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**I. INTRODUCTION**

The OAH has set aside five days for the Hearing, more than enough time if the parties confine themselves to the presentation of relevant evidence. Malkenhorst disagrees because he has an over-expansive view of relevance. He requested several additional hearing days, in part to accommodate unnecessary and immaterial testimony from three experts.

From CalPERS' perspective, relevancy should be framed by the Statement of Issues. In the Statement of Issues, CalPERS describes the issue at hand: whether the salary Malkenhorst received from the City of Vernon can be considered "final compensation" for purposes of determining his retirement benefit. The Statement of Issues further specifies that "final compensation" is defined by statute to exclude salary for overtime or multiple positions. (See Gov. Code § 20635.) Thus, adjudication of the dispute will depend on evidence of the time spent by Malkenhorst in one or more City positions.

Malkenhorst has designated three expert witnesses (Exhibit 1) who intend to testify on issues that do not relate to the parties' dispute. Two of the witnesses purport to have personal knowledge of overtime and multiple position practices at cities *other than Vernon*. Their knowledge would not assist the OAH determine what Malkenhorst did in Vernon. A third witness – a former, non-executive CalPERS employee – purports to be an expert on, generally, CalPERS' "policies and procedures" and their implementation. The witness, however, does not profess expertise with respect to any specific policy or procedure relevant to Malkenhorst's work at Vernon. And, in any event, the witness is not qualified to declare CalPERS policy – he was never a CalPERS executive and never had delegated authority to speak on CalPERS' behalf.

The OAH can decide the issues in dispute without the assistance of "experts." That is why CalPERS did not designate any expert witnesses and why testimony from Malkenhorst's experts witnesses should be excluded. Their proposed testimony would be irrelevant and unnecessarily time-consuming.

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## II. LEGAL BACKGROUND

Malkenhorst is a retired former administrator for the City of Vernon, a public agency that contracted with CalPERS for retirement benefits. CalPERS administers a defined benefit plan pursuant to the Public Employees' Retirement Law ("the PERL"). Under the PERL, a retiree's benefit formula takes three factors into account: a member's credited years of service, final compensation, and age at retirement. (See, *Prentice v. Board of Administration* (2007) 57 Cal.App.4th 983, 989.) Of these three factors, only the amount of Malkenhorst's final compensation is in dispute.

In *Prentice*, the Court described the derivation of final compensation:

- "Final compensation" is a function of the employee's highest "compensation earnable." (*Prentice, supra*, 157 Cal.App.4th at p. 989.)
- "Compensation earnable" consists of a member's "payrate" and "special compensation." (*Id.* at 989-90, citing Gov. Code § 20636(a).)
- An employee's "payrate" is the monthly amount of cash compensation received by the employee for normal working hours "pursuant to publicly available pay schedules." (*Id.* at p. 990, citing Gov. Code § 20636(b)(1); see also Gov. Code § 20635, excluding "overtime.")
- "Special compensation" is, generally, a "payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions," but is "limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate." (*Id.* at p. 990, citing Gov. Code § 20636(c).)

Both Malkenhorst's payrate and his special compensation are in dispute. On those two disputed issues, CalPERS explained its position in the Joint Prehearing Conference Statement:

1. **Payrate.** In connection with Gov. Code § 20636(b)(1) and 2 CCR 570.5(b), Respondents lack "publicly available pay schedules" for Mr. Malkenhorst with respect to

1 “services rendered on a full-time basis during normal working hours.” In connection with Gov.  
2 Code § 20635, Mr. Malkenhorst is claiming a payrate that improperly includes compensation  
3 for overtime. CalPERS has determined Mr. Malkenhorst’s lawful payrate, excluding overtime.  
4

5 2. **Special Compensation**. In connection with Gov. Code § 20636(c)(2), Mr.  
6 Malkenhorst is claiming longevity pay exceeding that received by “similarly situated  
7 members.” CalPERS has determined Mr. Malkenhorst’s lawful longevity pay, as received by  
8 similarly situated members.  
9

### 10 **III. MALKENHORST’S EXPERTS SHOULD BE EXCLUDED**

11 Administrative law judges may exclude evidence that is irrelevant, and exclude relevant  
12 evidence “if its probative value is substantially outweighed by the probability that its admission  
13 will necessitate undue consumption of time.” (Gov. Code § 11513, subd. (c) and (f).) These  
14 rules support an order precluding testimony from Malkenhorst’s three experts: Bob Adams,  
15 Joseph Tanner, and James Niehaus. The grounds for exclusion are apparent from the face of  
16 Malkenhorst’s designation of experts (attached as Exhibit 1).  
17

#### 18 **A. Bob Adams**

19 Adams purports to be a “Local Government Specialist” based on “40 years of  
20 experience in local government management.” He intends to testify about municipal policies  
21 and practices, including the practice of paying chief executives. It is Adams’s opinion that such  
22 executives “do not receive any additional salary or pay rate” for working in multiple positions  
23 or taking on additional duties.

