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I. INTRODUCTION

This administrative proceeding concerns the calculation of a retirement allowance under the Public Employees' Retirement Law ("the PERL," Government Code Section 20000 et seq.). CalPERS contends its calculation of Malkenhorst's retirement allowance is consistent with the PERL, while Malkenhorst believes that it is too low.

One of Malkenhorst's arguments is that his retirement allowance does not properly reflect the amount of "compensation" he was paid by his public employer, the City of Vernon. According to Malkenhorst, CalPERS has the "ministerial and mandatory duty to accept the "compensation" and use it for pension calculation purposes. (Motion, p. 4.) And when CalPERS failed to use Malkenhorst's compensation to calculate his retirement allowance, CalPERS was improperly interfering with Vernon's rights as a charter city.

Malkenhorst's argument has two significant flaws. First, it mistakenly assumes that the City is the final arbiter of the pension benefits received by its employees. That's not the case. All contracting agencies – including charter cities like Vernon – must act consistently with the PERL and submit to CalPERS statutory obligation to enforce the PERL. The City knows this; its contract with CalPERS expressly acknowledges that pension rights and obligations are to be decided under the PERL.

The second flaw in Malkenhorst's argument is even more fundamental. It is the mistaken assumption that Malkenhorst's retirement allowance is somehow based on his "compensation." It's not. As described in the Statement of Issues, Malkenhorst's retirement allowance is a function of his "final compensation," which in turn depends on his "compensation earnable." "Final compensation" and "compensation earnable," as defined by the PERL, are completely different from Malkenhorst's lay concept of "compensation." Nothing in the Statement of Issues or the PERL links a retiree's allowance to "compensation." And when CalPERS calculates a member's retirement allowance, it is not impacting or intruding upon the employer's right to set the member's compensation.

1 Malkenhorst posits that the PERL might impermissibly interfere with City rights if the
2 City decided to enact specific pension laws contrary to the PERL. That's incorrect. As a
3 matter of law and public policy, the PERL would preempt any contrary local law. In any event,
4 the issue is purely academic because, as Malkenhorst admits, the City of Vernon has no
5 pension laws to speak of. The PERL must govern Malkenhorst's retirement allowance.
6

7 **II. BACKGROUND LAW AND FACTS**

8 **A. CalPERS' Role is to Administer the PERL**

9 CalPERS is a unit of the Government Operation Agency. (Gov. Code § 20002.) Under
10 the PERL, CalPERS administers the retirement system for employees of the State of California
11 and other contracting public agencies. (Gov. Code § 20120.) For all enrolled public
12 employees, the CalPERS Board has final say on the amount of and adjustment to retirement
13 benefits, and is the sole judge of the conditions under which benefits are provided. (Gov. Code
14 §§ 20123-20125; see also § 20134.) The Board is required to administer CalPERS "in a
15 manner to best provide benefits to the participants of the plan." (*City of Sacramento v. Public*
16 *Employees Retirement System* (1991) 229 Cal.App.3d 1470, 1493.)

17 The PERL describes the three factors affecting a retiree's benefit: a member's credited
18 years of service, "final compensation," and age at retirement. (See, *Prentice v. Board of*
19 *Administration* (2007) 157 Cal.App.4th 983, 989.) Of these three factors, only the amount of
20 Malkenhorst's "final compensation" is in dispute; Malkenhorst contends his "final
21 compensation" has been set too low by CalPERS.

22 The PERL guides CalPERS' determination of "final compensation." "Final
23 compensation" is a function of "compensation earnable," and "compensation earnable" is the
24 aggregate of "payrate" and "special compensation." All four of these terms are narrowly
25 defined by the PERL. (Gov. Code §§ 20037, 20636(a).) None of the definitions are based on
26 the lay concept of "compensation." Thus, it is quite common for CalPERS members to receive
27 "compensation" from their employers (e.g., overtime pay or special benefits) that legally do not
28 count towards a retirement benefit. (See *Molina v. CalPERS* (2011) 200 Cal.App.4th 53, 67

1 [CalPERS member “fails to recognize the important difference between the amount he was
2 paid by Oxnard ... and the much narrower category of ‘compensation earnable’ that can be
3 taken into account for pension purposes, as established under PERL.”)]

