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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) **OAH NO. 2013080917**
21 BRUCE MALKENHORST, SR.,)
22)
23 Respondent,) **CALPERS OPPOSITION TO**
24) **MALKENHORST'S MOTION IN**
25 and.) **LIMINE NO. 9**
26)
27 CITY OF VERNON,)
28) **Hearing: June 13, 2014, 9:00 a.m.**
Respondent.)
)

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2 **MOTION IN LIMINE NO. 9 SHOULD BE DENIED**

3 This administrative proceeding concerns the determination of Malkenhorst's retirement
4 allowance under the Public Employees' Retirement Law (Government Code section 20000, et
5 seq.). In addition to pursuing an administrative remedy, Malkenhorst challenged the
6 calculation of his retirement allowance through several civil lawsuits. Malkenhorst now
7 requests that the OAH admit into the administrative record the pleadings and briefs from the
8 civil lawsuits, claiming that their admission is somehow necessary to "preserve" his rights.

9 Malkenhorst's request to admit the civil pleadings is the subject of CalPERS' own
10 motion in limine: "CALPERS' MOTION IN LIMINE TO EXCLUDE FROM EVIDENCE
11 PLEADINGS IN OTHER LITIGATION." CalPERS adopts the argument and evidence from
12 its motion in limine as its Opposition to Malkenhorst's motion here. As CalPERS explained in
13 its motion, the OAH should not admit the civil pleadings into the administrative record because
14 the civil pleadings are not evidence and are not relevant to any issue to be decided. The only
15 reason Malkenhorst wants them admitted is that they purportedly "contain a more extensive
16 discussion" of Malkenhorst's defenses.

17 It is too late in the administrative process for Malkenhorst to make further arguments in
18 favor of his defenses. His defenses have already been the subject of extensive briefing by the
19 parties and, thus, have been "preserved." It would be unfair, costly, and time consuming for
20 CalPERS to have to respond to additional arguments. Accordingly, the Motion should be
21 denied.
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24 DATED: June 1, 2014

STEPTOE & JOHNSON LLP

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26 By:  _____

Jason Levin

27 Attorneys for Complainant CalPERS
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