

February 10, 2015

Jennifer Anders-Gable  
Western States Pension Assistance Project  
Legal Services of Northern California  
Senior Legal Hotline  
505 12<sup>th</sup> Street  
Sacramento, California 95814

***Re: Appeal for Additional Benefits under the Northrop Grumman Space & Mission Systems Corp. Salaried Pension Plan***

Dear Ms. Anders-Gable:

I am writing to you on behalf of the Benefit Plans Administrative Committee (the "Committee"), which is the Plan Administrator of the Northrop Grumman Space & Mission Systems Corp. Salaried Pension Plan (the "Plan").<sup>1</sup> This is in response to your letter dated December 3, 2014 (received on December 12, 2014), appealing the denial of your organization's request on behalf of [REDACTED] for relief from the Plan's rules for recouping pension overpayments. After a thorough review of your appeal under the terms of the Plan and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Committee must deny your appeal for the reasons described below.

### **Background**

Ms. [REDACTED] and her former spouse, [REDACTED], both earned benefits under the Plan during periods of employment with TRW. Mr. [REDACTED] was employed with TRW from February 1966 through August 1994, and Ms. [REDACTED] was employed with TRW from January 1985 through January 1993. Pursuant to qualified domestic relations orders dated June 16, 1994 ("QDROs"), 50% of Mr. [REDACTED]'s benefit earned from April 1962 through February 1987 was awarded to Ms. [REDACTED], and 50% of Ms. [REDACTED]'s benefit earned from January 1985 through February 1987 was awarded to Mr. [REDACTED]. Ms. [REDACTED] QDRO allowed her to elect when her portion of Mr. [REDACTED]'s benefit would be paid and the form of

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<sup>1</sup> On December 11, 2002, TRW Inc. ("TRW") was acquired by Northrop Grumman Corporation, which assumed sponsorship of the Plan. The Plan's provisions were not changed as a result of the change in sponsorship, but the Plan's name was changed.

payment – separate and apart from any elections made by Mr. [REDACTED] with respect to his portion of such benefit.<sup>2</sup>

According to our records, in a signed Retirement Application for Alternate Payee dated November 4, 1994 (the “1994 Application”), Ms. [REDACTED] elected to receive a lump sum payment of \$28,156.93, representing the portion of Mr. [REDACTED] Plan benefit awarded pursuant to her QDRO. The 1994 Application included a signed Lump Sum Payment Authorization form and a signed Lump Sum Payment Authorization By Direct Rollover Transfer form, indicating her election to have a portion of her lump sum benefit rolled over directly to an individual retirement account (“IRA”) with Provident Savings Bank in Redlands, California. (Your December 3, 2014 letter confirms that the lump sum payment was received and reported on her 1994 tax return.)

Ms. [REDACTED] subsequently submitted a signed Retirement Application dated February 24, 1998 on which she elected to commence payment of her Plan benefit earned as a TRW employee in the form of a 10-year certain annuity, with payments beginning in April 1998. After the applicable reduction for the portion of this benefit awarded to Mr. [REDACTED] under the QDRO, the amount of Ms. [REDACTED] monthly benefit payments was \$69.57.<sup>3</sup>

In September 2004, the Northrop Grumman Benefits Service Center inadvertently provided Ms. [REDACTED] with a retirement kit that again offered payment of the portion of Mr. [REDACTED] Plan benefit awarded pursuant to her QDRO. As described above, the Plan Administrator’s records indicate this benefit was previously paid to Ms. [REDACTED] in a lump sum. However, in a signed Election Form for Benefits dated October 25, 2004, she elected to receive payment of the same benefit in the form of a 10-year certain annuity, with monthly payments of \$396.55 retroactive to June 1, 2004.

In February 2013, Ms. [REDACTED] contacted the Northrop Grumman Benefits Center (“NGBC”) and requested calculations supporting her monthly benefit payments from the Plan. In response to this request, she was issued a Pension Verification Notice dated June 28, 2013 and a set of calculations. The Pension Verification Notice expressly stated that “Northrop Grumman reserves the right to correct any errors.”

In connection with its response Ms. [REDACTED]’s February 2013 inquiry, the Plan Administrator discovered that the portion of Mr. [REDACTED] Plan benefit awarded pursuant to her QDRO was already paid in 1994. Consequently, her monthly payments of \$396.55 retroactive to June 1, 2004 had resulted in net overpayments totaling \$43,776.33.<sup>4</sup> In light of the foregoing, the NGBC sent her a Pension Plan Overpayment Recovery Notice dated September 16, 2013 (the

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<sup>2</sup> This is referred to as a “separate interest” QDRO.

<sup>3</sup> Mr. [REDACTED] initiated payment of his portion of Ms. [REDACTED] Plan benefit in June 1997. He elected to roll over the full amount to an IRA with The Norton Credit Union in San Bernardino, California.

<sup>4</sup> The Plan Administrator determined that, taking into account Ms. [REDACTED]’s final average earnings, her 1994 lump sum payment made pursuant to the QDRO had been underpaid by \$637.27. The sum of her overpayments from June 1, 2004 through September 30, 2013 (\$44,413.60) was offset by the amount of the underpayment, resulting in a net overpayment of \$43,776.33.

"Overpayment Notice"), explaining the Plan's obligation to recoup the amount of the improper payments. With the Overpayment Notice, the NGBC included a Summary of Benefits dated September 16, 2013, a calculation worksheet and a copy of the 1994 Application. Effective October 1, 2013, Ms. [REDACTED] monthly payments of \$396.55 were permanently cancelled, and her monthly payments of \$69.57 (i.e., her portion of the pension benefit she earned as a TRW employee) were suspended. The Overpayment Notice provided that unless Ms. [REDACTED] repaid the entire \$43,776.33 net overpayment by October 31, 2013, her monthly payments of \$69.57 would be withheld until the net overpayment amount was completely offset.

On December 16, 2013, your organization submitted requests for certain documents related to Ms. [REDACTED]'s benefits under the Plan. Those requests were responded to in a letter dated February 5, 2014, accompanied by several enclosed documents.

On July 7, 2014, your organization submitted a claim on behalf of Ms. [REDACTED] requesting that her monthly benefit payments of \$396.55 and \$69.57 be fully reinstated, and that she be made whole for the aggregate cancelled and suspended payments from October 1, 2013 to July 7, 2014. The claim letter asserted that, based on the facts of Ms. [REDACTED]'s situation, the Plan is not entitled to recoup the overpayment and that Ms. [REDACTED] would prevail in a legal action by the Plan Administrator to do so. The letter included a number of legal arguments to support Ms. [REDACTED]'s position. In a letter dated October 2, 2014, the Plan Administrator denied the claim for the reasons described below.

You subsequently filed this appeal on December 3, 2014. The appeal does not present any new evidence to support the claim, but reiterates and supplements numerous legal arguments in support of Ms. [REDACTED]'s position.

### **Decision**

The Plan Administrator is a fiduciary with respect to the Plan. Section 404(a)(1)(D) of ERISA requires the Plan fiduciary to discharge its duties with respect to the Plan solely in the interest of Plan participants and in accordance with the documents and instruments governing the Plan. The Plan expressly states that "if the Plan makes an overpayment of the amount of any benefits due any payee under the Plan, the Plan may recover the amounts either by requiring the payee to return the excess to the Plan, by reducing any future Plan payments to the payee, or by any other method deemed reasonable to the Committee." See Cash Balance Program, Section 10.08.<sup>5</sup>

The Plan fiduciary has a duty under ERISA to ensure that participants and beneficiaries (including alternate payees) receive only the specific benefits provided under the terms of the Plan document. Consistent with ERISA, the Plan document provides that, if a benefit overpayment is discovered, the payee may be required to return the excess to the Plan. Accordingly, both ERISA and the terms of the Plan impose a duty on the Plan Administrator

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<sup>5</sup> A copy of this provision is enclosed as Exhibit A.

to recover erroneous overpayments in order to protect the sound funding of the Plan for all participants.

The appeal letter asserts that payments of the Plan benefit earned by Ms. [REDACTED] during her employment with TRW should not be used to offset overpayments of the Plan benefit awarded pursuant to her QDRO. In support of this position, the appeal letter cites a Department of Labor opinion holding that overpayments may not be recouped by reducing benefit payments under another pension plan. The facts in that opinion are not analogous to Ms. [REDACTED]'s situation and have no bearing on the Plan Administrator's ability to recoup benefits erroneously paid to her by withholding other benefits due to her under the same plan.

Moreover, the appeal letter's characterization of the \$396.55 monthly overpayments as belonging to Mr. [REDACTED] – instead of Ms. [REDACTED] – is equally unfounded. In accordance with the QDRO's terms, Section 206(d)(3) of ERISA and Section 401(a)(13) of the Internal Revenue Code, Ms. [REDACTED] was awarded the sole rights to that portion of Mr. [REDACTED] benefit. Legally, an individual's rights to a benefit awarded under a separate interest QDRO are indistinguishable from her rights to a benefit that she actually earned as an employee/plan participant. The appeal letter asserts that ERISA's "anti-alienation" rules preclude recoupment of the overpayment by offsetting payments of Ms. [REDACTED]'s Plan benefit earned as an employee/participant. This assertion is incorrect; the regulations under ERISA include an express exception to the anti-alienation rules for any arrangement for the recovery of overpayments previously made from a plan. *See* Treas. Reg. Section 1.401(a)-13(c)(2)(iii). ERISA and its regulations do not limit recoupment actions to the specific benefit that was overpaid. Therefore, if an individual receives an overpayment from a plan under which she has more than one benefit, recoupment actions may be taken against any of her remaining plan benefits.

The appeal letter also asserts that Ms. [REDACTED]'s economic circumstances make repayment too difficult, or impossible, and she should be permitted to retain the overpayment based on certain court cases. The Plan does not provide an exception to the recoupment rules due to hardship caused to a participant. And, while some courts have allowed pension plan participants to retain overpayments, those cases do not override the Plan Administrator's obligation to recover the overpayment to Ms. [REDACTED] in this situation. Rather, in adherence to the fiduciary duties described above, the Plan Administrator must recover the amount of the overpayment.

The Committee realizes that Ms. [REDACTED] received a number of monthly payments of \$396.55 and communications indicating she was eligible for those amounts. The Committee sincerely apologizes for these errors. However, the Committee is legally bound by the terms of the Plan and must seek recovery of the overpayment. Consequently, the Committee must deny your request that Ms. [REDACTED] monthly benefit payments be fully reinstated, and that she be made whole for the aggregate cancelled and suspended payments from October 1, 2013 to July 7, 2014.

Ms. Jennifer Anders-Gable  
February 10, 2015  
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This letter constitutes a denial of Ms. [REDACTED]'s appeal for additional benefit service under the Plan. She is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to her claim. She now has the right to bring a civil action under Section 502(a) of ERISA if she chooses to further pursue this claim, provided she abides by certain time limitations. Specifically, she may not bring legal action against a party under the Plan after the later of:

- One year from the time the claim arises; or
- 90 days from the final disposition of the claim on appeal by the Committee.

