ATTACHMENT C

RESPONDENT(S) ARGUMENT(S)

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CITY OF SAN CARLOS

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CalPERS Board Unit

BOARD OF ADMINISTRATION

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Administration of the Contract between CalPERS and CITY OF SAN CARLOS, Respondent.	CASE NO. 2013-0351 OAH CASE NO. 2013-050653 **RESPONDENT'S REQUEST FOR OFFICIAL NOTICE IN SUPPORT OF REQUEST TO RE-OPEN THE HEARING**

TO THE BOARD, ALL COUNSEL AND PARTIES OF RECORD:

Respondent City of San Carlos ("City") hereby requests Official Notice be taken of the attached document pursuant to section 11515 of the Administrative Procedures Act. "[O]fficial notice may be taken before or after submission of a case for decision. (2 C.C.R. § 11515.)

1. CalPERS Finance & Administration Committee Staff Report, dated December 17, 2013, in support of Agenda item 7b. A true and correct copy of this staff report is attached hereto as Exhibit "A."

Dated: April 3, 2014

JACKSON LEWIS P.C.

By: Cepideh Roufougar
Cepideh Roufougar
Attorneys for Respondent
CITY OF SAN CARLOS

EXHIBIT A

Finance & Administration Committee

CalPERS

California Public Employees' Retirement System

Agenda Item 7b

December 17, 2013

ITEM NAME: Impact on Pension Risk Pools as a Result of Pension Reform

PROGRAM: Actuarial Office

ITEM TYPE: Information

EXECUTIVE SUMMARY

Staff has identified some unintended consequences resulting from the interaction of the Public Employees' Pension Reform Act of 2013 (PEPRA) and existing Board policies on risk pools. Changes will be necessary to ensure the proper funding of these pools.

Two alternatives are discussed. The first alternative includes changes to the financing of the risk pools. The second alternative looks at combining risk pools as well as some financing changes. Both alternatives preserve the essential pooling of risks needed to prevent demographic events from causing significant rate shocks for small plans.

Staff expects to come back in the spring of 2014 with a formal recommendation to adopt the second alternative – to combine risk pools and make some financing changes.

STRATEGIC PLAN

This agenda item is not part of our strategic plan but rather is a response to changes in the external environment that staff is responding to as part of the ongoing workload of the Actuarial Office.

BACKGROUND

Risk Pooling was implemented effective with the June 30, 2003 actuarial valuations to protect small employers (those with less than 100 active members) against large fluctuations in employer contribution rates caused by unexpected demographic events.

In June 2012, staff delivered a review report on risk pooling including all Board actuarial policies related to risk pooling, risk pooling practices, internal procedures, laws and regulations to assess what has worked and what can be improved. The review demonstrated that the key objective of risk pooling had been realized, i.e. risk pooling has protected small employers against large changes in employer contribution rates due to unexpected demographic events. In the report, it was noted that the pension reform proposals under consideration at the time could close all existing risk pools and have a significant impact on the risk pools at CalPERS.

Pension reform legislation was enacted in 2012 through the passage of PEPRA. PEPRA effectively closed the existing pools at that time. As the effective date of the legislation was after the effective date of the June 30, 2012 actuarial valuations staff did not make any changes to those valuations. In November 2012, the Board approved adding two new risk pools due to the formulas created by PEPRA to be able to implement PEPRA on January 1, 2013.

However, it is now necessary to consider the appropriate treatment of the effective closure of the risk pools for the "Classic" formulas – those in existence prior to the passage of PEPRA.

ANALYSIS

In an open pension plan, a fundamental underlying assumption is that there will be an ongoing influx of new employees to replace those employees that exit due to retirement, disability, turnover or death. Actuarial policies in place at CalPERS, including those covering risk pooling, were developed assuming pension plans would remain open to new entrants and experience a growth in payroll over time. The current Board approved payroll growth assumption is 3% per year. This future employer payroll growth assumption has a significant impact on employer contribution rates, resulting in a lower contribution rate in the early year of the amortization of any unfunded liabilities.

The Issues

PEPRA has closed all existing active risk pools to new public employees hired on and after January 1, 2013 except for classic members. Accordingly, it can no longer be considered a reasonable assumption that payroll of the risk pools for the classic formulas will continue to grow at 3%. When a pension plan becomes closed to new entrants, attrition will begin the process of reducing the number of active employees toward ultimately having a pension plans with no active employees.