24 Adams’s generalized knowledge is not relevant to any disputed issue. What would be  
25 relevant is evidence on the conduct and practices of the City of Vernon and/or Malkenhorst.  
26 Adams, however, lacks personal knowledge on those issues. He has never worked for the City  
27 of Vernon and does not claim to have any expertise on that city’s policies and practices.  
28

1  
2 **B. Joseph Tanner**

3 Tanner's designation is similar to that of Adams. Tanner also purports to be an expert in  
4 local government practices and, like Adams, intends to testify about how municipalities pay  
5 their chief executives.

6 Tanner's proposed testimony is irrelevant. Tanner, too, has never worked for the City of  
7 Vernon and does not purport to have any expertise on or knowledge of that city's policies and  
8 practices. Information on how other cities treat their executives is immaterial to the issue of the  
9 work Malkenhorst did for the City of Vernon, the positions in which he worked, the number of  
10 hours he worked, and how he was paid for his work,

11 **C. James Niehaus**

12 According to his resume, Niehaus is a former CalPERS employee. From 1984 to 2000,  
13 Niehaus says he worked as a "Retirement Program Specialist II" interpreting the PERL and  
14 dispensing benefit advice to CalPERS members who asked for help. He intends to testify about  
15 some unspecified "policies and procedures" of CalPERS, although neither his resume nor his  
16 designation reveal the nature of those "policies and procedures" or their relevance to  
17 Malkenhorst (who retired in 2005, five years after Niehaus left CalPERS.) Certainly Niehaus  
18 does not claim to have specific information on the issues of overtime, multiple positions, and  
19 longevity pay.

20 Even if Niehaus had some knowledge of the rules for overtime, multiple positions, and  
21 longevity pay, Niehaus would lack the qualifications to testify as an expert. Niehaus never held  
22 an executive position at CalPERS and never received Board delegation to make or interpret  
23 CalPERS policy. The mere fact that Niehaus answered informal inquiries from CalPERS  
24 members does not make Niehaus an expert on CalPERS "policy" or "practice."  
25

26  
27 **IV. CONCLUSION**


28 CalPERS will do its part to accommodate the Hearing schedule. It will present a  
streamlined case through only three witnesses, and its witnesses will focus directly on the

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disputes identified in the Statement of Issues. If Malkenhorst were to do the same – and he should – the Hearing will conclude within the allotted five days. Towards that goal, and for the reasons set forth above, the OAH should exclude from the Hearing any testimony unrelated to the Statement of Issues and, in particular, the proposed testimony of Bob Adams, Joseph Tanner, and James Niehaus.

DATED: July 7, 2014

STEPTOE & JOHNSON LLP

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

Attorneys for Complainant CalPERS



# **EXHIBIT 1**

1 John Jensen, Esq., State Bar No. 176813  
2 Law Offices of John Michael Jensen  
3 11500 West Olympic Blvd Suite 550  
4 Los Angeles CA 90064  
5 (310) 312-1100  
6 (310) 312-1109 Facsimile  
7 johnjensen@johnmjensen.com  
8 Attorneys for Respondent Bruce Malkenhorst

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BEFORE THE BOARD OF ADMINISTRATION

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In Re the Matter of ) CALPERS CASE NO.: 2012-0671  
) OAH CASE NO.: 2013080917  
BRUCE V. MALKENHORST, SR and )  
CITY OF VERNON, ) **MALKENHORST'S DISCLOSURE OF**  
) **HIS PROPOSED EXPERTS' OPINIONS,**  
Respondents. ) **RESUMES/CURRICULUM VITAE AND**  
) **OTHER DISCLOSURES PURSUANT TO**  
) **THE COURT'S JUNE 17, 2014**  
) **PREHEARING CONFERENCE ORDER**  
)  
) Hearing: August 25-27 and  
) September 2-4, 2014 9:00am  
) Location: Los Angeles OAH

Pursuant to the Court's June 17, 2014 *Prehearing Conference Order*, Respondent Malkenhorst hereby makes the following disclosures concerning the expert witnesses he intends to call at the Hearing in this matter, including the names of the proposed experts, a brief narrative statement of the general substance of the testimony that each expert is expected to give, including opinion testimony and its basis; a representation that the expert has agreed to testify at the hearing; and the expert's hourly and daily fee for providing testimony and for consulting with Respondent's counsel. Copies of each expert's current resume or *curriculum vitae* are attached.