In addition, the action must be filed before the time limit described above and before any other applicable statute of limitation arises, whichever comes first. For details on when a claim arises, please see the Plan document.

Ms. Anders-Gable, thank you for your letter. If Ms. [REDACTED] has any questions, she may contact the Northrop Grumman Benefits Center (NGBC) at 1-800-894-4194. Benefit service representatives are available to assist her Monday through Friday, from 9:00 a.m. to 6:00 p.m. Eastern time.

Very truly yours,



Melinda Ezzo  
Secretary, Benefit Plans Administrative Committee

Enclosure

**EXHIBIT A**  
**RELEVANT PLAN PROVISIONS**

**Northrop Grumman Cash Balance Program, Effective January 1, 2010**

- *Section 10.08, Incorrect Payment of Benefits*

“If the Committee determines in its full discretion that the Plan made an incorrect payment of benefits, and that a correction is necessary or desirable under the law, then:

(a) If the Plan makes an overpayment of the amount of any benefits due any payee under the Plan, the Plan may recover the amounts either by requiring the payee to return the excess to the Plan, by reducing any future Plan payments to the payee, or by any other method deemed reasonable to the Committee.

(b) If the Plan makes a late payment or an underpayment of the amount of any benefits due any payee under the Plan, correct payment will be made as soon as possible after the late payment or underpayment is discovered.”



Senior Legal Hotline  
505 12<sup>th</sup> Street  
Sacramento, CA 95814  
Phone: (916) 551-2140  
Fax: (916) 551-2197  
Toll Free: (800) 222-1753  
www.slh.lsnr.net

December 3, 2014

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Plan Administrative Committee  
Northrup Grumman Benefits Administration  
Northrup Grumman Corporation  
One Hornet Way  
El Segundo, CA 90245

Re: [REDACTED]  
[REDACTED]  
[REDACTED]

Dear Administrative Committee Members:

The Western States Pension Assistance Project (“WSPAP”) is a nonprofit law office that assists individuals with the resolution of issues regarding their pensions and retirement savings plans. We represent Ms. [REDACTED] in her appeal of the denial of her claim for the reinstatement of the benefits she earned during her eight years of employment with Northrup Grumman’s predecessor company, TRW. We have enclosed Ms. [REDACTED] authorization for us to represent her in this matter.

On October 6, 2014, we received a letter from Liza S. Tiglaio-Smith, dated October 2, 2014, informing us that the Northrup Grumman Space & Mission Systems Corp. Salaried Pension Plan, formerly known as the TRW Salaried Pension Plan (the “Plan”), denied Ms. [REDACTED] claim for reinstatement of her pension benefits, Ex. A. Pursuant to Section 503 (29 U.S.C. section 1133) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, on behalf of Ms. [REDACTED], we hereby timely appeal the Plan’s denial of the reinstatement of Ms. [REDACTED] benefits under the Plan. We request immediate reinstatement of the \$69.57 per month pension benefit amount Ms. [REDACTED] formerly received from her pension plan account, reimbursement for pension benefits not paid from October 2013 to the present, and interest on the reimbursed benefit amount. As explained in detail below, based on ERISA statutes and regulations and their interpretation by the courts, Ms. [REDACTED] is entitled to these benefits.

**I. Relevant Factual Background**

Ms. [REDACTED] earned benefits under the Plan during her employment with TRW. *See Declaration of [REDACTED] in Support of Appeal of Denial of Claim for Reinstatement of Pension Benefits* (hereinafter “[REDACTED] Dec.”), Ex. B, ¶ 4. Ms. [REDACTED]’s ex-husband, [REDACTED] earned benefits under another version of the Plan during his employment with TRW. *Id.* ¶ 5. Pursuant to a Qualified Domestic Relations Order (“QDRO”) dated June 16, 1994, a portion of Mr. [REDACTED]’s benefit

was awarded to Ms. [REDACTED] and a portion of Ms. [REDACTED]'s benefit was awarded to Mr. [REDACTED]. *Id.* ¶ 6-7.

**A. Ms. [REDACTED] Begins Receiving Her Portion of Her Benefit And Her Portion of Mr. [REDACTED]'s Benefit.**

On February 24, 1998, at age 55, Ms. [REDACTED] elected to receive her portion of her pension plan benefit. *Id.* ¶ 8. Effective April 1998, Ms. [REDACTED] received \$69.57 each month. *Id.* She continued to receive this benefit amount every month, until October 2013. *Id.*

On or about July 2004, the Plan sent Ms. [REDACTED] a packet of information explaining her Alternate Payee pension plan benefits under Mr. [REDACTED]'s pension plan account. The information the Plan sent Ms. [REDACTED] included a statement that she was entitled to approximately \$60,000 in benefits, or she could elect to begin receiving a monthly benefit at that time. Ex. C; *see also* [REDACTED] Dec. ¶ 9. On or about October 2004, Ms. [REDACTED] elected to receive a monthly distribution from Mr. [REDACTED]'s pension plan account. *Id.* ¶ 10. Effective on or about November 2004, Ms. [REDACTED] received \$396.55 every month, until October 2013.

In February 2013, Ms. [REDACTED] contacted the Plan to request an accounting of how the Plan calculated the benefits she was currently receiving. *Id.* ¶ 11. Ms. [REDACTED] was concerned about the way her benefits were calculated, because in looking through old paperwork, she noticed that most of the pension plan's calculations of her benefits were handwritten. *Id.* That calculation method seemed prone to potential error. *Id.* Ms. [REDACTED] thought that the Plan had made an error in its calculations and she was receiving less in benefits than the amount to which she was entitled. *Id.*

In June 2013, Ms. [REDACTED] received from the Plan a "Retirement Plan Pension Verification Notice" explaining how her benefits were calculated. *See* Exhibit D; *see also* [REDACTED] Dec. ¶ 12. The document explained how the Plan had calculated Ms. [REDACTED]'s pension plan benefits. [REDACTED] Dec. ¶ 12. After reviewing this document, Ms. [REDACTED] felt reassured that her pension benefits had been correctly calculated. *Id.* ¶ 13.

**B. The Plan Determines Ms. [REDACTED] Has Been Overpaid On Her Portion of Mr. [REDACTED]'s Pension Plan Benefit, And Collects The Overpayment From Ms. [REDACTED] Own Pension Plan Benefit.**

On or about September 18, 2013, Ms. [REDACTED] received from the Plan a "Pension Plan Overpayment Recovery Notice" dated September 16, 2013. Ex. E; *see also* [REDACTED] Dec. ¶ 14. The notice stated that Ms. [REDACTED] had elected to receive her portion of Mr. [REDACTED]'s benefit as a lump sum in September 1994. *Id.* The notice further stated that the Plan had determined that Ms. [REDACTED]'s 2004 election of a \$396.55 annuity—an election Ms. [REDACTED] made in response to the Plan's mailing of a packet of



information to her, requesting such an election of benefits--resulted in an overpayment to Ms. [REDACTED] of \$43,776.63. Ex. E.

The Overpayment Recovery Notice also stated that as of October 2013, Ms. [REDACTED] employee annuity benefit of \$69.57 would be suspended and the \$396.55 Alternate Payee benefit would be permanently discontinued. Ex. E; *see also* [REDACTED] Dec. ¶ 15-16. If Ms. [REDACTED] did not repay the overpayment made to her from Mr. [REDACTED] pension account, the pension plan benefit Ms. [REDACTED] had earned and which was paid from her own account would be permanently suspended. Ex. E; *see also* [REDACTED] Dec. ¶ 17.

Ms. [REDACTED] was shocked and dismayed when she received the Overpayment Recovery Notice. [REDACTED] Dec., ¶ 18. She did not recall receiving a lump sum payment from the pension plan in 1994, by that time almost twenty years in the past. *Id.* She was positive the Plan had made a mistake. *Id.* After all, the Plan had just told her two months previously that the Plan's calculations of her benefits were correct. *Id.*

Ms. [REDACTED] immediately began to research the issue. *Id.* ¶ 19. Ms. [REDACTED] was using the same bank in 1994 that she was using in 2004, Provident Savings Bank, listed on the 2004 Eligibility Distribution forms. *Id.* When she checked with the bank, she found that Provident did not have any record of a distribution from Mr. [REDACTED] plan in 1994 or 1995. *Id.* ¶ 20; *see also* Ex. F. Ms. [REDACTED] was convinced that the Plan was mistaken regarding providing her a lump sum payment in 1994. [REDACTED] Dec. ¶ 18. The Plan, however, insisted that it was correct. *Id.* ¶ 21.

In 2013, Ms. [REDACTED] was 71 years old. *Id.* ¶ 22. She had spent the previous twelve years caring for her mother, who was in a wheelchair and entirely dependent on her. *Id.* She worked as a housecleaner to make ends meet. *Id.* She had no medical insurance other than Medicare. *Id.* Eventually, sciatica, arthritis, chronic sinus infections and severe and recurring cases of shingles forced her to stop working. *Id.* At that point she could barely walk, she had a full right hip replacement, and a right shoulder replacement with reconstruction. *Id.* ¶ 23. Medical expenses had depleted her savings. *Id.* ¶ 24. She had, some years previously, declared bankruptcy. *Id.* ¶ 24. She had surrendered her house and rented a trailer. *Id.* She had sold most of her personal possessions. *Id.*

#### **C. Ms. [REDACTED] Discovers That She Did Receive A Lump Sum Payment in 1994.**

In 2014, the Plan was still insisting that Ms. [REDACTED] had received the benefits from Mr. [REDACTED] pension account in a lump sum, and Ms. [REDACTED] was convinced that she had not. With the assistance of our office, Ms. [REDACTED] began to perfect her claim for reinstatement of benefits. *Id.* ¶ 25. Ms. [REDACTED] kept thinking about ways she could show the Plan that she had not received a lump sum distribution 20 years previously. *Id.* ¶ 26. She thought that perhaps her tax return from 1994 would demonstrate to the Plan that she had not received a lump sum amount, because the tax return would not

show any such distribution. *Id.* She contacted the Internal Revenue Service and was able to receive a copy of the return. *Id.*

To Ms. [REDACTED] great surprise and chagrin, she found that she had reported on her 1994 tax return a lump sum pension plan payment of approximately \$28,000. *Id.* ¶ 27. Ms. [REDACTED] had totally forgotten that she had received that amount of money, or any amount of money, as a lump sum payment in 1994. *Id.* ¶ 27. She had not even thought about the prior payment when, in 2004, the Plan asked her to elect how to receive her portion of Mr. [REDACTED] pension benefits. *Id.* ¶ 28.

If Ms. [REDACTED] had remembered, in 2004, that she received a lump sum payment in 1994, she would have immediately notified the Plan Administrator of his or her error in asking her to select a method of payment of benefits. *Id.* ¶ 29. But she did not recall receiving such a lump sum payment. *Id.* Ms. [REDACTED] actually thought she may have been receiving *less* in benefits than she was entitled to, which was the concern that prompted her ask the Plan to review the amount of her benefits. *Id.* ¶ 29.

