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

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WITNESS: DX CX RDX RCX FRDX FRCX

TERRANCE RODGERS 7B 31K
300

B = BRAUN
K = KENNEDY
O = ONSTOT

E X H I B I T S

		MARKED FOR	RECEIVED
	DEPARTMENT'S	IDENTIFICATION	IN EVIDENCE
1			
2			
3			
4			
5	7 - AGREEMENT 7/1/2003	36	36
6	8 - ADDENDUM NUMBER 1	36	36
7	9 - ADDENDUM NUMBER 2	36	36
8	10 - ADDENDUM NUMBER 3	36	36
9	11 - AGREEMENT 6/30/2008	37	37
10	12 - A.R.S.C. COSTING AND PACKING PACKAGE	37	37
11			
	15 - E-MAIL EXCHANGES	38	38
12			
	19 - PAYROLL DETAIL INFO	39	39
13			
	20 - CITY OF BELL RESOLUTIONS	39	39
14			
15	21 - CITY OF BELL BUDGET 2005-2010	40	40
16			
	22 - RULE MAKING FILE (JUDICIALLY NOTICED)	40	40
17			
18	23 - CIRCULAR LETTER NUMBER 200-056-11 (JUDICIALLY NOTICED)	40	40
19			
20	24 - PAYROLL DETAIL SHEETS	41	41
21	25 - LEGISLATIVE HISTORY SB 53 (1993)	41	41
22			
	26 - LEGISLATIVE HISTORY AB 719 (2003)	41	41
23			
24	27 - PRECEDENTIAL DECISIONS ROY T. RAMIREZ	42	42
25			

E X H I B I T S

DEPARTMENT'S MARKED FOR RECEIVED
IDENTIFICATION IN EVIDENCE

28 - NON-PRECEDENTIAL 42 42
DECISION RICHARD KRENZ

29 - CALPERS AUDIT REPORT 43 43

30 - SUMMARIES OF REPORT 43 43
AND PAYROLL REPORTING

31 - OCTOBER 2ND, 2006, 44 44
LETTER TO CALPERS AND
ATTACHMENTS

RESPONDENTS' MARKED FOR RECEIVED
IDENTIFICATION IN EVIDENCE

- - NONE OFFERED - -

1 ORANGE, CALIFORNIA, WEDNESDAY

2 AUGUST 29, 2012

3 11:13 A.M.

4
5 THE COURT: OKAY. WE'RE BACK ON THE RECORD
6 MR. RODGERS IS IN REDIRECT, AND HE IS STILL UNDER
7 OATH.

8 MR. KENNEDY?

9 MR. KENNEDY: I HAVE NO QUESTIONS.

10
11 TERRANCE RODGERS,
12 CALLED AS A WITNESS AND PREVIOUSLY SWORN IN
13 BY THE COURT REPORTER, WAS EXAMINED
14 AND TESTIFIED AS FOLLOWS:

15
16 RECROSS-EXAMINATION (RESUMED)

17 BY MR. BRAUN:

18 Q. MR. RODGERS, ARE YOU AWARE THAT CALPERS --
19 SINCE MS. SPACCIA'S REQUEST TO RETIRE, THAT
20 ANNETTE PERETZ AND A LOUIS RAMIREZ ALSO RETIRED UNDER
21 CALPERS?

22 A. YES.

23 Q. AND IN ALL THOSE CASES CALPERS ACCEPTED THE
24 CONTRACTS THAT WERE SIGNED BY MR. RIZZO FOR
25 EMPLOYMENT, DID IT NOT?

1 MR. KENNEDY: OBJECTION. IT'S VAGUE AS TO
2 "ACCEPT" AND ALSO LACK OF FOUNDATION.

3 THE COURT: OVERRULED.

4 THE WITNESS: CALPERS PLACED THEM ON ROLL
5 WITH THOSE AMOUNTS.

6 BY MR. BRAUN:

7 Q. SO THAT MEANS THEIR PENSION WAS BASED ON
8 THOSE AMOUNTS; CORRECT?

9 A. YES.

10 Q. AND WITH THE EXCEPTION OF MR. RIZZO AND
11 MS. SPACCIA, WOULD IT BE FAIR TO SAY THAT CALPERS
12 ACCEPTED IN EVERY OTHER EMPLOYEES' CASE, UP TO THIS
13 POINT, THOSE PARTICULAR CONTRACTS?

14 MR. KENNEDY: OBJECTION AGAIN TO THE TERM
15 "ACCEPTED."

16 THE COURT: "USED."

17 MR. BRAUN: "USED."

18 MR. KENNEDY: AND ALSO VAGUE AS TO "EVERY
19 OTHER EMPLOYEE."

20 THE COURT: OVERRULED.

21 THE WITNESS: TO MY KNOWLEDGE, YES.

22 BY MR. BRAUN:

23 Q. NOW, IN TERMS OF CLASSIFYING MS. SPACCIA AS
24 A MEMBER OF A GROUP, DID YOU TAKE INTO CONSIDERATION
25 THE FACT THAT HER LAST SEVERAL MONTHS SHE WAS

1 ACTUALLY EMPLOYED AS A C.A.O. OF THE CITY OF MAYWOOD
2 ON LOAN?

3 A. NO.

4 Q. WOULD THAT HAVE AFFECTED HER GROUP IF YOU
5 HAD TAKEN THAT INTO CONSIDERATION?

6 A. DEPENDING ON WHAT -- YOU KNOW, IF WE LOOKED
7 TO DUTIES AND HOW THE MAKEUP OF THE CITY OF MAYWOOD
8 WAS, POTENTIALLY.

9 Q. SO WOULD IT MEAN THAT IN ADDITION TO THE --
10 IN TERMS OF CALPERS' ANALYSIS, IN ADDITION TO THE
11 PAPERWORK, YOU WOULD SOMETIMES ACTUALLY LOOK AT WHAT
12 THE PARTICULAR EMPLOYEE WAS DOING DURING HER LAST
13 YEAR OF EMPLOYMENT?

