

ATTACHMENT C
RESPONDENT'S ARGUMENT

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8
9 BOARD OF ADMINISTRATION
10 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
11

12 **IN THE MATTER OF THE**
13 **APPLICATION FOR REINSTATEMENT**
14 **FROM INDUSTRIAL DISABILITY**
15 **RETIREMENT,**
16 **ANGELITA RESENDEZ,**
Respondent,
17 **and**
18 **DEPARTMENT OF JUSTICE,**
19 Respondent.
20

AGENCY Case No. 2010-0131
OAH Case No. 2011-100985

**RESPONDENT DEPARTMENT OF
JUSTICE'S ARGUMENT AGAINST
ADOPTION OF PROPOSED DECISION**

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23 ///
24 ///

1 Respondent Department of Justice (DOJ) submits this Memorandum of Points and
2 Authorities in opposition to the adoption of the Proposed Decision by the Board of
3 Administration for the California Public Employees' Retirement System (CalPERS). Respondent
4 Angelita Resendez (Resendez) is not entitled to reinstatement following industrial disability
5 retirement under the Public Employees' Retirement Laws (PERL), in particular Government
6 Code sections 21192 and 21193 (Section 21192 or Section 21193). Due to the page limit, the
7 DOJ will only address the following issues but reserves the right to raise additional objections to
8 the decision in further proceedings should it be adopted.

9 **I. THE BURDEN OF PROOF, NOT JUST THE BURDEN OF PRODUCING EVIDENCE, LIES**
10 **WITH CALPERS**

11 The ALJ allocates the "burden of proof" by declaring that CalPERS had the burden of
12 producing evidence (see Evid. Code, § 110) on the issue of whether Resendez is no longer
13 incapacitated, and the DOJ had the burden of proof (see Evid. Code, § 115) regarding whether
14 "CalPERS' determination was incorrect and that Respondent Resendez is still incapacitated . . ."
15 (Prop. Dec., pp. 15-16, ¶ 2(b).) The ALJ's determinations are dubious. Initially, on these
16 "incapacity" issues allocated to each party, they are identical, but simply stated differently.
17 Nevertheless, the ALJ ignored the DOJ's argument that judicial estoppel should be invoked to
18 allocate the burden of proof solely to CalPERS. Avoidance of the legal contention does not make
19 it cease to exist.

20 "[T]he equitable doctrine of judicial estoppel targets not only unfairness between individual
21 parties, but also abuse of the judicial system itself." (*MW Erectors, Inc. v. Niederhauser*
22 *Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 424.) The California Supreme Court
23 further held that:

24 " "Judicial estoppel precludes a party from gaining an advantage by taking one
25 position, and then seeking a second advantage by taking an incompatible position.
26 [Citations.] ..." [Citation.] The doctrine [most appropriately] applies when: '(1) the
27 same party has taken two positions; (2) the positions were taken in judicial or quasi-
28 judicial administrative proceedings; (3) the party was successful in asserting the first
position (i.e., the tribunal adopted the position or accepted it as true); (4) the two
positions are totally inconsistent; and (5) the first position was not taken as a result of
ignorance, fraud, or mistake.' " " "The doctrine's dual goals are to maintain the

1 integrity of the judicial system and to protect parties from opponents' unfair
2 strategies. [Citation.]” ’ ”

3 (*Id.* at p. 422, citations omitted.) Here, CalPERS conceded at the start of the hearing that it had
4 the burden of proof, and not merely the burden of producing evidence. “**And I understand that,**
5 **representing CalPERS, that I would have the burden of proof in this matter.** That I would
6 go forward with my evidence that supports the determination made to reinstate Ms. Resendez.”
7 (See Hearing Transcript, Vol. I, 18:10-14 [comments by Rory Coffey, counsel for CalPERS].)¹
8 But in its closing brief, CalPERS claimed that “Respondent DOJ has the burden of proof.” (See
9 CalPERS Closing Brief, 10:18-22.)² With respect to Mr. Coffey’s second sentence above, he was
10 referring to the order of proof in which he stated that CalPERS would present its evidence first,
11 followed by the other parties. That statement was not a retreat from his prior statement that
12 CalPERS had the “burden of proof.”

13 Indeed the positions taken by CalPERS are inconsistent, and it has not proffered any
14 evidence to establish that its position was taken as a result of fraud, ignorance or mistake on the
15 part of its counsel. Accordingly, CalPERS gained an unfair advantage by changing its positions
16 mid-stream. But CalPERS should be estopped from asserting, after the taking of evidence, that
17 the DOJ has the burden of proof. Allowing CalPERS to shift the burden is prejudicial to the DOJ
18 and denies it fundamental due process.

19 Equally important, the normal allocation of the burden of proof may be altered at times.³

20 “The general rule allocating the burden of proof applies ‘except as otherwise provided
21 by law.’ The exception is included in recognition of the fact that the burden of proof
22 is sometimes allocated in a manner that is at variance with the general rule. In
23 determining whether the normal allocation of the burden of proof should be altered,
24 the courts consider a number of factors: the knowledge of the parties concerning the
particular fact, the availability of the evidence to the parties, the most desirable result
in terms of public policy in the absence of proof of the particular fact, and the
probability of the existence or nonexistence of the fact.”

25 ¹ “Judicial Estoppel may be based on a position taken by a party or party’s legal counsel.”
(*Blix Street Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, 48, citation omitted.)

26 ² Interestingly, CalPERS failed to raise the burden of proof issue during the second day of
the hearing, and buried its “new” position in the latter portion of its post-hearing brief.

27 ³ “Except as otherwise provided by law, a party has the burden of proof as to each fact the
28 existence or nonexistence of which is essential to the claim for relief or defense that he is
asserting.” (Evid. Code, § 500.)

1 (*Lakin v. Watkins Associated Indus.* (1993) 6 Cal.4th 644, 660-61.) Here, the DOJ advocates that
2 the burden of proof should be altered based upon the principles recognized by the Supreme Court.
3 CalPERS has the advantage on two factors – knowledge of a particular fact (e.g., incapacity) and
4 availability of evidence (Dr. Georgis). The DOJ was disadvantaged because it could not obtain
5 current evidence to counter the expert evidence proffered by CalPERS for two fundamental
6 reasons: (1) Resendez refused to undergo physical and psychological exams under Government
7 Code section 1031 (Section 1031), and (2) the DOJ could not compel its own independent
8 physical or psychological exams of Resendez. Placing the burden of proof on a party which is
9 unable to marshal evidence is akin to binding a boxer’s hands and then faulting him for not
10 defending himself. CalPERS held all the cards on the incapacity issue, and thus, it must bear the
11 burden of proof, not simply the burden of producing evidence.