1. Robert Adams

Based on his extensive personal experience serving as chief executive officer for numerous municipalities, Mr. Adams will testify about the policies and practices of municipal



1 government and the roles of their officials, including that it is not at all uncommon for chief  
2 executive officers, such as City Managers or City Administrators, to hold a single job or position  
3 but to perform numerous duties and responsibilities as part of that single job. He will testify  
4 about the various duties, responsibilities, and acts that municipal government officials hold or  
5 take, as well as how municipal governments account for them. For example, he will also testify  
6 such chief executive officers often hold various *ex officio* titles related to those other duties and  
7 responsibilities, but that this occurs as part of the single job or position. He will also testify that  
8 such chief executive officers typically are paid a single base salary or pay rate for their  
9 performance in the job or position, and do not receive any additional salary or pay rate for  
10 performing additional duties or responsibilities, including as related to any *ex officio* titles they  
11 may hold. Mr. Adams will testify that it is not at all uncommon for municipalities to attribute or  
12 account for the salaries paid to chief executive officers as associated with, accounted for, or  
13 drawn from different funds, sources, or portions of the municipality's budget, but that this is a  
14 budgeting or accounting matter and does not in any way change the fact that the city established  
15 a single position that was paid a single base salary or pay rate for performing the work of a single  
16 position.

17 Mr. Adams has not yet prepared any expert report concerning this matter.

18 Mr. Adams has agreed to testify at the Hearing in this matter.

19 Mr. Adams' rate for providing testimony and for consulting with Respondent's counsel is  
20 \$250 per hour.

21 A copy of Mr. Adam's resume/*curriculum vitae* is attached as Exhibit 1.

22 2. Joseph Tanner

23 Mr. Tanner served as high ranking or chief executive officer of numerous municipalities,  
24 both charter cities and general law cities. Mr. Tanner will testify about the duties,  
25 responsibilities, and job requirements of high ranking municipal government officials. Mr.  
26 Tanner will testify that City Managers or City Administrators often simultaneously perform a  
27 broad range of duties or responsibilities, including holding titles or performing the  
28 responsibilities of other offices. Mr. Tanner will testify that these other responsibilities are

1 performed within the duties or responsibilities required of the City Manager or City  
2 Administrator, and that no additional pay is provided for performing the other duties or  
3 responsibilities. Mr. Tanner will testify that chief executive officers are exempt employees to  
4 which no overtime is paid. Mr. Tanner will testify that a municipality's chief executive officer  
5 often holds a single job or position but performs numerous duties and responsibilities as part of  
6 that single job. Mr. Tanner will also testify that chief executive officers are paid a single base  
7 salary or pay rate for their performance in the job or position, and do not receive any additional  
8 salary or pay rate for performing additional duties or responsibilities, including as related to any  
9 *ex officio* titles they may hold. Mr. Tanner will testify that municipalities often attribute or  
10 account for a portion of the salaries paid to chief executive officers as associated with,  
11 accounted for, or drawn from different funds, sources, or portions of the municipality's budget,  
12 but that these budgeting accounts does not mean that the individual holds multiple or numerous  
13 or separate positions.

14 Mr. Tanner has not yet prepared any expert report concerning this matter.

15 Mr. Tanner has agreed to testify at the Hearing in this matter.

16 Mr. Tanner is not charging a fee for providing testimony and for consulting with  
17 Respondent's counsel.

18 A copy of Mr. Tanner's resume/*curriculum vitae* is attached as Exhibit 2.

19 3. James Niehaus

20 Based on his personal experience serving for more than 15 years as a Retirement Program  
21 Specialist II at CalPERS, Mr. Niehaus will testify about CalPERS policies and procedures, the  
22 form and structure of those policies and procedures, the process of using them, and CalPERS  
23 staff's use of policies and procedures. Mr. Niehaus will testify that CalPERS staff consults with  
24 established policies and procedures as they apply the PERL to a given set of facts specific to a  
25 member; that CalPERS organizes its policies and procedures in specific forms, and establishes  
26 those policies and procedures for use in specific manners; that CalPERS' non-attorney staff are  
27 not allowed to make legal determinations; and that CalPERS staff members must consult with  
28 established policies and procedures and then apply CalPERS' policies and practices to the facts.

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Mr. Niehaus has not yet prepared any expert report concerning this matter.

Mr. Niehaus has agreed to testify at the Hearing in this matter.

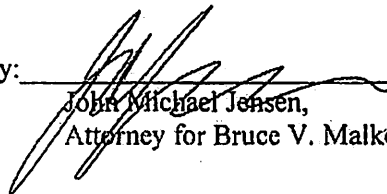
Mr. Niehaus' rate for providing testimony and for consulting with Respondent's counsel is \$150 per hour.

A copy of Mr. Niehaus' resume/*curriculum vitae* is attached. *ex 3*

Respectfully submitted,

Dated: June 23, 2014

By: \_\_\_\_\_



John Michael Jensen,  
Attorney for Bruce V. Malkenhorst, Sr.