14 A. WE LOOK AT DUTIES FOR -- WE LOOKED AT ALL
15 RELEVANT INFORMATION.

16 Q. SO THAT IF YOU HAD KNOWN THAT SHE WAS
17 ACTUALLY WORKING AS A C.A.O. OF THE CITY OF --

18 MR. KENNEDY: OBJECTION, YOUR HONOR.
19 RELEVANCY. BECAUSE MAYWOOD IS A SEPARATE CONTRACT
20 AND ENTITY UNDER CALPERS.

21 THE COURT: YEAH. BUT I THINK THAT SHE'S
22 EMPLOYED BY THE CITY OF BELL WHEN SHE'S WORKING AT
23 MAYWOOD.

24 MR. BRAUN: YES. THAT'S CORRECT.

25 THE COURT: OVERRULED.

1 BY MR. BRAUN:

2 Q. SO YOU MIGHT HAVE -- YOU HAD KNOWN THAT OR
3 BEEN TOLD THAT, IT MIGHT HAVE MADE A DIFFERENCE IN
4 TERMS OF HER GROUPING; CORRECT?

5 A. POTENTIALLY.

6 Q. NOW, IN TERMS OF -- AND CORRECT ME IF I'M
7 WRONG -- CALPERS DOES NOT, IN TERMS OF ALLOWING A
8 COMPENSATION EARNABLE, DOES NOT MAKE A -- DOES NOT
9 JUDGE THE LEVEL OF COMPENSATION A PARTICULAR PERSON
10 SHOULD GET; CORRECT?

11 A. CALPERS DOES NOT DICTATE WHAT'S PAID TO
12 EMPLOYEES. CALPERS LOOKS TO COMPENSATION EARNABLE AS
13 IT PERTAINS TO PAY RATE AND SPECIAL COMPENSATION
14 BASED ON THOSE FACTORS CONTAINED IN (B) (1), NORMAL
15 PAY RATE TO A SIMILARLY SITUATED GROUP OR CLASS OF
16 EMPLOYEES, AND BASED ON A PUBLICALLY AVAILABLE PAY
17 SCHEDULE.

18 Q. SO WE LOOK AT THAT COMPENSATION EARNABLE
19 CONCEPT. THAT'S BASICALLY A CONCEPT THAT'S USED AT
20 THE TIME OF THE PERSON'S RETIREMENT?

21 A. NO. COMPENSATION EARNABLE IS ALL
22 COMPENSATION THAT IS REPORTED TO CALPERS THAT CALPERS
23 LOOKS TO TO VERIFY WHETHER IT'S COMPENSATION
24 EARNABLE, MEANING IT WOULD BE USED IN THE RETIREMENT
25 CALCULATION.

1 BUT GENERALLY, YES, WE'RE LOOKING AT THE
2 FINAL COMPENSATION PERIOD, GENERALLY.

3 Q. AND CORRECT ME IF I'M WRONG BECAUSE I'M
4 SORT OF NEW TO THIS AREA. DURING A PERSON'S
5 RETIREMENT, EACH YEAR AN ANALYSIS IS MADE BY CALPERS
6 TO DETERMINE WHAT THE COST OF THAT PARTICULAR
7 PERSON'S PENSION SHOULD BE FOR THAT PARTICULAR YEAR,
8 AND THAT AMOUNT IS PAID INTO CALPERS; IS THAT RIGHT?

9 A. CONTRIBUTIONS ARE PAID INTO CALPERS BASED
10 UPON THE PAYMENTS THAT ARE REPORTED BY THE EMPLOYER.

11 Q. SO AT THE END OF A PERSON'S CAREER WHEN
12 THEY'RE GOING INTO RETIREMENT, IT SHOULD BE THE CASE,
13 NORMALLY, THAT CALPERS HAS ENOUGH MONEY ON HAND TO
14 THEN FULFILL THE PERSON'S PENSION OBLIGATIONS FOR THE
15 REST OF THEIR LIFE; IS THAT CORRECT?

16 A. NOT NECESSARILY. IN THE CASE WHERE THERE'S
17 AN ABHORRENT FLUCTUATION AND THERE'S NOT A POSITION
18 IN A GROUP OR CLASS THAT'S COMING IN AND GOING OUT TO
19 FUND THAT FUND BEHIND THAT, NO.

20 JUST BECAUSE A MEMBER MAKES CONTRIBUTIONS
21 FOR PAYMENTS THAT ARE REPORTED BY THEIR EMPLOYER,
22 THAT DOESN'T NECESSARILY MEAN --

23 Q. SO WHAT CALPERS IS CONCERNED ABOUT -- AND
24 THIS IS WHAT I'M TRYING TO GET TO.

25 IF YOU HAD A NORMAL CAREER PATH WHERE EACH

1 YEAR THE PERSON IS MAKING A CERTAIN AMOUNT OF MONEY
2 AND THEY GET NORMAL INCREASES BUT NOTHING REALLY OUT
3 OF THE ORDINARY, AT THE END OF THEIR CAREER, IF
4 THERE'S NO SPIKING OR INCREASE AT THE END -- ABNORMAL
5 INCREASE AT THE END, THERE SHOULD BE ENOUGH MONEY AT
6 LEAST TO TAKE CARE OF THAT PERSON'S PENSION; CORRECT?

7 MR. KENNEDY: OBJECTION.

8 THE COURT: WELL, AND ADD TO THAT ASSUMING
9 THERE IS A GROUP OR CLASS IN WHICH THE PERSON IS A
10 MEMBER. MAKE THAT ASSUMPTION AS WELL.

11 THE WITNESS: ASSUMING THERE'S A GROUP OR
12 CLASS AND IT'S A NORMAL, STABLE, PREDICTABLE PAY RATE
13 FOR A GROUP OR CLASS --

14 MR. KENNEDY: AND, YOUR HONOR, CONTINUING
15 THE HYPOTHETICAL WOULD BE THAT THE POSITIONS AND PAY
16 RATES THAT ARE BEING USED TO CONTINUE THROUGH --
17 AFTER THAT PERIOD OF TIME.