4
5 **B. The City of Vernon Contracted with CalPERS and Agreed to be Subject to the**
6 **PERL**

7 Public agencies may enter into contracts that permit them to participate in CalPERS.
8 (Gov. Code § 20460, et seq.) Contracting agencies must abide by the PERL. (Gov. Code §
9 20506 [“Any contract ... shall subject the contracting agency and its employees to all
10 provisions of this part and all amendments thereto....”])

11 The City of Vernon is a public agency that contracted with CalPERS. In its contract,
12 the City expressly agreed to be “subject to the provisions of the State Employees’ Retirement
13 Law”¹ A subsequent amendment in 1991 specified that: “All words and terms used
14 herein which are defined by the Public Employees’ Retirement Law shall have the meaning
15 defined therein unless otherwise specifically provided.”²

16 **III. THERE IS NO CONFLICT BETWEEN THE PERL AND**
17 **VERNON’S STATUS AS A CHARTER CITY**

18 The City of Vernon is a chartered city. As such, the City enjoys autonomy over matters
19 pertaining to its municipal affairs, “subject only to conflicting provisions in the federal and
20 state Constitutions and to preemptive state law.” (*Associated Builders and Contractors, Inc. v.*
21 *San Francisco Airports Com.* (1999) 21 Cal.4th 352, 363). The autonomous charter city is said
22 to have “home rule” powers and general control of its “municipal affairs.” (*Howard Jarvis*
23 *Taxpayers Assn. v. City of San Diego* (2004) 120 Cal.App.4th 374, 385, citing *Fisher v. County*
24 *of Alameda* (1993) 20 Cal.App.4th 120, 125.)

25
26
27 ¹ See Exhibit 1. The State Employees’ Retirement Law was later renamed the PERL.

28 ² See Exhibit 2

1 Using its home rule powers, the City of Vernon acted autonomously in hiring
2 Malkenhorst and deciding how much to pay him. (Motion, p. 19, 22-23, 29-30.) The City also
3 acted autonomously in its decision to enroll Malkenhorst and its other employees in CalPERS.
4 But that is the limit of the “home rule” doctrine’s relevance. Malkenhorst pushes the doctrine
5 too far when he claims that because the City decided to provide Malkenhorst a pension, he (and
6 not CalPERS or the City) gets to make pension calculations.
7

8 To begin, there is no evidence that the City believes CalPERS’ is interfering with its
9 autonomy to decide Malkenhorst’s “final compensation.” And even were such evidence to
10 appear, Malkenhorst has no authority to speak on behalf of the City of Vernon in connection
11 with its “home rule” powers or on any other issue.

12 Malkenhorst’s argument also misdescribes the law. For almost forty years, it has been
13 established that the PERL does not interfere with the home rule powers of a charter city. (*City*
14 *of Downey v. Board of Administration* (1975) 47 Cal.App.3d 621.) In *City of Downey*, the
15 court rejected a charter city’s argument that amendments to the PERL interfered with its home
16 rule, municipal powers. (*Id.* at pp. 624, 629.) “The municipal affairs doctrine does not
17 foreclose state legislation with respect to municipal affairs of a home rule city; it is only in the
18 event of a conflict between local and state regulations or state preemption of local regulation
19 that the question whether the matter regulated is a municipal affair or of statewide concern
20 becomes determinative.” (*Id.* at p. 629.) The Court then pointed out there was no real conflict
21 between the PERL and Downey’s powers, noting that Downey’s contract with CalPERS
22 expressly provides that the PERL would govern. (*Id.* at p. 629, fn. 6.)
23

24 Like the City of Downey, the City of Vernon entered a contract with CalPERS
25 expressly providing that the PERL would govern its employees’ retirement benefits. And like
26 the City of Downey, the City of Vernon did not enact a local regulation that created a conflict
27 by attempting to take PERL decisions from CalPERS. (Motion, p. 35 [Malkenhorst admits
28 that, “Vernon did not enact specific pension provisions in its charter or ordinances.”])
Accordingly, the charter city/municipal affairs doctrine does not apply.

1 Malkenhorst tries to create a legal conflict where none in fact exists. The conflict, he
2 says, is between the City's decision to set Malkenhorst's "compensation" and CalPERS'
3 decision not to use Malkenhorst's "compensation" as a basis for calculating his retirement
4 benefit. (Motion, pp. 4, 58.)

