

ATTACHMENT C

RESPONDENT'S ARGUMENT

1 GIDIAN R. MELLK, SBN 214404
2 **RAINS LUCIA STERN ST. PHALLE & SILVER, PC**
3 1428 2nd Street, Suite 200
4 Santa Monica, CA 90401
5 Tel: 310.393.1486
6 Fax: 310.395.5801
7 E-mail: GMellk@RLSlawyers.com

8 Attorneys for Respondent Nancy Vega

9 BEFORE THE BOARD OF ADMINISTRATION
10 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
11 HARDEN SOOPER, ADMINISTRATIVE LAW JUDGE

12 In the Matter of the Appeal of Lifetime
13 Beneficiary Benefit Payable Upon the Death of
14 Joaquin Vega by

15 NANCY VEGA,

16 Respondent,

17 and

18 JASMINE M. YOUNG; LAUREN C.
19 VALAIKA; LUCAS J. VEGA; AND DILLON J.
20 VEGA,

21 Respondents.

AGENCY CASE NO. 2023-0805
OAH NO. 2024041112

**RESPONDENT NANCY VEGA'S
ARGUMENT IN SUPPORT OF
PROPOSED DECISION**

Location: Remote

1 **I. INTRODUCTION**

2 Respondent Nancy Vega hereby requests that the CalPERS Board of Administration
3 adopt the Decision of the Administrative Law Judge (“ALJ”) in the above-captioned matter,
4 in which he concluded that Mrs. Vega proved, by the requisite preponderance of the
5 evidence, that her husband, Joaquin Vega, had made a mistake on his retirement application
6 that was correctible pursuant to Government Code section 20160. That statute provides, in
7 relevant part:

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

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

16 (2) The error or omission was the result of mistake, inadvertence,
17 surprise, or excusable neglect, as each of those terms is used in Section
18 473 of the Code of Civil Procedure.

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

21 ...

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

25 Simply put, the ALJ found, based on the evidence presented, that 1) Mrs. Vega’s request that
26 her husband’s retirement application be corrected was timely made; 2) Mrs. Vega proved by
27 a preponderance of the evidence that Mr. Vega’s error was the result of “mistake,
28 inadvertence, surprise, or excusable neglect”; and 3) correcting Mr. Vega’s application will
not provide Mrs. Vega with a right not otherwise available. Accordingly, as will be shown,
the Board should adopt the ALJ’s decision.

26 **II. ARGUMENT**

27 **A. THE ALJ APPLIED THE CORRECT BURDEN OF PROOF.**

28 As an initial matter, the ALJ utilized the proper burden of proof, writing:

1 Respondent bears the burden to present documentation or other evidence
2 establishing the right to correct Decedent’s mistake. (Gov. Code, §
3 20160, subd. (d).) This burden requires proof by a preponderance of the
evidence. (Evid. Code, § 115.) Preponderance of the evidence means
evidence that has more convincing force than that opposed to it.

4 (Decision, p. 12, citation omitted.) The ALJ found that Mrs. Vega “proved by a
5 preponderance of evidence Decedent made a correctable error on his retirement application”
6 (Decision at p. 2-3) and, further, that Mrs. Vega’s “evidence Decedent made a mistake on his
7 Application was more persuasive than CalPERS’ evidence to the contrary.” (Decision, p. 11,
8 ¶ 36.)

9 **B. MRS. VEGA’S REQUEST FOR CORRECTION WAS TIMELY.**

10 The Board should uphold the ALJ’s finding that “Respondent timely requested
11 CalPERS correct Decedent’s error on his Application. Respondent requested a correction in a
12 letter dated January 27, 2022, about two months after she first received notification from
13 CalPERS about her benefit entitlements after Decedent’s death.” (Decision, p. 13, ¶ 4.)

