ATTACHMENT C

RESPONDENT ARGUMENT

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BOARD OF ADMINISTRATION

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

ADMINISTRATIVE LAW JUDGE HUMBERTO FLORES

In the Matter of the Calculation of Final Compensation of CHRISTINE F. LONDO, Respondent, and CITY OF WALNUT, Respondent.	AGENCY CASE NO. 2014-0681 OAH NO. 2014070904 **RESPONDENT CHRISTINE F. LONDO'S ARGUMENT** Hearing: November 5, 2014

Respondent, Christine Londo, strongly urges the Board of Administration of CalPERS to adopt the Proposed Decision of the Administrative Law Judge (ALJ) in the above-captioned matter. After considering all the evidence and written arguments submitted by the parties, the ALJ correctly concluded that the increased compensation of $5,000 earned by Ms. Londo between November 2005 and November 2006 while serving as the City of Walnut's Interim City Manager constituted special compensation in the form of "Temporary Upgrade Pay" which is defined in Section 571(a)(3) of the CalPERS Regulations as follows:

> "Compensation to employees who are required by their employer or governing board or body to work in an upgraded position/classification of limited

duration."

The ALJ correctly found that Ms. Londo, the City's Finance Director, was in fact required by the governing body of the City of Walnut, its City Council, to work in the upgraded classification of City Manager for that limited one year period in return for additional compensation of $5,000. The ALJ's determination is completely consistent with the testimony of the CalPERS representative who appeared at the hearing. She was presented with the following typical situation and then asked whether the pay in question would satisfy the definition of Temporary Upgrade Pay: If an employee in the classification of Police Officer and his or her employer agreed that for a temporary period of time he or she would occupy the higher paying position of Police Sergeant on a full time basis and perform the attendant duties and assume the attendant responsibilities for additional compensation until a promotional examination had been conducted and the position had been filled, would that additional compensation constitute Temporary Upgrade Pay? The CalPERS representative answered in the affirmative.

As the ALJ concluded, the uncontroverted testimony of Ms. Londo established that her situation was virtually identical to that hypothetical question. Like the hypothetical Police Officer, she agreed to assume the City Manager job on a full time basis and she performed the attendant duties and assumed the attendant responsibilities connected with that higher-paying position. She did so for a limited time period until that position was filled one year later.

Of further significance is the fact that, as the ALJ emphasized, "there was no evidence presented that this special compensation would create an unfunded liability over and above CalPERS' actuarial assumptions" in light of the fact that it was earned and reported to CalPERS as pensionable income almost seven years prior to the time Ms. Londo had retired.

Finally, in its Post-Hearing Brief, CalPERS relied upon almost completely on a "Precedential Decision" involving a retired City Manager from the City of Indio. However, as we emphasized in our Reply Brief, nowhere in that Decision is there even any mention of the

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application or nonapplication of "Temporary Upgrade Pay." As a result, it cannot operate to preclude the application of that provision to Ms. Londo's situation.

Respectfully submitted,

SILVER HADDEN SILVER & LEVINE

Dated: February 18, 2015

By

STEPHEN H. SILVER
Attorneys for Respondent Christine F. Londo

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1428 Second Street, P.O. Box 2161, Santa Monica, California 90407-2161.

On February 18, 2015, I served the foregoing document described as **RESPONDENT CHRISTINE F. LONDO'S ARGUMENT** on the parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Via Mail
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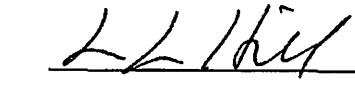
[X] [By Mail] I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it would be deposited with the U.S. Postal Service with postage thereon fully prepaid at Santa Monica, California, in the ordinary course of business. I am aware than on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[X] [By Electronic Mail] I transmitted the document(s) to the addressee(s) via electronic mail at the address listed above.

[ ] [By Facsimile Transmission] I caused the above-referenced document to be transmitted to the named person(s) via facsimile transmission to the fax number(s) set forth above from a fax machine at (310) 395-5801.

Executed on February 18, 2015, at Santa Monica, California.

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

LISA L. HILL