ATTACHMENT B

STAFF'S ARGUMENT

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STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Carole Marie de Géry (Respondent de Géry) is the surviving spouse of Barry C. Lewis (Decedent), a member of CalPERS through his employment with the City of South San Francisco and the City of Brisbane. Decedent passed away on January 26, 2024.

On March 18, 2002, Decedent applied for service retirement and completed a Service Retirement Election Application form. He elected the Option 3W Lifetime Monthly Benefit, named his then-wife Respondent Kathleen Lewis (Respondent Lewis) as the beneficiary, and included her date of birth. Under the option election section, the form states:

> I understand that my election is irrevocable and that by electing Option 2W, 3W, or 4, I forfeit my right to an increase in my allowance based on the conditions described in A Guide to Completing Your CalPERS Service Retirement Election Application.

In the same form, Decedent named Respondent Lewis as the beneficiary of his Lump Sum Retired Death Benefit. Under the retired death benefit section, the form states:

> The person listed above will receive the Lump Sum Retired Death Benefit that is payable upon my death. I understand that I may change this beneficiary at any time and that any change in my marital status or the birth or adoption of a child automatically revokes this designation.

The form was signed by Decedent and Respondent Lewis and was notarized.

Decedent retired effective July 6, 2002. CalPERS issued a July 19, 2002, confirmation letter advising Decedent that benefits would be paid in accordance with his retirement election and explaining the limited circumstances and required written steps to modify a beneficiary after divorce or remarriage:

> You may 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 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.

Decedent and Respondent Lewis divorced in 2005. A stipulated judgment of dissolution effective August 4, 2005, awarded Decedent the CalPERS pension as his sole and separate property; it did not address or change the Option 3W beneficiary designation. On June 3, 2007, Decedent married Respondent de Géry.

Following Decedent's death in 2024, Respondent de Géry applied for Retired Member/Payee Survivor Benefits. On March 20, 2024, she submitted a letter contesting Decedent's beneficiary designation of Respondent Lewis and included the divorce judgment, marriage certificate, will excerpts, and CalPERS records naming Respondent de Géry as Decedent's 457 plan beneficiary. She asserted that Decedent and his divorce attorney did not know that Decedent had to provide CalPERS with the divorce decree and marriage certificate. She also suggested that, because Decedent had named her as the beneficiary of his CalPERS Deferred Compensation account, he may have believed that designation applied to both CalPERS accounts.

After reviewing Decedent's member file, CalPERS determined that the Option 3W beneficiary on his account is Respondent Lewis. CalPERS informed Respondent de Géry by letter dated July 30, 2024, that it was denying her request to be named the Option 3W lifetime monthly beneficiary and that Respondent Lewis be removed. The letter explained that, upon qualifying events, "the modification of options can only become effective if a member submits the formal election document and if both a member and their new option beneficiary are alive on the effective date for the modification of options." CalPERS had no record of any written election by Decedent to change his Option 3W beneficiary after his divorce or remarriage. CalPERS further determined that the facts did not establish a correctable mistake was made by Decedent with respect to the Option 3W designation.

Respondent de Géry appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. A hearing was held on July 20 and August 11, 2026. Respondent represented herself at the hearing. Respondent Lewis did not appear at the hearing and a default was taken as to Respondent Lewis only.

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

Respondent de Géry testified about her belief as to Decedent's intentions, their relationship, his struggles with paperwork, his dyslexia, his cognitive decline after a stroke, and his belief that she would be "taken care of" after his death. She testified that Decedent told her she would receive all his CalPERS retirement benefits upon his

death. She stated that Decedent told her that he had changed the beneficiary to name her as100 percent beneficiary.

Respondent de Géry submitted into evidence Decedent's last will and testament dated October 12, 2018, which lists her as executor, but does not make any reference to Decedent's CalPERS pension or beneficiary designations. Decedent's trust agreement was also submitted into evidence, but it makes no reference to Decedent's CalPERS pension or beneficiary designations. Respondent de Géry also submitted affidavits from individuals who knew Decedent and had conversations with him in which he told them Respondent de Géry would receive a monthly payment from his pension after his death.

Respondent de Géry submitted a screenshot from Decedent's 457 plan website where he designated her as his primary beneficiary. Respondent de Géry confirmed that Decedent's 457 plan was managed by Voya and that she received funds from Decedent's 457 plan after his death. She contended that when Decedent changed his 457 plan beneficiary on this website, he thought he had changed his beneficiary across all his CalPERS accounts.

Respondent de Géry called her sister, Dominique Chastenet, to testify on her behalf. Ms. Chastenet knew Decedent for approximately 20 years and reported that Decedent told her Respondent de Géry would be well cared for because she would receive his retirement benefits, which he referred to as his "401k" and his "retirement" from the police department. Ms. Chastenet testified that she believed Decedent thought his 401k plan and retirement were one portfolio. According to Ms. Chastenet, Decedent told her that, to ensure Respondent de Géry received what Decedent had intended, he went to his lawyer and he felt it had been done.

