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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. 10**
26)
27 CITY OF VERNON,)
28) **Hearing: June 13, 2014, 9:00 a.m.**
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MOTION IN LIMINE NO. 10 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 it determined Malkenhorst's retirement allowance in accordance with the PERL, in part based on the testimony of its employees Tomi Jimenez, Lolita Lueras, Margaret Junker, and Chris Wall.

In his Motion in Limine No. 10, Malkenhorst speculates that Jimenez, Lueras, Junker, and Wall will provide testimony "directly contrary to the clear and unambiguous terms of the City of Vernon's charter, resolutions, minutes, pay schedules, or other official documents or acts." (Motion at p. 3.) Malkenhorst suggests that the conflicting evidence would somehow violate the parol evidence rule.

The Motion should be denied because it fails to identify the specific evidence to be excluded. "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.) General objections like those asserted by Malkenhorst are best left until the Hearing, when the ALJ can "determine the evidentiary question in its appropriate context." (*Id.*)

In any event, Malkenhorst's reference to the parol evidence rule makes little sense. The parol evidence rule pertains to the method by which the courts interpret a written contract. (*Adams v. MHC Colony Park Limited Partnership* (2014) 224 Cal.App.4th 601, 619-620.) The rule holds that courts must receive extrinsic evidence on a written contract's meaning so that it can be decided, as a matter of law, whether the contract is ambiguous (i.e., reasonably susceptible to more than one interpretation). (*Id.*) The rule exists because "parol evidence might expose a latent ambiguity when the contract appears unambiguous on its face." (*Id.* at p. 620.)

Here, if the parties' dispute actually involved the interpretation of a contract, the parol evidence rule would require the OAH to *admit* (not exclude) extrinsic evidence as to the

1 contract's meaning. But the parties' dispute does not involve the interpretation of any contract.
2 It involves the interpretation of the PERL and its requirements for determining and correcting a
3 retirement allowance. Malkenhorst's discussion of the parol evidence rule is irrelevant.
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5 For the reasons set forth above, the Motion should be denied.

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7 DATED: June 9, 2014

STEPTOE & JOHNSON LLP

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10 By: _____


Jason Levin

11 Attorneys for Complainant CalPERS
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