5
6 Malkenhorst's argument confuses PERL terminology and methodology. A member's
7 retirement allowance is not based on the lay concept of "compensation," which might include
8 overtime, bonuses, or even special longevity pay. Instead, a member's retirement allowance is
9 based on the PERL's definitions of "final compensation" and "compensation earnable." (Gov.
10 Code §§ 20037, 20636(a).) CalPERS' obligation is to calculate an employee's "compensation
11 earnable" as defined by the PERL, not to consider "compensation" promises made by an
12 employer. (See *City of Pleasanton v. CalPERS* (2012) 211 Cal.App.4th 522, 544 ["PERS's
13 fiduciary duty to its members does not make it an insurer of every retirement promise
14 contracting agencies make to their employees. PERS has a duty to follow the law."])

15 *Molina* explains that "compensation" and "compensation earnable" are simply not the
16 same thing. (*Molina, supra*, 200 Cal.App.4th at p. 67.) In *Molina*, a retiree filed a wrongful
17 termination action against his former employer. (*Id.* at p. 53.) The action was eventually
18 settled: the employee received \$875,000 and was rehired for one day for the sole purpose of
19 allowing him to purchase service credits from CalPERS. (*Id.* at p. 57.) The employee then
20 argued that the settlement was for back pay, back pay is a form of compensation, and therefore
21 the employee's compensation must be utilized by CalPERS to increase his retirement
22 allowance.³ The Court, however, spotted the flaw in that argument: it "fails to recognize the
23 important difference between the amount he was paid by Oxnard ... and the much narrower
24 category of 'compensation earnable' that can be taken into account for pension purposes, as
25

26
27 ³ It is no coincidence that Malkenhorst makes a similar argument – his attorney was counsel of
28 record in *Molina*.

1 established under PERL.” (*Id.* at p. 67.) “‘Compensation earnable’ is a narrow subset of
2 ‘compensation.’” (*Id.* at p. 68.)

3
4 As in *Molina*, the issue here is not what the City agreed to pay Malkenhorst, but the
5 portion of Malkenhorst’s pay that can be considered “compensation earnable” under the PERL.
6 CalPERS’ calculation of Malkenhorst’s “compensation earnable” may affect his retirement
7 allowance, but it in no way affects the “compensation” he negotiated with the City. There is
8 therefore no interference with the City’s home rule powers.

9 **IV. THE PERL WOULD PREEMPT ANY CONFLICTING LOCAL LAW**

10 The City of Vernon has neither resisted the PERL nor enacted an ordinance that
11 conflicts with the PERL. Even if it had done so, the PERL would prevail. The courts have
12 expressly held that the PERL preempts contrary municipal law. (*City of Los Altos v. Board of*
13 *Administration* (1978) 80 Cal.App.3d 1049, 1052 [“State statutes dealing with PERS matters
14 preempt municipal provisions.”]) The preemptive power of the PERL arises from the, “strong
15 policy favoring statewide uniformity of interpretation as between the PERS and all of its
16 contracting agencies.” (*Id.* at p. 1051.) “PERS has contracts with several hundred public
17 agencies and cannot be expected to accept different interpretations for different agencies.” (*Id.*
18 at p. 1052.)

19 Once a city decides its employees are entitled to retirement benefits, and then contracts
20 with CalPERS, the PERL will preempt local law. (See *Marsille v. City of Santa Ana* (1976) 64
21 Cal.App.3d 764, 771 [“State statutes dealing with PERS matters preempt municipal
22 provisions.”]) Nonetheless, Malkenhorst questions this principle, citing *Batters v. City of Santa*
23 *Monica* (1980) 101 Cal.App.3d 595 and *Campbell v. City of Monrovia* (1978) 84 Cal.App.3d
24 341. But *Batters* and *Campbell* address entitlement to sick leave, not retirement benefits. The
25 PERL provision addressed in those decisions – then Gov. Code section 21025.2, now Gov.
26 Code section 21163 – specifically deferred to local laws in determining whether sick leave was
27 owed prior to a disability retirement becoming effective. Nothing in section 21025.2, or the
28 cases cited by Malkenhorst change the PERL’s preemption of local law where retirement

1 benefits are concerned. (See *Campbell, supra*, 84 Cal.App.3d at pp. 348-349 [“(T)here is no
2 doubt, in our view, that questions pertaining to the retirement of persons employed by agencies
3 contracting with PERS are to be answered by recourse to state rather than local law and that
4 preemption on that issue occurs simply by virtue of the contractual relation.”].)