Several issues have arisen as a result of PEPRA for the risk pooling structure. They can be categorized as funding, equity and employer contribution rate volatility issues.

Funding issue

Contributions for pools are collected as a contribution rate expressed as a percentage of payroll. When setting the contribution rates, the actuarial office uses the payroll information from the data used in the actuarial valuation. The payroll information is three years prior to the fiscal year when the contribution rate will apply. As a result, the payroll is projected forward for three years under the assumption it will grow by 3% per year.

With the closing of pools to new PEPRA hires, the payroll is most likely going to increase at a rate lower than 3% and even possibly decline over that time period. When a pool experiences smaller payroll growth than assumed, it can lead to an underfunding of the plan.

Let's use the 3% at 50 Safety Risk Pool June 30, 2011 annual valuation as an example. Total employer contribution toward unfunded liability and side fund was set to be $137 million dollars, which was expressed as 13.220% of a payroll that was projected for three years after the valuation assuming a 3% payroll growth per year. If the payroll of the pool were to remain level instead of growing at 3% per year, the employer contributions toward unfunded liability and side fund will be about 9% less than expected. In this example, the lower payroll would translate into a 12 million dollars contribution loss to the pool. The long-term impact of contribution losses will be significant to all classic pools and potentially lead to underfunding of the system unless changes are made.

Equity issue

Under the current risk pooling structure, the existing unfunded liability as well as future gains and losses are currently allocated to plans in each risk pool based on the payroll of the plan. This structure works well to the extent the payroll of each plan is expected to grow at about the same rate. With the closing of the pools to new hires, the payroll of plans will decline over time. Since every employer participating in risk pooling has different demographic characteristics, their active members will retire or exit the plan at different times leading to some plans experiencing a faster decline in payroll than others.

Since gains and losses of the entire pool are currently allocated based on payroll, plans with larger payroll will be asked to contribute more toward the pool's unfunded liability than plans with smaller payroll. As the number of active members decline in the pool, the payments toward the unfunded liability will disproportionally be shifted to those plans having the largest number of remaining active members resulting in an inequitable allocation of costs. Changes are need to how we allocate cost in the risk pools to address this equity issue.

Volatility issue

When PEPRA was enacted and closed all classic active pools to new PEPRA hires, the unfunded liability for the classic pools remained unchanged. Under current Board policies, payments to the amortization of unfunded liabilities and side funds are expressed as a percentage of payroll. Even if the unfunded liability decreases over time as employers pay the unfunded liability down, the employer contribution rates (which are the amortization payment divided by payroll) will increase eventually to an alarming stage. This is going to be difficult for employers to budget and could lead to perception issues related to the cost of pension benefits.

Possible Solutions
The Actuarial Office studied two alternatives for the future of risk pooling to address these issues without sacrificing the considerable benefit to contribution rate stability for smaller employers that risk pooling provides.

Alternative 1
Alternative 1 includes keeping the current pooling structure of 9 closed active pools, 1 inactive pool and 2 open active PEPRA pools and modifying current funding and amortization methods to address the funding and equity issues with the least amount of change to our current pooling structure. Alternative 1 will result in higher employer contribution rates and amounts immediately for almost all **of the** 1,625 plans in classic risk pools. For this reason, alternative 1 is not the preferred approach.

The modifications proposed under alternative 1 are:

- Collect employer contributions toward the unfunded liability and side fund as dollar amounts instead of contribution rates. This will address the funding issue. This will result in a major change in how contributions are collected from employers.
- Apply the current Board Amortization policies that states that when the payroll of a plan cannot be expected to increase at 3% per year that the unfunded liability and side fund be amortized as a level dollar rather than as a level percentage of an increasing payroll. Simply applying our existing policy will result in higher contributions short term from all pooled employers. This will address the funding and volatility issue.
- This alternative may potentially require a change to a shorter amortization period in the future to reflect the remaining average working lifetime of the pool, this will further address the funding issue but result in higher contribution requirements.
- Allocate the pool's unfunded liability to each individual plan based on the plan's total liability instead of by individual plan payroll. This will address the equity issue but will result in some employers having to pay more toward the unfunded liability of the pool and some paying less.

