

ATTACHMENT C

RESPONDENT'S ARGUMENT

ATTACHMENT C

FAX COVER SHEET

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| TO | Noelle Lamprecht |
| COMPANY | |
| FAX NUMBER | 19167953972 |
| FROM | DanielGriffin |
| DATE | 2023-08-31 19:23:18 GMT |
| RE | Respondent'sArgument |

COVER MESSAGE

Goodafternoon,

Please see the attached correspondence. Thank you.

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 8 BOARD OF ADMINISTRATION
 9 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

11 AGENCY CASE NO. 2022-0444

12 In the Matter of the Request to Change
 Option Selection of a Non-Member Service
 Retirement Application of

RESPONDENT'S ARGUMENT

13 JILL D. PAOLINI,
 14 Respondent.

16 Respondent Jill D. Paolini ("Respondent") respectfully represents as follows:

17 **RELEVANT FACTS**

18 While most of the evidence presented by Respondent is summarized in the Proposed
 19 Decision dated June 21, 2023, there are two significant items that were not given the proper
 20 weight: first, Respondent attempted to contact the CalPERS hotline to have her questions
 21 answered for three weeks with no response, callback, or information; second Petitioner CalPERS
 22 ("Petitioner") made a significant error in processing Respondent's application, which deprived
 23 Respondent of any notice that there was an error until it was brought to her attention by an honest,
 24 knowledgeable CalPERS employee years later.

25 To summarize, in 2011 Respondent received paperwork from her ex-husband relating to
 26 his CalPERS benefits. After reviewing the documents, she did not understand the forms or the
 27 benefits to be paid by each option, but intended to maximize the benefits for herself while she
 28 was alive because her children did not need financial assistance.

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Around January 13, 2012, Respondent submitted the paperwork with her best guess on which option to choose. Around March 27, 2012, Respondent called the CalPERS hotline daily over a three-week period for additional information on how to complete the forms and to calculate her benefits, but did not receive a callback or response from CalPERS staff.

It was not until 2020, when Respondent met CalPERS employee Deborah Fogal, that Respondent was informed that there was an error in her original benefits election that CalPERS should have corrected. After talking to Respondent and realizing her goal was to maximize her benefits, Ms. Fogal informed her that Respondent initially chose options 2w and 4, which provide for beneficiary benefits after Respondent passed away; Ms. Fogal informed Respondent that CalPERS should have rejected the options election form due to two options being chosen, and only one beneficiary being provided when the options selected require multiple beneficiaries. Once Mr. Fogal explained the various options and benefits amounts, Respondent understood that the Umodified Allowance was the option she intended. Respondent presented evidence that Ms. Fogal explained "Since the error is on the part of CALPERS we are allowing you a one time to change your option to the option you had intentionally wanted."

Based on her discussions with Ms. Fogal, Respondent submitted an Option Election/Life Option Beneficiary Change Form on October 30, 2020. The only reason Respondent waited for 10 years was because staff at CalPERS failed to process her original benefits election properly, incorrectly chose an option without requesting clarification from Respondent, and started paying benefits. Even at the evidentiary hearing, Ms. Tara Hench admitted to numerous mistakes made by previous CalPERS staff in processing the original benefits form. Even Respondent's request in 2020 to change her benefits took over a year to process, and was only processed due to Respondent's diligence in submitting a letter to CalPERS explaining the submission of the change form.

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LEGAL ARGUMENT

Pursuant to Government Code 20160, a CalPERS member or beneficiary may correct an error as follows:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or 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 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 this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

[. . .]

(c) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

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2 (3) That the purposes of this part will not be effectuated if the correction is
3 performed in a retroactive manner.