5
6 But again, the entire discussion of preemption is academic because the City of Vernon
7 has not passed any pension law in conflict with the PERL.

8 **V. CONCLUSION**

9 For the reasons set forth above, the OAH should deny Malkenhorst’s “charter city”
10 motion to dismiss, hear this matter on the merits, and decide the lawful amount of
11 Malkenhorst’s final compensation.

12
13 DATED: May 16, 2014

STEPTOE & JOHNSON LLP

14
15
16 By: _____

Edward Gregory
Jason Levin

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18 Attorneys for Complainant CalPERS
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EXHIBIT 1

209

STATE EMPLOYEES' RETIREMENT SYSTEM
SACRAMENTO 14, CALIFORNIA

Contract

BETWEEN

CITY COUNCIL

NAME OF LEGISLATIVE BODY

OF

CITY OF VERNON

NAME OF CITY, COUNTY, SCHOOL DISTRICT, OR OTHER PUBLIC AGENCY

AND THE

BOARD OF ADMINISTRATION

OF THE

CALIFORNIA STATE EMPLOYEES' RETIREMENT SYSTEM

This Agreement made this 23rd day of October, 1948, by and between
the Legislative Body of CITY OF VERNON
Name of City, County, School District, or Other Public Agency
hereafter referred to as "Public Agency," and the Board of Administration, California State Employees' Retirement System,
hereafter referred to as "Board."

WITNESSETH:

In consideration of the covenants and agreements hereinafter contained and on the part of both parties to be kept and performed, Public Agency and Board hereby agree as follows:

1. Public Agency is to participate in the State Employees' Retirement System, subject to the provisions of the State Employees' Retirement Law.

2. Public Agency shall participate in said Retirement System, making its employees members of said System, from and after November 1, 1948

3. Employees of Public Agency in the following classes shall become members of said Retirement System in accordance with the provisions of said Retirement Law, governing membership in said Retirement System, and subject to the further exclusions from membership in the next following sentence:

NUMBER OF EMPLOYEES
ELIGIBLE FOR MEMBERSHIP

CLASSES OF EMPLOYEES

ON November 1, 1948

a. Local Firemen, as defined in the State Employees' Retirement Law . . .	<u>39</u>
b. Local Policemen, as defined in the State Employees' Retirement Law . . .	<u>21</u>
c. County Peace Officers, as defined in the State Employees' Retirement Law . . .	
d. Employees other than Local Firemen, Local Policemen, and County Peace Officers . . .	<u>49</u>

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9. The provisions of Section 21367.5 of the State Employees' Retirement Law, providing a \$300 death benefit after retirement SHALL apply to employees of Public Agency who become members of said Retirement System.
("shall" or "shall not")

10. The provisions of Section 20025 of the State Employees' Retirement Law, providing for the portion of compensation which shall be included in computations under the Retirement Law SHALL NOT apply to employees of Public Agency who become members of said Retirement System.
("shall" or "shall not")

11. Public Agency shall contribute to said Retirement System as follows:

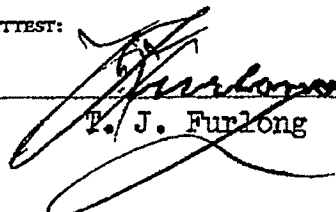
- a. The sum of \$13,363.61 per annum, payable in equal monthly or less frequent installments as Board shall require, for a period of 25 years, on account of the liability for benefits based on service rendered to Public Agency prior to the effective date hereof.
- b. 10.477 per cent of total salaries paid by Public Agency each month to its employees who are members of said Retirement System, provided that only salary earned as members of said System shall be included in said total salaries, and the employees who are members of said System shall include employees who become members upon the effective date hereof and employees who become members thereafter.
- c. A reasonable amount per annum, as fixed by Board, payable in equal monthly or less frequent installments, as Board shall require, to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodical investigation and valuation required by law, provided that said amount shall be determined on the basis of the number of employees of Public Agency who are members on July 1st of the respective fiscal years, or with respect to the first year of participation, on the effective date of said participation.
- d. A reasonable amount as fixed by the Board, payable in one installment from time to time as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and the costs of the periodical investigation into the experience under said Retirement System, as it affects said employees, and the valuation of the assets and liabilities of said System on account of said employees.