# Exhibit 1

**Robert F. D. (Bob) Adams**  
**badams638@gmail.com**  
**209 638-1846**

**2013 – 2014 Interim City Manager, Desert Hot Springs, CA**

Directed the financial renewal of a fiscally distressed city by analyzing cost centers, reducing employee salaries and benefits, initiating service reductions, revamping economic development activities and developing new revenue sources.

**2011 Interim Human Resources Director, Madera, CA**

Negotiated 4 expired labor agreements, processed grievances, and handled the day to day operations of the Human Resources Department including Risk Management.

**2008 – 2010 Interim City Manager, Vallejo, CA  
Interim Development Services Director, Vallejo, CA**

As City Manager, appointed to re-organize government structure, re-define how services were delivered, developed new revenues, re-negotiated labor agreements, negotiated re-structuring of debt with banks, and developed a plan of adjustment to get the City out of Chapter 9 Bankruptcy.

As a Management Specialist with Management Partners, Inc. assigned as Interim Development Services Director, Tasks included: supervision of 3 divisions (code enforcement, planning and building inspection), negotiating development agreements, reviewing/improving the development review process, and re-activating the redevelopment efforts of the City. Vallejo filed for bankruptcy protection so my tasks were keyed to improving the tax base for property values and the commercial development of retail centers to generate sales tax revenues. Major issues included brown field contamination and cost of new infrastructure in a historically significant area (Mare Island Naval Shipyard). The last building commissioned by President Abraham Lincoln is one of the many structures on the site.

**1996 – 2008 City Manager, Manteca, CA**

Directed all programs of a full service city with a \$110 million budget. Services included water, sewer & refuse utilities; parks development and maintenance; municipal golf course operations; police and fire protection; capital improvement program; road and storm drain maintenance. Negotiated agreements with developers, labor unions and other public agencies. Concurrently served as Redevelopment Agency Executive Director for three active project areas with a total RDA budget of \$20 million for development and housing rehabilitation.

Highlights: Redevelopment of a 360 acre defunct sugar refinery into a commercial/industrial complex that is the jewel of the city. Major commercial tenants include Target, Food 4 Less, Home Depot, Chevrolet dealership, & TJ Maxx. Major industrial tenants include American Modular, Advance Packaging, Millard Refrigeration, Ford Motor Co., Frito-Lay, & Carl Karcher Enterprises. Recruitment and negotiation of a Big League Dreams facility built in consortium with a power center. Recruitment and negotiation of "Life Style" shopping center with Bass Pro Shop as an anchor. Coordination of a 30 MGD surface drinking water plant and distribution system in cooperation with 4 other cities and the local irrigation district.

**1988 – 1996 City Manager, Lafayette, CA**

Administered all programs of a contract city. Maintained liaisons with other governmental agencies. Acted as City's Risk Manager. Coordinated and directed work programs and activities of volunteer commissions and committees which made reports directly to the City Council. Oversaw capital improvement program that included pavement management system, traffic safety and storm drain improvements. Supervised the successful passage of a G.O. Bond special election for road and storm drain rehabilitation and construction. Established City's first adopted Redevelopment Project Area and served as Agency's Executive Director.

Highlights: New Veterans Hall, new library, street renovations and storm drain improvements as a result of creating redevelopment agency and passage of bond measure.

**Robert F. D. Adams**  
**Page 2 of 2**

**1981 – 1988**                    **City Manager, Dinuba, CA**

Guided all programs of a full service city. Services included water & sewer utilities, ambulance, public safety, capital improvement program, maintenance of parks & roads, and administrative support services associated with the successful operation of the city. Negotiated all labor agreements and other city contracts and agreements. Concurrently served as City's first Redevelopment Agency Executive Director. Developed a comprehensive capital improvement program. Reorganized city departments to promote cost effectiveness and improve public services. Administered and coordinated sewer plant expansion grant and water system master plan and construction.

**Highlights:** Establishment of City's first Redevelopment project area that has become a model for downtown success for small cities in California's Central Valley.

