her eligibility for or participation in any benefit plan not disclosed in this agreement that is based in any degree on service during the marriage and before separation, that party will notify the other party of the existence of that eligibility or participation and authorize the plan to provide to the other party any information necessary to calculate the community interest, treating that interest as an omitted asset subject to the continuing jurisdiction of the Court.

5.03. **WAIVER.** Under the terms of this agreement, the entire interest of each plan specified in paragraph 5.01 above including, but not limited to, the right to future benefits and the right to name a beneficiary for any death and survivor benefits payable under the plan, is awarded to the party in whose name the interest is maintained, the "Plan Participant". Each party is informed that, independent of his or her community interest under federal law or the terms of the plan, he or she may, unless waived, have a right to survivor rights or other benefits in a plan awarded to the other party under the terms of this agreement. Each party expressly waives all such rights and interests and will timely sign those documents required by the plan administrator to implement the waiver, including written consent to designation of one or more alternate beneficiaries when applicable. This provision does not waive any right expressly provided in any trust agreement or beneficiary designation executed by one party in favor of the other after the effective date of this agreement.

5.04. **QUALIFIED DOMESTIC RELATIONS ORDERS.** Since by the terms of this agreement each party is assigned the entirety of the community property interest in his or her respective retirement benefits subject to ERISA provisions, no Qualified Domestic Relations Order is required. Therefore, the parties' previous agreement to engage the services of Moon Schwartz and Madden to draft the qualified orders necessary to divide the community property interests in the parties' respective retirements is hereby rescinded.

#### **V. ATTORNEY FEES AND COSTS**

*Grantland Johnson*

5.01 NO ALLOCATION OR REIMBURSEMENT. Each party will bear all of his or her own attorney fees and costs incurred in connection with the negotiation, preparation, and execution of this agreement and the pending proceeding for dissolution of marriage.

5.02 LEGAL REPRESENTATION. This agreement has been prepared by Mark P. Grotewohl CSB#244050, attorney for Husband. Wife has not been represented in the negotiation or preparation of this agreement. Wife acknowledges that Husband's attorney has informed her that the attorney represents only Husband, that Wife has the right to obtain independent legal advice, and that Wife should do so, but that she voluntarily declined to obtain such advice. Wife further acknowledges that she has carefully read this agreement in its entirety and voluntarily chooses to execute it.

**VI. GENERAL PROVISIONS**

6.01. RELEASE OF LIABILITIES AND CLAIMS. Except as otherwise provided in this agreement, each party hereby releases the other from all interspousal obligations, whether incurred before or after the effective date, and all claims to the property of the other. This release extends to all claims based on rights that have accrued before the marriage and during the marriage, including, but not limited to, property and support claims, claims for reimbursements or credits pursuant Family Code § 2640, charges for exclusive use of community property after the date of separation (*Marriage of Watts*), or payments on community obligations after the date of separation (*Marriage of Epstein*). The parties have considered and provided for such claims in this agreement.

This release extends to all claims, whether known or unknown, that either party may have against the other. By initialing below, each party expressly waives with respect to the other the benefits of Civil Code §1542, which protects against the inadvertent waiver of material claims that one does not know or suspect to exist, stated as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

    *CWB*    \_\_\_\_\_

(Wife's initials) (Husband's initials)

6.02. INDEMNIFICATION. Each party shall indemnify and hold the other harmless from all debts assigned to the party by the terms of this agreement, including legal fees and costs in defense of an enforcement action brought by the third party creditor.

6.03. WAIVER OF RIGHTS ON DEATH OF OTHER PARTY. Except for Wife's rights under paragraph 3.02 of this agreement, each party hereby waives the right to receive any property or rights whatsoever on the death of the other, unless such right is created or affirmed by the other under a will or other written document executed after the effective date of this agreement. Each party believes that he or she has received a fair and reasonable disclosure of the property and financial obligations of the other party. Each party's waiver is intended to be an enforceable waiver of that party's rights under Probate Code §§140-147.

Grantland Johnson

The rights waived include, but are not limited to, the following:

- (a) Property that would pass from the decedent by intestate succession;
- (b) Property that would pass from the decedent by testamentary disposition;
- (c) A probate homestead;
- (d) The setting aside of exempt property;
- (e) A family allowance;
- (f) The setting aside of an estate;
- (g) An election to take community or quasi-community property against the decedent's will;
- (h) The statutory share of an omitted spouse;
- (i) An appointment as executor or administrator of the decedent's estate, except as the nominee of a third party legally entitled to make such a nomination;
- (j) Property that would pass from the decedent by nonprobate transfer, such as the survivorship interest under a joint tenancy, a Totten trust account, or a payable-on-death account; and
- (k) Proceeds as beneficiary of any type of insurance policy.

6.04. ENTIRE AGREEMENT. This agreement contains the entire agreement of the parties on these matters, superseding any previous agreement between them.

6.05. RECONCILIATION. If the parties reconcile, this agreement will nevertheless remain in full effect unless and until it is modified or revoked in a writing signed by both parties.

6.06. MODIFICATION BY SUBSEQUENT AGREEMENT. This agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them, an oral agreement to the extent that the parties execute it, or an in-court oral agreement made into an order by a court of competent jurisdiction.

6.07. ATTORNEY FEES IN ACTION TO ENFORCE OR MODIFY AGREEMENT. The prevailing party in any action or proceeding to enforce or modify any provision of this agreement, or any corresponding provision of a subsequent judgment into which the provision is merged, will be awarded reasonable attorney fees and costs. For the moving party to be deemed the prevailing party for purposes of this provision, at least 10 days before the filing of any motion he or she must provide written notice to the other party specifying the alleged breach or default, if capable of being cured, or the modification requested. The other party must then be

*Grantland Johnson*

allowed to avoid implementation of this provision by curing the breach or default specified or executing an agreement for the modification requested during the 10-day period.

6.08. EFFECTIVE DATE. The effective date of this agreement will be the date of its execution by the second of the parties to do so.

6.09. COURT ACTION. If a judgment of dissolution of marriage is obtained by either party, the original of this agreement will be attached to the judgment. The Court will be requested to do the following:

- (a) Approve the entire agreement as fair and equitable;
- (b) Order the parties to comply with all of its executory provisions;
- (c) Merge all provisions, except those relating to warranties and indemnifications, into the judgment; and
- (d) Incorporate the remainder of the agreement in the judgment for the sole purpose of identification.

The foregoing is agreed to by:

Date: 9/29/14 *Grantland Johnson, Attorney in Fact*  
GRANTLAND JOHNSON, Petitioner

Date: 9/4/14 *Charlot Bolton*  
CHARLOT BOLTON, Respondent  
*See attached Notary Acknowledgment*

Approved as conforming to the agreement of the parties:  
Date: 10/14/14 *Mark P. Grotewohl*  
MARK P. GROTEWOHL, Attorney for Petitioner

IT IS SO ORDERED:  
Date: DEC 31 2014 *WM*  
SUPERIOR COURT JUDGE  
WM NEIL SHEPHERD  
COURT COMMISSIONER

*Grantland Johnson*

NOTARY ACKNOWLEDGMENT

State of California )  
County of Sacramento )

On this 4 day of Sept., 2014, before me, Leslie Robinson, Notary Public personally appeared Charlot Bolton who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Seal Above

*Leslie Robinson*  
Signature of Notary Public

*Gina Haud Johnson*

EXHIBIT A

Assets and Debts Confirmed to Wife

1. All clothing, jewelry, and other personal effects in Wife's possession.
2. All furniture, appliances, artwork, tools and other personal property in Wife's possession.
3. All net proceeds from the sale of real property located at 228 Omstead Drive, Sacramento, CA.
4. All net proceeds from the sale of real property located at 1773 Bannon Creek Drive, Sacramento, CA.
5. 1989 Volvo Sedan
6. 2000 Dodge van and any and all insurance proceeds received by Respondent.
7. All bank, credit union and investment accounts in Wife's sole name and funds on deposit therein.
8. All rights and interest in the Physicians Life insurance Policy, policy number ending in xxxx-5589.
9. Any and all interest in the County of Sacramento 457(b) account held in Wife's name alone, including but not limited to all member contributions and rights to future benefits.
10. Any and all interest in the County of Sacramento 401(k) account held in Wife's name alone, including but not limited to all member contributions and rights to future benefits.
11. Any and all interest in the Sacramento County Employees Retirement System defined benefit retirement plan held for the benefit of Wife.
12. Any and all student loan debt owed to the University of the Pacific.
13. All credit card accounts in Wife's sole name and related balances including but not limited to the following:
  - a. Wells Fargo credit card in Wife's name alone.
  - b. Merric Bank credit card in Wife's name alone
  - c. HSBN Orchard Bank credit card in Wife's name alone.
  - d. Barklay credit card in Wife's name alone.
  - e. Home Shopping Network credit card in Wife's name alone.

Exhibit C - 13



FEB/11/2015/WED 03:17 PM Community Housing

FAX No. 1707759653

P. 021

*Orlando Johnson*

EXHIBIT B

Assets and Debts Confirmed to Husband

1. All clothing, jewelry, and other personal effects in Husband's possession.
2. All furniture, appliances, artwork, tools and other personal property in Husband's possession.
3. All savings, checking and credit union accounts held in Husband's sole name and balances therein, including but not limited to accounts at Bank of America and Golden One.
4. All rights and interest in the Amerifunds 401(k) account number ending in xxxx-1775.
5. Any and all interest in the CalPERS defined plan attributable to Husband's employment, including but not limited to all member contributions and rights to past and future benefits, survivor and death benefits the Petitioner is entitled to select and assign according to the terms of the plan.
6. Any and all student loan debt owing to CSUS.
7. Any and all Federal and California State tax obligations owing for the tax years 2007, 2008 and 2009.
8. Any and all debt owed on the Bank of America visa credit card in Petitioner's name alone.
9. Any and all debt owing to Nelson Kynaard-Ford Mortor Company.
10. Any and all debt owing on the American Express credit card in Petitioner's name alone.
11. Any and all debt owing on the Golden One Credit Union credit card account in Petitioner's name alone.

Exhibit C - 14

# EXHIBIT D

RECEIVED SACRAMENTO  
CALPERS  
DDC # 16

November 13, 2013

2013 NOV 18 AM 11 26

Cal PERS  
PO Box 942715  
Sacramento, CA 94229 2715

RE IUD No.

To Whom It May Concern

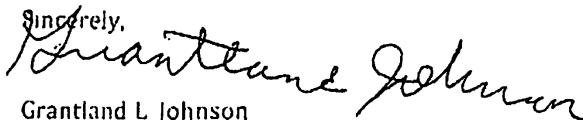
Please remove Charlot Bolton, my former wife from my Health Plan with CalPERS  
As of November 9, 2013, we are legally divorced I have included a copy of the  
divorce judgment and Charlot is no longer on my CalPERS health plan

Please send confirmation of her removal from the plan to me at

Grantland Lee Johnson  
2667 Sutterville Rd  
Sacramento, CA 95820

I thank you for your prompt attention to this matter

Sincerely,



Grantland L Johnson

2013/11/19 11:07:42 56 404

FL 190

2013/11/19 11:07:43 S6 405

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number and address) MARK P GROTEWOHL 244050 LAW OFFICES OF MARK GROTEWOHL 1610 Executive Court Sacramento CA 95864 TELEPHONE NO (916) 925-9180 FAX NO (Optional) (916) 925 9182 E-MAIL ADDRESS (Optional)		FOR COURT USE ONLY  <div style="border: 2px solid black; padding: 5px; text-align: center;">                     FILED/ENDORSED                      OCT 21 2013                      C.F.                      Lr-11                 </div>
ATTORNEY FOR (Name) Grantland L Johnson SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS 3341 POWER INN ROAD MAILING ADDRESS -same as above- CITY AND ZIP CODE SACRAMENTO CA 95826 BRANCH NAME WILLIAM R RIDGEWAY FAMILY RELATIONS PETITIONER Grantland L Johnson  RESPONDENT Charlot Bolton		
NOTICE OF ENTRY OF JUDGMENT		CASE NUMBER 13FL01863

You are notified that the following judgment was entered on (date)