14 Importantly, none of the correspondence from CalPERS to Mrs. Vega denying her
15 requests that Mr. Vega’s application be corrected alleged that her request was untimely. (See
16 Exhs. 14, 16.) Nor did CalPERS argue during the hearing that the request was untimely. In
17 any event, the evidence shows that the request was, indeed timely: On or about November 23,
18 2021, Ms. Vega received a letter from CalPERS stating that she was not named a beneficiary
19 for Mr. Vega’s benefits. (Exh. 12.) Ms. Vega had not seen any of the benefits payments Mr.
20 Vega had received, as they were direct-deposited into his bank account. (Hearing Transcript
21 (“TR”) at p. 51.) On or about January 27, 2022, her counsel sent correspondence to Keith
22 Riddle, Chief of CalPERS’ Disability and Survivor Benefits Division, requesting that
23 CalPERS correct “an error or omission” regarding the benefits, pursuant to Government Code
24 section 20160. (Exh. 13; see also Decision, p. 8, ¶ 25.) Accordingly, Mrs. Vega has satisfied
25 Government Code section 20160(1).

26 **C. THE ALJ CORRECTLY FOUND THAT MR. VEGA MADE A**
27 **CORRECTIBLE MISTAKE.**

28 As the ALJ noted, Government Code section 20160 is

1 “broadly available for the correction of errors or omissions made by
2 employees, their employers, members or beneficiaries, or the system,
3 and resulting from inadvertence, oversight, mistake of fact, mistake of
4 law, or other cause [There is] no reason for treating an employee’s
5 mistaken choice between two types of retirement to which he is entitled
6 by reason of past services differently from any other mistake depriving
7 him of benefits to which he is fairly entitled.” Although the holding in
8 *Rodie* applied to a member’s choice between service and disability
9 retirements, the reasoning applies equally in this matter.

6 (Decision, p. 15, ¶ 9, quoting *Rodie v. Board of Admin.* (1981) 115 Cal.App.3d 559, 566.)

7 The ALJ’s findings were based upon a thorough consideration of the evidence and testimony
8 presented, and a conclusion that the evidence presented by Mrs. Vega was stronger than that
9 presented by CalPERS. Such evidence included Mr. Vega’s two requests for his Estimate of
10 Benefits, both of which named Mrs. Vega as his individual lifetime beneficiary (Decision, p.
11 4, ¶ 10); the fact that the handwriting of CalPERS representative Soledad Franco appeared
12 several times in Mr. Vega’s retirement application (Decision, p. 5, ¶ 13); Mrs. Vega’s
13 testimony that Ms. Franco visited them in their home to aid Mr. Vega in filling out his
14 application (Decision, p. 7-8, ¶ 24); that Mr. Vega told Ms. Franco he wanted his wife to
15 receive his continued benefits, and his children to be secondary beneficiaries should both he
16 and his wife pass away (Decision, p. 8, ¶ 24); the testimony of Shane Talbot, who has
17 extensive experience helping CalPERS members apply for retirement benefits (Decision, p. 9,
18 ¶¶ 27-29; and the testimony of the four Vega children, Respondents herein, who each stated
19 they believed their father intended to provide their mother with lifetime benefits and that they
20 have not touched the lump sum payments provided by CalPERS for that very reason.

21 (Decision, p. 8, ¶ 26.)

22 The evidence presented by CalPERS in its attempt to refute Mrs. Vega’s showing of
23 mistake, on the other hand, was minimal and unpersuasive. Indeed, it relied on Mr. Vega’s
24 application itself, arguing that because it shows he chose Option 1 instead of Option 4, he
25 could not have made a correctible mistake. (See Decision, p. 11, ¶ 36.) This is an absurdity
26 which would completely obviate the reason for the existence of Section 20160, *i.e.*, an
27 opportunity for a CalPERS member to demonstrate, through the presentation of evidence, that
28 the information contained in an application (at least in circumstances such as the instant one)

1 was mistaken. The member’s mistake cannot be used to show no mistake was made.