**1977 – 1981**                    **Administrative Assistant, Santa Rosa, CA**  
Public Works Department  
Finance & Administrative Services Department

**1975 – 1977**                    **Personnel Director/Administrative Assistant, Visalia, CA**

**1974**                            **Administrative Intern, Visalia, CA**

**Related Activities**

**2014**                            **Board Member: California Municipal Finance Authority**  
**California Foundation for Stronger Communities**  
**California Foundation for Public Facilities**

**2012**                            **Speaker at Colorado City Managers Association meeting**  
**regarding Vallejo, CA Bankruptcy and Political Will**

**2008**                            **Speaker at Municipal Management Assistants of Northern**  
**California regarding Council/Manager relations**

**1988 – 2008**                    **Director & Past President, Municipal Pooling Authority (Risk**  
**Management JPA)**

**1998 – 2008**                    **Operating Committee Member, South County Surface Water**  
**Supply Project, South San Joaquin Irrigation District**

**2002 – 2007**                    **Past Chair & Member, Governing Board, Doctors Hospital of**  
**Manteca**

**2002 – 2007**                    **Board Member, Supplemental Law Enforcement Oversight**  
**Committee (SLEOC), San Joaquin County**

**1998 – 2001**                    **Executive Committee, City Managers Department, League of**  
**California Cities**

**Educational History**

**MPA**                            **Brigham Young University, UT**  
**BA**                            **University of California, Berkeley**

**References Available Upon Request**

### **Robert (Bob) Adams, Local Government Specialist**

Mr. Adams has approximately 40 years of experience in local government management. In addition to a broad understanding of all city services, he has expertise in change management, sharing and consolidating services, public/private partnerships, performance management, team development, goal setting and civic engagement. Bob also has significant expertise in finance, human resources, economic development, labor relations, and human resources. On the financial side, Bob oversaw the development of the bankruptcy workout plan and the plan of adjustment that paved the way for Vallejo to successfully exit bankruptcy. He also helped financially strapped Desert Hot Springs formulate a plan to avoid the fiscal cliff.

Bob served as City Manager for the California cities of Dinuba, Lafayette, Manteca, Vallejo and Desert Hot Springs. He has also served as Human Resources Director on an interim basis for the cities of Visalia and Madera.

Bob received a Bachelor of Arts degree from the University of California at Berkeley, majoring in Criminology. He also earned a Master of Public Administration degree from Brigham Young University.



## **Exhibit 2**



**JOSEPH M. TANNER**  
52 Dobbs Drive  
Pleasant Hill, CA 94523

(925) 930-9415

(925) 588-6095

[jmtanner55@aol.com](mailto:jmtanner55@aol.com)

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**PROFESSIONAL EXPERIENCE**

**July 23, 2012 – January 23, 2013**  
**Interim City Manager**

**City of Rio Vista, California**

Provided interim City Manager services while the city searched for a permanent city manager. Balanced a very difficult \$18 million dollar budget drastically cutting services and also helped the city pass a ¼ cent sales tax proposal with a 70% voter approval.

**January 8, 2007 – June 1, 2009**  
**City Manager**

**City of Vallejo, California**

Manage a city with a population of 125,000, a budget of \$256,603,897 and 520 employees. Responsibilities include managing a full service city including Fire, Police, Transportation, including Buses and Ferries, Public Works, Planning, Redevelopment, Housing, Human Resources, and other minor departments. Successfully filed Chapter 9 Bankruptcy saving the city over \$34,000,000 and setting legal precedents to void the city's labor agreements.

**March 31, 2003 – January 5, 2007**  
**City Manager**

**City of Pacifica, California**

Managed a city with a population of 40,400, a budget of \$41 million and 180 employees. Responsibilities included managing a full service city including Finance, Public Works, Beach, Parks and Recreation, Planning, Human Resources, Police, Fire and General Services. An environmental oasis, Pacifica is an attractive combination of secluded valleys and open hillsides set against a coastline of long beaches.

**November 1, 2002 – March 30, 2003**

**JT Associates, Owner**

Acted as a Consultant for municipal governments providing Economic Development and Redevelopment expertise; and general municipal management advice. Clients included the City of Alameda and private developers. Projects in Alameda included redeveloping the Encinal Terminal project on the waterfront, the downtown theater project and a 485 single family residential project.

**January 14, 2002 – November 1, 2002**

**Interim Assistant City Manager,  
Community & Economic Development  
City of Alameda, California**

Assisted in managing a full service city with a 79,000 population and a \$347,214,796.00 budget. Responsibilities included overseeing and implementing a Community Reuse Plan for the former Alameda Naval Air Station, which included a \$2 Billion mixed use development and golf course/hotel development. Responsibilities also included supervising 382 employees in the following departments: Development Services, Housing Authority, City-owned and operated Cable Television and Electric Power Utility, and Public Works. Also, successfully reduced the City's budget for the Naval Station by \$3,000,000 annually.

**June 15, 1987 - December 31, 2001**

**City Manager  
City of Pleasant Hill, California**

Managed a city with a population of 32,000 with a budget of \$21,000,000. Responsibilities included overall city management of all city departments such as Finance, Public Works, Planning, Human Resources, Community Development, Police, General Services, and Building Inspection. Also served as Executive Director of the Pleasant Hill Commons Redevelopment Agency whose work included a successful housing rehab program.