- 1  Dissolution
  - 2  Dissolution status only
  - 3  Dissolution - reserving jurisdiction over termination of marital status or domestic partnership
  - 4  Legal separation
  - 5  Nullity
  - 6  Parent child relationship
  - 7  Judgment on reserved issues
  - 8  Other (specify)
- " / / 2013

ite

OCT 21 2013

Clerk by \_\_\_\_\_ Deputy

**-NOTICE TO ATTORNEY OF RECORD OR PARTY WITHOUT ATTORNEY-**

Under the provisions of Code of Civil Procedure section 1952 if no appeal is filed the court may order the exhibits destroyed or otherwise disposed of after 60 days from the expiration of the appeal time

**STATEMENT IN THIS BOX APPLIES ONLY TO JUDGMENT OF DISSOLUTION**

Effective date of termination of marital or domestic partnership status (specify) 11/9/13

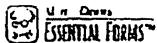
**WARNING** Neither party may remarry or enter into a new domestic partnership until the effective date of the termination of marital or domestic partnership status, as shown in this box

**CLERK'S CERTIFICATE OF MAILING**

I certify that I am not a party to this cause and that a true copy of the Notice of Judgment was mailed first class postage fully prepaid in a sealed envelope addressed as shown below and that the notice was mailed

at (place) Sacramento	California on (date)
Date OCT 2 2013	Date OCT 21 2013
Name and address of petitioner or petitioner's attorney Grantland L Johnson c/o Mark Grotewohl LAW OFFICES OF MARK GROTEWOHL 1610 Executive Court Sacramento CA 95864	Name and address of respondent or respondent's attorney Charlot Bolton c/o Jolene M Pasztor LAW OFFICES OF VICTORIA S LINDER 5303 Folsom Boulevard Sacramento CA 95819

Page 1 of 1



# EXHIBIT E

RECEIVED SACRAMENTO  
CALPERS  
DDC 7 15

2013 DEC 16 AM 9 38

2013/12/17 13:18:25 S8 2263

December 12, 2013

CalPERS  
PO Box 942715  
Sacramento, CA 94229 2715

RE IUD No

To Whom It May Concern

Please add Lee Anne Turner Johnson, my new wife to my Health Plan with CalPERS  
As of November 15, 2013, we are legally married I have included a copy of the  
Marriage Certificate, Lee's Social Security card and her birth certificate Thank you

Please send confirmation of her plan coverage to us at

Grantland Lee Johnson and Lee A Turner Johnson  
2667 Sutterville Rd  
Sacramento, CA 95820

I thank you for your prompt attention to this matter

Sincerely



Grantland L Johnson

# EXHIBIT F

RECEIVED  
CALPERS  
ODC - B

2014 JUL -3 AM 9 13

June 23, 2014

Cal PERS  
PO Box 942715  
Sacramento, CA 94229 2715

RE IUD No

To Whom It May Concern

I want my wife Lee Anne Turner Johnson, to be named as the beneficiary with my CalPERS retirement and all death benefits (previously named for Charlot Bolton and Patrice Bolton Johnson)

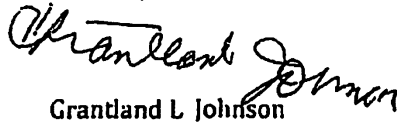
As of November 15, 2013, we were legally married. A court judgment or marital agreement will soon be filed and sent to you, finalizing all property with my former wife, Charlot Bolton. Upon receipt of this final settlement agreement, please immediately change all of my retirement benefit and all death benefit to my wife, Dr Lee Turner Johnson.

Once completed, please send confirmation of this change to us at

Grantland Lee Johnson and Lee A Turner Johnson  
2667 Sutterville Rd  
Sacramento, CA 95820

I thank you for your prompt attention to this matter

Sincerely,

  
Grantland L Johnson



# EXHIBIT G



P.O. Box 942715 Sacramento, CA 94229-2715  
888 CalPERS (or 888-225-7377) | Fax: (800) 959-6545  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

---

California Public Employees' Retirement System

July 25, 2014

Grantland L. Johnson  
2667 SUTTERVILLE RD  
SACRAMENTO, CA 95820-0000

CalPERS ID

Dear Grantland L. Johnson:

The Beneficiary Designation Form, which you recently submitted, cannot be processed because of the following reasons(s):

- An incorrect or invalid form was submitted. Please complete the enclosed form and re-submit.

You must complete a new form, which is provided. Please review the "Information and Instructions" sheet before completing the new form and make a copy of the form prior to mailing.

If you have any questions, please visit our Web site [www.calpers.ca.gov](http://www.calpers.ca.gov), or you may contact us toll free at 888 CalPERS (or 888-225-7377).

You may submit a new beneficiary designation at any time by logging into my|CalPERS

Exhibit G - 1

my|CalPERS 0589

# EXHIBIT H



P O Box 942715 Sacramento CA 94229 2715  
 888 CalPERS (or 888 225 7377) | Fax (800) 959 6545  
 www.calpers.ca.gov

California Public Employees Retirement System

Post Retirement Lump Sum Beneficiary Designation

Section 1

Member Information

Please include your first name middle initial and last name

Grantland L Johnson

Member's Full Name SSN or CalPERS ID Telephone Number Birth Date

Check either Box 1 or Box 2. If you check Box 2, also indicate benefit type.

1  I hereby designate the following person(s) who survive me share and share alike if no percentage (%) is given as BENEFICIARIES for any lump sum death benefits payable under the Public Employees Retirement Law in the event of my death

100% Or

2  I hereby designate separate beneficiaries for the various lump sum benefits that may be payable. This designation is for

- Retired Death Benefit
- Option 1 Balance
- Temporary Annuity Balance
- Option 4 - Option 1 Balance

Section 2

Beneficiary Designation

Provide on the form the full name of your beneficiary relationship Social Security number or CalPERS ID and the complete address

I understand that if I am married or in a registered domestic partnership but do not name my spouse or registered domestic partner as beneficiary they may be entitled to a community property share of the balance of contributions (Option 1) or Temporary Annuity Balance. The community property share will be based on one half of the contributions or one half of the service credit earned during the marriage/registered domestic partnership. If the marriage or partnership occurred after my retirement date then my spouse or registered domestic partner is not entitled to a community property interest. If a community property interest applies my designated beneficiary(ies) will receive the portion of my lump sum Option 1 or Temporary Annuity Balance that is not payable to my spouse or registered domestic partner as their community property share.

Primary Beneficiaries

If a percentage (%) is entered make sure the total equals 100%

Dr Lee Turner Johnson

Name of Primary Beneficiary Birth Date

If the form does not provide enough space you may attach additional sheets provided you indicate whether you are designating primary or secondary beneficiaries. You must sign date and write your Social Security number or CalPERS ID at the top of each additional sheet.

wife 100%  
 Relationship to the Member Percentage of the Benefit Social Security Number or CalPERS ID

Address (Number Street City State and Zip Code)

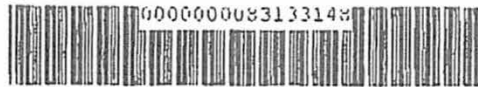
Name of Primary Beneficiary Birth Date

Relationship to the Member Percentage of the Benefit Social Security Number or CalPERS ID

Address (Number Street City State and Zip Code)

Continued on page 2

RECEIVED / CALPERS / 2014 AUG - 7 AM 11:22 / DDC - 1 / myCalPERS 0773



2014/08/07 13:38:14 86 5430

Put your name and Social Security number or CalPERS ID at the top of every page

Grantland L. Johnson  
Member's Name

\_\_\_\_\_  
Social Security Number or CalPERS ID

**Section 2**

**Beneficiary Designation - Continued**

If a percentage (%) is entered make sure the total equals 100%

**Primary Beneficiaries - Continued**

\_\_\_\_\_  
Name of Primary Beneficiary Birth Date

\_\_\_\_\_  
Relationship to the Member Percentage of the Benefit Social Security Number or CalPERS ID

\_\_\_\_\_  
Address (Number Street City State and Zip Code)

In the event I survive the person(s) named as primary beneficiary I hereby designate the following person(s) who survive me as BENEFICIARIES. If no percentage (%) is given, benefits will be paid share and share alike.

**Secondary Beneficiaries**

\_\_\_\_\_  
Name of Secondary Beneficiary Birth Date

\_\_\_\_\_  
Relationship to the Member Percentage of the Benefit Social Security Number or CalPERS ID

\_\_\_\_\_  
Address (Number Street City State and Zip Code)

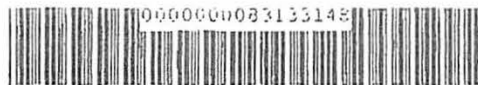
\_\_\_\_\_  
Name of Secondary Beneficiary Birth Date

\_\_\_\_\_  
Relationship to the Member Percentage of the Benefit Social Security Number or CalPERS ID

\_\_\_\_\_  
Address (Number Street City State and Zip Code)

If the form does not provide enough space you may attach additional sheets provided you indicate whether you are designating primary or secondary beneficiaries. You must sign date and write your Social Security number or CalPERS ID at the top of each additional sheet.

2014/08/07 13:36:15 S6 5431



Put your name and Social Security number or CalPERS ID at the top of every page

Grantland L Johnson  
Member's Name

\_\_\_\_\_  
Social Security Number or CalPERS ID

**Section 3**

**Required Signature(s)**

Provide the date you signed the form

**Member's Acknowledgement**

Should I survive all of the persons named I understand that the benefits payable upon my death will be paid to my statutory beneficiaries or to such other beneficiary or beneficiaries that I may hereafter designate in writing to CalPERS all in accordance with applicable provisions of law

By this beneficiary designation I hereby revoke any previous designation I have filed I understand that my marriage or domestic partnership final dissolution or annulment of my marriage or the termination of my domestic partnership or the birth or adoption of a child subsequent to the date this form is filed with CalPERS will automatically void this designation

I understand that a designation filed after the initiation of dissolution or annulment of marriage or domestic partnership or legal termination of domestic partnership will not be revoked when the legal process is finalized

Are you legally married or have a registered domestic partner?  Yes  No

If yes your spouse or registered domestic partner must sign this form If no please indicate

Never Married/Never in Registered Domestic Partnership  Divorced/Annulled  Widowed

If you are married or in a registered domestic partnership and your spouse or registered domestic partner does not sign this form you must complete and submit the Justification for Absence of Spouse s or Registered Domestic Partner s Signature (my|CalPERS 0775) form with your designation form

**IMPORTANT** You must complete the Justification for Absence of Spouse s or Registered Domestic Partner s Signature (my|CalPERS 0775) if you are married or have a registered domestic partnership but your spouse or registered domestic partner is unable to sign below

X Grantland L Johnson 8.5.14  
Member's Signature Date (mm/dd/yyyy)

**Spouse s/Registered Domestic Partner s Acknowledgement**

Before submitting your completed form be sure to make a copy to keep with your important retirement information

By signing this beneficiary designation form I acknowledge that I am aware of the designation made by my spouse or registered domestic partner I also hereby state that I am the current spouse or registered domestic partner

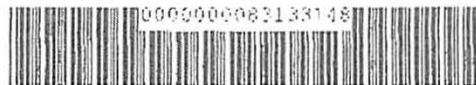
Dr Grantland L Johnson 8.5.14  
Spouse s/Registered Domestic Partner s Signature Date (mm/dd/yyyy)

11.15.13<sup>LT</sup>  
Date of Marriage or Registered Partnership (mm/dd/yyyy)

**Mail to:**

CalPERS Benefit Services DIVISION • P O Box 942711 Sacramento CA 94229 2711

my|CalPERS 0773



2014/08/07 13:38:15 56 5432

2014/08/07 13:38:16 56 5433

**Section 4** Information and Instructions

**Instructions**

The death benefits paid to your beneficiary depend on the retirement option you selected when you retired and the benefits contracted by your former employer. Please order or download *What You Need to Know About Changing Your Beneficiary or Monthly Benefit after Retirement* for a description of the benefits. The Post Retirement Lump Sum Beneficiary Designation form is used to designate a beneficiary(ies) for your lump sum benefits only.

- A. The following is a list of all the lump sum benefits that could be paid:
  - 1 Retired Death Benefit
  - 2 Option 1 Balance
  - 3 Temporary Annuity Balance
  - 4 Option 4 Option 2W or 3W and Option 1 Combined Balance

Any lump sum death benefits will be paid to your designated beneficiary. However, if no valid designation is in effect at the time of your death, your lump sum death benefits are paid to your statutory beneficiary (the order is determined by law).

