	Attachment H (Q) CalPERS Opposition to Malkenhorst's Motion in Limine No. 2 Page 1 of 2	
1 2 3 4 5 6 7 8 9 10	Edward Gregory (State Bar No. 128375) Jason Levin (State Bar No. 161807) Lisa Petrovsky (State Bar No. 239539) STEPTOE & JOHNSON LLP 633 West Fifth Street, Suite 700 Los Angeles, California 90071 Telephone: (213) 439-9400 Facsimile: (213) 439-9599 egregory@steptoe.com jlevin@steptoe.com lpetrovsky@steptoe.com Attorneys for California Public Employees' Retirement System (CalPERS)	Filed OAH By: elruiz Date:06/09/14 12:02
12 13 14	CALIFORNIA PUBLIC EMPLO	MINISTRATION OYEES' RETIREMENT SYSTEM CALIFORNIA
15 16 17	In the Matter of the Calculation of Final Compensation of: BRUCE MALKENHORST, SR.,) CASE NO. 2012-0671) OAH NO. 2013080917
18 19 20 21	Respondent, and.) CALPERS OPPOSITION TO) MALKENHORST'S MOTION IN) LIMINE <u>NO. 2</u>
22 23 24	CITY OF VERNON, Respondent.) Hearing: June 13, 2014, 9:00 a.m.)
25 26 27 28		

1 2

MOTION IN LIMINE NO. 2 SHOULD BE DENIED

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.

DATED: June 1, 2014

STEPTOE & JOHNSON LLP

By:

Attorneys for Complainant CalPERS