4 In *Rodie v. Board of Administration*, the court of appeal affirmed the trial court's decision
5 to reverse the administrative law judge's decision, and hold that the claimant was entitled to
6 change his status to maximize his benefits based on a mistaken understanding. In finding the
7 claimant was entitled to relief based on his mistaken belief, the Court explained as follows:

8 In any case, the trial court, exercising its independent judgment on the administrative
9 record alone, would have been justified in rejecting the administrative law judge's finding,
10 since the evidence showed only that Rodie's attorney and others advised him that there
11 were tax advantages, not that there actually were such advantages. That he received such
12 advice was not at all inconsistent with Rodie's claim of mistake. If the administrative
13 finding were rejected, there was certainly substantial evidence, in Rodie's testimony that
14 disability retirement was "most on (his) mind" and that no one compared the benefits he
15 would receive with each type of retirement, to support the finding of the trial court. (*See*
16 *Hosford v. Board of Administration* (1978) 77 Cal.App.3d 854, 859, 143 Cal.Rptr. 760.)

17 (*Rodie v. Board of Administration* (1981) 115 Cal.App.3d 559, 569–70.)

18 Further, in interpreting Government Code 20160, CalPERS decisions look to Code of
19 Civil procedure section 473 for guidance. The Board's duty to correct any mistake does not
20 terminate until the expiration of obligations of this system to the party seeking correction of the
21 error or omission. (Govt. Code § 20164(a).)

22 "[A]n honest mistake of law is a valid ground for relief when the legal problem posed 'is
23 complex and debatable.'" (*In re Medcalf*, Agency OAH No. 2020070638 (*quoting McCormick v.*
24 *Board of Supervisors* (1988) 198 Cal.App.3d 352, 360); *see In re Henderson*, PERS Dec. No. 98-
25 02 at 7–8.)

26 Excusable neglect exists when "a reasonably prudent person in similar circumstances
27 might have made the same error." (*County of San Bernardino v. Mancini* (2022) 83 Cal.App.5th
28 1095, 1103 (citing *Huh v. Wang* (2008) 158 Cal.App.4th 1406, 1424).) Relief may be granted
depending on 1) the nature of the mistake or neglect, and 2) if the party was otherwise diligent in
pursuing the required action. (*see Community Youth Athletic Center v. City of National City*
(2009) 170 Cal.App.4th 416, 430.)

1 “When the moving party seeks relief and there is no prejudice to the opposing party, very
2 slight evidence is required to justify relief.” (*Mink v. Superior Court* (1992) 2 Cal.App.4th 1338,
3 1343 (interpreting § 473).)

4 Here, Respondent made an honest mistake when filling out her benefits forms, and she
5 could not reach CalPERS through the designated hotlines over a three-week period. The only
6 reason she submitted the application was because she was uncertain if any deadlines would bar
7 her claim for benefits, which would be her only source of income after the divorce.

8 CalPERS made numerous mistakes in failing to contact Respondent, failing to reject her
9 benefits selection form when two contradictory options were selected, making a selection without
10 consulting with Respondent, then ignoring these mistakes for 10 years. In fact, Respondent’s
11 mistakes were only discovered due to Respondent’s diligence and her discussion with a CalPERS
12 employee who properly identified the issue and guided Respondent through the benefits
13 calculations and the process.

14 Respondent was not made aware of the conflicting choices in her options election forms,
15 or that another benefit option would provide the higher benefits she actually intended, until
16 discussing the matter with Ms. Fogal in 2020. After this was brought to her attention, and after
17 being told the mistakes made by CalPERS staff members in incorrectly entering her benefits
18 options, Respondent immediately filed a request to change her benefits to the unmodified
19 allowance, responded to all questions and correspondence despite another year-long delay by
20 CalPERS, then timely filed her appeal when the decision denying her election was presented.

21 Respondent fits the mold of a reasonable, diligent recipient who has been trying to correct
22 the mistakes made by her and CalPERS, and should be granted relief under section 20160. She
23 has taken all steps to corrections any mistakes brought to her attention, has promptly responded to
24 all requests by CalPERS employees, and has made adjustments to maximize the sole source of
25 her income.

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On these grounds, Respondent respectfully requests as follows:

- 1. That the Proposed Decision be rejected;
- 2. A hearing be held regarding Respondent’s request to correct her benefits; and
- 3. Any other or further relief deemed necessary or proper.

Dated: August 30, 2023

NEWPOINT LAW GROUP, LLP

By: /s/ Daniel Griffin

Daniel Griffin
Attorney for Respondent
Jill D. Paolini

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