12 **II. THE PROPOSED FINDING THAT RESENDEZ IS NO LONGER INCAPACITATED**
13 **REGARDING ALL OF THE USUAL DUTIES OF A SPECIAL AGENT SUPERVISOR IS**
14 **CONTRARY TO THE WEIGHT OF THE EVIDENCE AND SHOULD NOT BE SUSTAINED**

15 Section 1031 applies to applicants seeking to become peace officers and to peace officers
16 who have had a gap in service and wish to return to active duty, like Resendez. (See *Sager v.*
17 *County of Yuba* (2007) 156 Cal.App.4th 1049, 1058-1059.) The *Sager* court further held that “the
18 [Commission on Peace Officer Standards and Training (POST)] standards, which flesh out the
19 section 1031 standards, are ‘a matter of continuing education[.]’ In our view the section 1031
20 standards are incorporated by law into every peace officer’s job description.” (*Id.* at p. 1059.)⁴

21 Here, the ALJ agreed that Resendez’s usual duties included peace officer minimum
22 standards under Section 1031. (See Prop. Dec., pp. 8, 17-18.) The DOJ does not quarrel with
23 that specific finding. However, the ALJ summarily rejected the applicability of peace officer
24 minimum standards by declaring them not at-issue. The ALJ’s findings are incongruous.⁵ If

24 ⁴ “[S]ection 1031 applied as a matter of law to Sager’s fitness, and the POST standards
25 were conceded to be relevant by [Sager’s doctor]. In fact, they are incorporated into Sager’s job
26 description, and therefore her ability to comply with them forms an important part of her ‘usual’
27 duties.” (*Sager, supra*, 156 Cal.App.4th at p. 1057, emphasis omitted.)

27 ⁵ The ALJ relies on *In re Willie Starnes* (2000) PERS Dec. No. 99-03, but the *Starnes*
28 decision is faulty for many reasons. For example, all of the cases CalPERS relied upon in
29 *Starnes*, except for *Phillips v. County of Fresno* (1990) 225 Cal.App.3d 1240, do not discuss
30 Section 1031. The *Phillips* court touches upon Section 1031, but its discussion is dicta at best.

(continued...)

1 peace officer minimum standards are part of Resendez's usual duties, then those standards are
2 salient to the issue of whether she is no longer incapacitated in all aspects of her physical and
3 psychological state. There is no basis to flout critical duties in assessing whether Resendez is no
4 longer incapacitated.

5 The ALJ found that "when determining whether to reinstate her, CalPERS is required only
6 to ascertain whether her claimed disability still exists." (See Prop. Dec., p. 19.) This is not a
7 correct interpretation of Section 21192 or the standard imposed by case authorities. The inquiry
8 is not limited to determining if Resendez has no current back or neck problems, but whether "she
9 is still incapacitated, physically or mentally, for duty." Thus, the standard requires looking at the
10 whole person to determine if a former employee can perform all of the usual duties.

11 CalPERS proffered expert evidence solely on the issue of whether Resendez's orthopedic
12 problems prevented her from performing her usual duties. Yet, that expert evidence lacks weight.
13 First, Dr. Georgis's expert opinion is stale because there is no evidence that the "disability" does
14 not presently exist. (See, e.g., *Hosford v. Board of Admin.* (1978) 77 Cal.App.3d 854, 863.) He
15 has not seen Resendez since February 2010, and he had no current assessment of whether she can
16 perform the usual duties of a Special Agent Supervisor. (Hrg. Trans. I, 58:8-13; 84:24-86:21.)
17 CalPERS failed to present affirmative evidence that since February 2010, Resendez has no
18 recurring "disability," has not reinjured her neck or back, or has no other orthopedic condition
19 which prevents her from performing the usual duties. (Hrg. Trans. II, 96:15-97:1.)

20 Moreover, CalPERS did not produce expert evidence to establish that Resendez is not "still
21 incapacitated" physically and psychologically in regards to all of her usual duties. Dr. Georgis's
22 examination of Resendez was limited to her neck and back conditions; he did not perform a
23 comprehensive exam to determine if Resendez had any condition which prevents her from
24 performing all of the usual duties set forth in Exhibit 12.⁶ (See, e.g., Hrg. Trans. I, 98:10-25.)

25 (...continued)

26 (*Phillips, supra*, 225 Cal.App.3d at p. 1257.) The sole issue in *Phillips* was whether Government
27 Code section 31725 governs the procedures to be followed by the county when the retirement
28 board and the employing agency disagree about the peace officer's eligibility for retirement.
(*Phillips, supra*, 225 Cal.App.3d at p. 1250.)

⁶The ALJ found that the State Personnel Board Classification Specification for Special
(continued...)

1 For example, Dr. Georgis did not perform any testing to determine if Resendez could perform
2 duties related to (1) sight/seeing (Hrg. Trans. I, 100:25-101:6; (2) hearing/smelling (Hrg. Trans. I,
3 101:7-9); or (3) dealing with stress. On the issue of stress, Dr. Georgis admitted he was not a
4 psychiatrist and did not administer psychological tests. Similarly, Dr. Georgis did not conduct any
5 cardiovascular tests to see if Resendez could withstand the physical stress of being a peace officer.
6 (Hrg. Trans. I, 102:19-22; 106:5-23.) Dr. Georgis's expert opinions are flawed because he did
7 not take into account peace officer minimum standards. (Hrg. Trans. I, 94:17-95:14.) If peace
8 officer minimum standards are applied, then the finding that Resendez is no longer incapacitated
9 is not supported by the weight of the evidence because Dr. Georgis's examination was severely
10 limited in scope.

11 **III. THERE WAS NO OFFER TO REINSTATE AS REQUIRED BY SECTION 21193**

12 The ALJ's finding that Section 21193 has been met because the "conditional offer" made to
13 Resendez fulfills the "offer" requirement is tenuous.

14 First, the "conditional offer" was not an offer of reinstatement by the DOJ. "A
15 manifestation of willingness to enter into a bargain is not an offer if the person to whom it is
16 addressed knows or has reason to know that the person making it does not intend to conclude a
17 bargain until he has made a further manifestation of assent." (1 Witkin, Summary 10th (2005)
18 Contracts, § 130, p. 168.) Here, there was only a willingness to enter into a bargain which was
19 the reinstatement of Resendez. (Hrg. Trans. I, 122:21-123:8.) From the terms set forth in Exhibit
20 6 (the "conditional offer" letter of March 4, 2010), Resendez either knew or should have known
21 that the DOJ would not consider reinstating her unless she manifested an assent to conclude the
22 bargain. Thus, there was no offer as a matter of law.

23 Second, the effect of Resendez's rejection of the "conditional offer" is that there is no offer.
24 "An offer gives the offeree a continuing power to create a contract by acceptance of the offer

25 _____
26 (...continued)

27 Agents (Exh. D) did not contain Resendez's usual duties. The ALJ is incorrect. (See, e.g.,
28 *Mansperger v. Public Employees' Retirement Sys.* (1970) 6 Cal.App.3d 873, 874 ["the general
duties of a fish and game warden are set forth in the specifications for that class issued by the
California State Personnel Board"].)

1 *before the power has been terminated.* The power may be terminated by . . . rejection (1
2 Witkin, Summary 10th (2005) Contracts, § 156, p. 195, citations omitted & emphasis in original.)
3 Here, Resendez admitted that she rejected the “conditional offer” outright. (Hrg. Trans. II, 38:10-
4 18.) Resendez never had the power to create a contract because there was no offer in the first
5 instance, or on the other hand, her rejection of the “conditional offer” ended any power to
6 contract. Consequently, there was no offer on the proverbial table for Resendez to consider.

7 The DOJ’s position that the “conditional offer” is not an offer under Section 21193 is
8 supported by CalPERS’s failure to stop Resendez’s disability retirement allowance. In the letter
9 to Resendez dated February 25 (Exh. 4), CalPERS states “your disability retirement allowance
10 will be stopped on the effective date of your job offer.” Resendez is still retired (Hrg. Trans. II,
11 18:5-18), and therefore, CalPERS has not stopped her retirement allowance. CalPERS’s failure
12 to stop the allowance is a tacit admission that the DOJ’s “conditional offer” is not an offer of
13 reinstatement as contemplated under Section 21193.