Contributions required of Public Agency and its employees shall be subject to adjustment by the Board of Administration on account of amendments to the State Employees' Retirement Law, and on account of experience under the Retirement System, as determined by the periodical investigation, valuation and determination provided for by said Retirement Law.

12. Contributions required of Public Agency under paragraph 11 immediately preceding, and contributions required of Public Agency's employees who are members of said System, shall be paid by Public Agency to the State Employees' Retirement System within thirty days after the end of the month or longer period to which said contributions refer. If more or less than the correct amount of contribution required of Public Agency or its employees is paid for any period, proper adjustment shall be made in connection with subsequent remittances of Public Agency to the Board, to rectify the errors; or such adjustments on account of errors made in contributions required of employees, may be made by direct cash payments between the employee in connection with whom the error was made, and Board. Payments of Public Agency to Board may be made in the form of warrants, bank checks, bank drafts, certified checks, money orders, or cash.

WITNESS OUR HANDS the day and year first above written.

ATTEST:


P. J. Furlong
City Clerk

CITY COUNCIL

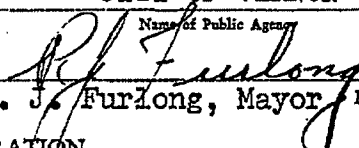
Name of Legislative Body

of

CITY OF VERNON

Name of Public Agency

By


R. J. Furlong, Mayor
Presiding Officer

BOARD OF ADMINISTRATION
STATE EMPLOYEES' RETIREMENT SYSTEM

ATTEST:


Earl Chapman
Executive Officer

By

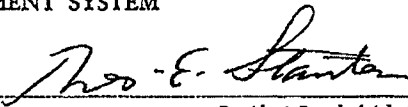

R. E. Stanton
President, Board of Administration

EXHIBIT 2

**AMENDMENT TO CONTRACT
BETWEEN THE
BOARD OF ADMINISTRATION
OF THE
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
AND THE
CITY COUNCIL
OF THE
CITY OF VERNON**

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The Board of Administration, Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of above public agency, hereinafter referred to as Public Agency, having entered into a contract effective November 1, 1948, and witnessed October 23, 1948, and as amended effective April 1, 1956, October 1, 1960, July 1, 1966, October 1, 1972, May 1, 1974, November 1, 1975, December 1, 1976, March 1, 1979, July 6, 1986, October 17, 1986, September 7, 1990 and January 19, 1991, which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

A. Paragraphs 1 through 13 are hereby stricken from said contract as executed effective January 19, 1991, and hereby replaced by the following paragraphs numbered 1 through 13 inclusive:

1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 60 for local miscellaneous members, age 50 for local police members and for those local fire members entering membership prior to October 17, 1986, and age 55 for those local fire members entering membership on or after October 17, 1986.
2. Public Agency shall participate in the Public Employees' Retirement System from and after November 1, 1948 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).

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4. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:

NO ADDITIONAL EXCLUSIONS

5. The percentage of final compensation to be provided for each year of credited prior and current service as a local miscellaneous member shall be determined in accordance with Section 21251.13 of said Retirement Law (2% at age 60 Full).
6. The percentage of final compensation to be provided for each year of credited prior and current service for local police members and for those local fire members entering membership prior to October 17, 1986 shall be determined in accordance with Section 21252.01 of said Retirement Law (2% at age 50 Full).
7. The percentage of final compensation to be provided for each year of credited prior and current service for those local fire members entering membership on or after October 17, 1986 shall be determined in accordance with Section 21252.6 of said Retirement Law (2% at age 55 Full).
8. Public Agency elected to be subject to the following optional provisions:
- a. Sections 21380-21387 (1959 Survivor Benefits) excluding Section 21382.2 (Increased 1959 Survivor Benefits) and Section 21382.4 (Third Level of 1959 Survivor Benefits) for local safety members only.
 - b. Sections 21263, 21263.1 and 21263.3 (Post-Retirement Survivor Allowance).
 - c. Section 20930.3 (Military Service Credit as Public Service), Statutes of 1974.
 - d. Section 20024.2 (One-Year Final Compensation) for local miscellaneous members and local fire members only.
 - e. Section 20461.6 (Different Level of Benefits), applicable to the 2% @ 50 Full formula for local fire members entering membership on or after October 17, 1986.
 - f. Sections 21380-21387 (1959 Survivor Benefits) including Section 21382.4 (Third Level of 1959 Survivor Benefits) for local miscellaneous members only.
 - g. Section 21365.6 (Pre-Retirement Optional Settlement 2 Death Benefit) for local miscellaneous members and local fire members only.