Established the following practices, programs and policies while in Pleasant Hill: Created and built a new \$150 million downtown redevelopment project providing for more jobs and sales tax; increased taxable sales receipts annually by \$2 million dollars; developed a cohesive management team by creating a team approach to city management; became a recognized leader in educating youth against substance abuse; became proactive in legislative issues; and created a new Redevelopment area plan to rehab a 25-acre site for a potential city conference/convention center including meeting spaces, hotel, and office development.

**1984 - 1987**

**City Manager  
City of Emeryville, California**

Managed a culturally diverse city. Responsibilities included overall city management of all departments including Finance, Marina, General Services, Community Development/Housing Rehab, Planning, Building Inspection, Child Development Center, Senior Citizen's Center, Public Works, Police, Fire, and Redevelopment Agency.

Established the following practices, programs and policies in Emeryville: Budgeting process and fiscal controls; created an investment policy, fire permit fees, utility users' tax; rewrote the city's business license ordinance, personnel system and conducted a classification study; reorganized the city's Redevelopment Agency and Legal Department; and brought the city out of near financial and managerial collapse.

**1973 - 1984**

**City Manager**  
**City of Galt, California**

**Responsibilities included Finance, Public Works, Transit, Community Development, Housing, Parks and Recreation, Police and Fire, and Redevelopment. Established the city's first Redevelopment area. Also, served as Finance Director, Personnel Director, and Public Works Director during various periods with the city encompassing the management and operation of each department personally.**

**ACCOMPLISHMENTS:**

- **Developed appointive and elective department heads into a cohesive management team. Was responsible for the transition of a once warehouse city into the "Bio-Tech Capital of the World," providing jobs and commerce for Emeryville.**
- **Planned, organized and constructed two new Civic Center-City Hall complexes**
- **Created a Redevelopment Agency and three new project areas.**
- **Initiated new financing techniques for the city, by providing for the sale of Revenue Bonds, Grant Anticipation Notes, Redevelopment Tax Allocation Bonds, Certificates of Participation Notes and Assessment District Bonds.**
- **Served as an Instructor, League of California Cities, "Grantsmanship Training for Small Cities." Held workshops in California cities on the art of obtaining Federal and State grants.**
- **Served as President and Vice President of the Contra Costa County Municipal Risk Management Insurance Authority encompassing 18 cities. Established self-insurance programs for Worker's Compensation and Liability Insurance.**
- **Lobbied special legislation successfully before the California Senate and Assembly.**
- **Financial Lecturer/Speaker for Community Redevelopment Association (CRA) instructing Redevelopment managers on the art of obtaining public financing, issuing debt and selling bonds for redevelopment/capital projects.**

**EDUCATION:**

**Golden Gate University, San Francisco, CA (1979) M.P.A. (Masters of Public Administration) with emphasis on local government, (3.9 grade point average).**

**California State University, Sacramento, CA (1969)  
Major - Government Administration, Bachelor of Arts Degree  
Minor - Business Administration**

**Continuing education in Finance, labor relations, bond financing, insurances, etc.**

**PROFESSIONAL/SPECIALIZED/ CERTIFICATES/COMMENDATIONS:**

**Proclamation from the City of Vallejo for Outstanding Service dated June 17, 2009.**

**Proclamation from the City of Pacifica for Outstanding Performance dated December 11, 2006**

**Pleasant Hill Proclamation declaring May 15, 1997 as "Joe Tanner Day" for services rendered to the City of Pleasant Hill.**

**Award of appreciation from the City of Emeryville dated June 15, 1987**

**California State Senate Rules Committee Commendation (Resolution No. 3174 dated July 26, 1984).**

**California State Assembly Resolution Commendation for Achievement (Resolution No. 2483, dated July 24, 1984).**

**County of Sacramento Board of Supervisors Resolution Commendation dated July 27, 1984 and County of San Joaquin Board of Supervisors Commendation dated July 24, 1984.**

**Galt City Council Commendations, Sept. 6, 1979, Dec. 6, 1983 and July 27, 1984.**

**PROFESSIONAL AFFILIATIONS:**

**President, California Cities Finance Corporation. Helped establish a non-profit organization to benefit all cities for bonded indebtedness, having issued over \$300 million of various bonds for cities and special districts**

**Past President & Vice President - City Manager's Group League of California Cities, Contra Costa County and Sacramento Valley Divisions (elected positions).**

**Past Member - Transportation Policy Committee, Legislative Strategy Committee, and Executive Committee for the League of California Cities.**

**Instructor for Peace Officer Standards and Training (POST) State of California teaching city management to future chiefs of police.**



# Exhibit 3

**CONFIDENTIAL**

**PRIVILEGED**

**ATTY WORK  
PRODUCT**

Jim Niehaus  
1809 S Street, Ste. 101-384  
Sacramento, CA 95811  
www.cpparetire.com  
mypublicpension@gmail.com • (916) 798-3462

**BACKGROUND/TRAINING**

During my employment with CalPERS I received training in the proper interpretation of the Public Employees' Retirement Law. I was often the lead analyst in the Telephone Information Center, referred to as the TIC and today known as the Customer Contact Center. I have experience in interpreting the statutes relating to the calculation of retirement benefits, including but not limited to compensation, service credit accrual, final compensation and post-employment health benefits. I am also experienced what constitutes CalPERS membership. Total CalPERS experience exceeds 27 years.