The benefits from her own pension plan account and from Mr. [REDACTED] pension plan account were the only income, other than [REDACTED] Social Security, Ms. [REDACTED] received. *Id.* ¶ 30. She deposited her monthly pension benefits in a personal checking account. *Id.* She used this account for day-to-day expenses. *Id.* She was barely able to meet her daily expenses with the amount of pension benefits she formerly received. *Id.* ¶ 31. Now, with no pension benefits at all, she cannot make ends meet and has had to apply for Medi-Cal and a Medi-Cal subsidy to receive medical care. *Id.* ¶ 32. She also has had to apply for food stamps, and for low-income utility programs to help pay her gas and electric bills. *Id.* She has great difficulty meeting her monthly rent payment for the trailer. *Id.* If Ms. [REDACTED] benefit is not reinstated, she will lose her trailer and will not have anywhere to live. *Id.* ¶ 33. Ms. [REDACTED] desperately needs the \$69.57 in pension benefits that she earned for working at TRW. *Id.*

## **II. Legal Argument**

### **A. Denying Ms. [REDACTED] Access to Her Own Pension Plan Benefits in Order to Recoup Overpayment of Benefits from Mr. [REDACTED] Pension Plan Account Contravenes ERISA Statutes and Regulations.**

As demonstrated below, denying Ms. [REDACTED] the benefits she earned through her employment at TRW is contrary to ERISA statutes and regulations. The attempted recovery of the overpayment is a form of legal, not equitable, relief, which is not permitted under ERISA. Moreover, the Plan Administrator's failure to discover his or her error for nine years is a breach of his or her fiduciary duty to Ms. [REDACTED] under ERISA statutes describing such duty. Attempting to recoup an overpayment from one individual's pension plan account by collecting it from another individual's pension plan account is also breach of fiduciary duty under ERISA and constitutes a forfeiture of Ms. [REDACTED]'s earned pension benefits. Further, such recoupment is, in effect, an impermissible alienation of Ms. [REDACTED] pension plan benefits.

**1. ERISA Statutes and Regulations Do Not Permit the Plan to Recover the Overpayments From Ms. [REDACTED]'s Pension Plan Account Because Such Recovery Is a Legal, Not Equitable, Form of Relief.**

As stated above, the Plan is not permitted to recover the Alternate Payee benefits made under Mr. [REDACTED] pension plan account by discontinuing the benefits from Ms. [REDACTED] pension plan account due Ms. [REDACTED] under the plan governing her benefits. In the Pension Plan Overpayment Recovery Notice dated September 16, 2013, the Plan provided two ways to repay the alleged overpayment: send the Plan a check or money order of \$43,776.43 by October 31, 2013, or do nothing and in that case the Plan would recoup the overpayment by taking away Ms. [REDACTED]'s own pension plan benefits. See Ex. E. In effect, the Plan Administrator's first option was that Ms. [REDACTED] immediately pay back the overpaid benefits from Mr. [REDACTED] pension plan account through her own funds. Ms. [REDACTED] was unable to do so, because she spent the benefits on basic living expenses, including food and rental of her trailer.

ERISA section 502(a)(3) (29 U.S.C. § 1132(a)(3)) limits the circumstances under which a fiduciary may file an action for restitution to recover benefits paid in error. That section authorizes a civil action "by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate *equitable relief* (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan." 29 U.S.C. § 1132(a)(3) (emphasis added). The Supreme Court has interpreted this section of the statute to authorize only "those categories of relief that were typically available *in equity* (such as injunction, mandamus, and restitution, but not compensatory damages)." *Mertens v. Hewitt Associates*, 508 U.S. 248, 256-57 (1993) (emphasis added). Claims for money damages are excluded from the category of equitable relief because they are "the classic form of *legal relief*" and therefore fall outside of the categories of relief that were typically available in equity. *Id.* at 255 (emphasis added) (citation omitted). In their holding, the *Mertens* Court looked beyond the label plaintiffs placed on their complaint, stating "Although they often dance around the word, what petitioners in fact seek is nothing other than compensatory damages—monetary relief for all losses their plan sustained." *Id.*

In *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002), the Court applied the *Mertens* holding to a recoupment case. The Court rejected the argument that 29 U.S.C. section 1132(a)(3) authorizes all relief consistent with ERISA's purpose, instead interpreting the statute as providing fiduciaries solely with equitable relief. *Id.* at 219 n. 5. The *Great-West* Court then explicitly distinguished between equitable restitution and legal restitution, finding that "restitution is a legal remedy when ordered in a case at law and an equitable remedy . . . when ordered in an equity case, and whether it is legal or equitable depends on 'the basis for the plaintiff's claim' and the nature of the underlying remedies sought." *Id.* at 213, quoting *Reich v. Continental Casualty Co.*, 33 F.3d 754, 756 (7th Cir. 1994). The *Great-West* Court explained:

Not all relief falling under the rubric of restitution is available in equity . . . In cases in which the plaintiff could not assert title to or right to possession of particular property, but in which nevertheless he might be able to show just grounds for recovering money to pay for some benefit the defendant had received from him, the plaintiff had a right to restitution at law . . . Such claims were viewed essentially as actions at law for breach of contract (whether the contract was actual or implied) . . . The basis for petitioners' claim is not that respondents hold particular funds that, in good conscience, belong to petitioners, but that petitioners are contractually entitled to some funds for benefits that they conferred. The kind of restitution that petitioners seek, therefore, is not equitable—the imposition of a constructive trust or equitable lien on particular property—but legal—the imposition of personal liability for the benefits that they conferred upon respondents.

*Great-West*, 534 U.S. at 214-215 (internal citations omitted). Thus, the *Great-West* Court held that recoupment of erroneous payments made by a plan was not available under ERISA, at least not where the property at issue was not an identifiable *res*. *Id.* at 215-16; *see also Honolulu Joint Apprenticeship and Training Committee of United Ass'n Local Union No. 675 v. Foster*, 332 F.3d 1234, 1237-38 (9th Cir. 2003) (equitable restitution is available where the specific *res* or funds can be identified and attached by equitable lien or constructive trust, but not where the plaintiff seeks to impose general personal liability as a remedy for the defendant's monetary obligations).

Here, similar to *Great-West*, the Plan seeks to recover monies paid in error, using the remedy of recoupment. The Plan does not claim that there is an identifiable *res* consisting of overpaid funds that can be identified and attached by equitable lien. Instead, the Plan points only to permissive Plan language stating that the Plan “may” recover the amounts overpaid. Because the Plan controls Ms. [REDACTED]’s own pension plan payments as well as those from Mr. [REDACTED]’s pension plan account, the Plan has seized Ms. [REDACTED]’s pension plan payments. The Plan does not question that Ms. [REDACTED] has utilized her portion of Mr. [REDACTED]’s pension plan benefits for her essential daily living expenses, including food, medicine, and housing. The Plan does not question the fact that Ms. [REDACTED] possesses no *res* of prior benefit payments that may be attached by equitable lien or constructive trust. The Plan impermissibly seeks to impose general personal liability upon Ms. [REDACTED] as a remedy for her alleged monetary obligations. Thus, the Plan seeks a legal, not an equitable, remedy. This remedy is not authorized under ERISA.

**2. The Plan May Not Seek Recovery of the Overpayments Because Under ERISA, the Plan Administrator’s Breach of His or Her Fiduciary Duty in Delaying Nine Years Before Taking Action Bars Such Recovery.**

Even if ERISA permitted the Plan to seek recoupment of its overpayments from Ms. [REDACTED] such action would be barred by the Plan Administrator’s breach of his or her fiduciary duty. Under ERISA, plan administrators, as fiduciaries, and are required to discharge their duties “with care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in like capacity and

familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.” 29 U.S.C. § 1104(a)(1)(B); *see also Phillips v. Maritime Ass’n-I.L.A. Local Pension Plan*, 194 F. Supp. 2d 549, 555 (E.D. Tex. 2001).

In *Phillips*, the plan administrator failed to submit QDROs for several beneficiaries to an actuary. This failure prevented the QDROs from being adjusted to account for the alternate payee's early receipt of benefits, any age difference between the alternate payee and the former spouse, and the present value of any employer subsidy for early retirement. The plaintiffs began receiving monthly benefits based on these QDROs, but the dollar amounts were not actuarially correct because of the plan administrator's failure to allow an actuary to review the proposed QDROs before qualifying them under the Plan. The plan administrator's actions resulted in incorrect benefit amounts being paid to several alternate payees, including the four plaintiffs, for as long as seven years.

The court held that the duty of plan administrators and trustees is that of a fiduciary, and as a fiduciary, one “must exercise his position of trust so as, at the very minimum, not to harm the beneficiary as a result of his failure to exercise reasonable care.” *Phillips*, 194 F. Supp. 2d at 555-56, citing *Wright v. Simmons*, 641 F. Supp. 1391, 1402 (S.D. Tex. 1986). The court stated:

The overpayments were the result of more than just a mistake, they were the result of [the administrator's] *breach of fiduciary duty* owed to the Plaintiffs. Plaintiffs had no way of knowing that they were being overpaid. The overpayments in no way occurred through the fault of the Plaintiffs. Plaintiffs rationally planned their lives on the amounts stated in the QDROs and paid to them by the Plan each month for years, and as a result had a change of position.

*Phillips*, 194 F. Supp. at 556 (emphasis added). The *Phillips* court held that the plan could correct mistakes made in calculating the pension benefits and pay correct amounts, but the plan was prohibited from recouping overpayments made before the error was discovered. *Id.* at 555. In disallowing any future recoupment, the court stated that it “would [not] be equitable for the Plaintiffs to bear the weight of an error that [the plan administrator] could have prevented by upholding her duty as plan administrator.” *Id.* at 557.

Here, similar to the facts of *Phillips*, the Plan Administrator has breached his or her fiduciary duty by providing Ms. [REDACTED] an incorrect benefit for not seven, but nine, years. As in *Phillips*, Ms. [REDACTED] is an older woman who depended on the dollar amount she rationally assumed she was entitled to receive when planning for the rest of her life. [REDACTED] Dec. ¶ 28. She did not know that her monthly benefits were incorrect. *Id.* ¶ 29. Ms. [REDACTED] relied on the Plan Administrator's duty of loyalty and reasonable care to provide her correct and accurate information. *Id.* ¶ 28. She suffers now and will continue to suffer as a result of the Plan Administrator's breach of those duties. *Id.* ¶¶ 32-33. The Plan Administrator's error could have been prevented if he or she had fulfilled his or her fiduciary duty as

required of a plan administrator. For these reasons, the Plan Administrator is barred from collecting its overpayment by withholding Ms. [REDACTED] pension plan benefits.

**3. Denying Ms. [REDACTED] Her Own Pension Plan Benefits Is a Further Breach of Fiduciary Duty Under ERISA.**

Reducing benefits under one pension plan account to remedy a participant's failure to repay erroneous amounts received under another individual's pension plan account violates the requirements of ERISA section 404(a)(1) (29 U.S.C. section 1104). This section requires a fiduciary to discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries. *See* 29 U.S.C. § 1104(a)(1). As a participant and beneficiary of her own pension plan account, Ms. [REDACTED] has the right to expect the Plan Administrator to discharge his or her duties in her interest, not in the interest of a different pension plan account earned by a different participant. The problems related to Mr. [REDACTED] pension plan account have no relevance to Ms. [REDACTED] pension plan account, which is entirely separate and distinct.

