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15 **BOARD OF ADMINISTRATION**  
16 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**  
17 **STATE OF CALIFORNIA**

18 In the Matter of the Calculation of Final ) **CASE NO. 2012-0671**  
19 Compensation of: )  
20 BRUCE MALKENHORST, SR., ) **OAH NO. 2013080917**  
21 Respondent, )  
22 and. ) **CALPERS OPPOSITION TO**  
23 CITY OF VERNON, ) **MALKENHORST'S MOTIONS IN**  
24 Respondent. ) **LIMINE NOS. 7 & 8**  
25 )  
26 ) **Hearing: June 13, 2014, 9:00 a.m.**  
27 )  
28 )

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2 **MOTIONS IN LIMINE NOS. 7 & 8 SHOULD BE DENIED**

3 This administrative proceeding concerns the determination of Malkenhorst's retirement  
4 allowance under the Public Employees' Retirement Law ("the PERL," Government Code  
5 section 20000, et seq.). CalPERS will prove that its determination of Malkenhorst's retirement  
6 allowance is proper under the PERL, and to that end, will introduce ADP payroll records that  
7 pertain to Malkenhorst. These payroll records reflect, generally, that Malkenhorst worked in  
8 different positions for seven or more departments within the City of Vernon, a fact  
9 Malkenhorst disputes.

10 In his Motions, Malkenhorst points out that he does not have a complete set of ADP  
11 payroll records from 2004. He accuses CalPERS of intentionally withholding the missing  
12 records and argues the OAH should sanction CalPERS by excluding *all* ADP payroll records  
13 from evidence. Malkenhorst's attack on CalPERS is completely unjustified.

14 CalPERS has withheld nothing. CalPERS received the ADP payroll records from the  
15 City of Vernon, but the City did not provide a complete set. In response to a Public Records  
16 Act request, CalPERS then sent Malkenhorst all the ADP payroll records it had received from  
17 the City. Subsequently, on its exhibit list, CalPERS provided a separate entry for the 2004  
18 payroll records and gave a precise page count. CalPERS made full disclosure.

19 In the weeks that followed the exchange of exhibit lists, counsel engaged in two lengthy  
20 telephone conferences and sent letters addressing various discovery and exhibit issues.  
21 Malkenhorst never mentioned the ADP payroll records. In fact, CalPERS was unaware  
22 Malkenhorst had a problem with the payroll records until it received his Motion. Had  
23 Malkenhorst raised the issue with CalPERS, he would have been informed that the missing  
24 2004 payroll records are not within CalPERS' possession, custody, or control.

25 Malkenhorst has not explained the relevance of the missing payroll records or the  
26 prejudice that would arise if the missing records are not located. Nonetheless, Malkenhorst  
27 requests permission to subpoena the missing records from ADP. CalPERS has no objection to  
28 the request provided that Malkenhorst acts expeditiously to obtain the ADP records and agrees

1 that under no circumstances will the records provide cause for delaying or extending the  
2 Hearing.  
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5 DATED: June 9, 2014

STEPTOE & JOHNSON LLP

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7 By:  \_\_\_\_\_  
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Jason Levin

9 Attorneys for Complainant CalPERS  
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