**WORK EXPERIENCE:**

August 2009 - Currently

President of California Public Pension Plan Advisers (formerly RetirementPlus)

- Provide public employees and employers with assistance in navigating public pension plans with specific expertise in CalPERS
- Used the Public Employees' Retirement Law to interpret the statutes and follow and process the retirement formulas for state, school and public agency employees
- Currently on retainer with the California Judges Association
- Adviser to California Correctional Peace Officers Association
- Providing pension planning seminars for state, school and public agency employees

February 2005 – August 2009

Senior Human Resources Analyst - Judicial Council's Administrative Office of the Courts 455 Golden Gate Ave, San Francisco, CA 94102

Principal Staff to the Judicial Service Advisory Committee and lead analyst to HR division's Judicial Services Unit.

- Provide judges and justices with individual retirement planning relating to the Judges' Retirement System and CalPERS benefits
- Used the Public Employees' Retirement Law to interpret the statutes and follow and process the retirement formulas for state, school and public agency employees
- Provide information relating to 401(k) & 457 plans

**PRIVILEGED**

**CONFIDENTIAL**

**ATTY WORK  
PRODUCT**

- Analyze legislative proposals affecting judicial retirement and benefits
- Lead analyst to the Office of General Counsel on retirement issues
- Coordinate with the Department of Personnel Administration for judicial pay increases pursuant to the Government Code

**September 2003 – February 2005**

**California RetirementPlus LLC - Retirement Consulting**

- Provide retirees and beneficiaries with assistance in working with public retirement systems, specializing in the Legislators' Retirement System, Judges' Retirement System and CalPERS
- Used the Public Employees' Retirement Law to interpret the statutes and follow and process the retirement formulas for state, school and public agency employees
- Audit retiree/beneficiary and survivor accounts to ensure that they are receiving their maximum benefit from CalPERS
- Contract Consultant to the California Judges Association on all matters relating to pension benefits and legislation
- Contract Consultant to the Administrative Office of the Courts – Primarily to assist in developing new retirement proposals for the Judges' Retirement System II plan
- Faculty member for California Judges' Association Conferences

**January 2000 to February 2003**

**Principal Consultant to the Judicial Council's Task Force on Judicial Service and Senior Analyst in HR for judicial retirement issues.**

- Develop and draft legislative proposals to address the issues of judicial retention
- Provide bill analysis and cost/benefit analysis on numerous legislative proposals for retirement and health benefits
- Draft amendments to California's Rules of Court affecting judicial sabbatical and leave programs

**May 1984 to January 2000**

**Retirement Program specialist II – California Public Employees Retirement System**

- Independently provide analytical and technical assistance to state, school and public agency employees as well as judges and legislators, retirees and beneficiaries on the most sensitive and complex issues related to membership, retirement and death benefits
- Used the Public Employees' Retirement Law to interpret the statutes and follow and process the retirement formulas for state, school and public agency employees

**CONFIDENTIAL**

**ATTY WORK  
PRODUCT**

**PRIVILEGED**

- Assigned the most complex/sensitive analyses of appropriate sections of law. Legal opinions, administrative remedies, policies, memorandums, etc, related to current constitutional officers, legislators and judges
- Prepare policy recommendations and implementation plans for management review and approval
- Prepare reports related to the LRS and JRS and all legislative matters
- Lead analyst for all issues interacting with the CalPERS Legal Office regarding legal opinions surrounding government code sections involving both the LRS and the JRS

**EDUCATION**

1992 B.A. History  
CSU Sacramento

Jim Niehaus, President  
California Public Pension Advisers



1 PROOF OF SERVICE

2 I am a resident of the State of California, over the age of eighteen years, and not a party to  
3 the within action. My business address is Law Offices of John Michael Jensen, 11500 W.  
4 Olympic Blvd., Suite 550, Los Angeles, CA 90064-1524.  
5

6 On June 23, 2014, I served the following document(s) by the method indicated below:

7 Malkenhorst's Disclosure of his Proposed Experts' Opinions, Resumes/Curriculum  
8 Vitae and Other Disclosures Pursuant to the Court's June 17, 2014 Prehearing  
9 Conference Order

10  
11 By placing the document(s) listed above in a sealed envelope(s) and consigning it First class mail  
12 through the U.S. Postal Service to the address (es) set forth below.