A similar situation to the present circumstance was described in the Office of Pension and Welfare Benefit Programs Opinion Letter of April 4, 1977. This Opinion Letter, dealt, *inter alia*, with recouping an overpayment from a Health and Welfare Fund by withholding funds from a Pension Trust Fund. In the Opinion Letter, the Office made it clear that

[D]elaying or reducing benefits . . . to remedy a participant or beneficiary's failure to repay erroneous amounts received from another plan . . . would primarily be for the convenience of the fiduciary . . . rather than for the benefit of the beneficiary. Problems relating to another plan have no relevance to the plan in question, even if both plans are established and maintained pursuant to the same collective bargaining agreement and cover many of the same employees.

ERISA Opinion No. 77-34, 1977 WL 5397 (Apr. 4, 1977).

Here, the Plan Administrator is attempting to recoup an overpayment from a 1985 TRW Salaried Pension Plan account by reducing benefits from a different plan, the 1989 TRW Salaried Pension Plan, and a different account within that Plan. The different versions of the plans have different requirements and different hours of service. Moreover, these are two different pension plan accounts within the different versions of the plan. Attempting to remedy the overpayment from Mr. [REDACTED] account by reducing Ms. [REDACTED] benefit is primarily for the "convenience of the fiduciary" and not for the benefit of the participant, a violation of the Plan Administrator's fiduciary duty. *See* 29 U.S.C. § 1104(a)(1)(A)(i).

**4. Raiding Ms. [REDACTED]'s Pension Plan Account to Recoup the Overpayment from Mr. [REDACTED]'s Pension Plan Account Constitutes a Forfeiture of Ms. [REDACTED]'s Vested Pension Benefits, in Violation of ERISA Statutes.**

ERISA is a "comprehensive and reticulated statute," which Congress adopted after careful study of private retirement pension plans. *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U.S. 359, 361 (1980). Through ERISA, Congress wanted to ensure that "if a worker has been promised a defined pension benefit upon retirement--and if he has fulfilled whatever conditions are required to obtain a vested benefit--... he actually receives it." *Id.* at 375. For this reason, the concepts of vested rights and nonforfeitable rights are critical to the ERISA scheme. *See id.* at 370, 378. ERISA prescribes vesting and accrual schedules to ensure that employees obtain rights to their normal pension benefits. Most critically, ERISA establishes that "[e]ach pension plan shall provide that an employee's right to his normal retirement benefit is *nonforfeitable* upon the attainment of normal retirement age." 29 U.S.C. § 1053(a) (emphasis added).

Here, the Plan is attempting to offset its overpayment, which the Plan made on behalf of Mr. [REDACTED] pension plan account, by recouping this overpayment from Ms. [REDACTED]'s earned and nonforfeitable pension plan account. Ms. [REDACTED]'s right to receive all funds due her under her own pension account may not be abridged. Ms. [REDACTED] was a beneficiary of a portion of Mr. [REDACTED]'s pension plan account, but she was a participant in her own account and has the right to receive her vested benefits. The Plan's attempt to collect its erroneous overpayments by abrogating Ms. [REDACTED]'s nonforfeitable rights flies in the face of the careful scheme of Congress to ensure that workers receive their vested benefits.

The Plan claims that "there is no legal distinction between a benefit awarded under a QDRO and a benefit earned as a participant under the same plan." This is correct if the situation involves collection of an overpayment from an Alternate Payee as a beneficiary of a plan, or collection of an overpayment from a participant of a Plan. Both, under law, are treated as recoupment of overpayments. However, the Plan is not able to point to any case law or administrative ruling supporting its position that collecting an overpayment from Mr. [REDACTED]'s pension plan account by withholding benefits under Ms. [REDACTED]'s pension plan account does not violate Ms. [REDACTED]'s rights. This is a distinct situation involving nonforfeitable rights to earned and vested benefits, and this situation requires that the Plan cease its efforts at recoupment.

**5. Recouping the Overpayment from Mr. [REDACTED]'s Pension Plan Account by Eliminating Ms. [REDACTED]'s Pension Plan Benefits Violates the Anti-Alienation Provisions of ERISA.**

ERISA section 206(d)(1) (29 U.S.C. section 1056(d)(1)) mandates that a pension plan governed by the statute "shall provide that benefits provided under the plan may not be assigned or alienated." The

Internal Revenue Code likewise conditions preferential tax treatment on a pension plan's prohibiting alienation and assignment of participant benefits. See 26 U.S.C. § 401(a)(13)(A).

In conformity with these requirements, Article VI of the Plan states, in relevant part:

Non-Alienation of Benefits: General Rule: Any attempt to alienate, sell, transfer, assign, pledge or otherwise encumber any benefit under the Plan, whether presently or thereafter payable, shall be void.

See TRW Salaried Pension Plan, effective on and after January 1, 1989.

Federal cases have construed ERISA's provision against assignment or alienation as generally prohibiting garnishments of pension benefits, except for the support of spouses or children. *Gen. Motors Corp. v. Buha*, 623 F.2d 455, 460 (6th Cir. 1980). For example, in *Guidry v. Sheet Metal Workers National Pension Fund*, 493 U.S. 365 (1990), the Supreme Court cited ERISA's anti-alienation provision in refusing to allow a union that Guidry had defrauded to satisfy its judgment against him by garnishing current pension income. And, in *Kickham Hanley P.C. v. Kodak Retirement Income Plan*, 448 F.3d 204, 214 (2d Cir. 2006), the Second Circuit refused, on anti-alienation grounds, to permit the withholding of attorney's fees from pension plan benefit payments to which the "plan participants [were] presently entitled."

Here, the Plan has implemented what is in effect a garnishment of Ms. [REDACTED] pension benefits. There is no exception in ERISA's anti-alienation provision that permits this garnishment. The garnishment is not an effort to collect benefits to support a spouse or children. It is, instead, an attempt to collect from Ms. [REDACTED] a pension plan account, to which she is presently entitled under law, a debt to Mr. [REDACTED]'s pension plan account. Therefore, the Plan must cease recouping the overpayment it erroneously made from Mr. [REDACTED] pension account by garnishing Ms. [REDACTED] pension plan benefit, and repay the amount it has withheld from her to date, plus interest.

**B. The Plan's Recoupment of the Benefits Paid from Mr. [REDACTED]'s Pension Plan Account By Forfeiture of Ms. [REDACTED] Pension Plan Benefits Has Created Create Extreme Hardship and For This Reason the Balance of the Equities Requires that the Plan Waive Repayment of the Overpayment.**

As demonstrated above, a pension plan is not required by ERISA statutes and regulations to recoup the overpayments to Ms. [REDACTED], and can and in many cases must waive the repayment. In an overpayment situation, courts interpreting ERISA statutes are concerned with the basic equities, i.e., whether the collection of an overpayment results in an inequitable impact on a beneficiary. Courts have repeatedly determined that where the recoupment of overpayments creates hardship, the balance of the equities shows that it is inequitable to collect such overpayment. See, e.g., *Wells v. U.S. Steel & Carnegie Pension Fund, Inc.*, 950 F.2d 1244, 1251 (6th Cir. 1991) ("Although the Plan language



permits recoupment, this court is concerned with the possible inequitable impact recoupment may have on the individual retirees”); *Butler v. Aetna U.S. Healthcare, Inc.*, 109 F. Supp. 2d 856, 862 (S.D. Ohio 2000) (“[W]ithout question, the plan grants [defendant] a legal right to withhold [plaintiffs] entire monthly benefit award until it recoups the overpayment caused by her retroactive receipt of Social Security Disability benefits . . . [H]owever, . . . equitable principles may limit an ERISA fiduciary's legal right to recoup an overpayment of benefits.”); *Redall Industries, Inc. v. Wiegand*, 870 F. Supp. 175, 178 (E.D. Mich. 1994) (“In their motion for partial summary judgment, the Trustees argue that there is no issue of material fact on their restitution claim because . . . the parties agree that Weigand received an overpayment of \$427,281. However, [the] Trustees must also show that equity requires Weigand to return the overpaid benefits.”).

In *Phillips v. Maritime Ass'n-I.L.A. Local Pension Plan*, 194 F. Supp. 2d 549, 555 (E.D. Tex. 2001), the plan administrator overpaid benefits for seven years to four divorced elderly women, as a result of the plan's erroneous calculations. The court noted:

These older women depended on the dollar amounts not only stated in the QDROs and by Hunt [the plan administrator], but actually distributed to them for years, when planning the rest of their lives. They neither knew nor had reason to know that the monthly benefits were incorrect. Plaintiffs suffered, and continue to suffer, as a result of Maritime's recoupment efforts.

*Id.* at 556. The court then reasoned:

The balance of equities weighs in favor of disallowing Defendants to recoup the past overpayments. The overpayments were the result of more than just a mistake, they were the result of [the plan administrator's] breach of fiduciary duty owed to the Plaintiffs.

*Id.*; see also *Porter v. Hartford Life & Accident Ins. Co.*, 609 F. Supp. 2d 817, 827-28 (E.D. Ark. 2009) (finding that plan could not recoup amount overpaid for four years, because the error was due to its own negligence), order withdrawn after mediation, 2009 WL 6498182 (E.D. Ark. Aug. 31, 2009).

In *Adams v. Brink's Co.*, 261 Fed. Appx. 583, 597 (4th Cir. 2008), plaintiff Addington took early retirement earlier than he had planned, relying on the plan's representation of how much he would receive at retirement. For five years, Addington did receive that stated amount—but then the plan discovered a significant error and demanded repayment. The court held:

The responsibility for the miscalculation of Addington's early retirement benefits lies with the Pittston Plan and with the Pittston employees who were entrusted with the task of computing his benefits. Because of Appellees' mistakes, Addington and his wife detrimentally relied on a stated monthly early retirement payment and have lived according to this fixed monthly standard for many years. Thus, the equities of the

situation demand an exception to the full restoration rule in order to protect Addington and provide a necessary incentive for Pittston to ensure that they are protecting the interests of future participants and beneficiaries. The Court affirms the district court finding that Addington does not have to repay the overpaid pension benefits.

*Id.* at 597 (internal citation omitted). In *Kaliszewski v. Sheet Metal Workers' National Pension Fund*, 2005 WL 2297309, at \*8 (W.D. Pa. July 19, 2005), the court refused to order restitution of an overpayment, highlighting significant equitable concerns regarding the length of time before the overpayment was discovered (nine years) and the extent of plaintiffs reliance on the continuing benefit payments in lifestyle and financial planning.