14 Lastly, even if the term “offer” includes “conditional offers,” the DOJ proffered substantial
15 evidence that Resendez has not complied with the conditional terms. (Hrg. Trans. I, 136:21-
16 137:8.) Without compliance with the terms, Resendez is not entitled to reinstatement.

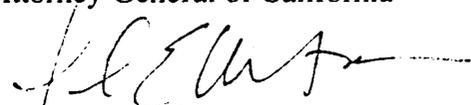
17 CONCLUSION

18 Although there are numerous reasons not addressed in this brief for the Board of
19 Administration to reject the Proposed Decision, the DOJ requests that the Board decline to ratify
20 the Proposed Decision based upon the above Points and Authorities. In short, the Proposed
21 Decision will not withstand close judicial scrutiny.

22 Dated: October 30, 2012

Respectfully Submitted,

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27 Supervising Deputy Attorney General
28 *Attorneys for Respondent Department of Justice*

Hrg. Trans. I

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E X A M I N A T I O N S

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FURTHER

WITNESS:	DX	CX	REDX	RECX	REDX
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T. GEORGIS	33C	50W	108C		
R. LOPES	113W	137C			
		143V	150W	153C	160W
					162W

C = COFFEY

V = VITKO

W = WHITAKER

E X H I B I T S

DEPARTMENT'S	MARKED FOR IDENTIFICATION	RECEIVED IN EVIDENCE
D - CALIFORNIA STATE PERSONNEL	59	64
BOARD SPECIFICATION FOR THE CLASSIFICATION OF SPECIAL AGENTS		
E - LETTER TO D.O.J.	65	66
F - LETTER TO D.O.J.	65	66
G - SERIES OF DOCUMENTS	65	66
H - MEDICAL EXAMINATION REPORT	97	129
I - PSYCHOLOGICAL SCREENING DIMENSIONS	129	131
J - MEDICAL SCREENING MANUNAL	131	131

E X H I B I T S

RESPONDENTS'	MARKED FOR IDENTIFICATION	RECEIVED IN EVIDENCE
1 - DISABILITY RETIREMENT ELECTION APPLICATION	9	13
2 - CALPERS APPROVAL LETTER	9	13
3 - REINSTATEMENT APPLICATION	10	13
4 - CALPERS LETTER TO RESPONDENT	10	13
5 - CALPERS LETTER TO RESPONDENT	10	13
6 - LETTER FROM D.O.J.	10	13
7 - LETTER FROM D.O.J.	10	13
8 - JURISDICTIONAL DOCUMENTS	11	13
9 - LETTER FROM CEDARS SINAI	11	
10 - MEDICAL REPORT FROM DR. GEORGIS	11	64
11 - CURRICULUM VITAE FROM DR. GEORGIS	11	64
12 - DOCUMENT	12	
A - REQUEST FOR JUDICIAL NOTICE	12	
B - MOTION IN LIMINE	12	
C - PRECEDENTIAL DECISION OF W. STARNES	22	
K - D.O.J. POLICY	148	159

1 LOS ANGELES, CALIFORNIA, THURSDAY,

2 MARCH 22, 2012

3 10:09 A.M.

4
5 THE COURT: WE'RE OPENING THE RECORD ON THE
6 MATTER OF THE APPLICATION OF REINSTATEMENT FROM
7 INDUSTRIAL DISABILITY RETIREMENT OF ANGELITA
8 RESENDEZ, RESPONDENT, AND THE DEPARTMENT OF JUSTICE,
9 RESPONDENT. AGENCY CASE NUMBER 2010-0131.

10 THIS IS BEFORE THE BOARD OF ADMINISTRATION,
11 CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM.

12 O.A.H. NUMBER IS 2011100985.

13 THIS IS MARCH 22, 2012, A LITTLE PAST 10:00
14 A.M., WHICH IS THE DATE AND TIME THIS MATTER IS SET
15 FOR HEARING.

16 MY NAME IS JULIE CABOS-OWEN. I'M THE
17 ADMINISTRATIVE LAW JUDGE WITH THE OFFICE OF
18 ADMINISTRATIVE HEARINGS.

19 MAY I HAVE THE APPEARANCES OF THE PARTIES
20 FOR THE RECORD.

21 MR. COFFEY: YES, THANK YOU. GOOD MORNING,
22 YOUR HONOR.

23 RORY, R-O-R-Y, COFFEY, C-O-F-F-E-Y
24 APPEARING ON BEHALF OF CALIFORNIA PUBLIC EMPLOYEES
25 RETIREMENT SYSTEM, CALPERS

1 MS. RESENDEZ'S REQUEST FOR REINSTATEMENT.

2 AND BOTH PARTIES WERE GIVEN THE RIGHT TO
3 EXERCISE AN APPEAL, CHALLENGING THAT DETERMINATION.
4 AND DEPARTMENT OF JUSTICE DID EXERCISE THEIR RIGHT TO
5 CHALLENGE THE DETERMINATION.

6 BUT IT WOULD BE MY POSITION, YOUR HONOR,
7 THAT THE CHALLENGE TO THE APPEAL IS LIMITED TO THE
8 QUESTION OF WHETHER THE CALPERS DETERMINATION IS, OR
9 IS NOT, SUPPORTED BY COMPETENT MEDICAL EVIDENCE.

10 AND I UNDERSTAND THAT, REPRESENTING
11 CALPERS, THAT I WOULD HAVE THE BURDEN OF PROOF IN THIS
12 MATTER. THAT I WOULD GO FORWARD WITH MY EVIDENCE THAT
13 SUPPORTS THE DETERMINATION MADE TO REINSTATE
14 MS. RESENDEZ.

15 BUT, LIKEWISE, I WOULD ANTICIPATE THE
16 DEPARTMENT OF JUSTICE, WHO EXERCISED THEIR RIGHT TO
17 APPEAL, THAT THEIR EVIDENCE WOULD BE FOCUSED ON
18 COMPETENT MEDICAL EVIDENCE CHALLENGING THE
19 DETERMINATION MADE BY CALPERS.

20 AND IF I MAY BE HEARD JUST BRIEFLY IN
21 SUPPORT OF THAT POSITION.

22 IF WE TAKE PROCEDURALLY WHERE WE ARE, AND
23 STEP BACK ONE STEP TO THE POINT IN TIME WHERE
24 MS. RESENDEZ APPLIED FOR DISABILITY RETIREMENT.

25 IF, AT THAT POINT, THE CALPERS

1 THE MEDICAL RECORDS THAT YOU WERE PROVIDED REGARDING
2 MS. RESENDEZ AND HER PAST ISSUES?

3 A. I WOULD SAY IN THIS CASE PROBABLY BETWEEN
4 45 MINUTES TO AN HOUR MEDICAL REVIEW PREPARATION.

5 AND THEN ANOTHER HOUR IN PREPARING THE
6 REPORT, DICTATING IT, AND FORMING OPINIONS, AND DOING
7 A FINAL REPORT.

8 Q. AND YOU'VE ONLY SEEN MS. RESENDEZ ON ONE
9 OCCASION IN FEBRUARY 2010; CORRECT?

10 A. THAT'S CORRECT.

11 Q. YOU HAVE NOT SEEN HER SINCE FEBRUARY 2010;
12 CORRECT?

13 A. THAT'S CORRECT.

14 Q. AND YOU HAVE NOT BEEN ASKED BY CALPERS TO
15 PROFFER AN UPDATED OPINION OR EVALUATION OF
16 MS. RESENDEZ; CORRECT?

17 A. THAT'S CORRECT.

18 MR. WHITAKER: I'M GOING TO ASK THE WITNESS
19 TO LOOK AT A PARTICULAR DOCUMENT, YOUR HONOR.

20 I'M NOT QUITE SURE, FOR HOUSEKEEPING
21 PURPOSES, IF THE DEPARTMENT OF JUSTICE SHOULD USE
22 ALFA INSTEAD OF NUMERICAL TO IDENTIFY DOCUMENTS IT
23 INTENDS TO OFFER INTO EVIDENCE.