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9. Public Agency, in accordance with Government Code Section 20740, ceased to be an "employer" for purposes of Section 20759 effective on November 1, 1975. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20759, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20759.
10. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
11. Public Agency shall also contribute to said Retirement System as follows:
 - a. Public Agency shall contribute \$2.50 per employee, per month on account of the liability for the 1959 Survivor Benefits provided under Section 21382.4 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members.
 - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
12. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.

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13. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the Twenty-First day of September, 1991.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
OF THE
CITY OF VERNON

BY Malcolm K. Gibson
CHIEF, CONTRACT SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY Thomas C. Malburg
~~President~~ Mayor

11-13-91
Witness Date

Attest:
[Signature]
City Clerk

PERS-CON-702 (AMENDMENT)
(Rev. 3/91)

APPROVED AS TO FORM:
David B. Brearly
City Attorney

PROOF OF SERVICE

F.R.C.P. 5 / C.C.P. 1013a(3)/ Rules of Court, Rule 2060

I am a resident of, or employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is: Steptoe & Johnson LLP, 633 West Fifth Street, Suite 700, Los Angeles, California 90071.

On May 16, 2014, I served the following listed document(s), by method indicated below, on the parties in this action: **CALPERS' OPPOSITION TO MALKENHORST'S MOTION REGARDING CITY CHARTER AUTONOMY, PREEMPTION, AND RELATED LEGAL ISSUES.**

SEE ATTACHED SERVICE LIST

XX BY U.S. MAIL

By placing ☐ the original / ☒ a true copy thereof enclosed in a sealed envelope(s), with postage fully prepaid, addressed as per the attached service list, for collection and mailing at Steptoe & Johnson in Los Angeles, California following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of document for mailing. Under that practice, the document is deposited with the United States Postal Service on the same day in the ordinary course of business. I am aware that upon motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after date of deposit for mailing contained in this affidavit.

BY OVERNIGHT DELIVERY

By delivering the document(s) listed above in a sealed envelope(s) or package(s) designated by the express service carrier, with delivery fees paid or provided for, addressed as per the attached service list, to a facility regularly maintained by the express service carrier or to an authorized courier or driver authorized by the express service carrier to receive documents.

BY PERSONAL SERVICE

☐ By personally delivering the document(s) listed above to the offices at the addressee(s) as shown on the attached service list.
☐ By placing the document(s) listed above in a sealed envelope(s) and instructing a registered process server to personally deliver the envelope(s) to the offices at the address(es) set forth on the attached service list. The signed proof of service by the registered process server is attached.

BY ELECTRONIC SERVICE

(via electronic filing service provider)

By electronically transmitting the document(s) listed above to LexisNexis File and Serve, an electronic filing service provider, at www.fileandserve.lexisnexis.com pursuant to the Court's _____ Order mandating electronic service. See Cal. R. Ct. R. 2053, 2055, 2060. The transmission was reported as complete and without error.

BY ELECTRONIC SERVICE

(to individual persons)

By electronically transmitting the document(s) listed above to the email address(es) of the person(s) set forth on the attached service list. The transmission was reported as complete and without error. See Rules of Court, rule 2060.

BY FACSIMILE

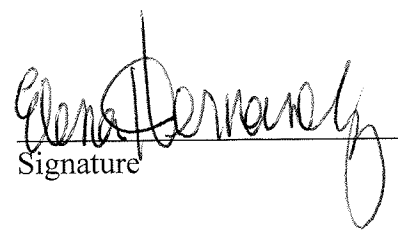
By transmitting the document(s) listed above from Steptoe & Johnson in Los Angeles, California to the facsimile machine telephone number(s) set forth on the attached service list. Service by facsimile transmission was made pursuant to agreement of the parties, confirmed in writing.

XX STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
☐ FEDERAL I declare under penalty of perjury under the laws of the United States that I am employed in the office of a member of the bar of this court at whose direction the service is made.

Executed on May 16, 2014 at Los Angeles, California.

ELENA HERNANDEZ

Type or Print Name


Signature

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