The changes proposed under alternative 1 will result in almost all pooled employers having to contribute more. We expect that about 90% of the Miscellaneous plans in the classic risk pools will experience employer rate increases between 0-3% of payroll and about 75% of the Safety plans will experience increases of 2-5% of payroll. In addition to the contribution increases, change of the allocation of the pool's unfunded liability will further increase or decrease individual employer contribution rates. See Attachment 1 for a distribution of the expected impact on employer rates.

Under this alternative, we will need to monitor the funding of the risk pool carefully. It is possible that we may have to eventually modify our funding approach to reflect the demographics of the closed groups which would further increase contributions. This is not the preferred alternative.

Alternative 2

Staff also reviewed another alternative which is combining all pools into two active pools, one for all miscellaneous groups and one for all safety groups. This is the more complex solution and will involve structural change. By combining almost all pooled plans into two risk pools, the payroll of the risk pools and employers within the pools can once again be expected to increase at the assumed 3% annual growth, addressing some of the issues that resulted from having a declining active population in the pool. Therefore we will be able to keep our current level percent of pay amortization schedule which will avoid the necessity of immediate increases to employer contributions that is the hallmark of alternative 1.

Under alternative 2, we would recommend the following modifications:

- Collect employer contributions toward unfunded liability and side fund as dollar amounts instead of contribution rates, this will address the funding issue that would still arise from the declining population under the classic formula. This will result in a major change in how contributions are collected from employers. Note that several employers have approached CalPERS over the last few months proposing that we no longer collect contributions for the unfunded liability as a percentage of payroll but rather invoice them for the amount needed each year to pay the unfunded liability down. The normal cost contribution would continue to be expressed as a percentage of payroll.
- Allocate the pool's unfunded liability to each individual plan based on the plan's total liability instead of by individual plan payroll. This is a change that many pooled employers have been asking for. For the last few years, many pooled employers have been asking for the ability to pay down their share of the pool's unfunded liability. This is not possible unless we start allocating the unfunded liability of the pool to each employer on an annual basis. Making this change will address the equity issue and allow employers to pay down their share of the pool's unfunded liability but will result in some employers having to pay more toward the unfunded liability of the pool and some paying less.

Under this approach, there is no overall increase in employer contributions. Some employers will have higher contributions while other employers will have lower contributions. Employer rates for mature plans with high liabilities and high retiree to active ratios are expected to increase while rates for plans with lower liabilities and lower retiree to active ratios are expected to see a decrease. A preliminary analysis performed by staff showed that almost half of the plans will see a rate change – positive or negative of less than 1% of payroll. About 85% of the plans will experience rate changes between -3% to +3% of payroll. However, there are a few plans with large retiree to active ratios that will experience rate increases in excess of 3% of payroll. See Attachment 2 for a distribution of the expected impact on employer rates.

This solution will require a significant effort to program and design the required database changes to our existing system. Modifications to Board policies, as well as legislative and regulation changes may be needed. Staff is still analyzing the changes that would be needed.

This alternative is also likely to pose additional challenges in the future when an assumption change occurs. Staff will be looking at various ways to handle future assumption changes. Any solution would have to consider fairness among employers and ability of our current computer systems to handle.

BUDGET AND FISCAL IMPACTS

This item was not anticipated in the strategic or business plan and has not been built into the budget. Given the time constraint to implement the changes outlined in this agenda item, it is anticipated that any work associated with the issues described herein will have to be completed with existing staff and absorbed within current budgets although this may be revisited in a future agenda item. Unless action is taken, contributions from employers will have to be accelerated and impose additional strain on employers' budgets.

ATTACHMENTS

Attachment 1 – Estimated Impact of Alternative 1 on Employer Contribution Rates
Attachment 2 – Estimated Impact of Alternative 2 on Employer Contribution Rates

DAVID LAMOUREUX
Deputy Chief Actuary
Actuarial Office

ALAN MILLIGAN
Chief Actuary

PROOF OF SERVICE

I, Lauretta Adams, declare that I am employed with the law firm of Jackson Lewis P.C., whose address is 50 California Street, 9th Floor, San Francisco, California, 94111; I am over the age of eighteen (18) years and am not a party to this action.