The U.S. Department of Labor also has opined that a plan administrator should not seek recoupment if it creates a financial hardship for the participant or beneficiary:

In other cases, again depending on the facts and circumstances involved, the hardship to the participant or beneficiary resulting from such recovery or the cost to the Fund of collection efforts may be such that it would be prudent, within the meaning of [ERISA] section 404(a)(1)(B), for the Fund *not to seek recovery from the participant or beneficiary of an overpayment made to him.*

DOL Adv. Op. 77-08 (emphasis added); *see also* Department of Labor (“DOL”) Adv. Ops. 77-07, 77-33, 77-34.

Here, as in *Phillips*, Ms. [REDACTED] is an older woman in the same situation as the plaintiffs in that case. She depended on the dollar amounts not only stated in the QDRO but actually distributed to her for years, when planning the rest of her life. [REDACTED] Dec., ¶ 30. She did not know that the benefits packet the Plan sent to her in 2004, and the Plan’s request that she elect a method of payments from Mr. [REDACTED]’s pension plan account, had been sent to her in error. [REDACTED] Dec. ¶¶ 27-29. She did not remember then—or nine years later, in 2013—that she had already elected to receive a lump sum. [REDACTED] Dec. ¶¶ 18, 28-29. Had she remembered that payment, that she would have informed the Plan of its error in 2004. [REDACTED] Dec. ¶ 29. It never occurred to Ms. [REDACTED] that the Plan was mistakenly providing her too much in benefits—after all, the Plan Administrator was an experienced professional administering a complex pension plan. Ms. [REDACTED] trustingly assumed that the Plan Administrator was performing his or her duties with care and diligence. [REDACTED] Dec. ¶ 28.

As in *Adams*, the Plan’s error in calculation of Ms. [REDACTED] Alternate Payee benefit, and the failure to discover that error for years, along with Ms. [REDACTED] detrimental reliance on the promised monthly income, demand an exception to any repayment suggestions included in the Plan, in order to protect Ms. [REDACTED] and provide an incentive for the Plan to ensure that in the future they do a better job of protecting beneficiaries.

As in *Kaliszewski*, the Plan Administrator here failed to discover his or her error for nine years. Ms. [REDACTED] is an elderly woman unable to work, who depends on her pension amount for the basic necessities of life, including rent and food. The balance of the equities here weighs heavily in favor of the Plan waiving its efforts to recoup the past overpayments from Mr. [REDACTED]'s pension plan account by garnishing Ms. [REDACTED]'s own pension plan benefit.

The Plan claims that it is *required* by its fiduciary duty under ERISA section 404(a)(1)(D) to collect the overpayment to Ms. [REDACTED], and it "must" recover the amount of the overpayment. *See* Ex. A., pps. 3-4. However, the plan language enclosed with the claim denial letter clearly does not *require* such collection. Instead, the language permits the Plan Administrator to make such a collection, or not to make such a collection:

[I]f the Plan makes an overpayment of the amount of any benefits due any payee under the Plan, the Plan *may* recover the amounts either by requiring the payee to return the excess to the Plan, by reducing any future Plan payments the payee, or by another method deemed reasonable to the Committee.

*See* Claim Denial Letter, page 3 of 4 (emphasis added).<sup>1</sup> This overpayment collection language is permissive, not compulsory. Moreover, even if the language required such collection of overpayments, federal courts, particularly those in the Ninth Circuit, have held that such language does not prohibit a plan from waiving an overpayment. Absent a finding of fraud or wrongdoing, Ninth Circuit courts have found that recoupment is not justified whether or not a plan includes language permitting or requiring it. *See, e.g., Trustees ex rel. Teamsters Benefit Trust v. Doctors Medical Center of Modesto, Inc.*, 286 F. Supp. 2d 1234, 1239 (N.D. Cal. 2003) ("In cases involving overpayment, the Ninth Circuit has thus far found unjust enrichment/restitution claims *only* where there is fraud or wrongdoing.") (emphasis added), *citing FMC Medical Plan. v. Owens*, 122 F.3d 1258, 1261 (9th Cir. 1997) ("Restitution is referred to in *Mertens* as the return of 'ill-gotten' assets or profits taken from a plan . . . Owens did not obtain FMC's funds by any fraud or wrong-doing"); *Reynolds Metals Co. v. Ellis*, 202 F.3d 1246 (9th Cir. 2000) (under *Owens*, "restitution requires the showing of fraud or wrongdoing"); *BankAmerica Pension Plan v. McMath*, 2001 WL 263290, \*12 (N.D. Cal. Mar. 5, 2001) ("The Ninth Circuit has held that the equitable remedy of restitution is *only* available where the defendant obtained the funds through 'fraud or wrong-doing'" (emphasis added); *Medical Benefits Adm'rs of MD, Inc. v. Sierra R. Co.*, 2007 WL 2914824 (E.D. Cal. Oct. 5, 2007) ("*Mertens* and *Great-West* are distinguishable from the present case because neither involved an allegation of fraud or wrongdoing").

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<sup>1</sup> Section 10.08 appears to be a provision of the Northrup Grumman Cash Balance Program, Effective January 1, 2010. This was not the pension plan in effect at the time of Ms. [REDACTED]'s last hour of service, and the Plan does not explain its relevance here. Moreover, this plan was never sent to us in response to our request for documents relevant to Ms. [REDACTED] claim.

The Plan Administrator, in the claim denial letter, states “Unfortunately, the Plan does not provide an exception to the recoupment rules due to hardship caused to a participant.” This statement makes no sense, because the “rules” as cited in the letter are permissive, and their wording of “may” rather than “must” or “shall” does indeed allow for exceptions. Moreover, such an exception is required in this case, where the balance of the equities, including Ms. [REDACTED]’s extreme financial hardship, require waiver of the overpayment.

**C. The Plan May Not Recover Overpayments on a Theory of Unjust Enrichment, Because There Was No Fraud or Wrongdoing on the Part of Ms. [REDACTED]**

The Plan may be proceeding to attempt to collect overpayments on a theory of unjust enrichment. However, in cases involving ERISA overpayments, courts generally find unjust enrichment/restitution claims only where there is fraud or wrongdoing. *FMC Medical Plan. v. Owens*, 122 F.3d at 1261 (“Restitution is referred to in *Mertens* as the return of ‘ill-gotten’ assets or profits taken from a plan . . . [but] Owens did not obtain FMC’s funds by any fraud or wrong-doing”); *Reynolds Metals Co.*, 202 F.3d at 1248 (under *Owens*, restitution requires the showing of fraud or wrongdoing).

Here, Ms. [REDACTED] did not perpetrate any fraud on the Plan or commit any wrongdoing resulting in the overpayments. Instead, Ms. [REDACTED] received the overpayments trusting that the Plan Administrator had fulfilled his or her fiduciary duty to ensure that she was paid the amount to which she was entitled. [REDACTED] Dec., ¶ 18, 20. Because Ms. [REDACTED] relied on the Plan to provide her the correct amount of pension benefits, and believed she was receiving that correct amount, she was not unjustly enriched by the overpayments. Thus, there is no unjust enrichment basis upon which the Plan may seek recoupment.

**D. The Plan Has Waived Its Right to Recover the Overpayment From Ms. [REDACTED]**

Waiver is the “voluntary or intentional relinquishment of a known right.” *Rhorer v. Raytheon Engineers and Constructors, Inc.*, 181 F.3d 634, 645 (5th Cir. 1999), citing *Pitts v. American Sec. Life Ins. Co.*, 931 F.2d 351, 357 (5th Cir. 1991). The test of waiver is whether the individual charged with waiver knew or had the means or source of information from which, if pursued, the individual would have ascertained the correct situation. See *Matter of A and A Energy Properties, Ltd.*, 21 B.R. 73, 76 (E.D. Mich. 1982).

In this case, the Plan Administrator paid Ms. [REDACTED] an incorrect monthly pension benefit for nine years. In 2004, when the incorrect payments began, the Plan Administrator possessed all of the information he or she needed to determine the correct amount of benefits and thus had the means and source of information to determine the correct benefit amount. Even if the Plan did not have actual knowledge of its erroneous overpayments at any time during the nine years from 2004 to 2013, at the least it had constructive knowledge of this fact, which is sufficient for waiver. See *In re Balfour MacLaine Int’l Ltd.*, 873 F. Supp. 862, 871 (S.D.N.Y. 1995), *aff’d*, 85 F.3d 68 (2d Cir. 1996) (“even if an insurer does not have actual knowledge of all the pertinent facts . . . if it has sufficient information to put

it on notice . . . the insurer has constructive knowledge, which is sufficient for waiver"). Nevertheless, the Plan Administrator continued to pay Ms. [REDACTED] the incorrect amount of benefits. Only after overpaying more than \$40,000 did the Plan inform Ms. [REDACTED] that her benefit amount was not correct. By possessing the information regarding the correct benefit payment yet failing to take any action for the nine years from 2004 to 2013, the Plan waived the right to collect the overpayment from Ms. [REDACTED]

**E. The Plan Administrator Breached His or Her Fiduciary Duty to Provide Ms. [REDACTED] With the Statutorily Required Information Upon Denial of Her Claim for Reinstatement of Her Pension Plan Benefits.**

ERISA regulations require that when a Plan Administrator gives notice of an adverse benefit decision upon review of a claim for benefits, the Plan Administrator must provide, along with that notification, the following information:

[T]he notification shall set forth, in a manner calculated to be understood by the claimant--(1) The specific reason or reasons for the adverse determination;(2) Reference to the specific plan provisions on which the benefit determination is based;(3) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section;(4) A statement describing any voluntary appeal procedures offered by the plan and the claimant's right to obtain the information about such procedures described in paragraph (c)(3)(iv) of this section, and a statement of the claimant's right to bring an action under section 502(a) of the Act.

29 C.F.R. § 2560.503-1. In *Grossmuller v. Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am., UAW, Local 813*, 715 F.2d 853, 857-58 (3d Cir. 1983), the court stated that in order to afford a plan participant whose claim has been denied a reasonable opportunity for full and fair review, the plan's fiduciary must notify the participant promptly, in writing and in language likely to be understood by laymen, that the claim has been denied and also provide the participant with an opportunity to appeal. The court found, *inter alia*, that the plan did not notify Grossmuller of his appeal rights or the manner in which he could challenge the denial. The court held that the plan "deprived Grossmuller of the protections afforded by ERISA for his interests in the pension plan." *Id.* at 858.

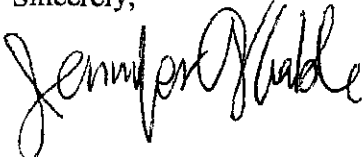
Here, the Plan Administrator's letter denying Ms. [REDACTED] claim for benefits did not comply with ERISA's regulations regarding notice of an adverse benefit decision. The notification did not include a statement the Ms. [REDACTED] was entitled to receive copies of all documents relevant to her claim. It did not include a statement of appeal procedures offered by the plan. It did not include a statement of Ms. [REDACTED] right to bring an action under section 502(a) of the Act. Thus, as in *Grossmuller*, the Plan Administrator deprived Ms. [REDACTED] of the protections afforded by ERISA for her interests in the Plan.