24 THE COURT: I'VE BEEN JUST USING LETTERS;
25 SO THE NEXT IN ORDER WOULD BE D.

1 Q. OKAY.

2 A. I JUST TOOK IT AT FACE VALUE.

3 Q. DID YOU HAVE YOUR OWN UNDERSTANDING OF WHAT
4 SHE MEANT BY RARE?

5 A. VERY, VERY LESS THAN VERY OCCASIONAL.

6 RARE. I DON'T KNOW. NOT ON A DAILY BASIS.

7 Q. WEEKLY BASIS? MONTHLY BASIS?

8 A. POSSIBLY.

9 Q. POSSIBLY FOR WHAT?

10 A. FOR EITHER. IT'S HARD TO PIN IT DOWN AND
11 SAY EXACTLY WHAT IS RARE. TO ME RARE IS RARE. I
12 TAKE IT ON FACE VALUE. IT'S NOT VERY OFTEN.

13 Q. ALSO ON PAGE TWO OF YOUR REPORT,
14 DR. GEORGIS, YOU OPINED THAT MISS RESENDEZ HAS HAD
15 TWO TRIALS OF RETURN TO WORK.

16 AND AS YOU KNOW FROM YOUR REVIEW OF
17 RECORDS, SHE WAS UNABLE TO PERFORM HER DUTIES AS
18 SPECIAL AGENT SUPERVISOR, BOTH PREOPERATIVE AND
19 POSTOPERATIVE.

20 BUT YOU THOUGHT THAT SHE WOULD BE ABLE TO
21 PERFORM HER DUTIES AS OF FEBRUARY 10TH --
22 FEBRUARY 2010; CORRECT?

23 A. THAT'S CORRECT.

24 Q. WHY DON'T YOU THINK SHE WOULD FALL INTO THE
25 SAME PATTERN OF RETURNING TO WORK AND DISCOVERING

1 THAT SHE WAS UNABLE TO PERFORM HER DUTIES BECAUSE OF
2 HER HISTORY OF BACK AND NECK PAIN INJURIES AND
3 CONDITIONS AS YOU KNOW IT?

4 A. THAT'S A GOOD QUESTION. AND THAT'S WHY WE
5 TALKED EARLIER, AND I SAID THIS ABOUT TAKING
6 EVERYTHING IN CLINICAL CONTEXT FOR FORMULATION OF THE
7 CLINICAL FINDINGS.

8 AND THE TIME I SAW HER AND EVALUATED HER IN
9 FEBRUARY 2010, SYMPTOMATICALLY SHE WAS DESCRIBING NO
10 CURRENT SYMPTOMATOLOGY. THE EXAMINATION CONFIRMED
11 THAT, AND IT WAS CONSISTENT WITH THAT, AND IT'S
12 SUBSTANTIALLY WHAT WE ALREADY DISCUSSED.

13 SHE DEMONSTRATED BASED ON HER SPINE
14 EVALUATION THAT, BASICALLY, THERE WERE NO
15 ABNORMALITIES. HER NEUROLOGICAL EVALUATION WAS
16 BASICALLY NORMAL.

17 AND SO AT THAT POINT IN TIME IT WAS MY
18 OPINION, FROM AN ORTHOPEDIC SURGEON'S STANDPOINT,
19 BASED ON HER CONDITION AT THAT TIME, SHE IS CAPABLE
20 OF DOING THIS JOB.

21 NOW, I WILL SAY A COUPLE OF THINGS. WHEN
22 SHE HAD ATTEMPTED TO WORK BEFORE THE SURGERY, THE
23 SITUATION IN THE NECK WAS -- WAS STOPPING HER FROM
24 DOING THAT, WHICH SUBSEQUENTLY LED HER TO NEEDING THE
25 SURGERY, THE RECENT SURGERY.

1 NOW AFTER THE SURGERY, SHE TRIED TO GO BACK
2 AND, OBVIOUSLY, FROM THE RECORDS AND DOCUMENTS, SHE
3 WAS UNABLE TO. AND THAT'S WHAT LED HER TO TAKING
4 INDUSTRIAL RETIREMENT, OR MEDICAL RETIREMENT.

5 HOWEVER, BASED ON MY EVALUATION AND MY
6 OPINION, THINGS HAVE CHANGED. SHE HAD REHABILITATED
7 HERSELF FURTHER TO THE POINT OF HEALING AND RECOVERY
8 BEYOND WHERE SHE WAS WHEN SHE FAILED THAT PREVIOUS
9 TIME OR AFTER THE SURGERY.

10 IN MY SENSE, MEDICALLY, THINGS HAVE
11 CHANGED.

12 NOW ANOTHER ISSUE IS, DOES THE FACT OF
13 HAVING A SURGICAL FUSION PRECLUDE HER FROM DOING HER
14 JOB? AND I WOULD CONCLUDE NO, BECAUSE SHE HAD A
15 PREVIOUS FUSION IN 2001. SO SHE EVEN WENT BACK TO
16 WORK FOR SEVERAL YEARS.

17 SO TO ME, THE IMPORTANT DETERMINANT WAS HOW
18 SHE PRESENTED AT THE TIME OF MY CLINICAL EXAMINATION.
19 AND I FELT, AT THAT POINT IN TIME, BASED ON THAT
20 INFORMATION, THAT SHE WAS CAPABLE OF DOING THE JOB.
21 SO THAT'S WHY I CONCLUDED THAT.

22 Q. AND YOU INDICATED EARLIER THAT YOU DID
23 REVIEW HARONIAN'S REPORT; CORRECT?

24 A. YES, I DID.

25 Q. AND HE AUTHORED A REPORT IN JUNE OF 2008.

1 BUT, AGAIN, I CAN'T SAY FOR SURE. BUT IN
2 FACT, I WOULD NOT ANTICIPATE ANY.

3 BY MR. WHITAKER:

4 Q. OKAY. BUT IF THE LOWER BACK PAIN RETURNED
5 BECAUSE OF THE USE OF THE GUN BELT, SHE WOULD BE
6 UNABLE TO PERFORM HER USUAL AND CUSTOMARY DUTIES AS A
7 SPECIAL AGENT SUPERVISOR; CORRECT?

8 A. I DON'T KNOW THAT FOR A FACT. IT WOULD
9 DEPEND ON WHAT THE SYMPTOMS ARE THAT SHE'S HAVING.
10 HAS SHE GOT MILD SYMPTOMS? IS THE FREQUENCY RARE?
11 THERE'S A WHOLE LIST OF THINGS THAT GO INTO IT PER
12 SE.

13 SO I COULD NOT ANSWER THAT IN THE
14 AFFIRMATIVE BASED ON WHAT I KNOW NOW.

15 Q. WELL, WHAT YOU KNEW BACK IN FEBRUARY 2010?

16 A. EXACTLY. THANK YOU.

17 Q. DOCTOR, ARE YOU FAMILIAR WITH THE
18 GOVERNMENT CODE SECTION 1031?

19 A. NO, NOT BY NUMBER OR NAME.

20 Q. HAVE YOU EVER PERFORMED A PHYSICAL OR
21 PSYCHIATRIC EVALUATION UNDER THE STANDARDS OF
22 GOVERNMENT CODE SECTION 1031?