On April 3, 2014, I served the attached **RESPONDENT CITY OF SAN CARLOS' REQUEST FOR OFFICIAL NOTICE IN SUPPORT OF REQUEST TO RE-OPEN THE HEARING** in this action by placing a true and correct copy thereof, enclosed in sealed envelopes addressed as follows:

Cheree Swedensky, Assistant to the Board
California Public Employees' Retirement System
P.O. Box 942701
Sacramento, CA 94229-2701
Fax No.: (916) 795-3972

[**X**] BY MAIL: United States Postal Service by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California. [(**X**) *Courtesy copy by fax.*]

[ ] BY HAND DELIVERY: I caused such envelope(s) to be delivered by hand to the above address.

[ ] BY OVERNIGHT DELIVERY: I caused such envelope(s) to be delivered to the above address within 24 hours by overnight delivery service.

[ ] BY E-MAIL: I caused such document to be transmitted by electronic mail to the e-mail addresses indicated above (by written agreement of the parties)

[X] BY FACSIMILE: I caused such document to be transmitted by facsimile from our fax number (415) 394-9401 to the fax number indicated above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 3, 2014, at San Francisco, California.

Lauretta Adams
Lauretta Adams

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*** TX REPORT ***
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FAX

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From:	Cepideh Roufougar		
Sender:	Lauretta Adams		
Subject:	In the matter of appeal involving the City of San Carlos. CalPERS Ref. No. 2013-0351		
Date:	April 3, 2014		
Client/Matter #:	214034 / 15959		
Pages:	19, including cover sheet		
Original:	_XX_ Will Follow	____ Will Not Follow	

MESSAGE:

Attached please find the following documents submitted on behalf of Respondent City of San Carlos:

1. Respondent's Argument In Support of Rejecting the Proposed Decision and, In the Alternative, Request to Re-Open the Hearing.

2. Respondent's Request for Official Notice In Support of Request to Re-Open the Hearing.

Representing Management Exclusively in Workplace Law and Related Litigation

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2. Respondent's Request for Official Notice In Support of Request to Re-Open the Hearing.

Originals of both documents have been sent by mail to the P.O. Box address indicated in your letter From February 21, 2014.

Thank you.

Please contact L. Adams at 415-394-9400 if there are any problems with this transmission.

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CITY OF SAN CARLOS

BOARD OF ADMINISTRATION

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Administration of the Contract between CalPERS and

CITY OF SAN CARLOS,

Respondent.

CASE NO. 2013-0351

OAH CASE NO. 2013-050653

RESPONDENT'S ARGUMENT IN SUPPORT OF REJECTING THE PROPOSED DECISION AND, IN THE ALTERNATIVE REQUEST TO RE-OPEN THE HEARING

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I. INTRODUCTION

In May of 2012, CalPERS staff placed all of the City's safety members, both active and inactive, in the risk pool that applied to the benefit formula where the City had active members – the 2% at 50 risk pool ("Pool 7"). This action was consistent with the plain language of Board Resolution No. 03-03-AESD ("Resolution"), which states that active and inactive members of the same category who have different retirement formulas "will participate in the risk pool applicable to the active members." Despite this language, four months later, CalPERS staff determined that a mistake had been made and incorrectly split the City's safety members into two different pools, leaving some in Pool 7 and transferring some to the inactive pool ("Pool 10"). The City appealed this decision and asks that all of its safety members be included in Pool 7 as provided by the clear application of the Resolution. Moreover, the City should be reimbursed for any overpayments made under protest as a result of this incorrect decision by CalPERS staff.

During the hearing before Administrative Law Judge ("ALJ") Schneider, the City demonstrated that the pool placement that occurred in May of 2012 was appropriate. The City showed that, under the plain language of the Resolution and the operative legal authorities, CalPERS staff had no discretion to separate the City's active and inactive safety members into different pools. CalPERS staff admitted that the only regulation which gave discretion in risk pool placement did not apply because the City was not "a new contracting agency." In addition, CalPERS staff did not identify a single policy or procedure that was violated when all of the City's safety members were placed in Pool 7. Instead, the Chief Actuary testified that he acted without reviewing the numbers. Notably, these numbers were based solely on an assumption that the Chief Actuary has since admitted "can no longer be considered a reasonable assumption."