### III. Conclusion

For the reasons stated herein, we appeal the decision to collect overpayments made from Mr. [REDACTED] pension plan account from Ms. [REDACTED] earned pension plan benefits. We request that the Plan immediately reinstate Ms. [REDACTED] benefits and provide Ms. [REDACTED] with benefits she would have received between October 1, 2013 to the present, and pay interest on the reimbursed benefits.

If you would like to discuss this matter, I may be reached at (916) 930-4923, or [janders@lsnc.net](mailto:janders@lsnc.net). Please direct your written response to me at: Western States Pension Assistance Project, Legal Services of Northern California, Senior Legal Hotline, 505 12<sup>th</sup> Street, Sacramento, CA 95814. Thank you for your attention to this matter.

Sincerely,



Jennifer Anders-Gable  
Supervising Attorney, Western States Pension Assistance Project

Enc.

[REDACTED]

EXHIBIT A

***NORTHROP GRUMMAN***

Northrop Grumman Corporation  
One Hornet Way  
El Segundo, California 90245

October 2, 2014

Parisa Ijadi-Maghsoodi  
Western States Pension Assistance Project  
Legal Services of Northern California  
Senior Legal Hotline  
505 12<sup>th</sup> Street  
Sacramento, California 95814

***Re: Claim for Additional Benefits under the Northrop Grumman Space & Mission Systems Corp. Salaried Pension Plan***

Dear Ms. Ijadi-Maghsoodi:

I am writing to you on behalf of the Plan Administrator of the Northrop Grumman Space & Mission Systems Corp. Salaried Pension Plan (formerly known as the TRW Salaried Pension Plan) (the "Plan").<sup>1</sup> This is in response to your letter dated July 7, 2014 on behalf of [REDACTED] requesting relief from the Plan's rules for recouping pension overpayments, including reinstatement of her monthly pension payments and restoration of her cancelled and suspended payments. After a thorough review of your claim under the terms of the Plan and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Plan Administrator must deny the claim for the reasons described below.

#### **Background**

Ms. [REDACTED] and her former spouse, [REDACTED], both earned benefits under the Plan during periods of employment with TRW. Mr. [REDACTED] was employed with TRW from February 1966 through August 1994, and Ms. [REDACTED] was employed with TRW from January 1985 through January 1993. Pursuant to qualified domestic relations orders dated June 16, 1994 ("QDROs"), 50% of Mr. [REDACTED]'s benefit earned from April 1962 through February 1987 was awarded to Ms. Hamblin, and 50% of Ms. [REDACTED]'s benefit earned from January 1985 through February 1987 was awarded to Mr. [REDACTED].

According to our records, in a signed Retirement Application for Alternate Payee dated November 4, 1994 (the "1994 Application"), Ms. [REDACTED] elected to receive a lump sum payment of \$28,156.93, representing the portion of Mr. [REDACTED] Plan benefit awarded

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<sup>1</sup> On December 11, 2002, TRW Inc. ("TRW") was acquired by Northrop Grumman Corporation, which assumed sponsorship of the Plan. The Plan's provisions were not changed as a result of the change in sponsorship, but the Plan's name was changed.



pursuant to her QDRO. The 1994 Application included a signed Lump Sum Payment Authorization form and a signed Lump Sum Payment Authorization By Direct Rollover Transfer form, indicating her election to have a portion of her lump sum benefit rolled over directly to an individual retirement account ("IRA") with Provident Savings Bank in Redlands, California.

Ms. [REDACTED] subsequently submitted a signed Retirement Application dated February 24, 1998 on which she elected to commence payment of her Plan benefit earned as a TRW employee in the form of a 10-year certain annuity, with payments beginning in April 1998. After the applicable reduction for the portion of this benefit awarded to Mr. [REDACTED] under the QDRO, the amount of Ms. [REDACTED]'s monthly benefit payments was \$69.57.<sup>2</sup>

In September 2004, the Northrop Grumman Benefits Service Center inadvertently provided Ms. [REDACTED] with a retirement kit that again offered payment of the portion of Mr. [REDACTED] Plan benefit awarded pursuant to her QDRO. As described above, our records indicate this benefit was previously paid to Ms. [REDACTED] in a lump sum. However, in a signed Election Form for Benefits dated October 25, 2004, she elected to receive payment of the same benefit in the form of a 10-year certain annuity, with monthly payments of \$396.55 retroactive to June 1, 2004.

In February 2013, Ms. [REDACTED] contacted the Northrop Grumman Benefits Center ("NGBC") and requested calculations supporting her monthly benefit payments from the Plan. In response to this request, she was issued a Pension Verification Notice dated June 28, 2013 and a set of calculations. The Pension Verification Notice expressly stated that "Northrop Grumman reserves the right to correct any errors."

In connection with its response Ms. [REDACTED]'s February 2013 inquiry, the Plan Administrator discovered that the portion of Mr. [REDACTED] Plan benefit awarded pursuant to her QDRO was already paid in 1994. Consequently, her monthly payments of \$396.55 retroactive to June 1, 2004 had resulted in net overpayments totaling \$43,776.33.<sup>3</sup> In light of the foregoing, the NGBC sent her a Pension Plan Overpayment Recovery Notice dated September 16, 2013 (the "Overpayment Notice"), explaining the Plan's obligation to recoup the amount of the improper payments. With the Overpayment Notice, the NGBC included a Summary of Benefits dated September 16, 2013, a calculation worksheet and a copy of the 1994 Application. Effective October 1, 2013, Ms. [REDACTED]'s monthly payments of \$396.55 were permanently cancelled, and her monthly payments of \$69.57 (*i.e.*, her portion of the pension benefit she earned as a TRW employee) was suspended. The Overpayment Notice provided that unless Ms. [REDACTED] repaid the entire \$43,776.33 net overpayment by October 31, 2013,

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<sup>2</sup> Mr. [REDACTED] initiated payment of his portion of Ms. [REDACTED] Plan benefit in June 1997. He elected to roll over the full amount to an IRA with The Norton Credit Union in San Bernardino, California.

<sup>3</sup> The Plan Administrator determined that, taking into account Ms. [REDACTED]'s final average earnings, her 1994 lump sum payment made pursuant to the QDRO had been underpaid by \$637.27. The sum of her overpayments from June 1, 2004 through September 30, 2013 (\$44,413.60) was offset by the amount of the underpayment, resulting in a net overpayment of \$43,776.33.

her monthly payments of \$69.57 would be withheld until the net overpayment amount was completely offset.

On December 16, 2013, you submitted requests for certain documents related to Ms. [REDACTED] benefits under the Plan. We responded to your requests in a letter dated February 5, 2014, accompanied by several enclosed documents.

On July 7, 2014, you submitted this claim on behalf of Ms. [REDACTED] requesting that her monthly benefit payments of \$396.55 and \$69.57 be fully reinstated, and that she be made whole for the aggregate cancelled and suspended payments from October 1, 2013 to July 7, 2014. The claim letter asserts that, based on the facts of Ms. [REDACTED] situation, the Plan is not entitled to recoup the overpayment and that Ms. [REDACTED] would prevail in a legal action by the Plan Administrator to do so. The letter sets forth numerous legal arguments to support your position.

### Decision

The Plan Administrator is a fiduciary with respect to the Plan. Section 404(a)(1)(D) of ERISA requires the Plan fiduciary to discharge its duties with respect to the Plan solely in the interest of Plan participants and in accordance with the documents and instruments governing the Plan. The Plan expressly states that "if the Plan makes an overpayment of the amount of any benefits due any payee under the Plan, the Plan may recover the amounts either by requiring the payee to return the excess to the Plan, by reducing any future Plan payments to the payee, or by any other method deemed reasonable to the Committee." See Cash Balance Program, Section 10.08.<sup>4</sup>

The Plan fiduciary has a duty to ensure that participants receive only the specific benefits provided under the terms of the Plan document. As a result, if a benefit overpayment is discovered, the Plan may require the payee to return the excess to the Plan. This is consistent with ERISA and the terms of the Plan, which both impose a duty on the Plan Administrator to recover erroneous overpayments in order to protect the sound funding of the Plan for all participants.

The claim letter asserts that payments of the Plan benefit earned by Ms. [REDACTED] during her employment with TRW should not be used to offset overpayments of the Plan benefit awarded pursuant to her QDRO. In support of this position, the claim letter cites a Department of Labor opinion holding that overpayments may not be recouped by reducing benefit payments under another pension plan. The facts in that opinion are not analogous to Ms. [REDACTED] situation and have no bearing on the Plan Administrator's ability to recoup benefits erroneously paid to her by withholding other benefits due to her under the *same* plan. Moreover, the claim letter's characterization of the \$396.55 monthly overpayments as belonging to Mr. [REDACTED] - instead of Ms. [REDACTED] - is equally unfounded. In accordance with the QDRO and Section 206(d)(3) of ERISA, Ms. [REDACTED] was awarded the sole rights to

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<sup>4</sup> A copy of this provision is enclosed as Exhibit A.

Parisa Ijadi-Maghsoodi  
October 2, 2014  
Page 4 of 4

that portion of Mr. [REDACTED] benefit; there is no legal distinction between a benefit awarded under a QDRO and a benefit earned as a participant under the same plan.

The claim letter also asserts that Ms. [REDACTED] economic circumstances make repayment too difficult, or impossible, and she should be permitted to retain the overpayment based on certain court cases. Unfortunately, the Plan does not provide an exception to the recoupment rules due to hardship caused to a participant. And, while some courts have allowed pension plan participants to retain overpayments, those cases do not override the Plan Administrator's obligation to recover the overpayment to Ms. [REDACTED] in this situation. Rather, in adherence to the fiduciary duties described above, the Plan Administrator must recover the amount of the overpayment.

We realize that Ms. [REDACTED] received a number of monthly payments of \$396.55 and communications indicating she was eligible for those amounts. We sincerely apologize for these errors. However, we are legally bound by the terms of the Plan and must seek recovery of the overpayment. Consequently, we must deny your request that Ms. [REDACTED] monthly benefit payments be fully reinstated, and that she be made whole for the aggregate cancelled and suspended payments from October 1, 2013 to July 7, 2014.

\* \* \*

Ms. Ijadi-Maghsoodi, thank you again for your letter. If you or Ms. [REDACTED] have any additional questions, please contact the Northrop Grumman Benefits Center at 1-800-894-4194. Benefit service representatives are available to assist you Monday through Friday, from 9:00 a.m. to 6:00 p.m. Eastern time.

Very truly yours,



Liza S. Tiglao-Smith  
Manager  
Benefits Customer Services

Enclosure

cc: Ms. [REDACTED] (w/out enclosures)

**EXHIBIT A**  
**RELEVANT PLAN PROVISIONS**

**Northrop Grumman Cash Balance Program, Effective January 1, 2010**

- *Section 10.08, Incorrect Payment of Benefits*

“If the Committee determines in its full discretion that the Plan made an incorrect payment of benefits, and that a correction is necessary or desirable under the law, then:

(a) If the Plan makes an overpayment of the amount of any benefits due any payee under the Plan, the Plan may recover the amounts either by requiring the payee to return the excess to the Plan, by reducing any future Plan payments to the payee, or by any other method deemed reasonable to the Committee.