2 CalPERS additionally relied on the testimony by Dionne Harris that CalPERS
3 representatives only go to members’ homes to aid in the filling out of retirement applications
4 in emergency situations. However, not only did Ms. Harris testify that she **did not in fact**
5 **know** whether Soledad Franco, whose handwriting is found on Mr. Vega’s application,¹
6 visited the Vegas’ home for that very purpose (TR 140), but Mrs. Vega testified
7 unequivocally that she in fact did. (TR 47-48, 54-55.) Finally, the CalPERS letters to Mr.
8 Vega after he submitted his application affirmed only that he had chosen Option 1, without an
9 explanation of same; they did not alert him to the fact that he had made a mistake in his
10 choice of Option 1. The ALJ properly and thoroughly considered all the evidence and
11 testimony presented, and rightfully came to the conclusion that Mrs. Vega proved by a
12 preponderance of the evidence that Mr. Vega made a correctible mistake on his retirement
13 application.

14 **D. CORRECTION OF THE MISTAKE WILL NOT PROVIDE MRS. VEGA**
15 **WITH BENEFITS NOT OTHERWISE AVAILABLE.**

16 The ALJ rightly found that “[t]he correction sought will not provide respondent a
17 status, right, or obligation not otherwise available. CalPERS did not dispute Decedent earned
18 his retirement benefits or that Decedent could have elected Option 4, 2W & 1 combined, on
19 his Application.” (Decision, p. 14, ¶ 6; see Gov. Code § 20160(3).) Indeed, there is no
20 question that Mr. Vega was entitled to retirement benefits under a variety of options; under
21 whichever option he chose, CalPERS would be required to pay benefits. Accordingly, a
22 finding that Mr. Vega had intended to choose Option 4 instead of Option 1 does not provide
23 Mrs. Vega with any benefits to which she would not have been entitled had Mr. Vega
24 correctly chosen Option 4 at the outset.

25 **E. THE PAROL EVIDENCE RULE DOES NOT APPLY.**

26 CalPERS may argue that the parol evidence rule barred the ALJ from considering any
27

28 _____
¹ CalPERS did not dispute this.

1 evidence beyond Mr. Vega’s retirement application to show that such application was not his
2 “final intent.” The ALJ properly found this rule to be inapplicable. (Decision, p. 14, ¶ 8.)
3 Indeed, as noted, *supra*, constraining the ALJ from looking at any evidence beyond the actual
4 application that Mrs. Vega contends needs correcting would render meaningless Government
5 Code section 20160. Importantly, CCP section 1856(c), the Parol Evidence Rule, provides,
6 “Where a mistake or imperfection of the writing is put in issue by the pleadings, this section
7 **does not exclude evidence relevant to that issue.**” (Emphasis added.) This mistake could be
8 mutual or unilateral: “It is the rule that, where the writing itself, through mistake, does not
9 express the intention of the parties who entered into it, **or one of them**, and the writing does
10 not therefore contain the real contract between the parties, the objection as to parol evidence
11 is without merit.” (*Pasqualetti v. Galbraith* (1962) 200 Cal. App. 2d 378, 381; emphasis
12 added.) Accordingly, the ALJ properly considered extrinsic evidence when deciding this
13 matter.

14 **F. EQUITABLE ESTOPPEL IS APPLICABLE.**

15 The ALJ did not reach his conclusion in favor of Ms. Vega on the basis of equitable
16 estoppel, which Mrs. Vega had argued in the alternative. However, equitable estoppel is also
17 a basis for affirming the ALJ’s decision. Indeed, Mrs. Vega has established the four
18 necessary elements: 1) The party to be estopped must know, or should have known, the facts;
19 (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting
20 the estoppel had the right to believe that it was so intended; (3) the party asserting the
21 estoppel must be ignorant of the true state of facts; and (4) he must rely upon the conduct to
22 his injury. (*Ashou v. Liberty Mutual Fire Ins. Co.* (2006) 138 Cal.App.4th 748, 766–767.)

23 Here, Ms. Franco, the CalPERS representative, 1) knew or should have known the
24 facts relative to Mr. Vega’s Disability Retirement Application as first, she would have had
25 access to Mr. Vega’s file and second, he discussed his intentions with her; 2) her undisputed
26 purpose in meeting with the Vegas was to aid them in filling out the application, and so
27 intended that her advice be acted upon; 3) the Vegas were not independently familiar with
28 properly filling out the benefits application, which is exceedingly confusing for a layperson to

1 understand (see TR 57); and 4) Mrs. Vega has clearly been injured by CalPERS’ conduct, as
2 she was erroneously not named Mr. Vega’s lifetime beneficiary.