- B. Any of the following events automatically revoke an existing beneficiary designation:
  - 1 Marriage
  - 2 Registered domestic partnership
  - 3 Dissolution or annulment of marriage or termination of a registered domestic partnership that is initiated before the designation is filed
  - 4 Birth or adoption of a child

If your beneficiary designation is revoked and there is no designation in effect at the time of your death, benefits will be paid to your statutory beneficiary. However, you can redesignate your previous beneficiary or name a new beneficiary by completing this form.

- C. If you are legally married or in a registered domestic partnership and you designate someone other than your spouse or registered domestic partner to receive your Option 1 balance, they could be entitled to their community property interest in this benefit. Their community property interest is 50 percent of the benefit for the period of CalPERS service during which you were married to your current spouse or in a registered domestic partnership. If you married or established a registered domestic partnership after retirement, your spouse or registered domestic partner does not have a community property interest in your death benefits.

- D. In Section 1, remember to clearly print the personal information requested at the top of the form. To protect you and your beneficiary from a possible legal challenge of your designations, we cannot accept a form with any corrections or erasure marks. Also, remember to check either Box 1 or Box 2. Check Box 1 if your designation applies to all applicable lump sum death benefits. Check Box 2 if you want to designate a different beneficiary for each lump sum death benefit payable. Your primary beneficiaries will receive an equal percent of the benefit, unless you indicate otherwise.

- E. In Section 2, if you want to name more than three primary beneficiaries or more than two secondary beneficiaries for one or all of the lump sum death benefits, you may attach additional sheets provided you indicate whether you are designating primary or secondary beneficiaries. You must sign date and write your Social Security number or CalPERS ID at the top of each additional sheet.

- F. In Section 3, you must sign the *Member's Acknowledgement* and your current spouse or registered domestic partner must also sign the *Spouse's or Registered Domestic Partner's Acknowledgement* to acknowledge the action you are taking. If you are not legally married or in a registered domestic partnership, you should check the box in the *Member's Acknowledgement* section stating that you are not married or in a domestic partnership and mark the correct applicable situation. If you are married or in a registered domestic partnership and your spouse or registered domestic partner does not sign the form, you must complete and submit the *Justification for Absence of Spouse's or Registered Domestic Partner's Signature* form with your designation form.

**Information Practices Statement**

The Information Practices Act of 1977 and the Federal Privacy Act require the California Public Employees Retirement System to provide the following information to individuals who are asked to supply information. The information requested is collected pursuant to the Government Code Sections (20000 et seq.) and will be used for administration of the Board's duties under the Retirement Law, the Social Security Act, and the Public Employees Medical and Hospital Care Act, as the case may be. Failure to supply all of the requested information may result in the System being unable to perform its functions regarding your status. Portions of this information may be transferred to state and public agency employers, California State Attorney General, Office of the State Controller, California Technology Agency, Public Safety & Communications Division, Franchise Tax Board, Internal Revenue Service, Workers Compensation Appeals Board, State Compensation Insurance Fund, County District Attorneys, Social Security Administration, beneficiaries of deceased members, physicians, insurance carriers, and various vendors who prepare microfiche/microfilm for CalPERS. Disclosure to these parties is done in strict accordance with current statutes regarding confidentiality.

You have the right to review your membership files maintained by the California Public Employees Retirement System. For questions concerning your rights under the Information Practices Act of 1977, please contact the Information Coordinator, CalPERS, P.O. Box 942702, Sacramento, CA 94229-2702.

myCalPERS 0773



# EXHIBIT I



2014/08/07 13:44:25 86 5546



# Application to Modify Option and/or Life Option Beneficiary

888 CalPERS (or 888-225 7377) TTY (877) 249 7442

Name of Participant (First Name Middle Initial Last Name) Grantland Lee Johnson Social Security Number (Last Four Digits) \_\_\_\_\_

## Section 1

### Qualifying Events for Modification

Please submit a copy of appropriate legal document such as certified death certificate, marriage certificate, certificate of domestic partnership or the endorsed filed court order with this application

You can change your benefit option or life option beneficiary only if one of the following events occurs. Indicate the event that applies:

Death of current life option beneficiary (submit a copy of the certified death certificate)

Name of Beneficiary (First Name Middle Initial Last Name) \_\_\_\_\_ Date of Birth (MM/DD/YYYY) \_\_\_\_\_

Marriage (submit a copy of marriage certificate)

Name of Spouse (First Name Middle Initial Last Name) \_\_\_\_\_ Date of Birth (MM/DD/YYYY) \_\_\_\_\_

Establishment of domestic partnership (submit a copy of certificate of domestic partnership)

Name of Domestic Partner (First Name Middle Initial Last Name) \_\_\_\_\_ Date of Birth (MM/DD/YYYY) \_\_\_\_\_

Divorce, annulment or legal separation from spouse or ex-spouse who is your life option beneficiary (submit a copy of the endorsed filed court order)

divorce date 11/8/13  annulment  legal separation \_\_\_\_\_ Date of Birth (MM/DD/YYYY) \_\_\_\_\_

Dissolution or termination of domestic partnership from domestic partner or ex-partner who is your life option beneficiary (submit a copy of the endorsed filed court order)

RECEIVED/S. CALIF. CALPERS  
 2014 AUG -7 AM 9 2  
 DDC - 1

## Section 2

### New Beneficiary Information

Complete new beneficiary information and submit a copy of their birth certificate

If you were required by court order at the time of retirement to designate your former spouse or legally recognized domestic partner as a Community Property Option 4 beneficiary, you must do so. Do not complete Sections 2 and 3

Name of New Beneficiary (First Name Middle Initial Last Name) Lee A Turner Johnson

Male  Female wife  
 Gender Relationship to You

Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

on file at CalPERS w/ Medical Center

See page 2

**POOR QUALITY**

Exhibit I - 1

Put your name and Social Security number or CalPERS ID at the top of every page

Grantland Lee Johnson  
Name of Participant Social Security Number or CalPERS ID

**Section 3**

We will provide Options 1 2 2W 3 and 3W if these do not meet your needs you can request one of the approved Option 4 types shown

If you want your beneficiaries to receive an equal share of your benefits do not specify a dollar or percentage of the benefit

**Option 4 Types**

You must first review CalPERS publication *Retirement Option 4* 6.07  
 Option 2W & Option 1 Combined ~~W/A~~ ~~W/A~~  Option 3W & Option 1 Combined  
 Specific Percentage to Beneficiary 100 %  Specific Dollar Amount to Beneficiary \$ \_\_\_\_\_  
 Reduced Allowance for Fixed Period of Time 68  
Reduce my Allowance by \$ \_\_\_\_\_ or \_\_\_\_\_ % through the end of \_\_\_\_\_ (mm/yyyy)  
Dollar Amount Percentage

Multiple Lifetime Beneficiaries  
Name (First Name Middle Initial Last Name) Social Security Number or CalPERS ID  
Birth Date (mm/dd/yyyy)  Male  Female Gender Relationship to You  
Address  
City State ZIP County

Name (First Name Middle Initial Last Name) Social Security Number or CalPERS ID  
Birth Date (mm/dd/yyyy)  Male  Female Gender Relationship to You  
Address  
City State ZIP County

Name (First Name Middle Initial Last Name) Social Security Number or CalPERS ID  
Birth Date (mm/dd/yyyy)  Male  Female Gender Relationship to You  
Address  
City State ZIP County

Reduced Allowance Upon Death of Retiree or Beneficiary \$ \_\_\_\_\_  
Reduction Amount

2014/08/07 13:44:26 56 5547

Put your name and Social Security number or CalPERS ID at the top of every page

Gruntland Lee Johnson  
 Name of Participant Social Security Number or CalPERS ID

**Section 4**

**Option 4 Court-Ordered Community Property**

These options apply to Option 4 Court Ordered Community Property only

- Option 4/1 – To complete this option choice you must also fill out the new beneficiary information below
- Option 4/2W – To complete this option choice you must also fill out the new beneficiary information below
- Option 4/3W – To complete this option choice, you must also fill out the new beneficiary information below

Complete new beneficiary information and submit a copy of their birth certificate

Name (First Name Middle Initial Last Name) Social Security Number or CalPERS ID  
 Birth Date (mm/dd/yyyy) Gender Relationship to You  
 Address  
 City State ZIP

**Section 5**

**Survivor Continuance**

If your spouse or domestic partner is your eligible survivor you must submit a copy of your marriage certificate or certificate of domestic partnership

I currently have an eligible survivor who may be entitled to the Survivor Continuance benefit

Dr Lee A Turner Johnson  
 Name (First Name Middle Initial Last Name) Social Security Number or CalPERS ID  
 Birth Date (mm/dd/yyyy) Relationship to You Date of Marriage or Domestic Partnership (mm/dd/yyyy)

**Section 6**

**Certification of Participant**

I understand that this form is a request for an election form to modify my option and beneficiary(ies) I further understand that my new option/beneficiary change will not be processed until the properly completed election form is submitted to CalPERS I hereby certify under penalty of perjury that the foregoing information is true and correct

[Signature] Johnson 10/3/14  
 Signature of Participant Date  
 Home Phone Number Business Phone Number  
altua

Exhibit I - 3

Mail to:

CalPERS Benefit Services Division • PO Box 942711 Sacramento, CA 95834-2711

2014/08/07 13:44:26 S6 5548

# EXHIBIT J



P.O. Box 942715 Sacramento, CA 94229-2715  
888 CalPERS (or 888-225-7377) | Fax: (800) 959-8545  
[www.calpers.ca.gov](http://www.calpers.ca.gov)

California Public Employees' Retirement System

August 14, 2014

Grantland L. Johnson  
2667 SUTTERVILLE RD  
SACRAMENTO, CA 95820-0000

CalPERS ID:

Dear Grantland L. Johnson:

This is to confirm that your Beneficiary Designation form which was designated on 08/14/2014 9:32 am has been accepted by CalPERS.

**Benefit Selection: Pro-Rata Lump Sum**

**Beneficiary(s): Lee A. Turner, Primary, 100.00%**

We would like to remind you that if any of the following events should occur, your current designation will be automatically revoked:

- Marriage or registered domestic partnership.
- Dissolution or annulment of marriage or registered domestic partnership if initiated after the beneficiary designation form was submitted.
- Birth or adoption of a child.
- Termination of employment that results in a refund of your contributions.

If one of these events should occur, a new beneficiary designation must be completed if you wish to name someone other than your statutory beneficiary(ies). The statutory order is: 1) Spouse or Registered Domestic Partner, or if none, 2) Children, or if none, 3) Parents, or if none, 4) Brothers and sisters, or if none, 5) Estate, if probated, or if not, 6) Trust.

If you have any questions, please visit our website [www.calpers.ca.gov](http://www.calpers.ca.gov) or you may contact us toll free at 888 CalPERS (or 888-225-7377).

my|CalPERS 2172

Exhibit J - 1

# EXHIBIT K

FILE COPY



Benefit Services Division  
P.O. Box 942711  
Sacramento, CA 94229-2711  
Telcommunications Device For  
The Deaf - (916) 326-3240  
(916) 326-3232; FAX (916) 326-3934

Reply To: Section 415  
Refer To:

December 4, 2003

Grantland L Johnson

**YOUR SERVICE RETIREMENT ALLOWANCE:**

Your election to receive the Option 2 Allowance has been processed. Your monthly retirement benefit is \$972.14 based on your retirement date of 11/16/2003. This amount does not include any deduction you have authorized this system to make. Your first regular warrant will arrive on or shortly after 01/01/2004 and will cover the period of 12/01/2003 through 12/31/2003. Your retroactive warrant will be issued on 12/18/2003, and will cover the period of 11/16/2003 through 11/30/2003. Your future retirement warrants will be mailed to arrive on or shortly after the first of the month following the month to which they apply.

Please endorse and cash or deposit each warrant promptly. Unless direct bank mailings are authorized, your personal endorsement is required. If you have requested direct deposit, it will take effect in 30 to 60 days.

Your retirement allowance shown above is an approximation of the amount you are eligible to receive. An adjustment to your account, if needed, to reflect an increase in service (i.e. Golden Handshake service credit), a change in retirement date, or increase in salary will be completed after final payroll information has been received. Any questions concerning an adjustment or pertaining to your future retirement benefits should be directed to the Benefit Services Division, P.O. Box 942716, Sacramento, CA 94229-2716 or by telephoning (916) 326-3848 or (800) 352-2238.