Despite the evidence presented and the plain language of the Resolution, ALJ Schneider issued a Proposed Decision in which she recommended denying the City's appeal. However, the conclusions in this Proposed Decision are not supported by the evidence or the legal authorities. Thus, adopting the decision would be an abuse of discretion, subject to reversal by a court.

Given the flaws in the Proposed Decision and the after-hearing admission of the Chief Actuary, the Board should reject ALJ Schneider's recommendation. The Board should issue a new decision granting the City's appeal and holding that all of the City's safety members should have been allowed to continue participation in Pool 7 as provided under the plain language of the Resolution and pursuant to CalPERS regulations. In the alternative, the Board should re-open the hearing to allow for the introduction of additional evidence in this matter. Finally, given its deficiencies, the Board should not designate the Proposed Decision as precedential.

II. THE FINDINGS AND CONCLUSIONS IN THE PROPOSED DECISION ARE NOT SUPPORTED BY THE EVIDENCE OR LEGAL AUTHORITIES

A. The Plain Language of the Resolution Requires the Participation of All of the City's Safety Members in Pool 7

The plain language of the Resolution provides for a two-step analysis that must be undertaken when determining risk pool placement. First, CalPERS staff must identify the membership classification of the agency's members (either safety or miscellaneous). Second, CalPERS staff must identify the applicable benefit formula to determine pool placement. If an employer offers multiple benefit formulas and has both active and inactive members in the same membership classification, the Resolution states:

> Inactive members that are subject to a different service retirement formula than the one applicable to the active members of the same employee category <u>will participate in the risk pool applicable to the active members of the same employee category</u>. (Emphasis added.)

If an employer has had no active members in a membership classification for <u>at least one year</u>, then the employer's plan becomes eligible for placement in the inactive risk pool. Factual Findings No. 12 and 13 in the Proposed Decision quote the Resolution language which sets forth this process for determining risk pool placement.

Turning to the facts in this matter, the employee category or membership classification at issue is "safety member." Factual Finding No. 15 and 16 correctly hold that the City's police officers and firefighters are both "considered safety members." This is consistent with Government Code section 20420, which defines the term "local safety member" as including both police officers and firefighters employed by a CalPERS contracting agency. In addition, Factual Findings No. 15 and 16 note that the City had active safety members earning benefits under the

2% at 50 formula and inactive safety members who had previously earned benefits under the 3% at 50 and 3% at 55 benefit formulas. Thus, the City has both active safety members and inactive safety members who are subject to different retirement formulas. Applying the language of the Resolution to the facts leads to only one conclusion: **Because the City had active safety members in the 2% at 50 benefit formula, the City's inactive safety members who were subject to a different retirement formula "will participate" in the 2% at 50 risk pool (Pool 7) with the City's active safety members.**

The City's safety members could only be transferred to the inactive pool if the City had no active safety members for at least one year. However, this pre-requisite was never satisfied and the City's safety members have never been eligible for placement in Pool 10. Factual Findings No. 15 and 16 confirm this ineligibility, finding that the period of time during which the City had no active safety members was only 11 months (from October 31, 2010 until October 1, 2011) and not at least one year. Thus, the placement of the City's safety members in the inactive pool before this one year period had passed directly contradicts the language of the Resolution.

Notwithstanding the factual findings in the Proposed Decision, ALJ Schneider concluded that the City's interpretation of the Resolution "is unsupported by the plain language of the Resolution." (Legal Conclusion No. 6.) However, the Proposed Decision offers no explanation or facts in support of this conclusion. This fails to meet the requirement that findings "bridge the analytic gap between the raw evidence and the ultimate decision or order." (*Topanga Association of a Scenic Community v. City of Los Angeles* (1974) 11 Cal.3d 506, 515.) Thus, the Proposed Decision should be rejected. In its place, CalPERS should grant the City's appeal and hold that all of the City's safety members were properly placed in Pool 7. This interpretation of the Resolution is the only interpretation that is consistent with its plain language.

B. The Chief Actuary Lacks Discretion to Determine Risk Pool Placement As Applied to the City of San Carlos

Since the City met its burden of proving that the initial decision to place all of the City's safety members in Pool 7 was correct, the burden of proof shifted to CalPERS to show the existence of a mistake that warranted a different action. (Gov. Code § 20160 (d).) The Proposed

Decision contains no findings which show that CalPERS met this burden. Instead, the Proposed Decision makes conclusory statements about the authority of the Chief Actuary "to determine that an employer's participation in a risk pool has an unacceptable material impact on other employers in that pool" and ability to determine risk pool placement. (Legal Conclusion No. 5 and 7.) These conclusions are not supported by the law or the evidence presented during the hearing.

