ATTACHMENT C

RESPONDENT'S 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 IN SUPPORT OF PROPOSED DECISION AFTER REMAND** Hearing: November 5, 2014 Remand Hearing: July 31, 2015

Respondent, Christine Londo, strongly urges the Board of Administration of CalPERS (the Board) to adopt the Proposed Decision After Remand of the Administrative Law Judge (ALJ) in the above-captioned matter. After considering all the evidence and arguments submitted by the parties, including those presented on Remand, 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.

After the ALJ had submitted his initial Proposed Decision that determined that the increased compensation Respondent earned while serving as Interim City Manager was correctly reported as special compensation, on April 20, 2015, the Board of Administration of CalPERS remanded the matter to the ALJ to "receive and consider additional evidence regarding the issue of whether the facts of this case differ from the facts of the Board's

Precedential Decision No. 00-06 (*In the Matter of the Appeal For Calculations of Benefits Pursuant to the Employer's Report of Final Compensation Related to: ROY T. RAMIREZ and the City of Indio*). This Remand occurred even though this Precedential Decision had been presented to the ALJ at the initial evidentiary hearing on November 5, 2014, and was briefed at length by the parties prior to the initial Proposed Decision being rendered by the ALJ. Interestingly, on remand, CalPERS offered no additional evidence but simply repeated the same arguments that were rejected by the ALJ when he rendered his initial Proposed Decision.

On Remand, after receiving arguments from both CalPERS and Respondent, the ALJ addressed the application of that Precedential Decision in Factual Findings 12 and 13, and Legal Conclusion 7 of his Proposed Decision After Remand. The ALJ correctly determined that the Precedential Decision is readily distinguishable from the present situation for several reasons.

Initially, while the Precedential Decision found that the compensation in question in that case had the effect of constituting a "spike" of the affected individual's retirement benefits, there was no evidence to that effect presented in this case nor was there any evidence from which that conclusion could be drawn. The ALJ correctly found (in Finding 12(a)) that ". . . respondent Londo continued to work for the City of Walnut for seven more years after she completed her term as Interim City Manager. The issue of retirement was nowhere in sight for [her] during the time she [served in that capacity]." The ALJ therefore proceeded to conclude that not only was there no intent to spike Respondent's salary but that her retirement seven years after she received the income in question had no such effect.

Likewise, in Finding 12(b), the ALJ contrasted the Precedential Decision which found that "a significant increase in special compensation **at or near** the time of a member's retirement creates an unfunded liability, which may increase not only the rates charged by CalPERS to the last employer, but also the rates CalPERS charges to any previous public employers who contract with CalPERS." (Emphasis added.) The ALJ distinguished that situation from Respondent's because her increase in special compensation occurred seven years prior to the time of retirement.

Finding 12(b) also contrasted Respondent's situation from the Precedential Decision which noted that some actuarial problems would exist if the compensation the individual in question received while serving in a miscellaneous status were included in his final compensation as a local safety member. The ALJ correctly noted that, in this case, all of Respondent's service occurred as a miscellaneous member.

The ALJ set forth in Finding 12(b) yet another basis for distinguishing the Precedential Decision. He observed that, in that case, the individual in question significantly increased his workload which caused the resulting decision to conclude that the pay for those extra hours amounted to overtime which is excluded from special compensation. The ALJ emphasized that the uncontroverted testimony in this case revealed that Respondent "did not appreciably increase her hours of work when she assumed the duties of Interim City Manager."

Finally, in Finding 12(d), the ALJ correctly distinguished the Precedential Decision on the grounds that there the individual in question received significantly more compensation than the occupant of the position he was filling in for on an interim basis while, in this case, the uncontroverted credible testimony demonstrated that the salary received by Respondent for serving as Interim City Manager was commensurate with the salary for that position.

The ALJ concluded in Finding 13 that, as a result of those differences, "[t]he contention that the [Precedential Decision] should control the outcome of this case is not persuasive.

For all the reasons set forth above, the ALJ **again** correctly decided that the additional compensation provided Respondent while serving as Interim City Manager constituted special compensation in the form of Temporary Upgrade Pay. There is absolutely no basis for rejecting that Decision or remanding it for further consideration on any possible grounds. Respondent has incurred significant additional expenses because of the initial Remand, which was questionable at best in light of the fact that the issue with respect to which the Remand occurred had already been fully briefed and argued by the parties and no additional evidence was presented on remand by CalPERS. Accordingly, there is absolutely no basis for the Board

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to take any action that would cause Respondent to incur any additional emotional or monetary expense by having to pursue this issue further, and it should adopt the Proposed Decision After Remand.

Respectfully submitted,

SILVER HADDEN SILVER & LEVINE

Dated: September 17, 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 September 17, 2015, I served the foregoing document described as **RESPONDENT CHRISTINE F. LONDO'S ARGUMENT IN SUPPORT OF PROPOSED DECISION AFTER REMAND** on the parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

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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.

Executed on September 17, 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

L L Hill