13 Jason Levin  
14 Steptoe & Johnson LLP  
15 633 West Fifth St. Suite 700  
16 Los Angeles, CA 90071

17 Joung Yim  
18 Liebert Cassidy and Whitmore  
19 6033 West Century Blvd, 5<sup>th</sup> Floor  
20 Los Angeles CA 90045

21 I declare under penalty of perjury under the laws of the State of California that the above  
22 is true and correct. Executed on June 23, 2014, at Los Angeles, California.

23   
24 Griselda Montes De Oca  
25  
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**PROOF OF SERVICE**  
F.R.C.P. 5 / C.C.P. 1013a(3)/ Rules of Court, Rule 2060

I am a resident of, or employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is: Steptoe & Johnson LLP, 633 West Fifth Street, Suite 700, Los Angeles, California 90071.

On July 7, 2014, I served the following listed document(s), by method indicated below, on the parties in this action: **CALPERS' RENEWED MOTION TO EXCLUDE MALKENHORST'S PROPOSED EXPERT WITNESSES.**

**SEE ATTACHED SERVICE LIST**

**XX BY U.S. MAIL**

By placing  the original / x a true copy thereof enclosed in a sealed envelope(s), with postage fully prepaid, addressed as per the attached service list, for collection and mailing at Steptoe & Johnson in Los Angeles, California following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of document for mailing. Under that practice, the document is deposited with the United States Postal Service on the same day in the ordinary course of business. I am aware that upon motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after date of deposit for mailing contained in this affidavit.

**BY OVERNIGHT DELIVERY**

By delivering the document(s) listed above in a sealed envelope(s) or package(s) designated by the express service carrier, with delivery fees paid or provided for, addressed as per the attached service list, to a facility regularly maintained by the express service carrier or to an authorized courier or driver authorized by the express service carrier to receive documents.

**BY PERSONAL SERVICE**

By personally delivering the document(s) listed above to the offices at the addressee(s) as shown on the attached service list.  
 By placing the document(s) listed above in a sealed envelope(s) and instructing a registered process server to personally deliver the envelope(s) to the offices at the address(es) set forth on the attached service list. The signed proof of service by the registered process server is attached.

**XX STATE**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

**FEDERAL**

I declare under penalty of perjury under the laws of the United States that I am employed in the office of a member of the bar of this court at whose direction the service is made.

ELENA HERNANDEZ

Type or Print Name

**BY ELECTRONIC SERVICE**

(via electronic filing service provider)

By electronically transmitting the document(s) listed above to LexisNexis File and Serve, an electronic filing service provider, at www.fileandserve.lexisnexus.com pursuant to the Court's \_\_\_\_\_ Order mandating electronic service. See Cal. R. Ct. R. 2053, 2055, 2060. The transmission was reported as complete and without error.

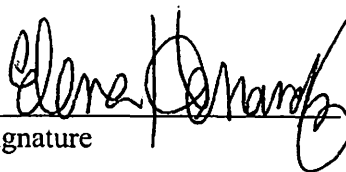
**XX BY ELECTRONIC SERVICE**

(to individual persons)

By electronically transmitting the document(s) listed above to the email address(es) of the person(s) set forth on the attached service list. The transmission was reported as complete and without error. See Rules of Court, rule 2060.

**BY FACSIMILE**

By transmitting the document(s) listed above from Steptoe & Johnson in Los Angeles, California to the facsimile machine telephone number(s) set forth on the attached service list. Service by facsimile transmission was made pursuant to agreement of the parties, confirmed in writing.

  
Signature

**SERVICE LIST**

1  
2  
3 John M. Jensen, Attorney at Law  
4 Law Offices of John Michael Jensen  
5 11500 W. Olympic Blvd., Suite 550  
6 Los Angeles, CA 90064  
7 Telephone: 310-312-1100  
8 Facsimile (310) 312-1109  
9 E-Mail: johnjensen@johnmjensen.com  
10 ***Attorneys for Respondent Bruce Malkenhorst***

11  
12 Joung Yim, Attorney at Law  
13 Liebert Cassidy Whitmore  
14 6033 W. Century Blvd., #500  
15 Los Angeles, CA 90045  
16 Telephone: (310) 981-2000  
17 Facsimile (310) 337-0837  
18 E-Mail: jyim@lcwlegal.com  
19 ***Counsel for Real Party in Interest of City of Vernon***

20  
21 Renee Salazar, Senior Staff Attorney  
22 CalPERS  
23 P. O. Box 942707  
24 Sacramento, CA 94229-2707  
25 Telephone: 916-795-0725  
26 Facsimile (916) 795-3659  
27 E-Mail: renee\_salazar@calpers.ca.gov  
28 ***Counsel for Defendants/Respondents CalPERS***