18 MR. BRAUN: YES.

19 THE COURT: YES.

20 MR. BRAUN: SO I'M TRYING TO REALLY GET TO
21 THE POLICY AND THE PURPOSE OF THIS 20646.

22 BY MR. BRAUN:

23 Q. WOULD IT BE FAIR TO SAY THAT WHAT REALLY IS
24 CALPERS' CONCERN IS THAT SOMETHING SHOULD HAPPEN THAT
25 THE POTENTIAL RETIREE SHOULD BE GETTING A BUMP AT THE

1 END OR SOMETHING THAT WOULD THROW OFF THE
2 CALCULATIONS, TO MEAN THAT THERE MAY NOT BE ENOUGH
3 MONEY TO FUND THAT PERSON'S PENSION?

4 MR. KENNEDY: YOUR HONOR, I UNDERSTAND
5 THE QUESTION BUT I OBJECT TO THE TERM "CALPERS'
6 CONCERN."

7 THE COURT: SUSTAINED.

8 BY MR. BRAUN:

9 Q. OKAY. NOW, ISN'T THE REAL PURPOSE OF
10 CLASSIFYING SOMEONE WHEN THEY GO TO RETIRE IN A
11 PARTICULAR GROUP TO MAKE SURE THAT THAT PERSON HASN'T
12 GOTTEN AN EXTRA INCREASE THAT WOULD EFFECT THE
13 PENSION?

14 MR. KENNEDY: I'M SORRY. VAGUE AND
15 AMBIGUOUS.

16 THE COURT: OVERRULED.

17 THE WITNESS: AGAIN, WE'RE GOING TO LOOK TO
18 ALL OF THOSE PRINCIPLES WITHIN 20636 (B) (1) ON THE
19 PAY RATE, NORMAL MONTHLY RATE OF PAY TO A GROUP OR
20 CLASS, SIMILARLY SITUATED GROUP OR CLASS.

21 BY MR. BRAUN:

22 Q. WHAT I'M TRYING TO DO IS -- AND MAYBE I'M
23 NOT ARTICULATING IT CORRECTLY.

24 I'M TRYING TO FIGURE OUT THE PURPOSE OF
25 DOING THAT. IN OTHER WORDS --

1 THE COURT: LET'S SEE IF IT'S THIS. THERE
2 ARE SEVERAL PURPOSES FOR HAVING A GROUP OR CLASS;
3 TRUE?

4 THE WITNESS: YES.

5 THE COURT: ONE OF THE PURPOSES IS SO THAT
6 YOU DON'T CALCULATE A FINAL SERVICE ALLOWANCE ON AN
7 ABNORMAL INCREASE IN COMPENSATION OVER OTHER MEMBERS
8 OF THE GROUP OR CLASS. THAT'S ONE REASON, YOU DON'T
9 WANT SPIKING.

10 THE WITNESS: CORRECT.

11 THE COURT: ANOTHER REASON IS YOU WANT A
12 GROUP OR CLASS OF EMPLOYEES TO CONTINUE THE PATH OF
13 THE RETIRED PERSON SO THAT THEY CAN CONTINUE TO FUND
14 THAT PERSON'S RETIREMENT AND ASSIST THEM.

15 THE WITNESS: CORRECT.

16 THE COURT: I SUSPECT THERE ARE OTHER
17 REASONS AS WELL. ARE THERE OTHER REASONS THAT YOU'RE
18 AWARE OF?

19 THE WITNESS: FOR THE GROUP OR CLASS?

20 THE COURT: YES.

21 THE WITNESS: I THINK THOSE ARE THE PRIMARY
22 DRIVERS.

23 BY MR. BRAUN:

24 Q. SO MY QUESTION IS ASSUMING THAT, AS YOU
25 SAID, CALPERS DOESN'T DICTATE THE LEVEL OF

1 COMPENSATION IN TERMS OF WHAT A PERSON NORMALLY GETS
2 AND CALPERS IS CONCERNED THAT AT THE END OF THEIR
3 CAREER, THERE'S NOT SOME SPIKE OR AN ABNORMAL
4 INCREASE THAT COULD THROW OFF THE CALCULATIONS,
5 WHY -- AND YOU CAN ANSWER THIS.

6 IF THAT WERE THE PURPOSE, WHY WOULD YOU
7 THEN -- IF A PERSON WHO IS NOT WITHIN A CLASS, WHY
8 WOULD YOU NOT SIMPLY JUST DEPRIVE THAT PERSON OF ANY
9 INCREASE THAT THEY GOT THE LAST YEAR RATHER THAN
10 DEPRIVING THEM OF THEIR ENTIRE PENSION?

11 MR. KENNEDY: OBJECTION ON THE USE OF THE
12 TERM "COMPENSATION." I DON'T KNOW IF IT'S BEING USED
13 IN A GENERIC SENSE OR WHETHER IT'S BEING USED AS
14 DEFINED UNDER THE P.E.R.L. UNDER 20636.