Factual Finding No. 11 refers to the only CalPERS regulation that gives the Chief Actuary any discretion in evaluating an agency's risk pool placement. This regulation states, in relevant part, "[a] new contracting agency with CalPERS following the creation of risk pools shall be required to participate in a risk pool... provided that the actuary determines such participation will not be unfavorable to other agencies in the pool." (2 C.C.R. § 588.2, emphasis added.) By its express terms, this regulation only allows discretion in limited circumstances involving a "new contracting agency." It does not provide discretion as to all contracting agencies. If the Board had intended that the actuary have discretion as to the participation of all contracting agencies, the Board would not have included the language limiting discretion to "a new contracting agency."

In this case, the City has contracted with CalPERS for approximately 70 years, and is not a "new contracting agency." Thus, the regulation allowing for the exercise of discretion did not apply to the City. This fact was admitted to by the Chief Actuary during the hearing. (See Tr. 75:9-25.) The Chief Actuary cannot exercise discretion where none is given. Accordingly, any conclusions by ALJ Schnieder allowing for the exercise of discretion in this matter must be rejected as being contrary to law and the evidence in this matter.

C. Other Findings in the Proposed Decision Are Not Supported by the Evidence

Adopting the Proposed Decision is an abuse of discretion because the findings contained in the decision are not supported by the evidence that was presented at the hearing. In addition to the errors discussed above, the Proposed Decision states that, on October 31, 2010, the City's safety plan "became inactive after it eliminated its Police Department." (Factual Finding No. 15.) This factual finding not only misstates the evidence but contradicts the language of Resolution No. 03-03-AESD, which states that a plan can only become inactive after there are no active members for at least one year.

Since the City contracted with police services with the San Mateo County Sheriff on October 31, 2010, the earliest date by which the City's safety members would become eligible for placement in the inactive pool was October 31, 2011. However, before this date occurred, the City formed a fire department and hired new safety members to staff that department. These new safety members were hired on October 1, 2011, only 11 months later. (See Factual Finding No. 16.) CalPERS knew of these facts when it correctly placed all of the City's safety members into Pool 7. Thus, any findings that the City had an inactive plan are both factually and legally incorrect and should be rejected by the Board.

D. After the Hearing, CalPERS Staff Admitted that the Assumptions Applied Are No Longer Considered Reasonable

One of the primary issues of contention in the hearing was the determination by CalPERS staff that allowing all of the City's safety members to participate in Pool 7 would have a "material impact" on the other employers in the pool. In determining this alleged material impact, CalPERS staff calculated the projected additional contribution that would need to be made to the pool by applying a annual payroll increase assumption of 3%. Application of this assumption resulted in a claimed total impact of $18,000,000 spread out over 30 years.

At the hearing, the City challenged the application of this 3% annual increase as being unrealistic. However, CalPERS staff maintained that the assumption was appropriate. Since the hearing, CalPERS staff have reversed their position and publicly declared that the 3% payroll assumption "can no longer be considered a reasonable assumption." (Request for Notice, Exhibit A.) This reversal of position calls into question the validity of the calculations performed and the assertions of CalPERS staff made during the hearing.

The Chief Actuary has already admitted that he did not review any calculations before making the decision to separate the City's safety members into different pools. (See. Tr. 60:6-11.) As a result, he was unable to explain any of the discrepancies in the calculations. (See Tr. 62:24-63:6.) The Proposed Decision discounted almost $4,000,000 of the alleged total impact claimed. (See Factual Finding No. 27.) Given the reversal by CalPERS staff on the reasonableness of the primary assumption applied, the alleged material impact claimed should be further discounted. Accordingly, the Board should reject all findings in the proposed decision which assert the existence of a material impact associated with the City's participation in Pool 7.