**BENEFICIARY/SURVIVOR ALLOWANCE:**

Upon your death, benefits will be paid to your beneficiary in accordance with the designation indicated on your retirement election document. If you elected a benefit which requires marriage and/or birth documentation and you have not submitted these documents, please send them immediately to the Benefit Services Division. If the documents are not in file at the time of your death, it may be necessary to delay payment of benefits to your beneficiary.

If your beneficiary predeceases you, your allowance will increase to the Unmodified allowance. You may modify your election to Option 1, 2, 2W, 3, 3W, or 4 and name a new beneficiary. You may also modify your election upon marriage after retirement if a former spouse was not named as the beneficiary. If a former spouse was named, you must have a court order that awards you the entire interest in your CalPERS benefits before you can name a new spouse as beneficiary. You may modify your election upon divorce, annulment or legal separation if you have a court order that awards you the entire interest in your CalPERS benefits.

To request a modification of election to name a new beneficiary for a lifetime option allowance, please contact the Benefit Services Division for information about a recalculation of allowance and the required documentation.

California Public Employees' Retirement System  
Lincoln Plaza-400 P Street-Sacramento, CA

PAS313/P1313

*Section 415*

*what does it say when member has no job interest to be retired*

FILE COPY

Grantland L Johnson

INCOME TAX INFORMATION:

The following information regarding your contributions will assist you in the determination of the taxability of your benefit.

CONTRIBUTIONS:	Total Contributions and Interest	Interest	Taxed Contributions	Non-taxed Contributions
Normal	\$ 23,790.49	\$ 3,823.51	\$ .00	\$ 19,966.98
Total	<u>\$ 23,790.49</u>	<u>\$ 3,823.51</u>	<u>\$ .00</u>	<u>\$ 19,966.98</u>

Based on your taxed contributions, your monthly tax free amount is \$ .00.

The staff of the California Public Employees' Retirement System hope that your transition into retirement has been a pleasant experience. We look forward to assisting you in the future.

Retirement Eligibility and Payment Section

PERS-BAS-11



FILE COPY



**BENEFIT SERVICES DIVISION**  
 P.O. Box 942711  
 Sacramento, CA 94229-2711  
 Telecommunications Device For  
 The Deaf - (916) 326-3240  
 (800) 352-2238; FAX (916) 326-3933

Grantland L Johnson  
 2025 W. El Camino Blvd. #180  
 Sacramento CA 95833

SSA#  
 Retirement Date: 11/16/2003  
 Member Age: 55.00  
 Beneficiary Date of Birth:

### ACCOUNT DETAIL INFORMATION SHEET

The following is the data used to calculate your retirement allowance. Any change in the information reflected below could result in a change to your retirement benefit. An adjustment to your account, if needed, will be completed after final payroll information has been received from your employer.

EMPLOYER NAME	TYPE OF SERVICE	YRS OF SERVICE	FORMULA / BENEFIT FACTOR	FINAL COMP
EMPLOY DEV DEPT	NORMAL SERVICE	2.729	2% @ 55 / 2.000	10,951.00
EMPLOY DEV DEPT	NORMAL SERVICE	1.833	2% @ 55 / 2.000	10,951.00
HLTH & WLF ADM	NORMAL SERVICE	0.300	2% @ 55 / 2.000	10,951.00
HLTH & WLF ADM	NORMAL SERVICE	0.150	2% @ 55 / 2.000	10,951.00

Final compensation is your highest average monthly pay rate for the last consecutive 12 or 36 months of employment based on your employer's contract. If your service was coordinated with Social Security the final compensation shown was reduced by \$133.33 in the calculation of your retirement allowance.

Retirement Eligibility and Payment Section  
 Benefit Services Division

FILE COPY

Reply to Section 415  
Refer to No.  
December 4, 2003

To: 5790 Hlth & Wlf Adm  
Attn: Personnel  
10014

From: Benefit Services Division  
California Public Employees' Retirement System

Subject: Johnson, Grantland L

Notice of Placement on Retirement Roll:

This is to advise you that the employee named above has been placed on our 12/2003 Service Retirement Roll with an effective date of 11/16/2003 and separation date of 11/15/2003.

PERS-BAS-62

Exhibit K - 4

# EXHIBIT L

FEB/11/2015/WED 03:10 PM Community Housing

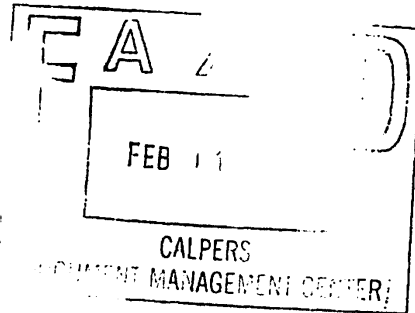
FAX No. 170775 053

P. 002

February 11, 2015

Cal PERS  
PO Box 942715  
Sacramento, CA 94229-2715

RE: IUD No



CalPERS Death Benefits Division:

Enclosed please find the Certified Final Judgment on Property in the Marital Settlement and Agreement for Grantland L. Johnson in the case of Grantland Johnson V. Charlot Bolton (December 31, 2015)

The bifurcation was completed in November, 2014 (which CalPERS has on file) and this is the certified final property settlement judgment. This was held up due to lack of clerical staffing in the courts. It is my understanding from a call I made to CalPERS prior to Christmas that the analyst was awaiting this judgment in order to complete the process related to Lump Sum Death Benefit and payment of other monthly death benefits to beneficiary, designated by Grantland Johnson mid-August, 2014 before his death on August 19, 2014 which is in his file. I have enclosed copy again plus the Power of Attorney, designating myself, his wife as POA and Executor.

In addition, I am enclosing most of the pay stubs from my husband's retirement checks from December, 2013 through September, 2014. Grantland's ex-wife had put a lien on his retirement checks while the property settlement was in progress, in the event that she might receive a portion. 50% was withheld monthly during that period. The judgment (enclosed) was not in her favor. I cannot locate the stubs for June, July, and August, 2014 although they were received. My husband was ill at the time, on dialysis, and spent the latter part of July and all of August until the 16<sup>th</sup> in hospital when I brought him home to pass away in our home. The amount withheld most likely equals that of the previous month of May, 2014 and the amount shown on the September, 2014 stub. In total, I estimate the withheld amount to be a little more than \$6,000. Grantland wanted me to have this to pay off the cost of his funeral and not be burdened with this expense.

Once you have reviewed the certified final judgment, please issue the disbursement of the lump sum and the past retirement to his stated beneficiary, myself. I have included his will of 2012 naming me his Power of Attorney and his Executor- as Dr. Lee Turner-Muecke, which was my name at the time, prior to our marriage on November 15, 2014. I have enclosed both a copy of the will, and I have verified our marriage certificate which is already in your file with his death certificate and application for both lump sum and application information for other monthly benefits, sent to me by CalPERS and returned completed in September 2014, shortly after his death.

In addition, I was on his Medical/Dental plans and recently found out that I was removed because the final certified property judgment was delayed due to court staffing and without that property settlement everything to do with his estate was closed down. This has been shocking and an extreme hardship to me as his wife

FEB/11/2015/WED 03:10 PM Community Housing

FAX No. 1707750053

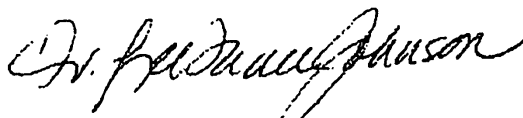
P. 003

and previously domestic partner since 2008. I believe Grantland is Tier 1 and signed Option 2 for monthly benefits to surviving spouse. As such, I would be eligible for his Medical/Dental plan for life. I anxiously await word from you on this matter, as it has been very very stressful to me.

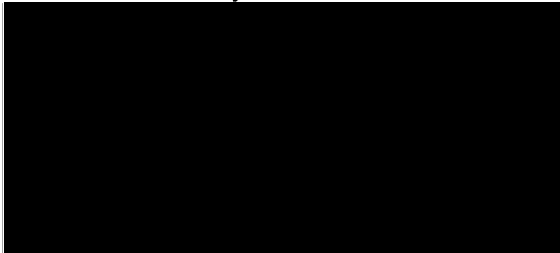
Thank you for your attention to this business, as I continue to work on his life closure. It has been an enormous loss after our ten years together and I am very appreciative of the manner in which CalPERS has worked with me to make what is very difficult, somewhat more bearable. Should you need to reach me, the best phone number in your file to reach me is my cell, 916-524-8745.

Thank you and I look forward to hearing from you.

Sincerely,



Dr. Lee Turner Johnson



# EXHIBIT M

February 14, 2015

Cal PERS  
PO Box 942715  
Sacramento, CA 94229-2715

RE: IUD No

CalPERS Death Benefits Analyst:

This package has been faxed in entirety to the Death Benefits Division on Wednesday, February 11, 2015. I am now sending the hard copy with a cover to address the fact that there seems to be some notation that in spite of my husband Grantland Johnson choosing Option 2 and further having signed the Application to Change Beneficiary on his Survivor Benefits, that I would only receive Lump sum. I have therefore put the two documents he signed August 13 while in hospital for both lump sum and Application to change Survivor Benefits Beneficiary. Although we were married in 2013, there was a final property settlement on his former marriage pending. Enclosed please find the Certified Final Judgment on Property in the Marital Settlement and Agreement for Grantland L. Johnson in the case of Grantland Johnson V. Charlot Bolton (December 31, 2015). You will find that my husband was granted full and complete rights to name his own beneficiary with no amount of any property being assigned to his former wife. That had already been settled.

Grantland signed the Lump Sum Death Benefit and payment of other monthly death benefits to beneficiary, designated by Grantland Johnson in August, 2014 before his death on August 19, 2014 and we certified mail for you to receive originals which are now in your file. At that time, he and I talked with a CalPERS representative who assured him that his wishes would be honored even if after his death. In fact, I also had him sign a second copy of each and do have original signatures on both the Lump Sum and Survivor Benefits forms. In addition I am also his Executor (enclosed).

In addition, I am enclosing most of the pay stubs from my husband's retirement checks from December, 2013 through September, 2014. Grantland's ex-wife had put a lien on his retirement checks while the property settlement was in progress, and 50% was withheld from December, 2013 through September, 2014. The judgment (enclosed) was not in her favor. I cannot locate the stubs for June, July, and August, 2014 although they were received. My husband was ill at the time, on dialysis, and spent the latter part of July and all of August until the 16<sup>th</sup> in hospital when I brought him home to pass away in our home. The amount withheld most likely equals that of the previous month of May, 2014 and the amount shown on the September, 2014 stub. In total, I estimate the withheld amount to be a little more than \$6,000. Grantland wanted me to have this to pay off the cost of his funeral and not be burdened with this expense.

Once you have reviewed the certified final judgment, please issue the disbursement of the lump sum and the past retirement to his stated beneficiary,

myself. I have enclosed both a copy of the will, and I have verified our marriage certificate which is already in your file with his death certificate and application for both lump sum and application information for other monthly benefits, sent to me by CalPERS and returned completed in September 2014, shortly after his death.

In addition, and of great importance, I was on his Medical/Dental plans (CalPERS statement enclosed) and recently found out that I was removed because the final certified property judgment was delayed due to court staffing and without that property settlement everything to do with his estate was closed down. This has been shocking and an extreme hardship to me as his wife and previously domestic partner since 2008. I know Grantland signed Option 2 for monthly benefits to surviving spouse. As such, I would be eligible for his Medical/Dental plan for life. I intently await word from you on this matter, as it has been very very stressful to me. Somehow those I have spoken with do not seem to notice that his beneficiary changes were made and signed before his death so I am therefore eligible for montly benefits and medical/dental benefits. I have consulted with an attorney in this matter.

Thank you for your attention to this business, as I continue to work on his life closure. It has been an enormous loss after our ten years together and I am very appreciative of the manner in which CalPERS has worked with me to make what is very difficult, somewhat more bearable. I would appreciate communication at your earliest convenience; the best phone number in your file to reach me is my cell, 916-524-8745.