15 AND ALSO, IT'S AN ARGUMENTATIVE QUESTION.

16 MR. BRAUN: MAY I REPHRASE IT, YOUR HONOR?

17 THE COURT: SURE.

18 BY MR. BRAUN:

19 Q. WHAT I'M TRYING TO FIGURE OUT IS THAT --
20 AND YOU'RE AN EXPERT, AND I'M NOT.

21 BUT WHAT I'M TRYING TO SAY IS THE PURPOSE
22 OF THIS SECTION IS, YOU TOLD THE JUDGE, TO MAKE SURE
23 THAT THERE'S NOT AN ABNORMAL SPIKE WHERE A PERSON'S
24 PENSION WOULD BE GOING UP ABNORMALLY, AND THEN IT
25 WOULD NOT BE FUNDED LATER BY THE OTHER GROUP OF

1 EMPLOYEES THAT ARE MOVING THROUGH THE SYSTEM.

2 IF THAT WERE THE PURPOSE OF THIS SECTION --

3 AND CALPERS IS NOT IN THE BUSINESS OF NORMALLY

4 SETTING LEVELS OF COMPENSATION -- WOULDN'T THE

5 PURPOSE BE FULFILLED BY JUST DEPRIVING THE PERSON

6 INVOLVED OF THE LAST COUPLE OF YEARS OF THE INCREASE,

7 RATHER THAN TAKING THE POSITION THAT "WELL, YOU'RE

8 NOT A MEMBER OF A GROUP. WE CAN'T EVEN CLASSIFY YOU.

9 THEREFORE, WE DON'T HAVE ANY MEASURE OF YOUR

10 COMPENSATION IN THE LAYMAN'S SENSE, AND YOU GOT TO GO

11 BACK TO YOUR PENSION 20 YEARS IN ANOTHER CITY"?

12 MR. KENNEDY: OBJECTION.

13 MR. BRAUN: DO YOU SEE WHAT I'M TRYING TO

14 GET AT?

15 THE COURT: NO. THE OBJECTION IS

16 SUSTAINED.

17 BY MR. BRAUN:

18 Q. OKAY. IF A PERSON IS NOT A MEMBER OF A

19 GROUP, THEN HOW DO YOU DETERMINE WHETHER OR NOT THERE

20 IS AN ABNORMAL INCREASE TO THEIR PAY AT THE END?

21 A. WELL, WE WOULD LOOK TO (E) (2), GOVERNMENT

22 CODE 20636 (E) (2).

23 Q. AND WHAT WOULD YOU DO?

24 A. WE WOULD LOOK TO THE AVERAGE INCREASE OF

25 MEMBERS IN THE MISCELLANEOUS CLASSIFICATION.

1 Q. SO THEN YOU WOULD ALLOW AN INCREASE IF IT
2 WAS THE SAME AS THE AVERAGE; IS THAT RIGHT?

3 OR DO YOU DEPRIVE THE PERSON -- ARE YOU
4 SAYING THERE'S THEN NO COMPENSATION EARNABLE UPON
5 WHICH TO MEASURE A PENSION?

6 A. I THINK THERE'S AN ASSUMPTION THERE THAT
7 IT'S ONLY THE SPIKE OR THE COMPENSATION -- IT NOT
8 BEING CONSIDERED COMPENSATION EARNABLE ONLY HAPPENS
9 AT THE END. IT COULD HAPPEN EARLIER THAT SOMETHING
10 IS OUTSIDE OF WHAT IS DEFINED AS COMPENSATION
11 EARNABLE OR PAY RATE WITHIN COMPENSATION EARNABLE.

12 Q. WHY DIDN'T YOU USE THE VARIOUS CONTRACTS
13 THAT MS. SPACCIA HAD FROM 2003 THROUGH 2009 OR 2010
14 AS A BASIS FOR HER COMPENSATION EARNABLE?

15 A. THERE WAS NOT A PUBLICALLY AVAILABLE PAY
16 SCHEDULE.

17 Q. THAT'S THE ONLY BASIS?

18 A. THAT'S PART OF THE BASIS, YES.

19 Q. AND THE OTHER PART, IS THERE ANY OTHER
20 BASIS FOR NOT USING IT?

21 A. THERE WAS CONCERNS AS TO WHETHER THE
22 DOCUMENTS PROVIDED TO CALPERS WERE DULY APPROVED AND
23 NOTICED.

24 Q. AND DID YOU CONSIDER WHETHER OR NOT
25 MR. RIZZO HAD THE AUTHORITY TO ENTER INTO THOSE

1 CONTRACTS WITHOUT BEING NOTICED BY THE CITY AT THE
2 CITY COUNCIL MEETINGS?

3 A. NO.

4 Q. NOW, EVEN IF SOMETHING WAS REQUIRED TO BE
5 DULY NOTICED AND WASN'T, DID YOU CONSIDER WHETHER OR
6 NOT THAT PARTICULAR LEGISLATIVE ACT STILL MADE THE
7 BALLOT UNDER THE BROWN ACT?

8 DO YOU KNOW WHAT THE BROWN ACT IS?

9 A. I'M FAMILIAR WITH THE TERMS. I DON'T KNOW
10 THE INS AND OUTS.

11 Q. SO YOU DON'T KNOW WHETHER THEN, IF A
12 LEGISLATIVE ACT IS PASSED BY A CITY COUNCIL, IT'S A
13 VIOLATION OF THE BROWN ACT THAT IT'S STILL VALID
14 UNLESS THERE'S A LAWSUIT TO SET IT ASIDE?

15 DO YOU KNOW ANYTHING ABOUT THE BROWN ACT?

16 A. NOT ENOUGH TO SPEAK TO IT HERE.

17 Q. SO WOULD YOU CONCEDE THEN THAT IF IT WERE
18 DETERMINED THAT THESE CONTRACTS WERE PUBLICALLY
19 AVAILABLE AND IF THEY WERE A LEGITIMATE EXERCISE OF
20 LEGISLATIVE OR EXECUTIVE POWER, THEN YOU SHOULD HAVE
21 TAKEN THOSE INTO CONSIDERATION?

22 MR. KENNEDY: OBJECTION. IT'S AN
23 INCOMPLETE HYPOTHETICAL, FIRST OF ALL, AS
24 ARGUMENTATIVE, AND IT DOESN'T DEFINE THE TERM
25 "PUBLICALLY AVAILABLE" TO BE ABLE TO PROVIDE A PROPER

1 RESPONSE OF THE WITNESS.

2 THE COURT: OVERRULED.

3 HE'S ASKING YOU A HYPOTHETICAL. AND HERE
4 IT IS. NUMBER 1, ASSUME THAT THE CONTRACTS ARE
5 PUBLICALLY AVAILABLE. YOU KNOW WHAT THAT MEANS?