(b) If the Plan makes a late payment or an underpayment of the amount of any benefits due any payee under the Plan, correct payment will be made as soon as possible after the late payment or underpayment is discovered.”

## EXHIBIT B

**DECLARATION OF [REDACTED]**  
**IN SUPPORT OF APPEAL OF DENIAL OF CLAIM**  
**FOR REINSTATEMENT OF PENSION BENEFITS**

I, [REDACTED] declare as follows:

1. My full name is [REDACTED] I have personal knowledge of the facts stated in this declaration and I could and would testify competently to them in a court of law if called upon to do so.
2. I reside at [REDACTED]
3. I am 72 years old.
4. I worked for TRW, and I earned a pension benefit during my employment with TRW.
5. I was married to [REDACTED] also worked at TRW. He earned a pension benefit under a different version of the TRW plan.
6. [REDACTED] and I divorced and we divided our pension benefits. After the divorce, our attorneys sent the pension plan a copy of the Qualified Domestic Relations Order ("QDRO"). The court date of the QDRO was June 16, 1994.
7. The QDRO gave me a portion of [REDACTED] pension plan benefits, and gave Mr. [REDACTED] a portion of my pension plan benefits.
8. On February 24, 1998, when I was 55 years old, I signed a retirement application to receive my portion of the benefit I earned. Starting on or about April 1998, I received \$69.57 monthly in pension benefits from the pension I earned. I received this amount every month until October 2013, when the pension plan cut off my benefits.
9. On or about July 2004, the Plan sent me a packet of information explaining my Alternate Payee benefits under Mr. [REDACTED] pension plan account. The information stated that I was entitled to approximately \$60,000 in benefits, or I could sign up to receive a monthly amount.
10. On or about October 2004, I signed a retirement application to receive my portion of Mr. [REDACTED] pension plan benefit on a monthly basis. I received \$396.55 each month from on or about December 2004 until October 2013, when the pension plan cut off my benefits.
11. In February 2013, I called the pension plan and asked a representative how my benefits were calculated. I wanted to know how the pension plan calculated my benefits because I was looking through some old papers and I noticed that most of the pension plan's calculations of my benefits were handwritten. That seemed unprofessional to me, and prone to potential error. I thought that perhaps I was receiving too little in pension benefits. At any rate, I wanted to ensure that the amounts I was receiving were correct.
12. In June 2013, the Plan finally sent me a written response to my February inquiry regarding the calculation of my pension benefits. This was in the form of a document entitled

"Retirement Plan Pension Verification Notice." This document explained how my benefits were calculated.

13. The receipt of the "Retirement Plan Pension Verification Notice" reassured me that I was receiving the correct amount of pension benefits. I knew that the Plan had double-checked its calculations and found them all to be correct. I had no reason to believe that the enclosed worksheets included any errors, and again relied on the Plan to have properly calculated and conveyed my benefits to me.
14. However, my peace of mind was short-lived. On or about September 18, 2013, I received from the pension plan a document entitled "Pension Plan Overpayment Recovery Notice." This notice stated that I had elected to receive my portion of Mr. [REDACTED] pension plan benefit as a lump sum, in September 1994.
15. The Pension Plan Overpayment Recovery Notice also stated that as of October 2013, it was suspending my pension plan benefit of \$69.57, which was the pension benefit I had earned.
16. The Pension Plan Overpayment Recovery Notice also stated that as of October 2013, my pension plan benefit of \$396.55 from Mr. [REDACTED]'s pension plan benefit account would be permanently discontinued.
17. Moreover, the Pension Plan Overpayment Recovery Notice stated that if I did not repay the overpayments made to me from Mr. [REDACTED] pension plan account, my own pension plan benefit from my own account would be permanently suspended.
18. I was shocked and dismayed when I received the Pension Plan Overpayment Recovery Notice. I did not recall receiving a lump sum payment from the pension plan back in 1994. I was positive the pension plan had made a mistake. After all, the plan had just told me in June that their calculations of my pension plan amounts were correct.
19. I immediately began to research the issue. I knew that in 1994, I was using Provident Savings Bank, the bank that I was also using in 2004 when I completed the forms the Plan sent me, asking me to indicate the method of distribution I wanted for my portion of Mr. [REDACTED] pension plan account.
20. I checked with Provident Savings Bank. The Bank did not have any record of a distribution from Mr. [REDACTED] plan in 1994 or in 1995. That seemed to me to be strong evidence that I had never received such a distribution.
21. The pension plan, however, insisted that it was correct and that I did indeed receive the lump sum distribution.
22. At this time, in 2013, I was 71 years old. I had spent the previous twelve years caring for my mother, who was in a wheelchair and totally dependent on me. I had been working as a housecleaner to make ends meet. I had no medical insurance other than Medicare. Eventually, sciatica, arthritis, chronic sinus infections and severe and recurring cases of shingles forced me to stop working altogether.
23. At this time, in 2013, I could barely walk. I have had a full right hip replacement, and a right shoulder replacement with reconstruction.

24. At this time, in 2013, medical expenses had depleted my savings. I had already, some years before, declared bankruptcy. I had surrendered my house and was renting a trailer. I had sold most of my personal possessions.
25. I continued to insist to the pension plan that they had made a mistake. I was able to find the Western States Pension Assistance Project, and their pro bono attorneys were helping me to draft a claim for my pension plan benefits that had been discontinued.
26. I kept thinking about other ways to prove to the pension plan that I never received a lump sum distribution. Finally, I thought perhaps my tax return from 1994 might show that I never received it. I was able to get a copy of my tax return through the Internal Revenue Service.
27. To my great surprise and chagrin, I found that I had reported a lump sum distribution from Mr. [REDACTED] pension plan of approximately \$28,000. I had totally forgotten that I received that amount, or any amount, 20 years ago.
28. In 2004, when the pension plan asked me to elect a method of distribution of my portion of Mr. [REDACTED]'s benefits, I did not remember this prior payment. I just followed its instructions to elect a method of payment. I assumed I was entitled to receive benefits if the Plan said I was. I assumed the Plan Administrator had fulfilled his or her duties with care and diligence.
29. In 2004, if I had remembered that I received a lump sum distribution from Mr. [REDACTED] pension plan account, I would have pointed that out to the pension plan. But I did not remember that event, at that time 10 years in the past. I actually thought I was receiving less in benefits than I was entitled to receive. That is the reason I called the plan in February 2013 to check on my benefit amounts.
30. The benefits I received from the pension plan for my own account, and those for my portion of Mr. [REDACTED] account, were my only source of income other than a little in Social Security. I deposited my monthly benefits in a personal checking account. I used this account for day-to-day expenses, including food, medicine and housing. I counted on having these benefits for the rest of my life.
31. I was barely able to meet my daily expenses with the amount of pension income I previously received.
32. Now, with no pension plan benefits at all, I cannot make ends meet. I have had to apply for food stamps, Medi-Cal and a Medi-Cal subsidy to receive medical care. I am enrolled in utility programs for low-income people, to help with bills for gas and electricity. I have great difficulty meeting my monthly mobile home park rent.
33. I desperately need my pension plan benefits that I earned working at TRW. I need this amount just to live. If I do not receive this benefit, I will lose my mobile home. The lack of this pension is creating severe financial hardship for me, as well as great physical and emotional stress.

I declare under penalty of perjury under the laws of California and the United States that the foregoing is true and correct. Executed this 28 day of November, 2014, in [REDACTED] San Bernardino County, California.



## EXHIBIT C

## TRW Pension Benefit Calculation Summary

Name: [REDACTED]

SSN: [REDACTED]



### Section I - Summary of Your Payment Options

#### Payment Options for Benefits from the Northrop Grumman Space & Mission Systems Corp. Salaried Pension Plan (AP BENEFITS)

You are eligible for:

- A lump sum payment as of June 1, 2004 in the amount of \$63,976.28. (This value is calculated using an interest rate of 4.74%).

OR

- Monthly payments as of June 1, 2004, payable in one of the following options:

PAYMENT OPTIONS	YOUR MONTHLY BENEFIT	JOINT ANNUITANT'S BENEFIT	PRIMARY BENEFICIARY'S BENEFIT
Life Only Annuity	\$409.71	N/A	N/A
50% Joint and Survivor Annuity	N/A	N/A	N/A
75% Joint and Survivor Annuity	N/A	N/A	N/A
100% Joint and Survivor Annuity	N/A	N/A	N/A
10 Years Certain Annuity	\$396.55	N/A	\$396.55*

\* Assuming all guaranteed payments have not been made at the time of your death.

*Note:* Your benefit is calculated based on the Personal Information listed in Section II - Pension Plan Worksheet. Since incorrect data may affect your pension benefit, please notify your Human Resources Department if any of this information is incorrect or if you changed this information when requesting your benefit packet.

Full details of the benefits provided under the Plan are contained in the Plan document, which governs the operation of the Plan. Details of how the Plan works may be found in the Summary Plan Description. In the event the content of this statement or any oral representation made by any person regarding the Plan conflicts with or is inconsistent with the provisions of the Plan document, the provisions of the Plan document are controlling.

The above benefit amounts are based on current Northrop Grumman Space & Mission Systems Corp. Salaried Pension Plan provisions. Please note that any benefit calculated prior to your actual Benefit Commencement Date will include assumptions about future pay and service and should be considered an estimate.

rehire, your benefits will be recalculated, taking into consideration any payment(s) which you received during your previous retirement period.

**Social Security Benefits:** After you retire, you may be eligible for Social Security benefits. For information about these benefits, call the Social Security Administration at 1-800-772-1213.

**Additional Information:** The Northrop Grumman Benefits Service Center cannot give you advice about your benefit and/or tax elections. Since individual tax situations are different, you may wish to consult with a financial and/or tax advisor before you make your elections. However, if you have any questions about the information or instructions in this packet, call the Northrop Grumman Benefits Service Center.



### What you need to do

1. Check to make sure that you have properly completed, signed, and dated all appropriate forms.
2. Check to make sure that you have included copies of all required proof of birth documents.
3. Make copies of all forms for your records before returning them to the Northrop Grumman Benefits Service Center.
4. Keep the Calculation Summary for your personal records.

When you have completed and returned all required documents and all processing is complete, you will receive a confirmation of the benefit amount payable to you.



**For assistance, call the Northrop Grumman Benefits Service Center**

Automated phone system: daily from 6:00 a.m. to 12:00 midnight EST

Phone: 1-800-859-4567 TDD: 1-800-581-4626

Representatives are available Monday - Friday 9:00 a.m. to 7:00 p.m. EST

*Please retain this letter for your records.*

## EXHIBIT D

**NORTHROP GRUMMAN**

Statement Date: June 28, 2013

**My Benefits Access**  
through *Benefits OnLine* at  
<http://benefits.northropgrumman.com>

**Northrop Grumman Benefits Center**  
1-800-894-4194  
between 9 a.m. and 6 p.m., Eastern  
time, Monday through Friday.

## Retirement Plan Pension Verification Notice

This notice applies to the NG Space and Mission Systems Pension Plan (the "Pension Plan").