Sincerely,



Dr. Lee Turner Johnson

Wife of Former Secretary, Grantland Lee Johnson, Secretary, Health and Human Services Agency, State of California, Governor Davis Administration and,

Former Regional Director, Region IX, Health and Human Services Agency, President Clinton Administration



# EXHIBIT N



California Public Employees' Retirement System  
Benefit Services Division  
P.O. Box 1652  
Sacramento, CA 95812-1652  
TTY: (877) 249-7442  
(888) CalPERS (225-7377) phone • (916) 795-1281 fax  
www.calpers.ca.gov

Reply To: Section 440/MC  
Refer To: 1190657388

March 4, 2015

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

Dr. Lee Turner Johnson  
[REDACTED]

Dear Dr. Turner Johnson:

Please accept my condolences regarding the death of your husband, Grantland Johnson. This letter is to advise that we have received your claim for death benefits payable from this system. We have reviewed Mr. Johnson's file along with the correspondence and documents you submitted. The following information will provide an explanation of the benefits payable and why there are no continuing monthly benefits payable to you.

Mr. Johnson retired with CalPERS on November 16, 2003 electing the Option 2 allowance and naming his current spouse at the time, Charlot Bolton, as his option beneficiary. On December 4, 2003, correspondence from CalPERS (copy enclosed) was sent to Mr. Johnson confirming his election to receive the Option 2 allowance. This correspondence included information regarding the Beneficiary/Survivor Allowance. It specifically states that the member may modify his election upon marriage after retirement if a former spouse was not named as the beneficiary. If a former spouse was named, the member must have a court order that awards him the entire interest in his CalPERS benefits before he can name a new spouse as beneficiary. It instructs the member that to request a modification of election to name a new beneficiary for a lifetime option allowance, he should contact Benefit Services Division for information about a recalculation of allowance and the required documentation.

In August 2013, CalPERS was notified of Ms. Bolton's community property interest claim to Mr. Johnson's retirement allowance as a result of their marriage dissolution. In December 2013, we began holding one-half of Mr. Johnson's allowance pending receipt of the court order resolving the community property claim. A filed copy of the entire property settlement agreement, or court order in which the community property determination was made, was requested once the respective interests of the parties were determined by the court.

We received correspondence from Mr. Johnson requesting that you be named as his beneficiary for benefits that were previously named for Charlot Bolton and Patrice Bolton Johnson. On August 7, 2014, we received Mr. Johnson's completed Post Retirement Lump Sum Beneficiary Designation form naming you as his beneficiary to receive 100% of any lump sum death benefits payable under the Public Employees Retirement law in the event of his death. We also received an Application to Modify Option and/or Life Option Beneficiary. The qualifying event provided is the divorce on November 9, 2013. Under this event, our form instructs the member to submit a copy of the endorsed filed court order. Mr. Johnson listed you

RESPONDENT-000051

Dr. Lee Turner Johnson  
March 4, 2015  
Page 2

information under the new beneficiary information section. He selected the box for a calculation of Option 4 100%, but this is lined out with what appears to be his initials next to the alterations. Mr. Johnson listed you as a possible eligible survivor for Survivor Continuance; however, this would only be payable to a spouse whom the member was married to prior to retirement. In the Certification of Participant section of the form above Mr. Johnson's signature, the following statement is provided:

I understand that this form is a request for an election form to modify my option and name a new beneficiary(ies). I further understand that my new option/beneficiary change will not be processed until the properly completed election form is submitted to CalPERS. I hereby certify under penalty of perjury that the foregoing is true and correct.

Following Mr. Johnson's passing on August 19, 2014, CalPERS sent forms for you to complete and submit in order to claim the death benefits that are payable. We received your completed forms and advised you that we still needed a copy of the final settlement on the community property issue in order to determine what is payable.

On February 11, 2015, we received multiple documents from you including your correspondence claiming a right to the lump sum death benefits, Option 2 monthly benefit, health/dental benefits and the accrued payment held while awaiting a filed copy of the court order or entire property settlement agreement; as well as a copy of the Judgment on Reserved Issues and Marital Settlement Agreement, filed December 31, 2014, pertaining to the member's retirement benefits with CalPERS. Our community property area reviewed the document and removed the community property hold based on the judgment which awarded Mr. Johnson the entire interest in his pension.

In accordance with GC section 21454, and based on the judgment on reserved issues awarding Mr. Johnson the entire interest in his pension along with his written request, we have determined that Mr. Johnson's former spouse will be removed as his option beneficiary. Therefore, the lifetime monthly Option 2 allowance will not be payable to Christy Johnson.

Government Code Section 21506 provides that if a member's spouse is removed as the option beneficiary, the allowance shall be continued during the retired person's lifetime in accordance with the provisions in effect but that no monthly allowance shall be paid following the retired person's death, and in lieu thereof there shall be paid in a lump sum to the member's estate or a beneficiary designated by him or her the amount, if any, by which the member's accumulated contributions at retirement exceed the total payments made to the retired person to the date of his or her death. Therefore, you are also entitled to the balance of Mr. Johnson's accumulated contributions at retirement in the amount of \$2,858.71.

Mr. Johnson designated you as the beneficiary to receive any lump sum benefits payable under the Public Employees' Retirement Law in the event of his death, thus, you are entitled to the \$2,000.00 Retired Death Benefit. We have processed payment of this lump sum death benefit to you. In accordance with Government Code section 21506, and because Mr. Johnson's

Dr. Lee Turner Johnson  
March 4, 2015  
Page 3

former spouse was removed as his option beneficiary thereby making a lifetime monthly option 2 allowance not payable, you are also entitled to the prorated allowance payable for the 19 days in August 2014 that Mr. Johnson survived as well as the accrued payment consisting of the one-half portion of Mr. Johnson's allowance held pending resolution of the community property issue. We will now forward Mr. Johnson's file for processing of the accrued payment.

Government Code Section 21462 addresses Conditions for Change in Optional Settlement or Beneficiary. It includes:

- (a) (1) Notwithstanding any other provision of this part, a member who elected to receive optional settlement 2, 3, or 4, involving a life contingency of the beneficiary, may, if the beneficiary predeceases the member or if the member marries and the former spouse was not named as beneficiary, or, if a former spouse was named, in the event of a dissolution or annulment of the marriage or a legal separation in which the judgment dividing the community property awards the total interest in the retirement system to the retired member, elect to have the actuarial equivalent reflecting any selection against the fund resulting from the election as of the date of election of the allowance payable for the remainder of the member's lifetime under the optional settlement previously chosen applied to a lesser allowance during the member's remaining lifetime under one of the optional settlements specified in this article and name a different beneficiary.
- (b) The election shall be made within 12 months following the death of the beneficiary who predeceased the member or within 12 months of the date of entry of the judgment dividing the community property of the parties, or within 12 months following marriage if the spouse is named as beneficiary. The election shall become effective on the date specified on the election, provided that this date is not earlier than the day following receipt of the election in this system pursuant to this section.
- (d) This section shall not be construed to mean that designation of a new beneficiary causes the selection of an optional settlement. An optional settlement shall be selected by a member in a writing filed by the member with the board.

Generally, after an Application to Modify Option and the required supporting documents are received, a recalculation of the various retirement options is completed to provide a benefit for a new beneficiary. This type of recalculation usually causes a reduction to the member's current benefit in order to provide a monthly benefit to the new beneficiary. An election document providing the figures under the various options available is mailed to the member within 60 days so the member may review the new benefit amounts, decide if they wish to elect a new option, and then select a new option. If the completed election document is not received by the due date the change is not processed. If the completed election document is received by the due date, the member's benefit is changed effective on the first day of the following month. Upon the member's death, the benefit elected becomes payable to the new beneficiary. Both the member and the new beneficiary must be alive on the effective date. Unfortunately, Mr. Johnson passed away before he was awarded full interest in his retirement benefits and before a recalculation election document could be provided to him.

RESPONDENT-000053

Dr. Lee Turner Johnson  
March 4, 2015  
Page 4

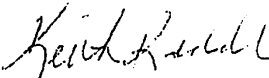
In accordance with GC section 21462, and because the conditions required to change an optional settlement beneficiary were not met, CalPERS cannot process a recalculation to Mr. Johnson's Option 2 benefit.

In cases where there is no ongoing monthly Option benefit payable to a beneficiary, there may still be an ongoing monthly Survivor Continuance benefit payable for eligible survivors. An eligible surviving spouse must have been married to the member for at least one year prior to the member's retirement date and continued without interruption until the death of the member. Because your marriage took place after your husband's retirement date, you are not eligible to receive this monthly Survivor Continuance benefit.

Dr. Turner Johnson, unfortunately there are no monthly benefits payable to you from CalPERS. Since you are not entitled to a monthly allowance, you are not eligible to continue enrollment in the employer sponsored health insurance through CalPERS. However, you may be eligible for continued coverage through the COBRA program. COBRA refers to federal legislation which allows you to continue enrollment in a group-sponsored health plan at a rate of 102% of the gross premium rate. You may participate for a limited period of time by paying your premium directly to the health insurance carrier. An election for COBRA coverage must be made within 60 days of notification of eligibility. If you are interested in enrolling for COBRA insurance, you should contact the CalPERS Health Benefits Division to inquire about group insurance coverage continuation, please call **888 CalPERS (or 888-225-7377).**

If you wish to appeal our determination that the conditions required to change an optional settlement beneficiary were not met, you have the right to do so. An appeal must be filed in writing with CalPERS at the address in the letterhead above, within 30 days of the mailing of this letter. The right to appeal is provided for under Sections 555 – 555.4, Title 2 of the California Code of Regulations. A copy of the applicable code sections is attached for your information. An appeal, if filed, must contain the factual basis and the legal authorities for the appeal. If you file an appeal, you will be provided with a statement of issues and notified of the hearing date by our Legal Office. The Legal Office will contact you and handle all requests for information. If you do not intend to appeal, we will move forward with payment of the balance of the member's accumulated contributions at retirement to you. If an appeal is received we will be unable to process payment of the balance of the member's accumulated contributions at retirement until this matter is resolved. If you have any questions, please contact Melissa Cisneros of my staff at her direct line (916) 795-0238.

Sincerely,



KEITH RIDDLE, Assistant Chief  
Benefit Services Division

Attachment: PERS-OSS-197

RESPONDENT-000054

# EXHIBIT O

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4 Sacramento, California 95864  
5 Telephone: (916) 448-9800  
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7 Email: [ian@kctlegal.com](mailto:ian@kctlegal.com)  
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9 Attorneys for Respondent

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BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Appeal Regarding  
Death Benefits Payable Upon the Death of  
GRANTLAND LEE JOHNSON by

Case No. 2015-0373  
OAH No. 2015081045

LEE TURNER JOHNSON,

**NOTICE OF AMENDED DECLARATION  
AND AMENDED DECLARATION OF  
HERBERT L. ANDERSON**

Respondent.

Hearing Date: October 6, 2015  
Hearing Location: Sacramento

**NOTICE OF AMENDED DECLARATION**

The amended declaration of Herbert L. Anderson set forth below will be introduced as evidence at the hearing in *In the Matter of the Appeal Regarding Death Benefits Payable Upon Death of Grantland Lee Johnson by Lee Turner Johnson, Respondent*, Ref. No. 2015-0373. Herbert L. Anderson will not be called to testify orally and you will not be entitled to question him unless you notify Ian J. Barlow at the law offices of Kershaw, Cutter & Ratinoff, LLP, 401 Watt Avenue, Sacramento, California 95864, that you wish to cross-examine him.

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**AMENDED DECLARATION OF HERBERT L. ANDERSON**

I, Herbert L. Anderson, declare as follows:

1. I have personal knowledge of the matters set forth in this declaration. If called upon as a witness I would be competent to do so, and could and would testify as to the truth of the facts below. I give this declaration freely and in support of Respondent Lee Turner Johnson's appeal of the California Public Employment Retirement System's ("CalPERS") denial of Grantland Johnson's Option 2 lifetime monthly benefits to Lee Turner Johnson.

2. I was a close personal friend of Grantland Johnson. I first met him in elementary School, we were debate partners in high school, and we remained in close contact off and on throughout his life. I was best man at his wedding when he married Lee Turner Johnson.

3. I was by his side in the Intensive Care Unit ("ICU") during the several days and weeks before he died.

4. During this time, Grantland Johnson was under constant medical supervision, undergoing frequent medical procedures, could not read, and in terminal health.

5. While at the ICU with Grantland Johnson in early August 2014, I witnessed Grantland Johnson and Lee Turner Johnson review and complete the Post Retirement Lump Sum Beneficiary Designation and Application to Modify Option and/or Life Option Beneficiary forms. I also witnessed Grantland Johnson sign both of those forms.