23 A. NO.

24 Q. AND YOU DID NOT CONDUCT A FEBRUARY 2010
25 EVALUATION OF MS. RESENDEZ UNDER THE STANDARDS OF

1 GOVERNMENT CODE SECTION 1013; CORRECT?

2 A. THAT'S CORRECT.

3 Q. ARE YOU FAMILIAR WITH THE POSITION ON PEACE
4 OFFICER STANDARDS AND TRAINING?

5 A. NO.

6 Q. ALSO KNOWN AS P.O.S.T.?

7 A. NO.

8 Q. ARE YOU AWARE THAT P.O.S.T. HAS REGULATIONS
9 GOVERNING PHYSICAL AND PSYCHIATRIC EVALUATIONS OF
10 PEACE OFFICERS?

11 A. NO.

12 Q. ARE YOU AWARE THAT P.O.S.T. HAS A MEDICAL
13 SCREENING MANUAL FOR CALIFORNIA LAW ENFORCEMENT?

14 A. NO.

15 Q. JUST FOR THE RECORD, SO IT'S COMPLETE, I'M
16 GOING TO ASK YOU, DOCTOR, TO TAKE A LOOK AT --

17 MR. WHITAKER: MAY I APPROACH, YOUR HONOR?

18 THE COURT: YOU MAY.

19 MR. WHITAKER: JUST FOR THE RECORD, I'M
20 ASKING DR. GEORGIS TO TAKE A LOOK AT THE CALIFORNIA
21 SCREENING MANUAL FOR CALIFORNIA LAW ENFORCEMENT. IT
22 IS STATE STAMPED D.O.J. 288 THROUGH D.O.J. 649.
23 BY MR. WHITAKER:

24 Q. I JUST WANT TO CONFIRM, DR. GEORGIS, THAT
25 YOU HAD NOT REVIEWED THAT MANUAL IN THE PAST AND DID

1 CONFIRM THAT DR. GEORGIS EITHER HAS USED THE FORM,
2 HAS SEEN IT BEFORE. JUST SOME FUNDAMENTAL
3 FOUNDATIONAL QUESTIONS.

4 AND THEN I'M GOING TO USE IT ONLY AS A
5 PURPOSE FOR A GUIDEPOST TO ASK HIM QUESTIONS ABOUT
6 HIS EXAMINATION OF MS. RESENDEZ.

7 THE COURT: AT THIS POINT, THE OBJECTION
8 IS OVERRULED.
9 BY MR. WHITAKER:

10 Q. DOCTOR, YOU HAVE BEEN PROVIDED WHAT'S BEEN
11 MARKED AS EXHIBIT H.

12 A. THANK YOU.

13 Q. CAN YOU TAKE A MOMENT TO TAKE A LOOK AT
14 THAT DOCUMENT, AND LET ME KNOW WHEN YOU'RE DONE SO I
15 CAN ASK YOU SOME QUESTIONS?

16 A. OKAY.

17 Q. HAVE YOU SEEN THIS FORM BEFORE?

18 A. NO, NOT TO RECOLLECTION.

19 Q. HAVE YOU EVER COMPLETED THIS FORM IN
20 REGARDS TO EVALUATING ANY PATIENTS?

21 A. NO.

22 Q. AND YOU DID NOT COMPLETE THIS TYPE OF FORM
23 IN REGARDS TO THE EVALUATION OF MS. RESENDEZ IN
24 FEBRUARY 2010; CORRECT?

25 A. CORRECT.

1 MR. WHITAKER: OKAY. THAT'S FINE, YOUR
2 HONOR.

3 I DO WANT TO ASK HIM SOME VERY GENERAL
4 QUESTIONS. WITHOUT REFERENCE TO THE FORM, I CAN ASK
5 HIM THE QUESTIONS?

6 THE COURT: YES.

7 MR. WHITAKER: OKAY.

8 BY MR. WHITAKER:

9 Q. DID YOU PERFORM ANY KIND OF SKIN TEST IN
10 YOUR EVALUATION OF MS. RESENDEZ?

11 A. YES, IN THE SENSE THAT I EVALUATED HER NECK
12 AND HER BACK, EXAMINED THE SENSATION OF HER LOWER
13 EXTREMITIES. I DID EXAMINE A SIGNIFICANT PORTION OF
14 HER SKIN.

15 Q. DID YOU PERFORM ANY HEAD TESTS?

16 A. I PERFORMED -- NO. NOT AS RELATED ON THIS
17 FORM.

18 BASICALLY THE -- I DID PERFORM THE NECK
19 EXAMINATION WHICH INCLUDES PUSHING ON THE HEAD,
20 MOVING THE HEAD UP AND PUSHING ON IT FOR THE
21 SPURLING'S TEST AS WE DISCUSSED EARLIER IN THE
22 DEPOSITION.

23 BUT SPECIFICALLY A HEAD AND EYE
24 EXAMINATION, I DID NOT PERFORM.

25 Q. OKAY. SO YOU DID NOT PERFORM ANY TYPE OF

1 EYE TEST UPON YOUR EXAMINATION?

2 A. NO. NOW AT THE CLINIC, OUR MEDICAL
3 ASSISTANTS DO A VISUAL ACUITY TEST, WHICH IS ON PAGE
4 6 OF MY REPORT.

5 BUT BEYOND THAT, I DIDN'T DO ANY SPECIFIC
6 EYE EXAMINATION, NO.

7 Q. DID YOU PERFORM ANY EAR, NOSE, THROAT, OR
8 MOUTH TEST IN YOUR EXAMINATION ON MS. RESENDEZ?

9 A. NO.

10 Q. JUST FOR THE RECORD AGAIN, WHAT KIND OF
11 NECK TESTS OR EXAMINATIONS DID YOU DO OF
12 MS. RESENDEZ?

13 A. WELL, IT'S IN MY REPORT. IF YOU HAVE A
14 LOOK OVER HERE , THERE'S A CHECKLIST, SECTION D.

15 THE COURT: OKAY. I THINK WE'RE ACTUALLY
16 NOT REFERRING TO A CHECKLIST. WE'RE JUST HAVING
17 COUNSEL ASK YOU QUESTIONS ABOUT YOUR EVALUATION.

18 THE WITNESS: OH, OKAY. I CAN JUST READ
19 OFF OF THIS THEN.

20 BASICALLY, I CHECKED RANGE OF MOTION IN
21 NECK. I INSPECTED VISUALLY. I PALPATED THE NECK.

22 BY MR. WHITAKER:

23 Q. OKAY. SO IF IT'S IN THE REPORT, JUST TELL
24 US JUST TELL US --

25 A. OH.

1 Q. -- WHAT THE PAGES THEY ARE ALL ON?

2 YOU CAN LOOK AT YOUR REPORT.

3 A. OKAY. PAGE 6.

4 Q. OKAY.

5 A. THAT'S CERVICAL SPINE RANGE OF MOTION.

6 AND ON THE BOTTOM OF PAGE 7, I TALK ABOUT
7 THE PALPATION OF THE NECK.

8 AND THEN ALSO ON PAGE 9 IS A NEUROLOGICAL
9 EXAMINATION WHICH INDIRECTLY IS INVOLVED WITH THE
10 NECK. AS IS THE GAIT EXAMINATION WHICH IS PERFORMED
11 ON PAGE 6.