In the alternative, the Administrative Procedures Act allows the Board to order that the hearing be re-opened so that additional evidence can be submitted. (2 C.C.R. § 11517(c)(2)(D).) This process should be used to prevent staff from being allowed to testify under oath during a hearing, only to later publicly reverse their position on a key issue after the hearing is closed to the introduction of additional evidence. Re-opening the hearing is necessary to ensure that due process is provided in this matter and to avoid a capricious and unfair result based on inconsistent assertions by CalPERS staff.

E. No Decision in this Matter should be Designated as Precedential

Given the numerous errors and gaps in the analysis contained in the Proposed Decision, CalPERS should not designate the decision as precedential. There is insufficient information in the Proposed Decision to allow a reader to determine how certain conclusions were drawn. Moreover, the matters at issue are not of general application. Instead, this matter involves one specific contracting agency and its unique circumstances. Thus, the Proposed Decision should not be designated as precedential.

III. CONCLUSION

For the reasons stated above, CalPERS should reject the Proposed Decision prepared by ALJ Schneider. In its place, CalPERS should find that all of the City's safety members, both active and inactive, should be allowed to continue participating in Pool 7 and the City be reimbursed for any overpayments made under protest. This is the only decision that is consistent with the language of the Resolution. In the alternative, CalPERS should reject the Proposed Decision and order the hearing re-opened so that new evidence can be introduced in this matter.

Dated: April 3, 2014

JACKSON LEWIS P.C.

By: Cepideh Roufougar

Cepideh Roufougar
Attorneys for Respondent
CITY OF SAN CARLOS

PROOF OF SERVICE

I, Lauretta Adams, declare that I am employed with the law firm of Jackson Lewis P.C., whose address is 50 California Street, 9th Floor, San Francisco, California, 94111; I am over the age of eighteen (18) years and am not a party to this action.

On April 3, 2014, I served the attached **RESPONDENT CITY OF SAN CARLOS' ARGUMENT IN SUPPORT OF REJECTING THE PROPOSED DECISION AND, IN THE ALTERNATIVE, REQUEST TO RE-OPEN THE HEARING** in this action by placing a true and correct copy thereof, enclosed in sealed envelopes addressed as follows:

Cheree Swedensky, Assistant to the Board
California Public Employees' Retirement System
P.O. Box 942701
Sacramento, CA 94229-2701
Fax No.: (916) 795-3972

[**X**] BY MAIL: United States Postal Service by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California. [(**X**) *Courtesy copy by fax.*]

[ ] BY HAND DELIVERY: I caused such envelope(s) to be delivered by hand to the above address.

[ ] BY OVERNIGHT DELIVERY: I caused such envelope(s) to be delivered to the above address within 24 hours by overnight delivery service.

[ ] BY E-MAIL: I caused such document to be transmitted by electronic mail to the e-mail addresses indicated above (by written agreement of the parties)

[X] BY FACSIMILE: I caused such document to be transmitted by facsimile from our fax number (415) 394-9401 to the fax number indicated above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 3, 2014, at San Francisco, California.

Lauretta Adams

Lauretta Adams

****
*** TX REPORT ***
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FAX

To:	Cheree Swendensky, Assistant to the Board		
Company:	CalPERS Executive Office		
Fax:	**916 795 3972**	**Tel #:**	916 795 1101
From:	Cepideh Roufougar		
Sender:	Lauretta Adams		
Subject:	In the matter of appeal involving the City of San Carlos. CalPERS Ref. No. 2013-0351		
Date:	April 3, 2014		
Client/Matter #:	214034 / 15959		
Pages:	19, including cover sheet		
Original:	_XX_ Will Follow ____ Will Not Follow		

MESSAGE:

Attached please find the following documents submitted on behalf of Respondent City of San Carlos:

1. Respondent's Argument In Support of Rejecting the Proposed Decision and, In the Alternative, Request to Re-Open the Hearing.

2. Respondent's Request for Official Notice In Support of Request to Re-Open the Hearing.

Representing Management Exclusively in Workplace Law and Related Litigation

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MESSAGE:

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1. Respondent's Argument In Support of Rejecting the Proposed Decision and, In the Alternative, Request to Re-Open the Hearing.

2. Respondent's Request for Official Notice In Support of Request to Re-Open the Hearing.

Originals of both documents have been sent by mail to the P.O. Box address indicated in your letter From February 21, 2014.

Thank you.

Please contact L. Adams at 415-394-9400 if there are any problems with this transmission.