6 THE WITNESS: SOMEONE COMES IN AND SAYS,
7 "MAY I SEE THE CONTRACT FOR AN EMPLOYEE?"

8 THE COURT: AND IT MEETS ALL THE
9 REQUIREMENTS OF LAW THAT MAKE IT PUBLICALLY
10 AVAILABLE. JUST ASSUME FOR THE MOMENT THAT IT'S PUT
11 ON THE WEB SITE. ASSUME THAT'S THE CASE. THAT'S THE
12 FIRST STEP.

13 MR. KENNEDY: THAT MAY NOT BE THE WHOLE
14 DEFINITION, THOUGH.

15 THE COURT: BUT ASSUME THAT IT'S PUBLICALLY
16 AVAILABLE -- THE QUESTION'S REALLY INTERESTING -- AND
17 THEN THE SECOND ONE IS ASSUME THE CONTRACT'S VALID.

18 IF THOSE TWO CONDITIONS WERE MET, THEN
19 WOULD YOU BE ABLE TO USE HER CONTRACT AMOUNT TO
20 CALCULATE FINAL COMPENSATION?

21 THE WITNESS: I THINK THERE IS A THIRD
22 FACTOR HERE.

23 THE COURT: OKAY.

24 THE WITNESS: AS FAR AS IT BEING DULY
25 APPROVED AND NOTICED, WHICH I DON'T KNOW THAT THE

1 QUESTION CONTAINED THAT COMPONENT AS WELL.

2 MR. BRAUN: SO LET'S ADD THAT IT WAS EITHER
3 DULY NOTICED OR LAWFUL.

4 IN OTHER WORDS, WHAT I'M TRYING TO SAY IS
5 THAT THE CONTRACT WAS EITHER PASSED BY THE CITY
6 COUNCIL LAWFULLY OR SIGNED BY THE C.A.O. LAWFULLY SO
7 THAT THESE ARE LAWFUL CONTRACTS.

8 THE WITNESS: I THINK THERE'S A DISTINCTION
9 THERE. I THINK YOU'RE SAYING IF IT'S LAWFUL FOR A
10 CITY COUNCIL, OR IN THIS INSTANCE, THIS INDIVIDUAL TO
11 APPROVE A CONTRACT VERSUS IT BEING DULY NOTICED TO
12 THE PUBLIC.

13 THE COURT: HE'S RIGHT. IT'S GOT TO BE
14 MORE THAN LAWFUL. UNDER THE STATUTE, IT HAS TO BE
15 DULY NOTICED, AND IT HAS TO BE PUBLICALLY AVAILABLE.

16 THE WITNESS: YES.

17 THE COURT: AND IF EITHER ONE OF THOSE
18 ELEMENTS ARE MISSING, CAN YOU THEN USE IT?

19 THE WITNESS: I DON'T THINK CALPERS WOULD
20 USE THAT.

21 THE COURT: YOU CAN LOOK TO IT AS SOME
22 EVIDENCE; TRUE?

23 THE WITNESS: CALPERS MAY CONSIDER OTHER
24 DOCUMENTS PROVIDED BY THE EMPLOYER.

25 THE COURT: OKAY.

1 BY MR. BRAUN:

2 Q. NOW, IN THE CASE OF AT LEAST HALF A DOZEN
3 OF OTHER PEOPLE, CALPERS DID USE THOSE DOCUMENTS TO
4 DETERMINE WHAT THE COMPENSATION EARNABLE WAS;
5 CORRECT?

6 A. AT THIS POINT?

7 Q. AT THIS POINT.

8 MR. KENNEDY: OBJECTION AS TO WHICH
9 INDIVIDUALS.

10 WHICH INDIVIDUALS ARE WE SPEAKING OF?

11 MR. BRAUN: ABOUT ANNETTE PERETZ AND
12 LOUIS RAMIREZ.

13 MR. KENNEDY: IF THE COURT WOULD INDULGE ME
14 WITH A LITTLE BIT OF EXPLANATION.

15 CALPERS -- WHEN WE'RE ASSUMING THAT
16 SOMEBODY RETIRES, MOST PEOPLE LIKE MYSELF AND THE
17 COURT AND MR. RODGERS HERE WILL RETIRE, THEY WILL
18 LOOK AT OUR TRANSCRIPTS, OUR PAYROLL DETAIL
19 TRANSCRIPTS.

20 AND BASED UPON THE LEVEL OF PAY AND BASED
21 UPON OTHER FACTORS, WE'LL USUALLY EXCEPT THOSE AS
22 BEING A VALID STATEMENT OF OUR COMPENSATION EARNABLE.

23 THE COURT: LET'S ASK IT THE REVERSE WAY.

24 WHAT WAS HER NAME?

25 MR. BRAUN: ANNETTE PERETZ.

1 THE COURT: LET'S TAKE MS. PERETZ. DO YOU
2 KNOW IF HER CONTRACT WAS USED BY CALPERS TO DETERMINE
3 HER SERVICE ALLOWANCE?

4 MR. KENNEDY: USED OR REVIEWED?

5 THE COURT: REVIEWED.

6 THE WITNESS: I DON'T KNOW SPECIFICALLY THE
7 DETERMINATION ON PERETZ, ALL THE FACTORS THAT --

8 THE COURT: OKAY. WHAT'S THE OTHER
9 PERSON'S NAME?

10 MR. BRAUN: LOUIS RAMIREZ.

11 THE COURT: RAMIREZ. DO YOU KNOW IF
12 RAMIREZ'S CONTRACT WITH THE CITY OF BELL WAS REVIEWED
13 IN ORDER TO REACH A DETERMINATION CONCERNING THE
14 FINAL SERVICE ALLOWANCE?