12 OTHER THAN WHAT'S LISTED --

13 Q. SO THE ONLY NECK TEST YOU'VE DONE IS SET
14 FORTH IN YOUR REPORT; CORRECT?

15 A. YES.

16 Q. DID YOU PERFORM ANY ABDOMEN TESTS OR
17 EXAMINATIONS ON MS. RESENDEZ?

18 A. NO, I DID NOT.

19 Q. DID YOU PERFORM ANY CARDIOVASCULAR TESTS OR
20 EXAMINATIONS? FOR EXAMPLE E.K.G., OR A
21 TACHYCARDIOGRAM?

22 A. NO, I DID NOT.

23 Q. DID YOU PERFORM ANY CHEST OR LUNG TEST IN
24 YOUR EXAMINATION OF MS. RESENDEZ?

25 A. NO, I DID NOT.

1 A. IT'S A TEST OF LUNG FUNCTION.

2 Q. DR. GEORGIS, YOUR ONLY BOARD CERTIFICATION
3 IS AS AN ORTHOPEDIC SURGEON?

4 A. YES.

5 Q. AND YOU'RE NOT BOARD CERTIFIED IN
6 PSYCHIATRY; CORRECT?

7 A. THAT'S CORRECT.

8 Q. AND YOU HAVE NOT EARNED A PH.D. IN
9 PSYCHIATRY; CORRECT?

10 A. THAT'S CORRECT.

11 Q. AND IT'S MY UNDERSTANDING FROM LOOKING AT
12 YOUR REPORT THAT YOU DID NOT CONDUCT ANY
13 PSYCHOLOGICAL TESTING OF MS. RESENDEZ WHEN YOU SAW
14 HER IN FEBRUARY 2010; CORRECT?

15 A. THAT'S CORRECT.

16 Q. AND AS PART OF YOUR FEBRUARY 2010
17 EVALUATION OF MS. RESENDEZ, YOU DID NOT PERFORM A
18 PSYCHIATRIC EXAMINATION; TRUE?

19 A. TRUE.

20 Q. AND YOU DID NOT RENDER ANY KIND OF
21 PSYCHIATRIC OPINION ABOUT ANY KIND MISANTHROPIES THAT
22 MS. RESENDEZ MAY HAVE HAD; CORRECT?

23 A. CORRECT.

24 Q. ARE YOU AWARE THAT THE COMMISSION ON PEACE
25 OFFICERS STANDARDS AND TRAINING HAS A GUIDELINE FOR

1 PEACE OFFICERS IN CALIFORNIA?

2 A. I AM.

3 Q. IS THE DEPARTMENT OF JUSTICE A
4 PARTICIPATING AGENCY OF P.O.S.T.?

5 A. WE ARE.

6 Q. AND WHAT DOES THAT MEAN TO BE A
7 PARTICIPATING AGENCY OF P.O.S.T.?

8 A. WELL, IT MEANS THAT WE GET INSPECTED BY
9 P.O.S.T. TO MAKE SURE THAT WE ARE ADHERING TO THEIR
10 STANDARDS AND TRAINING, NOT ONLY FOR THE HIRING
11 PROCESS, BUT OUR ONGOING TRAINING PROCESS FOR OUR
12 CURRENT EMPLOYEES.

13 SO WHAT THAT MEANS FOR THE DEPARTMENT IS
14 WE'RE ADHERING TO THE CONTEMPORARY PRACTICES FOR
15 PROFESSIONAL LAW ENFORCEMENT AGENCIES IN THE STATE OF
16 CALIFORNIA.

17 TO BE QUITE FRANK WITH YOU, I DON'T KNOW
18 OFF THE TOP OF MY HEAD IF THERE'S AN AGENCY, A LAW
19 ENFORCEMENT AGENCY IN CALIFORNIA, WHO'S NOT P.O.S.T.
20 CERTIFIED.

21 Q. NOW, TURNING YOUR ATTENTION BACK TO
22 EXHIBIT 6, MR. LOPES, WHY DID THE DEPARTMENT OF
23 JUSTICE EXTEND A CONDITIONAL OFFER OF REINSTATEMENT
24 TO MS. RESENDEZ?

25 A. SO WE COULD MOVE FORWARD TO BRING HER BACK

1 TO WORK AND TO COMPLY WITH P.O.S.T. STANDARDS.

2 Q. AND THE DEPARTMENT WAS -- LET ME START
3 AGAIN.

4 THE DEPARTMENT'S POSITION WAS THAT IF THE
5 REQUIREMENTS AS SET FORTH, AND THE CONDITIONS OFFERED
6 WERE COMPLIED WITH BY MS. RESENDEZ, THEN THE
7 DEPARTMENT WOULD REEMPLOY HER?

8 A. YES.

9 Q. NOW, IN REFERENCE TO THE MARCH 4, 2010
10 LETTER, EXHIBIT 6, WHAT PART OF THE MINIMUM STANDARDS
11 WERE REFERRED TO IN THAT LETTER?

12 A. WELL, THE MINIMUM STANDARDS WOULD BE TO
13 COMPLETE AN UPDATED BACKGROUND INVESTIGATION. AND
14 THEN TO SUBMIT TO A MEDICAL EVALUATION AND A
15 PSYCHOLOGICAL SCREENING EVALUATION.

16 Q. AND THOSE STANDARDS ARE DERIVED FROM WHAT
17 SOURCE?

18 A. WELL, IT'S -- THE P.O.S.T. ADMINISTRATIVE
19 MANUAL IS WHAT WE REFER TO. I BELIEVE IT'S 9050 OFF
20 THE TOP OF MY HEAD.

21 AND THEN 53, 54, AND 55 ARE THE DIFFERENT
22 SECTIONS. THE BACKGROUND REQUIREMENT, THE MEDICAL
23 SCREENING, AND THE PSYCHOLOGICAL SCREENING.

24 Q. AND ARE THE MINIMUM STANDARDS DERIVED FROM
25 GOVERNMENT CODE SECTION 1031?

1 CALIFORNIA.

2 SO THAT'S REALLY WHAT YOU'RE TALKING ABOUT
3 HERE.

4 Q. WHAT WOULD HAPPEN TO A LAW ENFORCEMENT
5 AGENCY, SUCH AS THE D.O.J., SHOULD IT ALLOW A PERSON,
6 SUCH AS MS. RESENDEZ, TO BE REINSTATED WITHOUT
7 COMPLYING WITH THE MINIMUM STANDARDS OF DISABILITY
8 RETIREMENT?

9 MR. COFFEY: OBJECTION. INCOMPLETE.
10 HYPOTHETICAL. CALLS FOR SPECULATION.

11 THE COURT: IT'S OVERRULED.

12 YOU CAN ANSWER.

13 THE WITNESS: WE ARE INSPECTED BY P.O.S.T.
14 THEY WOULD REALIZE THAT WE ADDED SOMEONE TO OUR
15 P.O.S.T. ROSTER.

16 THEY WOULD COME IN TO CHECK TO SEE IF WE'VE
17 DONE AN UPDATED BACKGROUND INVESTIGATION, AND IF WE
18 HAVE DONE ANY MEDICAL AND PSYCHOLOGICAL EVALUATIONS.

19 IF NOT, WE COULD LOSE OUR P.O.S.T.
20 ACCREDITATION.

21 Q. HAS MS. RESENDEZ, AS YOU SIT HERE TODAY,
22 COMPLIED WITH THE MINIMUM STANDARDS AS MANDATED BY
23 GOVERNMENT CODE SECTION 1031 AND P.O.S.T.
24 REGULATIONS?

