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MOTION IN LIMINE NO. 2 SHOULD BE DENIED

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This administrative proceeding concerns the determination of Malkenhorst's retirement allowance under the Public Employees' Retirement Law ("the PERL," Government Code section 20000, et seq.). CalPERS will prove that its determination of Malkenhorst's retirement allowance is proper under the PERL, focusing on evidence relevant to two disputed issues: Malkenhorst's payrate and Malkenhorst's special compensation. (See, *Prentice v. Board of Administration* (2007) 57 Cal.App.4th 983, 989-990 [describing factors affecting calculation of retirement allowance.])

In his Motion in Limine No. 2, Malkenhorst argues that it would be irrelevant and prejudicial for CalPERS to introduce evidence unrelated to payrate and special compensation. However, "[a] motion in limine to exclude evidence is not a sufficient objection unless it was directed to a particular, identifiable body of evidence" (*Boeken v. Philip Morris Inc.* (2005) 127 Cal.App.4th 1640, 1675.)

The Motion should be denied because Malkenhorst does not identify the specific evidence he seeks to exclude. The OAH and CalPERS are being forced to guess what documents and testimony Malkenhorst might feel are "unrelated" to the disputed issues. Malkenhorst's Motion does not account, for example, for evidence needed to lay a foundation, impeach witnesses, or address Malkenhorst's own defenses. Accordingly, the Motion should be denied.

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