15 THE WITNESS: I DON'T KNOW SPECIFICALLY TO
16 WHAT EXTENT IT WAS REVIEWED.

17 THE COURT: DO YOU KNOW IF PERETZ'S
18 CONTRACT WAS DULY APPROVED AND NOTICED?

19 THE WITNESS: I DO NOT.

20 THE COURT: DO YOU KNOW IF IT WAS
21 PUBLICALLY AVAILABLE.

22 THE WITNESS: I DO NOT.

23 THE COURT: WHO IS RESPONSIBLE FOR
24 REVIEWING THOSE?

25 THE WITNESS: I THINK IT WOULD HAVE BEEN

1 ONE OF TWO ANALYSTS, EITHER CHERYL LIVINGSTON OR
2 LOLITA LUERAS.
3 BY MR. BRAUN:

4 Q. WHAT IS THE DEFINITION OF DULY APPROVED AND
5 NOTICED FOR CALPERS FOR A SITUATION -- I MEAN,
6 OBVIOUSLY IF THE CITY COUNCIL DOES IT WE KNOW WHAT
7 THAT IS.

8 WHAT IF THEY HAVE SOMEONE IN THE CITY LIKE
9 THE C.A.O. WHOSE BEEN AUTHORIZED TO SIGN CONTRACTS BY
10 THE CITY COUNCIL? WHAT DOES CALPERS LOOK TO TO
11 DETERMINE WHETHER THAT TYPE OF A CONTRACT HAS BEEN
12 DULY APPROVED AND NOTICED?

13 A. WE WOULD LOOK TO THE AGENDA FOR THE CITY
14 COUNCIL TO DETERMINE WHAT WAS ON THE AGENDA AND THEN
15 TRY TO OBTAIN THE DOCUMENTS THAT WERE PART OF THAT
16 AGENDA.

17 Q. ARE YOU SAYING THAT EVERY CONTRACT FOR AN
18 EMPLOYEE COVERED BY CALPERS IN THE CITY HAS TO BE ON
19 THE AGENDA OF THE CITY COUNCIL?

20 A. IF WE WERE TO LOOK AT A CONTRACT, WE WOULD
21 LOOK AT THAT. WE WOULD LOOK FOR THAT DOCUMENTATION
22 IF WE WERE REVIEWING IT.

23 Q. WHAT IF THE DOCUMENTATION IS THAT THE CITY
24 COUNCIL AUTHORIZES SO AND SO FOR THE C.A.O. TO ENTER
25 INTO CONTRACTS WITH EMPLOYEES PERIOD.

1 THEN YOU WOULD LOOK TO THAT RESOLUTION,
2 WOULD YOU NOT?

3 A. THE RESOLUTION, THE AGENDA, AND THE
4 DOCUMENTS CONTAINED WITHIN THAT.

5 Q. WELL, WHAT I'M SAYING IS A RESOLUTION SUCH
6 AS THAT THAT DELEGATES AUTHORITY TO THE C.A.O. WOULD
7 MEAN THAT THERE WOULD NOT BE ANYTHING ON THE CITY
8 COUNCIL AGENDA FOR EMPLOYEES WHOSE CONTRACTS WERE
9 SIGNED BY THAT AUTHORIZED PERSON.

10 MR. KENNEDY: IS THIS A HYPOTHETICAL, OR IS
11 THAT A STATEMENT?

12 MR. BRAUN: THIS IS A HYPOTHETICAL.

13 THE WITNESS: IN THE INSTANCE THAT YOU
14 DESCRIBED, IT DOESN'T NECESSARILY SOUND LIKE IT'S
15 DULY APPROVED AND NOTICED.

16 BY MR. BRAUN:

17 Q. SO FOR EXAMPLE THE CUSTODIAN AT THE CITY OF
18 BELL WHOSE CONTRACT WAS SIGNED BY MR. RIZZO FOR HIS
19 EMPLOYMENT WOULD BE DEPRIVED OF HIS CALPERS PENSION
20 BECAUSE UNDER CALPERS INTERPRETATION, HIS CONTRACT
21 HAD TO BE ON THE CITY COUNCIL AGENDA?

22 A. I DON'T BELIEVE THAT THERE WAS A CUSTODIAN.
23 IS THERE A CUSTODIAN?

24 MR. BRAUN: THIS IS JUST A HYPOTHETICAL.

25 MR. KENNEDY: IF I MAY, YOUR HONOR. THE

1 QUESTION WAS JUST BASED ON THE FACTS PRESENTED IF
2 THERE WAS A --

3 THE COURT: DO YOU KNOW IF THE CUSTODIAN'S
4 EMPLOYMENT AGREEMENT WOULD HAVE TO BE APPROVED
5 FOLLOWING NOTICE?

6 THE WITNESS: I THINK IN THE INSTANCE OF A
7 CUSTODIAN, WE WOULD STILL LOOK TO THE DULY APPROVED
8 AND NOTICED. I HAVE PERSONALLY NEVER SEEN A
9 CUSTODIAN ON CONTRACT -- PERSONALLY, IN MY REVIEW OF
10 CASES.

11 THE COURT: OKAY. I'VE GOT IT.
12 BY MR. BRAUN:

13 Q. THERE'S ONE OTHER QUESTION. IN TERMS OF
14 THE CLASSIFICATION OF THE -- REVIEW OF THE
15 CLASSIFICATION, AT SOME POINT YOU NOTICED THAT
16 MS. SPACCIA WAS IN THE EXECUTIVE MANAGEMENT CATEGORY?

17 A. I NOTICED THE RESOLUTION STATED SHE WAS
18 IN -- BASED ON THAT RESOLUTION THAT CLASSIFIED HER IN
19 THAT CATEGORY.

20 Q. NOW, WHEN YOU DETERMINED WHAT OR WHY PEOPLE
21 ARE IN PARTICULAR CATEGORIES, DO YOU TAKE INTO
22 CONSIDERATION ANY FEDERAL LAW?