6. As part of Lee Turner Johnson's efforts to explain the forms to Grantland Johnson and correctly complete them, I also witnessed Lee Turner Johnson's telephone call to CalPERS on or around August 5, 2014 during which she conveyed Grantland Johnson's health condition, explained that he was attempting to complete the Post Retirement Lump Sum Beneficiary Designation and Application to Modify Option and/or Life Option Beneficiary forms, and requested guidance for completing those forms. As part of that telephone conversation, I heard Lee Turner Johnson convey to Grantland Johnson that the CalPERS employee told them that they should "not worry" and that "his wishes would be honored, no matter what," or representations to that effect.

7. I knew that the purpose of the forms was to designate Lee Turner Johnson as the

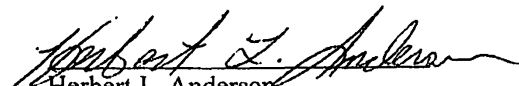


1 new beneficiary for Grantland Johnson's CalPERS benefits, including for lifetime monthly  
2 benefits.

3 8. Based on my knowledge of Grantland Johnson and his relationship with Lee  
4 Turner Johnson, it is my firm belief that by completing the Post Retirement Lump Sum  
5 Beneficiary Designation and Application to Modify Option and/or Life Option Beneficiary forms,  
6 he thought and believed that he was effectuating the designation of Lee Turner Johnson as a new  
7 beneficiary for his CalPERS benefits, including for lifetime monthly benefits, upon his death.

8 9. As soon as the forms were completed and signed, Grantland Johnson asked Lee  
9 Turner Johnson to mail the forms to CalPERS immediately. Lee Turner Johnson then left to  
10 deliver the forms while I remained at the ICU with Grantland Johnson.

11 I declare under penalty of perjury under the laws of the State of California that the  
12 foregoing is true and correct. Executed this \_\_\_ day of October, 2015, at \_\_\_\_\_,  
13 California.

14   
15 Herbert L. Anderson  
16 October 5, 2015  
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4 Attorneys for California Public  
5 Employees' Retirement System

6  
7 BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

8	In the Matter of the Appeal Regarding	)	CASE NO. 2015-0373
9	Death Benefits Payable Upon the Death	)	
	of GRANTLAND LEE JOHNSON by	)	OAH NO. 2015081045
10	LEE TURNER JOHNSON,	)	CalPERS Closing Brief
11	Respondent.	)	
12		)	Hearing Date: October 6, 2015 at
		)	9:00 am
13		)	Hearing Location: Sacramento
		)	Prehearing Conf.: None Scheduled
14		)	Settlement Conf.: None Scheduled

15 |  
16 CalPERS' files this Hearing Brief in its official capacity, and not otherwise.

17 **STATEMENT OF THE ISSUE**

18 This appeal is limited to the issue of whether Respondent Lee Turner Johnson  
19 (Respondent Johnson) is eligible for the Option 2 lifetime monthly benefits although,  
20 her deceased spouse, Grantland Johnson (Decedent Johnson), failed to modify his  
21 Option benefits to leave a share for Respondent Johnson.

22 **STATEMENT OF FACTS**

23 Decedent Johnson was employed by the California Health and Human Services  
24 Agency as the Secretary of the California Health and Human Services Agency.

1 Decedent Johnson submitted his application for service retirement on November  
2 12, 2003. (Exhibit 6.) Decedent Johnson elected Option 2 as his Option benefit and  
3 designated his then wife, Charlot Bolton ("Ms. Bolton"), as the beneficiary of the Option  
4 benefits. (Exhibit 6.) In the same application, Decedent Johnson designated his  
5 daughter, C. Bolton-Johnson as the beneficiary of the Lump Sum Retired Death  
6 Benefits. Decedent Johnson also named Ms. Bolton the spouse entitled to receive the  
7 Survivor Continuance benefits. (Exhibit 6).

8 On December 4, 2003, CalPERS sent a First Payment Acknowledgement Letter  
9 (Acknowledgement Letter) to Decedent Johnson, informing him of his monthly  
10 retirement benefits based on the election of Option 2 benefits. The letter specifically  
11 notified Decedent Johnson that :

12 "[i]f a former spouse was named, you must have a court order that awards you  
13 the entire interest in your CalPERS benefits before you can name a new spouse  
14 as beneficiary. You may modify your election upon divorce, annulment or legal  
15 separation if you have a court order that awards you the entire interest in your  
16 CalPERS benefits. To request a modification of election to name a new  
17 beneficiary for a lifetime option allowance, please contact the Benefit Services  
18 Division for information about a recalculation of allowance and the required  
19 documentation." (Exhibit 7).

20 Decedent Johnson separated from Ms. Bolton eleven years prior to their  
21 divorce, which was finalized in October 21, 2013. (Transcript p. 23:7-10; Exhibit 9O.)  
22 Decedent Johnson started a personal relationship with Respondent Johnson in 2004.  
23 (Transcript p. 19:2-5.)

24 On February 15, 2013, Decedent Johnson contacted CalPERS and requested  
25 information concerning change of beneficiary. (Exhibit 8, p. 8.) In response to his  
request, Decedent Jonson was mailed Publication 98, Changing Your Beneficiary or  
Monthly Benefit After Retirement. (Exhibits 9W & 11; Transcript 131:11-25; 132:1-11.)

Publication 98 includes a copy of the Application to Modify Option and/or Life

1 Option Beneficiary (Application). (Exhibit 11.) The member must submit the  
2 Application and necessary documents to change the option or name a new beneficiary.  
3 (Exhibit 11 p. 21; Transcript 179:10-22.) Within 60 days of receipt of the completed  
4 Application, CalPERS then mails the member the "Modification of Original Election at  
5 Retirement" document (Election Document), specifying the recalculated retirement  
6 allowance choices. (*Id.*) The member must elect an option and return the Election  
7 Document to CalPERS within the specified timeframe. (*Id.*)

8 Section 5 of the Application, certification of the member, notifies the member  
9 that this Application "is a request for an election form to modify my option and name a  
10 new beneficiary(ies). I further understand that my new option/beneficiary change will  
11 not be processed until the properly completed election form is submitted to CalPERS."  
12 (Exhibit 9H, p.3; Exhibit p. 21 & 23.) Publication 98 also specifies that the member and  
13 the new beneficiary "must be alive on the effective date." (Exhibit 11 p. 22.)

14 On August 8, 2013, CalPERS received a Summons Joinder on behalf of Ms.  
15 Bolton, a written notice claiming a portion of Decedent Johnson's retirement allowance  
16 due to the marriage dissolution with Decedent Johnson. (Exhibit 9S.) As a result,  
17 CalPERS informed Decedent Johnson that one-half of his allowance will be withheld  
18 until CalPERS receives a "court order resolving the community property claim." (Exhibit  
19 9Q, p. 6.)

20 On October 24, 2013, Decedent Johnson and Respondent Johnson contacted  
21 CalPERS and Decedent Johnson requested a copy of the December 4, 2003  
22 Acknowledgement Letter. (Exhibit 8, p. 5.)

23 On June 23, 2014, Decedent Johnson wrote a letter to CalPERS naming  
24 Respondent Johnson the beneficiary of all death benefits and removing Ms. Bolton and  
25 Patrice Bolton Johnson. (Exhibit 9M; received by CalPERS on July 3, 2014.) In the

1 letter, Decedent Johnson specifically stated that “[a] court judgment or marital agreement  
2 will soon be filed and sent to you. . .” (*Id.*)

3 On July 25, 2014, CalPERS sent a letter to Decedent Johnson rejecting the  
4 June 23, 2014 beneficiary designation, informing him that an incorrect or invalid form  
5 had been submitted. (Exhibits 8, p. 5; 9L; Transcript p. 140;4-12.) CalPERS mailed  
6 Decedent Johnson the Post Retirement Lump Sum Beneficiary Designation form and  
7 requested the form be completed and submitted to CalPERS. (Exhibits 9K & 9L:  
8 Transcript pp. 140:13-25; 141:1-12.)

9 On August 06, 2014, Respondent Johnson contacted CalPERS and was  
10 assisted by Kevin Abram, CalPERS’ employee at the Member Contact Center, on how  
11 to complete the Application. (Exhibit 8, p. 5; Transcript pp. 100:17-25; 101; 102:1-3.)  
12 Respondent Johnson was also advised about the amount of time it takes CalPERS to  
13 process the Application. (*Id.*) Mr. Abram testified that it is his practice to inform the  
14 caller concerning the required documents that must be submitted with the Application.  
15 (Transcript pp. 106:9-12; 107:1-6.)

16 On August 07, 2014, CalPERS received Decedent Johnson’s completed Post-  
17 Retirement Lump Sum Beneficiary Designation Form (Lump Sum Beneficiary Form),  
18 designating Respondent Johnson the beneficiary of the lump sum benefits. (Exhibit 9I;  
19 Transcript p. 141:13-21.) The form included an information and instructions page,  
20 which stated:

21 “The death benefits paid to your beneficiary depend on the retirement option  
22 you selected when you retired and the benefits contracted by your former  
23 employer. Please order or download What You Need to Know About Changing  
24 Your Beneficiary Or Monthly Benefit after Retirement for a description of the  
25 benefits. The Post Retirement Lump Sum Beneficiary Designation form is used  
to designate and beneficiary(ies) for your lump sum benefits only.” (Exhibit 9I,  
p. 4).

1           Thereafter, Decedent Johnson was notified by CalPERS' Forms Department  
2 that the Lump Sum Beneficiary Form has been processed and the lump sum  
3 beneficiary designation was accepted. (Exhibit 9G; Transcript 151:1-13.)

4           On August 7, 2014, CalPERS also received Decedent Johnson's Application,  
5 signed August 3, 2014, with a copy of the Notice of Entry of Judgment, terminating the  
6 marriage of Decedent Johnson and Ms. Bolton effective November 9, 2013. (Exhibit  
7 9H.) The Application form submitted by Decedent Johnson was the same version  
8 included in Publication 98, which was sent to by CalPERS in February 15, 2013.  
9 (Transcript 157:4-6.) A court order or a Marital Settlement Agreement (MSA)  
10 concerning the community property interest in pension benefits was not attached.

11           On September 09, 2014, Respondent Johnson notified CalPERS concerning  
12 Decedent Johnson's death. Decedent Johnson's Application was rejected because of  
13 his death and he failed to submit the proper documentation. (Transcript 178:13-23.)  
14 On September 19, 2014, Respondent Johnson submitted an application for Post-  
15 Retirement Survivor Benefits of Decedent Johnson to CalPERS. (Exhibit 3.)

16           On February 11, 2015, five months after Decedent Johnson's death,  
17 Respondent Johnson sent CalPERS the Certified Final Judgment on Property and the  
18 MSA for Decedent Johnson. (Exhibit 10.) The MSA was approved by the court on  
19 December 31, 2014, approximately three months after Decedent Johnson's death.  
20 (Exhibit 10.)

21           On February 17, 2015, CalPERS informed Respondent Johnson that the  
22 Community Property hold is being removed because Decedent Johnson was awarded  
23 the entire interest in his CalPERS pension benefits. (Exhibit 9B). The letter noted that  
24 Decedent Johnson's case is being referred to the Death Benefits Unit to process the  
25 death benefits. (Exhibit 9B).



1           In this matter, CalPERS made the determination that Respondent Orona is only  
2 entitled to 50% of the entire death benefits, to which he appealed. Accordingly, as the  
3 appeal is presented to the hearing officer, it is controlled by the provisions of the  
4 Administrative Procedure Act (APA) and relevant case law.

5           In *McCoy v. Board of Retirement* (1986) 183 Cal. App. 3d 1044, 1051, the Court  
6 of Appeal considered the issue of burden of proof in an administrative hearing  
7 concerning retirement benefits and found as follows:

8                       As in ordinary civil actions, the party asserting the affirmative  
9                       at an administrative hearing has the burden of proof,  
10                      including both the initial burden of going forward and the  
11                      burden of persuasion by a preponderance of the evidence.

12           In the absence of a statutory provision to the contrary, the applicant for a benefit  
13 has the burden of proof as the moving party to establish a right to the claimed  
14 entitlement or benefit, and that burden is unaffected by the general rule that pension  
15 statutes are to be liberally construed. (1 Cal. Public Agency Practice, sec. 39.03 [9];  
16 *see also, Glover v. Board of Retirement* (1989) 214 Cal. App. 3d 1327, 1332.)