25 A. NO.

1 Q. AND SHE HAS NOT COMPLIED WITH THE
2 CONDITIONAL OFFER OF REINSTATEMENT AS OUTLINED IN THE
3 MARCH 4TH, 2010 LETTER TO HER; CORRECT?

4 A. THAT'S CORRECT .

5 Q. AND HAS SHE PROVIDED ANY OF THE REQUESTED
6 DOCUMENTATION SO THAT THE DEPARTMENT COULD PERFORM A
7 BACKGROUND INVESTIGATION?

8 A. NOT TO MY KNOWLEDGE.

9 MR. WHITAKER: AT THIS TIME, YOUR HONOR, I
10 HAVE NO FURTHER QUESTIONS OF THE WITNESS.

11 THE COURT: MR. COFFEY, DO YOU HAVE ANY
12 QUESTIONS?

13 MR. COFFEY: I DO, YOUR HONOR. THANK YOU.
14

15 CROSS-EXAMINATION

16 BY MR. COFFEY:

17 Q. GOOD AFTERNOON, MR. LOPES.

18 A. GOOD AFTERNOON.

19 Q. I HOPE YOU'RE NOT TRYING TO CATCH THE 7:00
20 O'CLOCK FLIGHT BACK HOME. GOOD LUCK RIGHT NOW.

21 YOU DO NOT HAVE ANY FORMAL MEDICAL TRAINING
22 OR EXPERIENCE; CORRECT?

23 A. CORRECT.

24 Q. AND YOU ARE NOT OFFERING ANY TESTIMONY OR
25 EVIDENCE HERE TODAY ON THE MEDICAL QUESTION OF

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BEFORE THE
BOARD OF ADMINISTRATION OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA
JULIE CABOS-OWEN, ADMINISTRATIVE LAW JUDGE

IN THE MATTER OF:)
)
)
ANGELITA RESENDEZ,) CALPERS NO.
RESPONDENT, AND) 2010-0131
)
DEPARTMENT OF JUSTICE,) O.A.H. NO.
) 2011100985
RESPONDENT.)
_____)

TRANSCRIPT OF PROCEEDINGS, TAKEN AT
320 WEST FOURTH STREET, SIXTH FLOOR,
LOS ANGELES, CALIFORNIA, COMMENCING
AT 10:04 A.M., ON THURSDAY, AUGUST 16,
2012, HEARD BEFORE JULIE CABOS-OWEN,
ADMINISTRATIVE LAW JUDGE, REPORTED
BY SONJA REED, HEARING REPORTER.

1 APPEARANCES OF COUNSEL:

2
3 FOR THE DEPARTMENT:

4 STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
5 BY: MICHAEL E. WHITAKER, ESQ.
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6 SUITE 1702
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7 213.897.2092
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8
9 FOR THE RESPONDENT:

10 CALIFORNIA STATEWIDE LAW ENFORCEMENT
11 ASSOCIATION
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12 JAMES VITKO, ESQ.
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13 SUITE 375
WESTMINSTER, CALIFORNIA 92683
14 800.551.1414
EECKELMAN@CSLEA.COM

15 - AND -

16 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
17 BY: RORY J. COFFEY, ESQ.
400 Q STREET
18 ROOM 3340
SACRAMENTO, CALIFORNIA 94229
19 916.795.3938
RORY_COFFEY@CALPERS.CA.GOV

20
21
22
23
24
25

E X A M I N A T I O N S

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2
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4 WITNESS: DX CX REDX RECX
5
6 R. LOPES 10W 12V 15W
7 A. RESENDEZ 18E 42W 98C
107E

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13
14
15
C = MR. COFFEY

16 E = MS. ECKELMAN

V = MR. VITKO

17 W = MR. WHITAKER
18
19
20
21
22
23
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E X H I B I T S

1	E X H I B I T S		
2	DEPARTMENT'S	MARKED FOR IDENTIFICATION	RECEIVED IN EVIDENCE
3			
4			
5	13 - C.A.L.P.E.R.S.	7	7
6	POST-HEARING BRIEF		
7	N - DOCUMENT PAGINATED D.O.J. 650 - 655, DATED SEPTEMBER 5, 2008	48	50
8	O - DOCUMENT PAGINATED D.O.J. 663 - 667, DATED NOVEMBER 13, 2008	51	53
9			
10	P - SINGLE-PAGE DOCUMENT PAGINATED D.O.J. 692, "WORKERS' COMPENSATION CLAIM FORM"	73	-
12			
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E X H I B I T S

RESPONDENT'S	MARKED FOR IDENTIFICATION	RECEIVED IN EVIDENCE
9 - LETTER FROM CEDARS SINAI	29	29
12 - DEPARTMENT OF JUSTICE ESSENTIAL DUTIES, PEACE OFFICERS CLASSIFICATION SPECIAL AGENT SERIES	-	111
C - PRECEDENTIAL DECISION BY BOARD OF ADMINISTRATION, C.A.L.P.E.R.S. (OFFICIAL NOTICE)	-	111
L - D.O.J. MEMORANDUM OF POINTS AND AUTHORITIES, PEACE OFFICER MINIMUM STANDARDS	8	8
M - SUPPLEMENTAL BRIEF RELATING TO APPLICABILITY OF GOVERNMENT CODE 1031, SUBDIVISION (F)	8	8

1 LOS ANGELES, CALIFORNIA, THURSDAY

2 AUGUST 16, 2012

3 10:04 A.M.

4
5 THE COURT: ALL RIGHT. WE ARE BACK ON THE
6 RECORD IN THE MATTER OF THE STATEMENT OF ISSUES
7 AGAINST ANGELITA RESENDEZ AND THE DEPARTMENT OF
8 JUSTICE, RESPONDENTS, CASE NUMBER 20100131, BEFORE
9 THE BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC
10 EMPLOYEES' RETIREMENT SYSTEM, O.A.H. NUMBER
11 2011100985.

12 IT IS AUGUST 16TH, 2012, A LITTLE PAST
13 10:00 O'CLOCK A.M., AND THIS IS DAY TWO OF THIS
14 PROCEEDING. AND FOR THE RECORD, ALL THE COUNSEL ARE
15 PRESENT.

16 AND WHILE WE WERE OFF THE RECORD, I DID
17 RECEIVE BRIEFS FROM EACH OF THE PARTIES. THE
18 C.A.L.P.E.R.S. POST-HEARING BRIEF IS MARKED AS
19 EXHIBIT 13, AND IS IT LODGED.

20 (DEPARTMENT'S EXHIBIT NUMBER 13 WAS MARKED FOR
21 IDENTIFICATION BY THE COURT AND RECEIVED INTO
22 EVIDENCE.)

23 THE COURT: THE RESPONDENT'S D.O.J.'S
24 MEMORANDUM OF POINTS AND AUTHORITIES, RAY GOVERNMENT
25 CODE SECTION 1031, PEACE OFFICER MINIMUM STANDARDS,

1 DIRECT EXAMINATION

2 BY MS. ECKELMAN:

3 Q. GOOD MORNING.

4 A. GOOD MORNING.

5 Q. ARE YOU CURRENTLY DISABLED FROM YOUR
6 EMPLOYMENT WITH THE STATE OF CALIFORNIA?7 MR. WHITAKER: OBJECTION; CALLS FOR
8 SPECULATION. LACKS FOUNDATION. CALLS, ACTUALLY, FOR
9 A MEDICAL OPINION.10 THE COURT: IT'S OVERRULED. YOU CAN
11 ANSWER.12 I UNDERSTAND SHE'S NOT GIVING A MEDICAL
13 OPINION.