23 A. CAN YOU BE MORE SPECIFIC? WHAT FEDERAL
24 LAW?

25 Q. THE 402 PLANS -- 401 PLANS UNDER FEDERAL

1 LAW REQUIRE THAT THERE BE AT LEAST TWO PEOPLE
2 INCLUDED IN THE PLAN. ARE YOU AWARE OF THAT?

3 A. I AM NOW. NO.

4 Q. WOULD IT MAKE ANY DIFFERENCE TO CALPERS
5 THAT THE PERSON WAS PUT INTO A PARTICULAR CATEGORY
6 FOR A 401 FEDERAL PURPOSE AS OPPOSED TO SOME OTHER
7 CITY PURPOSE?

8 A. YES.

9 Q. WHY IS THAT?

10 A. BECAUSE THAT -- TO ME, BASED ON THAT
11 SITUATION, IT SOUNDS LIKE THEY'RE BEING PLACED
12 TOGETHER FOR PURPOSES OF SOME SORT OF BENEFIT AS
13 OPPOSED TO LOOKING AT 20636(E) (2), A GROUP OF
14 EMPLOYEES CONSIDERED TOGETHER BECAUSE THEY SHARE
15 SIMILAR DUTIES, COLLECTIVE BARGAINING, OR LOGICAL
16 WORK-RELATED GROUPING.
17 BY VIRTUE OF JUST PUTTING THEM TOGETHER FOR
18 PURPOSES OF A BENEFIT, THAT DEFERRED COMP PACKAGE, I
19 DON'T THINK THAT WOULD BE CONSIDERED A GROUP FOR
20 CALPERS.

21 Q. EVEN THOUGH IT'S DONE FOR FEDERAL PURPOSE
22 IT WOULD NOT BE -- EVEN THOUGH IT WOULD PASS MUSTER
23 UNDER THE FEDERAL LAW AS A GROUP, CALPERS MIGHT NOT
24 RECOGNIZE THAT?

25 A. I DON'T KNOW.

1 MR. KENNEDY: OBJECTION AS TO "PASS MUSTER"
2 AND RELEVANCY OF THE QUESTION.

3 THE COURT: SUSTAINED.

4 MR. BRAUN: ONE MORE, YOUR HONOR.

5 BY MR. BRAUN:

6 Q. DO YOU KNOW WHETHER OR NOT ANNETTE PERETZ
7 AND LOUIS RAMIREZ WERE DULY AUTHORIZED AND NOTICED IN
8 TERMS OF THEIR PAY?

9 A. I DON'T KNOW.

10 Q. NOW, WOULD YOU, AS CALPERS, GO BACK NOW AND
11 CHECK ALL THOSE HALF DOZEN OR SO PEOPLE THAT HAVE
12 BEEN ON PENSION AND DETERMINE IF THEIR CONTRACTS
13 WEREN'T DULY NOTICED AND APPROVED? THEN YOU'D PULL
14 THE PENSION AND EXAMINE THEM?

15 MR. ONSTOT: OBJECTION. CALLS FOR
16 SPECULATION.

17 THE COURT: SUSTAINED.

18 BY MR. BRAUN:

19 Q. DID YOU NOTICE THAT IN THE PRINTOUTS THAT
20 YOU HAVE FROM THE REPORTS FROM THE CITY OF BELL TO
21 CALPERS THAT IT ACTUALLY INCLUDED THE AMOUNT OF
22 MONIES THAT WERE PAID FOR DEFERRED COMPENSATION?

23 A. WHEN YOU SAY PRINTOUTS, DO YOU ACTUALLY
24 MEAN THE ACTUAL PAYROLL DETAIL TRANSCRIPTS?

25 Q. RIGHT.

1 A. YES. I SAW THAT.

2 Q. THAT MEANS THE CITY OF BELL TOOK THE MONIES
3 THAT WERE LISTED, THE MONEY THAT WAS PAID FOR THE
4 DEFERRED COMPENSATION FOR MS. SPACCIA, AS INCOME THAT
5 THEY PAID THEIR CONTRIBUTION TO CALPERS; IS THAT
6 RIGHT?

7 A. AT THE TIME IT WAS REPORTED, THAT'S AN
8 AUTOMATED PROCESS THAT WHEN PAYMENTS ARE REPORTED BY
9 AN EMPLOYER, CONTRIBUTIONS ARE PAID INTO THE SYSTEM.

10 Q. SO THAT MEANS THE CITY OF BELL WOULD HAVE A
11 RIGHT TO GET -- THAT DEFERRED COMPENSATION DOESN'T
12 QUALIFY AS COMPENSATION EARNABLE, DOES IT?

13 A. IT DOES NOT.

14 Q. SO THAT MEANS WITH RESPECT TO THOSE, THE
15 CITY OF BELL IS ENTITLED TO A REFUND FROM CALPERS; IS
16 THAT RIGHT?

17 THE COURT: IF YOU KNOW.

18 THE WITNESS: THE PROCESS IS IF THERE'S AN
19 AMOUNT, A PAYMENT THAT'S REPORTED TO CALPERS, CALPERS
20 WILL GO BACK TO THE EMPLOYER AND TELL THEM THIS IS
21 NOT CONSIDERED COMPENSATION EARNABLE.

22 THEY BACK OUT THE PAYROLL, AND THEN THE
23 EMPLOYER'S CREDITED WITH THE CONTRIBUTION AMOUNT.

24 BY MR. BRAUN:

25 Q. SO WAS THAT DONE IN THE CASE OF BELL, DO

1 YOU KNOW?

2 A. THAT HAS NOT BEEN DONE.

3 Q. SO THAT MEANS THAT THE CITY OF BELL IS
4 ENTITLED TO HAVE A BACK OUT OR REFUND, WHATEVER YOU
5 CALL IT, ON ALL THE DEFERRED COMPENSATION THAT WAS
6 REPORTED ON ALL THE EMPLOYEES FOR THE CITY OF BELL;
7 IS THAT RIGHT?