17           CalPERS, a governmental agency, exercised its official duty in responding to  
18 Respondent Johnson's application for Decedent Johnson's retirement benefits.  
19 CalPERS is entitled to the presumption that this official duty was regularly performed,  
20 which places the burden to rebut this presumption upon respondent. (See Evid. Code  
21 sec. 664; *Roelfsema v. Department of Motor Vehicles* (1995) 41 Cal. App. 4th 871;  
22 *Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal. App. 4th 471, 476.)

23           For all the foregoing reasons, Respondent Johnson has the burden of proof,  
24 including both the initial burden of going forward and the burden of persuasion by a  
25 preponderance of the evidence. *McCoy, supra*, at p. 1051.



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**ARGUMENT**

**I.**  
**DECEDENT JOHNSON FAILED TO SUBSTANTIALLY COMPLY WITH**  
**GOVERNMENT CODE SECTION 21462**

**A. Statutory Scheme**

The Legislature has set different rules for changing beneficiary designations based on the retirement benefits involved and the retirement status of the member.

**1. Lump Sum Death Benefits:**

To change a beneficiary designation for lump sum death benefits, Government Code section 21490(a)<sup>1</sup> simply states “. . . a member may, at any time, including, but not limited to, at any time after reaching retirement age, designate a beneficiary to receive the benefits as may be payable to his or her beneficiary or estate under this part, by a writing filed with the board.”

**2. Lump Sum Benefits under Option Settlement:**

Government Code Section 21453 provides that beneficiary designations under Options 2 are irrevocable from the time of the first payment on account of the retirement allowance. Sections 21454 and Section 21464 provide two exceptions to this rule. Section 21454 allows the member to modify his optional settlement by designating a new beneficiary to receive a lump sum benefit:

“Notwithstanding Section 21453, an election of optional settlement 2 . . . in which a spouse is designated as the beneficiary, may be modified as provided in this section in the event of a dissolution . . . in which the division of the community property awards the total interest in the retirement system to the retired member. The modification shall provide that payment shall be continued during the retired person's lifetime in accordance with the optional settlement then in effect but that no monthly allowance shall be paid following the retired person's death, and in lieu thereof there shall be paid in a lump sum to the member's estate or a beneficiary designated by him or her the amount, if any,

<sup>1</sup> Gov't Code § 20000 et seq., are further statutory references are to the Government Code.

1 by which the member's accumulated contributions at retirement exceed the total  
2 payments made to the retired person to the date of his or her death.

3 3. Monthly Benefits under Option Settlement:

4 Section 21464 allows the member to change the optional settlement or beneficiary  
5 to provide the beneficiary with a monthly benefit. Section 21464 provides in pertinent  
6 part that:

7 "Notwithstanding any other provision of this part, a member who elected to  
8 receive optional settlement 2, 3, or 4, involving a life contingency of the  
9 beneficiary, may, . . . if a former spouse was named, in the event of a  
10 dissolution . . . in which the judgment dividing the community property awards  
11 the total interest in the retirement system to the retired member, elect to have  
12 the actuarial equivalent reflecting any selection against the fund resulting from  
13 the election as of the date of election of the allowance payable for the remainder  
14 of the member's lifetime under the optional settlement previously chosen  
15 applied to a lesser allowance during the member's remaining lifetime under one  
16 of the optional settlements specified in this article and name a different  
17 beneficiary. The election shall be made within 12 months following the death of  
18 the beneficiary who predeceased the member or within 12 months of the date of  
19 entry of the judgment dividing the community property of the parties, or within 12  
20 months following marriage if the spouse is named as beneficiary. *The election  
21 shall become effective on the date specified on the election*, provided that this  
22 date is not earlier than the day following receipt of the election in this system  
23 pursuant to this section.

24 A member who has a qualifying event . . . on or after January 1, 1988, and who  
25 fails to elect within 12 months, shall retain the right to make an election under  
this section. However, this election shall become effective no earlier than 12  
months after the date it is filed with the board, provided that neither the member  
nor the designated beneficiary die prior to the effective date of the election.

**This section shall not be construed to mean that designation of a new  
beneficiary causes the selection of an optional settlement. An optional  
settlement shall be selected by a member in a writing filed by the member  
with the board. (Emphasis added.)**

22 B. Substantial Compliance with a Statute

23 Subsequent case law addressing section 21490 and/or lump sum benefits have  
24 held that statutory technical requirements, when designating or changing a beneficiary,  
25 do not have to be followed. (*Hudson*, 255 Cal. App 2d 89, 92, citing *Lyles v. Teachers*

1 Retirement Board (1963) 219 Cal.App.2d 532, 529-530; *Watenpaugh v. State*  
2 *Teachers' Retirement System* (1959) 51 Cal.2d 675, 681; *Gallaher v. State Teachers'*  
3 *Retirement System* (1965) 237 Cal.App.2d 510, 517-518; *Wickter v. County of Los*  
4 *Angeles* (1960) 177 Cal.App.2d 390, 397.) Case law addressing lump sum benefits  
5 provides that statutory compliance is satisfied if there is a clear manifestation of intent  
6 in writing to designate or change a beneficiary and an affirmative act in furtherance of  
7 the intent. (*Gallaher*, 237 Cal. App. 2d 510, 518; *Watenpaugh*, 51 Cal.2d 675, 681;  
8 *Hudson*, 255 Cal. App 2d 89, 92; *Coughlin v. Board of Administration, Public*  
9 *Employees' Retirement System* (1984) 152 Cal. App. 3d 70, 72.)

10 The court; however, has also stated that "[s]ubstantial compliance with a statute  
11 is dependent on the meaning and purpose of the statute." (*Freeman v. Vista De Santa*  
12 *Barbara Associates LP*, 207 Cal.App.4th 791, 793.) Thus, pursuant to section 21464,  
13 the requirements for changing a beneficiary designation for monthly benefits are  
14 significantly different and more stringent than changing a lump sum beneficiary under  
15 sections 21490 or 21453. Although there is much case law addressing section 21490  
16 and lump sum benefits, the courts have not yet to address option settlements,  
17 particularly in the context of death benefits. However, the plain text of of section 21464  
18 makes it clear that a designation of a new beneficiary is not sufficient to change an  
19 optional settlement; rather the member must select an optional settlement, in writing  
20 and file it with the Board. (Section 21462.) Thus, while designating a new beneficiary  
21 may be sufficient under sections 21490 or 21453, section 21462 requires more.

22 1. The Member Must Select the Option Settlement and be living on the effective date.

23 Ambiguity or uncertainty in the meaning of pension legislation may not be  
24 resolved in favor of a member if it would be inconsistent with the clear language and  
25 purpose of the statute. Thus, "courts must not blindly follow such rule of construction

1 where it would eradicate the clear language and purpose of the statute and allow  
2 eligibility for those for whom it was obviously not intended.” (*Barrett v. Stanislaus*  
3 *County Employees Retirement Assn.* (1987) 189 Cal. App. 3d at p. 1593, 1608–1609;  
4 *Hudson v. Board of Admin. of Public Employees' Retirement System* (1997) 59 Cal.  
5 App. 4th at p. 1310, 1324-25.)

6 Legislative history of section 21462 clearly demonstrates that the Legislature  
7 intended the member to select the option and the member and beneficiary must be  
8 alive on the effective date. The Enrolled Bill Report, for Assembly Bill 553, specifically  
9 states that “[b]oth the member and the beneficiary must be living on the election’s  
10 effective date in order for the election to be valid.” (Attachment 1, Cal. Public  
11 Employees Retirement System, Enrolled Bill Rep. on Assembly Bill No. 553 (1987-  
12 1988 Reg. Sess.) prepared for Governor Deukmejian (Aug. 20, 1987) p. 1.) Legislative  
13 history shows that the Legislature was particularly concerned about “death-bed  
14 elections.” (*Id.* at p.2.) This requirement is reiterated in Publication 98, which was sent  
15 to Decedent Johnson. (Exhibit 11, p. 21.)

16 Furthermore, from the simple reading of the statute, it becomes apparent that it  
17 is the member who must make the election. Even the case cited by Respondent in his  
18 opening argument, supports this interpretation. (Transcript 10:18-19.) In citing section  
19 21462, the court in *In Re Marriage of Cooper*, 160 Cal.App.4th 574, 579 stated that “. .  
20 . *the member* may select a new optional settlement and “name a different beneficiary.”  
21 (Emphasis added.) Here, Decedent Johnson failed to submit any writing with  
22 CalPERS selecting an Option and CalPERS cannot assume which option benefit he  
23 would select.

24 2. The Member Must Submit the Necessary Documents.

25 Section 21462 requires the member must submit a court order or MSA

1 demonstrating he has full interest in his retirement benefits and an Election Document  
2 to change his election. The section 21462 is very clear and does not provide for any  
3 exceptions. Decedent Johnson's failure submit a court order or MSA in a timely  
4 manner was more than a mere technicality. Decedent Johnson failed to submit the  
5 necessary documents allowing CalPERS to move forward, process his Application and  
6 provide him the Election Document.

7       The Election Document form which Respondent did not submit is the agreement  
8 between the member and CalPERS by which they indicate their irrevocable agreement  
9 to modify their Option benefit. It must be signed by the member and notarized.  
10 (Transcript p. 119:18-24.) Once accepted by CalPERS, Decedent Johnson would have  
11 had a reduction in his retirement benefits from the effective date until the remainder of  
12 his life. (Section 21462) Once effective, the agreement is irrevocable. The failure to  
13 submit a timely and complete Application not only prevented CalPERS from removing  
14 the community property hold, but also omitted the actual and most critical component  
15 of the election process, the Election Document itself, whereby Decedent Johnson  
16 elects a new Option of his liking, signs and agrees the modification is irrevocable.

17       Even if accompanied by the necessary documents, the mere submission of an  
18 Application is not sufficient to change Decedent Johnson's Option benefits. The  
19 Application does not notify CalPERS as to which option Decedent Johnson would  
20 select. (Transcript p. 175:7-10.) Furthermore, more than half of the members who  
21 submit Applications choose not to change their election. (Exhibit 14.) Thus, Decedent  
22 Johnson failed to substantially comply with section 21462 by failing to submit a  
23 document changing the option benefits.

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II.  
**RELIEF CANNOT BE GRANTED UNDER THE MISTAKE STATUE**

**A. The Mistake Statute**

Respondent has not met her burden. Respondent failed to establish that Decedent Johnson's failure to timely submit a completed Application and an Election Document changing his Option benefit was a result of mistake, inadvertence, surprise, or excusable neglect.

Section 20160, subdivision (a), provides in pertinent part, that subject to subdivisions (c) and (d), the Board may, in its discretion and upon any terms it deems just, correct the error or omission of any active or retired member, provided that all of the following facts exist:

- 1 The request, claim or demand to correct the error or the omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.
- 2 The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in section 473 of the Code of Civil Procedure.
- 3 The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

"Failure by a member or a beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an 'error or omission' correctable under" Government Code Section 20160. (section 20160(a).) Furthermore, the burden of establishing the right to correction is on the party seeking it. (section 20160(d).)

**B. The Standard**

"[T]he mere recital of mistake, inadvertence, surprise or excusable neglect is not sufficient to warrant relief. Relief on grounds of mistake, inadvertence, surprise or excusable neglect is available only on a showing that the claimant's

1 failure to timely present a claim was reasonable when tested by the objective  
2 'reasonably prudent person' standard. The definition of excusable neglect is  
3 defined as "neglect that might have been the act or omission of a reasonably  
4 prudent person under the same or similar circumstances. [citation] There must be  
5 more than the mere failure to discover a fact; the party seeking relief must  
6 establish the failure to discover the fact in the exercise of reasonable diligence.  
7 [citation] The party seeking relief based on a claim of mistake must establish he  
8 was diligent in investigating and pursuing the claim [citation] and must establish  
9 the necessary elements justifying relief by the preponderance of the evidence.  
10 [Citation.]" (*Dep't of Water & Power v. Superior Court* (2000) 82 Cal.App. 4th  
11 1288, 1293.)

12 In order to qualify for relief under Code of Civil Procedure section 473,  
13 subdivision (b), respondent has the burden of establishing that the result she wishes to  
14 avoid resulted from an act or omission that would have occurred notwithstanding the  
15 exercise of reasonable diligence as an ordinary prudent person would in conducting  
16 important business. (*Davis v. Thayer* (1980) 113 Cal. App. 3d 892, 906, ["If he did  
17 read it and disregarded its allegations he was guilty of careless and indifferent conduct.  
18 His conduct in permitting the matter to go to default was not the result of mistake,  
19 inadvertence, or surprise. It was solely the consequence of neglect, a neglect which  
20 we find to be inexcusable.])