Respondent de Géry called Janet Louise Childs to testify on her behalf. Ms. Childs worked with Decedent in the 1990s and counseled him when he became ill. Ms. Childs reported that Decedent made it "crystal clear" that he wanted his retirement to go to Respondent de Géry. Ms. Childs testified that she believes they discussed this in approximately 2019, but Decedent "wasn't sure" or "certain" of what he had to do. She said she encouraged him to do what he needed to do legally and logistically to accomplish his wishes. Ms. Childs testified that Decedent did not mention any paperwork and stated that Decedent was not good with paperwork.

Respondent de Géry also called MJ Kahle, to testify on her behalf. Ms. Kahle is a licensed psychologist and a CalPERS member. She knew Decedent and Respondent de Géry since approximately 2018 when they worked together. Ms. Kahle testified that it was clear to her that Decedent wanted Respondent de Géry to get his retirement benefits because he wanted her to be taken care of if anything happened to him. She also testified that Decedent was under the impression Respondent de Géry was his CalPERS designated beneficiary.

CalPERS witness, an Analyst II in the Survivor Benefits Section, testified at the hearing in support of CalPERS' determination. She explained that different forms are completed

when a member designates beneficiaries before and after they retire. Prior to retirement, the beneficiary designation is revocable and the member can change it at any time. At retirement, the member is given options and can choose to receive a lower monthly amount to allow a beneficiary to receive a lifetime allowance after the member's death. The member must provide the beneficiary's date of birth for CalPERS to make an actuarial calculation and provide an allowance estimate to the member. CalPERS witness explained that there is also a separate retired death benefit, which is a lump sum employer contracted benefit and the beneficiary designation is revocable. She testified that if a member seeks to modify the beneficiary for their lifetime option allowance, they must contact CalPERS for a recalculation of their allowance. CalPERS needs the new beneficiary date of birth and the member's option election form.

CalPERS witness testified that when she analyzes disputes, she reviews the entire file including the retirement application and any documents submitted to CalPERS. She confirmed that Decedent never contacted CalPERS after his retirement. He did not contact CalPERS to notify CalPERS of his divorce from Respondent Lewis or his marriage to Respondent de Géry, and CalPERS did not receive their marriage certificate until after Decedent's death. CalPERS analyzed all the information and documents submitted by Respondent de Géry and determined that Decedent made no attempt to remove Respondent Lewis as the Option 3W Lifetime Monthly Benefit beneficiary or to name Respondent de Géry as the new beneficiary.

CalPERS did not find any evidence of a correctable mistake because there was no indication that Decedent tried to change his beneficiary designation. CalPERS witness stated that she evaluated the change in beneficiary designation for Decedent's 457 plan and believes it demonstrates only that Decedent intended to update his beneficiary designation for his 457 plan and nothing more. Further, it would have been reasonable for Decedent to contact CalPERS regarding changing his beneficiary designations.

After considering all the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent de Géry's appeal. The ALJ found that Respondent de Géry did not meet the statutory requirements to receive the Option 3W Lifetime Monthly Benefit in the absence of a written election and actuarial recalculation initiated by Decedent during his lifetime. The ALJ concluded that the stipulated judgment of dissolution between Decedent and Respondent Lewis signed in August 2005, did not automatically revoke Respondent Lewis as the named Option 3W beneficiary. Under Government Code section 21462, a divorce judgment awarding the entire pension to the member creates an opportunity—not an automatic result—for the member to elect to modify the beneficiary. The law requires a written election and a recalculation to modify a lifetime beneficiary designation. No such election ever occurred. CalPERS' file contains no indication that Decedent even contacted the system to initiate a recalculation, obtain the required actuarial figures, or submit any form naming Respondent de Géry as the new beneficiary.

The ALJ rejected Respondent de Géry's argument that Decedent's overall course of conduct—divorcing Respondent, Lewis, marrying Respondent de Géry, expressing

intentions to make Respondent de Géry his beneficiary, and naming Respondent de Géry in other plans—constituted "substantial compliance" to modify his Option 3W beneficiary designation. The ALJ explained that substantial compliance cannot replace clear statutory requirements that a member must file a written election to change an Option 3W beneficiary after divorce and remarriage. Respondent de Géry's reliance on informal statements, third-party affidavits, and evidence of Decedent's difficulties with paperwork cannot overcome the explicit requirements that (1) an optional settlement must be selected in writing, (2) the new beneficiary's date of birth must be supplied so that CalPERS can recalculate the allowance, and (3) both member and beneficiary must be alive on the effective date of the modification. None of these conditions were met.

The ALJ found that the evidence does not establish that Government Code section 20160 applies to this matter. A correctable error or omission does not include "[f]ailure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances." (Gov. Code, § 20160, subd. (a)(3).) Decedent completed his service retirement application in March 2002, which required him to select an option, name a beneficiary, provide the beneficiary's date of birth, have the beneficiary sign the application, and have the application notarized. He divorced in 2005, and married Respondent de Géry in 2007. By the time he married Respondent de Géry, it had only been approximately five years since he completed his service retirement application. After having gone through that process, a reasonable person would contact CalPERS to ensure they correctly named a new beneficiary. Decedent had over 18 years after he divorced Respondent Lewis and before his death to contact CalPERS to ensure his beneficiaries were listed in a manner he wished, but no evidence demonstrated that he did so.

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

November 18, 2026

Austa Wakily
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