14 THE WITNESS: YES.

15 BY MS. ECKELMAN:

16 Q. AND PRIOR TO YOUR DISABILITY RETIREMENT,
17 WHAT DEPARTMENT DID YOU WORK FOR?

18 A. CALIFORNIA D.O.J.

19 Q. HAVE YOU HELD ANY OTHER POSITIONS WITH THE
20 STATE OF CALIFORNIA?

21 A. YES.

22 Q. WHAT ARE THOSE POSITIONS?

23 A. SENIOR SPECIAL INVESTIGATOR FOR CALIFORNIA
24 DEPARTMENT OF MOTOR VEHICLES, INVESTIGATIONS UNIT,
25 AND SUBSEQUENTLY CRIMINAL INVESTIGATOR WITH THE

1 IS NOW CUMULATIVE.

2 THE COURT: IT'S OVERRULED.

3 YOU CAN ANSWER.

4 THE WITNESS: OKAY. THE DOCUMENT ITSELF --
5 THE CONDITIONAL OFFER STATES HERE THAT IN ORDER FOR
6 ME TO COME BACK TO MY POSITION, THAT I WOULD HAVE TO
7 TAKE THE -- I WOULD HAVE TO SEE A LICENSED PHYSICIAN
8 TO DETERMINE IF I'M FREE FROM ANY PHYSICAL, MENTAL,
9 OR EMOTIONAL CONDITION THAT MIGHT AFFECT MY POSITION.

10 Q. AND DID YOU ACCEPT THE D.O.J.'S INITIAL
11 OFFER?

12 A. NO.

13 Q. AND WHY NOT?

14 A. I DIDN'T -- I DIDN'T ACCEPT THIS OFFER
15 BECAUSE I HAD RECEIVED A LETTER FROM C.A.L.P.E.R.S.
16 ADVISING ME THAT I HAD BEEN REINSTATED WITHOUT ANY
17 CONDITIONS, WHICH IS THE SAME ENTITY THAT ACTUALLY
18 MEDICALLY RETIRED ME OUT.

19 Q. DO YOU CURRENTLY HAVE A C.C.W.?

20 A. YES, I DO.

21 Q. AND WHAT IS A C.C.W.?

22 A. IT'S "CARRYING A CONCEALED WEAPON."

23 Q. AND HOW LONG HAVE YOU HAD THIS C.C.W.?

24 A. I'VE HAD THAT SINCE RIGHT AFTER JULY 2ND OF
25 2009, WHEN I WAS RETIRED.

1 TO WORK IMMEDIATELY.

2 BUT UNFORTUNATELY, AFTER CONSULTING WITH
3 THESE DOCTORS, THEY ALL SAID THE SAME THING: "YOU
4 HAVE TO HAVE THIS NECK SURGERY," THAT THERE WAS NO
5 OTHER WAY AROUND IT.

6 Q. OKAY.

7 THE COURT: COUNSEL, I'M JUST GOING TO ASK
8 YOU, DO YOU HAVE AN ESTIMATE FOR YOUR
9 CROSS-EXAMINATION?

10 MR. WHITAKER: I'VE JUST GOT A COUPLE MORE
11 QUESTIONS, YOUR HONOR. PROBABLY ABOUT FIVE MORE
12 MINUTES.

13 THE COURT: ALL RIGHT.

14 BY MR. WHITAKER:

15 Q. SINCE YOU SAW DR. GEORGES IN FEBRUARY 2010,
16 YOU HAVE NOT SEEN HIM SINCE THAT TIME; CORRECT?

17 A. THAT IS CORRECT.

18 Q. AND YOU'VE NOT SEEN ANY OTHER HEALTH CARE
19 PROVIDER THAT YOU'VE BEEN REFERRED TO BY
20 C.A.L.P.E.R.S.; IS THAT CORRECT?

21 A. THAT IS CORRECT.

22 Q. SO DR. GEORGES IS THE ONLY HEALTH CARE
23 PROVIDER THAT C.A.L.P.E.R.S REFERRED YOU TO FOR AN
24 EVALUATION SUBSEQUENT TO YOUR APPLICATION TO
25 REINSTATE; CORRECT?

1 A. THAT IS CORRECT.

2 MR. WHITAKER: NO FURTHER QUESTIONS, YOUR
3 HONOR.

4 THE COURT: WE'RE AT THE LUNCH HOUR.

5 DID YOU HAVE ANY REDIRECT?

6 MS. ECKELMAN: YES, WE DO, YOUR HONOR.

7 THE COURT: AND DO YOU HAVE AN ESTIMATE?

8 MR. COFFEY: I HAVE SOME QUESTIONS THAT I'D
9 LIKE TO ASK. I WOULD ESTIMATE TEN MINUTES.

10 THE COURT: ALL RIGHT. SO WE'LL GO AHEAD
11 AND -- IF IT WAS GOING TO BE SHORT, I WOULD TRY TO
12 FINISH IN THE MORNING. BUT IT SEEMS LIKE IT MAY TAKE
13 A LITTLE BIT LONGER THAN I ANTICIPATED, SO WE CAN GO
14 AHEAD AND TAKE OUR LUNCH HOUR AND RECONVENE AT 1:30.

15 AND WE'RE OFF.

16 (WHEREUPON, A LUNCHEON RECESS WAS
17 HELD FROM 11:53 A.M. TO 12:31 P.M.)

18 ///

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HEARING

1 STATE OF CALIFORNIA)
) SS
2 COUNTY OF LOS ANGELES)
3

4 I, SONJA REED, HEARING REPORTER, FOR THE STATE
5 OF CALIFORNIA, HEREBY CERTIFY:

6 THE FOREGOING PROCEEDINGS WERE TAKEN BEFORE ME
7 AT THE TIME AND PLACE THEREIN SET FORTH;

8 THE PROCEEDINGS WERE RECORDED STENOGRAPHICALLY
9 BY ME AND WERE THEREAFTER TRANSCRIBED;

10 THE FOREGOING TRANSCRIPT IS A TRUE AND CORRECT
11 TRANSCRIPT OF MY SHORTHAND NOTES SO TAKEN;

12 I FURTHER CERTIFY THAT I AM NEITHER COUNSEL
13 FOR NOR RELATED TO ANY PARTY TO SAID ACTION, NOR IN
14 ANY WAY INTERESTED IN THE OUTCOME THEREOF.

15 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
16 MY NAME THIS 24TH DAY OF SEPTEMBER, 2012.
17
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21 
22
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **In the Matter of Application for Reinstatement from Industrial Disability Retirement of ANGELITA RESENDEZ, Respondent, and DEPARTMENT OF JUSTICE, Respondent.**

No.: **2011-100985**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

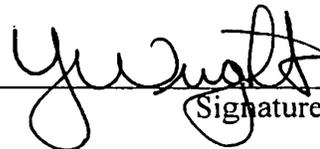
On October 30, 2012, I served the attached **Respondent Department of Justice's Argument against Adoption of Proposed Decision** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

James Vitko
c/o **Angelita Resendez**
CSLEA
5555 Garden Grove Blvd., #375
Westminster, CA 92683

Rory J. Coffey, Senior Staff Counsel
CalPERS
Legal Office
P. O. Box 942707
Sacramento, CA 94229-2707

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 30, 2012, at Los Angeles, California.

Yvette Wright
Declarant


Signature