21 Furthermore, a party may not excuse his/her failure to do a thing due to the  
22 press of other business. (*Davis v. Thayer*, supra, 113 Cal.App.3d at p. 909.)

### 23 Respondent Fails To Meet The Standard

24 First, it is questionable whether Respondent even has standing to obtain relief  
25 under the mistake statute because Decedent Johnson had the sole authority to submit

1 an Application and sign an Election Document to modify the Option benefits and name  
2 a new beneficiary.<sup>2</sup> Even if it is accepted that Respondent Johnson has standing, she  
3 did not seek relief within a reasonable time (or even 6 months). Respondent Johnson  
4 did not send CalPERS the MSA until a year and six months after Decedent Johnson  
5 submitted his incomplete Application to CalPERS and six months after his death.

6 Respondent Johnson fails to offer any valid reasons for Decedent Johnson's  
7 failure to submit a complete Application. She presents a vague contention of an  
8 illness; however, these assertions do not constitute grounds for relief.

9 1. Decedent Johnson was informed and aware of the requirements and his neglect is  
10 inexcusable.

11 Decedent Johnson's failure to file both timely and correctly was due to his  
12 inexcusable neglect. From the very start, Decedent Johnson and Respondent  
13 Johnson were informed that the process for modifying the Option benefit requires  
14 necessary documents and could take months.

15 The Acknowledgement Letter, which was sent to Decedent Johnson on  
16 December 4, 2013 and then again on October 24, 2013 specifically states that "[i]f a  
17 former spouse was named, you must have a court order that awards you the entire  
18 interest in your CalPERS benefits before you can name a new spouse as beneficiary.  
19 You may modify your election upon divorce . . . if you have a court order that awards  
20 you the entire interest in your CalPERS benefits." (Exhibit 7.) The letter informs  
21 Decedent Johnson to contact the Benefit Services Division for "information about the  
22 recalculation of allowance and the required documentation." (*Id.*)

23 Publication 98, which was sent to Decedent Johnson in February 2013, upon

24 <sup>2</sup> See *Lee v. Bd. of Admin.* (1982) 130 Cal. App.3d 122, 133, "[g]enerally, the party claiming estoppel is the  
25 party who has relied to his detriment upon the words or conduct of another. Plaintiff has made no such  
reliance; she is simply seeking to enforce what she contends is a benefit another intended she receive."



1 his request, includes the Application, lists the required documents, sets out the step by  
2 step procedure and states the specific time limits involved in the process. (Exhibit 11  
3 pp. 21-22.) Furthermore, Section 5 of the Application, signed by Decedent Johnson,  
4 notifies him that the Application is merely a request for an Election form and the option  
5 will not be modified until a completed Election form is submitted. (Exhibit 9H, p.3.)  
6 Publication 98 also sets out the relevant timeframe. (Exhibit 11, p. 21.) Respondent  
7 Johnson was also advised by Mr. Abram concerning the amount of time it takes  
8 CalPERS to process the Application. (Exhibit 8, p. 5; Transcript pp. 100:17-25; 101;  
9 102:1-3.)

10         Despite being fully informed by CalPERS, as late as February 2013, and  
11 receiving multiple advisements concerning the time frame to process the Application  
12 and the documents required, Decedent Johnson did not submit an Application until  
13 November 2014. (Exhibit 9H.) Respondent Johnson even testified that she and  
14 Decedent Johnson discussed their plans during the last four years of his life.  
15 (Transcript, p. 23:2-5.) Although Respondent Johnson acknowledges having received  
16 Publication 98, speaking to Mr. Abram on how to complete the Application, she and  
17 Decedent Johnson failed to submit a court order with the Application. (Transcript  
18 178:13-23.) Even if Decedent Johnson had been confused as to what was required to  
19 be filed and when, he was fully cognizant of the need to submit a court order or MSA to  
20 remove the community property hold. (Exhibit 9M.) An MSA however, was not  
21 obtained by the court until after his death. (Exhibit 10.)

22 2. Decedent Johnson's illness does not excuse his neglect.

23         Respondent Johnson indicates that the delay in filing the Application was a  
24 result of Decedent Johnson being in and out of the hospital during the past five years  
25 prior to his death in 2014. (Transcript 22:23-25; 23:1-5.) In *Davis v. Thayer* (1980)

1 113 Cal.App.3d 892, 909, the defendant in a civil case sought relief from a default  
2 judgment under Code of Civil Procedure section 473, claiming she was under the  
3 doctor's care due to a heart attack, medication, and was caring for a terminally ill  
4 husband and elderly mother. The court; however, held that defendant had failed to  
5 present sufficient evidence to grant relief. The court has also held that conclusory  
6 assertions of anxiety, depression, and financial hardships are insufficient to excuse  
7 failure to respond to a court documents. (*Kim v. Westmoore Partners, Inc.* (2011) 201  
8 Cal.App.4th 267, 280-281.)

9 Here, there is insufficient evidence to demonstrate that Decedent Johnson was  
10 incompetent or completely inept to obtain the necessary court order or MSA and file a  
11 complete Application prior to his death. Even if evidence supports such a contention,  
12 CalPERS is bound by section 21462 and could not have moved forward without a  
13 complete Application.

14 Furthermore, Respondent Johnson testified that she was named the power of  
15 attorney in 2012 and the executor "regarding a number of items of his business. . ."  
16 Thus, Respondent Johnson could have compiled the necessary documents and  
17 assisted him in providing a complete Application to CalPERS.

18 Decedent Johnson's failure to submit a complete application was not a result of  
19 excusable mistake, neglect, surprise or inadvertence. Decedent Johnson knew about  
20 the process and the requirements, yet failed to comply and modify his option benefits  
21 prior to his death.

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III.

**EQUITABLE ESTOPPEL IS NOT AVAILABLE TO PROVIDE RESPONDENT A BENEFIT OTHERWISE UNAVAILABLE UNDER THE PERL**

Estoppel is an equitable doctrine, seeking to prevent a person or entity from profiting from its wrongdoing. (*California School Employees Association v. Jefferson Elementary School District* (1975) 45 Cal.App.d 683.) Respondent Johnson fails to meet the necessary elements of equitable estoppel. Furthermore, Estoppel cannot provide Respondent Johnson a benefit otherwise unavailable under the express provisions of the PERL. (*Chaidez v. Board of Administration of California Public Employees' Retirement System* (2014) 223 Cal.App.4th 1425, 1432, review denied (May 14, 2014.)

A. Respondent Fails to Meet the Necessary Elements of Estoppel.

A party asserting the doctrine of equitable estoppel must establish: (1) the party to be estopped was apprised of the facts; (2) the party to be estopped intended or reasonably believed that claimant would act in reliance on its conduct; (3) the claimant was ignorant of the true state of facts; and (4) the claimant actually and reasonably relied on the conduct of the party to be estopped to his detriment. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.) Where estoppel is sought to be asserted against a governmental entity, a fifth element must be established - 5) the interests of a private party must outweigh by effect on public interests and policies. (*Id.* at 496-97.) It is the burden of the party asserting estoppel to affirmatively establish each of its elements. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn.5. ["[W]here one of the elements of an estoppel is missing there can be no estoppel."]; *People ex rel. Franchise Tax Bd. v. Superior Court* (1985) 164 Cal. App.3d 526, 552.)

Respondent Johnson fails to present any evidence demonstrating any wrongdoing by CalPERS. Respondent Johnson and Decedent Johnson contacted

1 CalPERS on several occasions. Each time CalPERS was contacted, CalPERS was  
2 responsive and provided the correct information concerning process and requirements  
3 for modifying the Option benefits, including a copy of the Acknowledgement Letter and  
4 Publication 98. (Exhibits 9W & 11; Transcript 131:11-25; 132:1-11.) The record  
5 demonstrates that CalPERS staff, Mr. Abram assisted Respondent Johnson on how to  
6 complete the Application, informed her about the time limits and documents that must  
7 be submitted with the application. (Exhibit 8, p. 5; Transcript pp. 100:17-25; 101;  
8 102:1-3; 106:9-12; 107:1-6.) There is no evidence indicating CalPERS provided  
9 incorrect or misleading information to Decedent Johnson.

10 Respondent Johnson fails to establish any of the elements stated above.  
11 Furthermore, Respondent Johnson lacks standing because she is not a party who  
12 would be entitled to rely on the information provided by CalPERS. (*Lee*, 130 Cal.  
13 App.3d 122, 134.) Thus, based on the record before the court, Equitable estoppel is  
14 inapplicable.

15 B. Respondent Can Not Invoke Estoppel In this Case to Obtain A Benefit Contrary to  
16 the Law

17 Retirement benefits for CalPERS members are entirely creatures of statute.  
18 (*City of San Diego v. San Diego City Employees' Retirement System* (2010) 186  
19 Cal.App.4<sup>th</sup> 69, 78-79; *Hudson v. Posey* (1967) 255 Cal.App.2d 89, 91.) The California  
20 Legislature has clearly stated that CalPERS does not have the power to award  
21 benefits beyond those authorized by statute. (See, Government Code § 20160 (stating  
22 CalPERS shall correct its mistake, and must not "provide the party seeking correction  
23 with a status, right, or obligation not otherwise available" under the retirement laws.)

24 It is well-settled, that equitable estoppel cannot be used to override a statute or  
25 to enlarge a governmental entity's statutory authority, nor can "the authority of a public

1 officer cannot be expanded by estoppel" because doing so "would have the effect of  
2 granting to the state's agents the power to bind the state merely by representing that  
3 they have the power to do so." (*Boren v. State Pers. Bd.* (1951) 37 Cal.2d 634, 643.)  
4 Even an erroneous assertion by an employee, although none was made here, cannot  
5 serve as a basis for extending a benefit where one is not otherwise authorized by law.  
6 (*Page v. City of Montebello* (1980) 112 Cal.App.3d 658, 669.)

7 In *Lee* the alleged beneficiary attempted to invoke estoppel by arguing the  
8 pamphlets distributed by CalPERS were misleading and failed to properly notify the  
9 members concerning their death benefits. The court held that "[E]stoppel cannot be  
10 applied . . . where the subject matter involved is as detailed and complex, as is the  
11 retirement scheme set up for state employees. In light of the myriad of 'optional  
12 settlement' . . . , distribution and types of benefits . . . , and other provisions regarding  
13 retirement . . . , the information presented in the PERS literature could not be anything  
14 more than a rudimentary overview of the system and how it operates." (*Lee*, 130 Cal.  
15 App.3d 122, 134.)

16 Here, the PERL only allows the member to elect a new option, providing a  
17 lesser allowance during the member's remaining lifetime, and name another  
18 beneficiary. (Section 21462.) Decedent Johnson did not complete the Application  
19 process and thereby did not elect an option benefit that would reduce his allowance  
20 during his lifetime. CalPERS has no authority to go beyond the provisions of section  
21 21462 and allow Respondent Johnson to make the election after Decedent Johnson's  
22 death.

23 Providing Respondent Johnson the Option benefits would require CalPERS to  
24 assume Decedent Johnson would have elected an option after receiving the Election  
25 Document, assume which option benefit Decedent Johnson would elect, arbitrarily pick

1 an effective date (the election is effective from the date first day of the month following  
2 receipt of the completed election document), then apply a reduction to allowance until  
3 the date of his death. "[E]stoppel will not be applied where it is based on surmise or  
4 questionable inference." (*Lee*, 130 Cal. App.3d 122,135.) Not only will CalPERS be  
5 required to violate the express provisions of section 21462, it would also have the  
6 burden of speculating Decedent Johnson's intent, which is unascertainable from the  
7 record. Thus, equitable estoppel is unavailable because the necessary elements are  
8 lacking and providing the benefits would violate the express provisions of the PERL.

9 **CONCLUSION**

10 Pursuant to legal authority, CalPERS correctly determined Respondent Johnson  
11 is not entitled to the Option benefits. Decedent Johnson failed to re-select an Option  
12 benefit and name Respondent Johnson the new beneficiary. CalPERS respectfully  
13 urges this Court to uphold its determination.

14 Respectfully submitted,

15  
16 Dated:

12/23/15



17 PREET KAUR, SENIOR STAFF ATTORNEY  
18 Attorney for California Public Employees'  
19 Retirement System

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