In response to your recent request, attached are the documents of your benefit calculations at the time of commencement for your benefits from the Pension Plan as a plan participant and as the Alternate Payee of [REDACTED]

### Additional Information

Northrop Grumman reserves the right to correct any errors. If it's determined at any time that the information provided on this statement conflicts with the benefit defined by the Pension Plan, the Pension Plan will prevail. Under the law, a plan must be operated in accordance with its terms.

### For More Information



For more information, go to *Benefits Online* at <http://benefits.northropgrumman.com> or call the Northrop Grumman Benefits Center (NGBC) at 1-800-894-4194. If you are calling from outside the United States, please call 718-354-1338. You will need your *My Benefits Access* password to secure your call. Benefits service representatives are available to assist you Monday through Friday from 9:00 a.m. to 6:00 p.m. Eastern time, excluding holidays. If you are hearing impaired, you will need to use a relay service through your TTY/TDD service provider.

TRW Pension Plan Worksheet

Plan...T010 TRW Salaried Pension  
Location...86701 Space & Defense

Name.... [REDACTED] Soc-Sec-No..... [REDACTED]  
Address... [REDACTED] Prepared by...CAROL  
CALIMESA CA 92320 Wksht Purpose: Estimate  
Type Retir: V DVR, Not Ret. Elig  
Payee Type: R Retiree

----- Employee Data -----

Birth..... [REDACTED] Hire.....1985/01 Termination.....1993/01  
Retirement.....1998/04  
Age....55 yrs 09 mos Service..... 97 mos

----- Beneficiary Data -----

----- Miscellaneous -----

Age 65 Monthly Benefit... 161.67  
Average Pension Earnings..... 1619.80  
DVR Source Code ..... N

----- Employment History -----

----- Pension Earnings -----

----- Error / Warning Messages -----

WARNING 19. FINAL AVERAGE EARNINGS ENTERED.  
WARNING 20. BENEFIT OVERRIDES SUPPLIED.  
WARNING 26. NEW FORMULA BENEFIT IS LARGER.  
WARNING 29. MINIMUM BENEFIT FORMULA APPLIES.  
WARNING 37. CHECK FOR POSSIBLE 12/31/88 PARTIAL VESTING ELIGIBILITY.

System Date 07/01/96  
Run Date 03/04/98

# TRW Pension Plan Worksheet

Plan...T010 TRW Salaried Pension  
Location...86701 Space & Defense

Name..... Soc-Sec-No.....

## ----- Benefit Formula Elements -----

Benefit Formula.....	Covered Compensation
SS Covered Compensation.. 3717.00	Early Ret Factor..... .5050
Prior Plan Benefit..... N/A	PRSB Cost Factor..... N/A
Early Ret Factor..... N/A	Service..... 97
Source.....	
Highest APE..... 1619.80	

## ----- Benefit Options -----

	Factor	Pre 62 Retiree Beneficiary	Post 62 Retiree Beneficiary
LO		81.64	81.64
C10	.984	80.33	80.33

System Date 07/01/96  
Run Date 03/04/98

Adjust NRB for QDRO to \$140.00

$140.00 \times .505 \times .984 = \$69.57$  C10 4/98

# TRW Pension Plan Worksheet

Plan...T010 TRW Salaried Pension  
Location...86701 Space & Defense

Name... Soc-Sec-No...  
----- Life Only Benefit Calculation Detail -----

## January 1, 1989 Formula:

1.  $(1.5\% \times APE \times (SVC, \max 420) / 12) + (1.33\% \times APE \times (SVC - 420, \min 0) / 12)$   
 $(1.5\% \times 1619.80 \times 97 / 12) + (1.33\% \times 1619.80 \times (97 - 420) / 12)$  \* see note
2. Gross Ben Reduced for Early Ret. ( 7. \* ERF )  
 $( 161.67 \times 0.5050 )$  ..... 81.64
3. Prior Plan Ben (PPBen\$ \* ( CONVFAC ) \* PPERF)  
 $( 0.00 \times (1.00000 \times 1.0000) \times 1.0000 )$  ..... 0.00
4. TRW Benefit ( 2. - 3. ) \* PRSB Cost Factor  
 $( 81.64 - 0.00 ) \times 1.0000$  ..... 81.64
5. Social Security Covered Compensation Offset  
 $(.4\% \times (APE, \max Cov. Comp) \times (SVC, \max 420) / 12 \times ERF \times PRSB)$   
 $(.4\% \times 1619.80 \times 97 / 12 \times 0.5050 \times 1.0000)$  \* see note
6. TRW Benefit After Offset ( 4. - 5. ) ..... 81.64
7. \$/month Minimum Benefit ( 20 \* SVC / 12 )  
 $( 20.00 \times 97 / 12 )$  ..... 161.67

## Prior Plan Formula:

1.  $((40\% \times APE \times SF) + (.5\% / 12 \times APE \times (SVC - 360, \min 0))) \times PVF$   
 $((40\% \times 1619.80 \times 0.166700000) + (.5\% / 12 \times 1619.80 \times (60 - 360)))$   
 $\times 1.0000$  ..... 108.01
2. Gross Ben Reduced for Early Ret. ( 1. \* ERF )  
 $( 108.01 \times 0.5050 )$  ..... 54.55
3. Prior Plan Ben (PPBen\$ \* ( CONVFAC ) \* PPERF)  
 $( 0.00 \times (1.00000 / 1.0000) \times 1.0000 )$  ..... 0.00
4. TRW Benefit ( 2. - 3. ) \* PRSB Cost Factor  
 $( 54.55 - 0.00 ) \times 1.0000$  ..... 54.55
5. Social Security Offset  $(50\% \times (ESS - 450, \min 0) \times SF \times ERF \times PRSB \times PVF)$   
 $( 50\% \times (662 - 450) \times 0.166700000 \times 0.5050 \times 1.0000 \times 1.0000 )$  ..... 8.92
6. TRW Benefit After Offset ( 4. - 5. ) ..... 45.63
7. TRW Benefit After Offset w/o COLA ( 6. \* 1.0832 ) ..... 49.43
8. TRW Benefit w/o COLA ( 7. + 5. ) ..... 58.35

## ----- Lump Sum Calculation Detail -----

1. TRW Benefit After Offset \* Post 62 LS Factor  
 $( 81.64 \times 156.72 )$  ..... 12794.62
2. Social Security Offset \* Supplement LS Factor  
 $( 0.00 \times 62.35 )$  ..... 0.00
3. Total Lump Sum Amount ..... 12794.62

\* \$/month Minimum Benefit Applies to January 1, 1989 Formula.

System Date 07/01/96  
Run Date 03/04/98



EXHIBIT E

Statement Date: September 16, 2013



**My Benefits Access**  
through *Benefits OnLine* at  
<http://benefits.northropgrumman.com>



**Northrop Grumman Benefits Center**  
1-800-894-4194  
between 9 a.m. and 6 p.m., Eastern time,  
Monday through Friday.

## Pension Plan Overpayment Recovery Notice

This notice applies to the NG Space and Mission Systems Pension Plan (the "Pension Plan").

Based on the research and analysis of your pension records on file, we have determined that you are currently being overpaid. Our records indicate two separate elections for your Alternate Payee pension benefit. Effective September 1994, your initial election was a one-time lump sum payment in the amount of \$28,156.93. The lump sum benefit you received represents the full payment awarded to you per terms of the Qualified Domestic Relations Order.

As of June 1, 2004 another election was processed. You've been receiving a 10-Year Certain and Continuous Form of payment in the amount of \$396.55. This monthly annuity creates an overpayment of benefit from the Pension Plan.

We've included historical documentation of your lump sum elections. Please review and retain it for your records.

You requested additional information regarding the average monthly earnings used to calculate your Pension benefit.

Please see the enclosed QDRO calculation(s) processed for you as Alternate Payee of Participant [REDACTED]. We provided a calculation using the earnings and service used in the historical calculation as of September 1, 1994. In the same document, we provided a calculation using the earnings we have on file and made a correction to the benefit service in the calculation. The adjustments made to Participant [REDACTED] monthly earnings increased the Final Average Earnings from \$3,464.60 to \$3,554.16. The decrease in benefit service from 253 to 250 months was necessary to recognize a three month layoff that was not eligible for service. The three months was already excluded from the denominator 340 months in the QDRO Fraction. The increase in earnings and the decrease in benefit service combine to produce a net increase in the lump sum paid effective September 1, 1994 in the amount of \$637.27.

Based on the recalculation using earnings on file, the net increase in the lump sum represents an underpayment of benefits from the Pension Plan. However, since you've been erroneously receiving the 10 Year Certain and Continuous form of payment. This underpayment in the amount of \$637.27 will be applied as an offset to the total overpayment due back into the NG Space and Mission Systems Pension Plan.

The Pension Plan is required by law to recoup any overpayment of benefits.

Below are the details of the change:

Monthly Annuity	Months Overpaid	Overpayment	Lump Sum Offset	Total Overpayment
AP Benefit Paid	6/1/2004 - 9/1/2013		Underpayment	
(a)	(b)	(a) * (b)	(c)	
\$396.55	112	\$44,413.60	\$637.27	\$43,776.33

As shown in the table above, you were paid \$396.55 from June 1, 2004 to September 1, 2013. The overpayment is being offset by the difference in the lump sum underpayment. Therefore, your total overpayment is \$43,776.33.

As of October 1, 2013 your employee annuity benefit payment of \$69.57 has been suspended due to the large total overpayment. In addition, the 10 Year Certain & Continuous payment of \$396.55 has permanently been stopped.

There are two ways in which you can repay this amount.

1. Send a check or money order in the amount of \$43,776.33 payable to Northrop Grumman Corporation to the address below. Please include the last four digits of your Social Security number on the memo line of your check or money order. Additionally, make a copy of this notice for your records and return the original with your payment. If you chose this option, we must receive your check/money order by **October 31, 2013**.

Northrop Grumman Benefits Center  
P.O. Box 8000  
Charlotte, NC 28262-8000

2. Alternatively, you may do nothing. If we do not receive your check by October 31, 2013, we will continue to withhold your entire employee annuity payment of \$69.57 as means of an overpayment recovery. Your annuity remains suspended until further notice to settle the overpayment and will return to the full amount when satisfied.

We apologize for any inconvenience this may have caused you.

## Additional Information

Northrop Grumman reserves the right to correct any errors. If it's determined at any time that the information provided on this statement conflicts with the benefit defined by the Pension Plan, the Pension Plan will prevail. Under the law, a plan must be operated in accordance with its terms.

## For More Information



For more information, go to *Benefits Online* at <http://benefits.northropgrumman.com> or call the Northrop Grumman Benefits Center (NGBC) at 1-800-894-4194. If you are calling from outside the United States, please call 718-354-1338. You will need your *My Benefits Access* password to secure your call. Benefits service representatives are available to assist you Monday through Friday from 9:00 a.m. to 6:00 p.m. Eastern time, excluding holidays. If you are hearing impaired, you will need to use a relay service through your TTY/TDD service provider.