3 Equitable estoppel may be applied against a government entity “where justice and
4 right require it.” (*Long Beach v. Mansell* (1970) 3 Cal. 3d 462, 493.) That is the case here.
5 Our Supreme Court has “recognized the existence of cases which applied estoppel to the area
6 of public employee pensions, in which the courts ‘emphasized the unique importance of
7 pension rights to an employee’s well-being,’ and not[ed] that ‘[i]n each of these instances the
8 potential injustice to employees or their dependents clearly outweighed any adverse effects on
9 established public policy[.]’” (*Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864,
10 869, quoting *Longshore v. County of Ventura* (1979) 25 Cal.3d 14.) Pension plans “create a
11 trust relationship between pensioner beneficiaries and the trustees of pension funds who
12 administer retirement benefits . . . and the trustees must exercise their *fiduciary trust* in good
13 faith and must deal fairly with the pensioners-beneficiaries. [Citations omitted.]” (*Hannon*
14 *Engineering, Inc. v. Reim* (1981) 126 Cal.App.3d 415, 425, original italics.) Furthermore,
15 there are no statutory or constitutional limitations barring application of estoppel here. (See
16 *Medina, supra*, 112 Cal.App.4th at 869.) Accordingly, equitable estoppel may be applied here
17 to effectuate a change in Mr. Vega’s retirement application.

18 **III. CONCLUSION**

19 As the foregoing shows, the ALJ properly found that Mrs. Vega met her burden to
20 prove that her husband made a correctible mistake under Government Code section 20160,
21 and the Board should affirm his findings and conclusion. In the alternative, the Board should
22 find that equitable estoppel may be had against CalPERS. Based upon either scenario, the
23 Board should affirm the ALJ’s proposed decision.

24 Dated: February 26, 2025

Respectfully submitted,

**RAINS LUCIA STERN
ST. PHALLE & SILVER, PC**

27 By: /s/ Gidian R. Mellk

Gidian R. Mellk

Attorneys for Respondent Nancy Vega

PROOF OF SERVICE

I am employed in the City of Santa Monica, State of California. I am over 18 years of age and not a party to this action. My business address is Rains Lucia Stern St. Phalle & Silver, PC, 1428 2nd Street, Suite 200, Santa Monica, CA 90401.

On the date below I served a true copy of the following document(s): **RESPONDENT NANCY VEGA’S ARGUMENT IN FAVOR OF PROPOSED DECISION**, on the interested parties to said action by the following means:

- (BY MAIL)** By placing a true copy of the above, enclosed in a sealed envelope with appropriate postage, for collection and mailing following our ordinary business practices. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- (BY OVERNIGHT DELIVERY)** By placing a true copy of the above, enclosed in a sealed envelope with delivery charges to be billed to Rains Lucia Stern St. Phalle & Silver, P.C., for delivery by an overnight delivery service to the address(es) shown below.
- (BY FACSIMILE TRANSMISSION)** By transmitting a true copy of the above by facsimile transmission from facsimile number (310) 395-5801 to the attorney(s) or party(ies) shown below.
- (BY MESSENGER)** By placing a true copy of the above in a sealed envelope and by giving said envelope to an employee of Action Messenger for guaranteed, same-day delivery to the address(es) shown below.
- (BY HAND DELIVERY)** By personal delivery of a true copy of the above to the attorneys or parties shown below
- (BY E-MAIL or ELECTRONIC TRANSMISSION)** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable period of time, after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Mehron Assadi, Esq.
 Lincoln Plaza North
 400 Q Street, Suite 3440B
 Sacramento, CA 95811
Mehron.Assadi@calpers.ca.gov
 (916) 460-2596

Board Services Unit Coordinator
 California Public Employees' Retirement
 System
 Post Office Box 942701
 Sacramento, CA 94229-2701
 Email: Board@CalPERS.ca.gov

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

DATED: February 26, 2025

/s/ Cheryl L. Mitchell

 Cheryl L. Mitchell