8 MR. KENNEDY: IT'S AN INCOMPLETE
9 HYPOTHETICAL.

10 THE COURT: SUSTAINED. IT DEPENDS ON THE
11 OUTCOME OF THIS PROCEEDING.

12 BY MR. BRAUN:

13 Q. ACTUALLY, I THINK WE CONCEDED THAT THE
14 DEFERRED COMPENSATION IS NOT PART OF THE COMPENSATION
15 EARNABLE. SO AT LEAST UNDER THAT HYPOTHETICAL, IF
16 THAT STICKS, THAT WOULD MEAN THAT THE CITY OF BELL IS
17 ENTITLED TO SOME CREDITS BACK; IS THAT RIGHT?

18 A. YEAH. WELL, WHAT WE'LL DO ONCE THAT'S
19 SETTLED -- AND I'M NOT SURE EXACTLY --

20 THE COURT: THE FACT THAT YOU'VE CONCEDED
21 IT DOESN'T MEAN THAT THERE'S BEEN AN ORDER THAT'S
22 ISSUED. IT GIVES RISE TO IT.

23 BY MR. BRAUN:

24 Q. OH, NO. I'M JUST SAYING THAT IN TERMS OF
25 BELL'S -- CALPERS' POLICIES, THAT IF THEY DISCOVER

1 THAT WITHIN THE REPORTS FROM THE CITY OF BELL WERE A
2 NUMBER OF ITEMS THAT WERE NOT COMPENSATION EARNABLE,
3 THEN THE PROPER PROCEDURE FOR CALPERS WOULD BE TO
4 GIVE THE CREDITS BACK TO BELL; IS THAT RIGHT?

5 A. CALPERS WILL REACH OUT TO BELL, IDENTIFY
6 THE PAY PERIODS IN WHICH THAT WAS PAYMENT WAS
7 REPORTED TO CALPERS ON AND ASK THAT IT BE BACKED
8 OUT -- REQUEST THAT IT BE BACKED OUT OF THE PAYROLL
9 SYSTEM.

10 Q. WHICH WOULD RESULT IN A CREDIT FOR THE CITY
11 OF BELL?

12 A. YES, SIR.

13 MR. BRAUN: NO FURTHER QUESTIONS.

14
15 RE-CROSS-EXAMINATION

16 BY MR. ONSTOT:

17 Q. I'M A LITTLE BIT UNSURE AS TO YOUR
18 TESTIMONY AND THE ANSWERS TO SOME QUESTIONS AS TO
19 WHETHER OR NOT YOU'RE TESTIFYING AS, BASICALLY, AN
20 EXPERT OR TO THINGS THAT YOU ACTUALLY DID WITH
21 REGARDS TO THE CALCULATION FOR COMPENSATION FOR
22 RETIREMENT PURPOSES.

23 LET ME ASK IT THIS WAY: DID YOU PERSONALLY
24 WORK ON OR PARTICIPATE IN THE DETERMINATION OF
25 MS. SPACCIA'S COMPENSATION FOR RETIREMENT PURPOSES?

1 A. I DID NOT.

2 Q. DID YOU PERSONALLY PARTICIPATE IN THAT
3 REGARD FOR ANY OTHER EMPLOYEE OF BELL?

4 A. I DID NOT.

5 Q. SO THEN IS IT FAIR TO SAY THAT YOU DON'T
6 KNOW WHETHER OR NOT OR TO WHAT EXTENT ANY EMPLOYMENT
7 CONTRACTS WERE USED BY ANYBODY AT CALPERS, WITH
8 REGARDS TO CALCULATING THE COMPENSATION FOR
9 RETIREMENT PURPOSES OF ANYBODY FROM BELL?

10 A. I'M SORRY. CAN YOU SAY THAT ONE MORE TIME?

11 THE COURT: SO YOU DON'T HAVE FIRSTHAND
12 KNOWLEDGE ABOUT ANYONE EMPLOYED BY THE CITY OF BELL,
13 HOW IT WAS CALCULATED?

14 THE WITNESS: HOW THE DETERMINATION WAS
15 MADE?

16 THE COURT: YES.

17 THE WITNESS: CORRECT.

18 MR. ONSTOT: NOTHING FURTHER.

19 THE COURT: MR. KENNEDY?

20

21 FURTHER REDIRECT EXAMINATION

22 BY MR. KENNEDY:

23 Q. MR. RODGERS, I'M TRYING TO PARAPHRASE, I
24 THINK, SOMETHING YOU SAID, AND THAT IS YOU PERCEIVE
25 THAT A GROUP OR CLASS AS USED IN THE P.E.R.L., AS I

1 UNDERSTAND, IS SOMETHING THAT IS ESSENTIALLY
2 LOGICALLY WORK-RELATED GROUPINGS.

3 IT CAN BE DUTIES, LOCATIONS, UNITS, AND
4 OTHER CONSIDERATIONS. BUT TO SAY THAT YOU ARE
5 CREATING A GROUP OR CLASS BASED UPON THE LEVEL AND
6 AMOUNT OF BENEFITS --

7 IN OTHER WORDS, YOU TAKE A GROUP OF PEOPLE
8 IN THE CITY OF BELL, AND YOU SAY, "YOU KNOW WHAT?
9 THESE PEOPLE ARE GOING TO GET BIG, HUGE DEFERRED
10 COMPS. THEY'RE GOING TO GET BIG, HUGE INCREASES IN
11 SALARY.

12 "AND BECAUSE WE WANT TO MAKE SURE THAT
13 DOESN'T SPREAD TO THE REST OF THE GROUP OR CLASS THEY
14 MAY BE IN, WE'RE GOING TO MAKE THEM AN EXECUTIVE
15 GROUP, OR WE'RE GOING TO MAKE THEM A SPECIAL GROUP BY
16 THEMSELVES. WE'RE GOING TO PUT THEM UNDER THAT
17 MONIKER."

18 THAT IS NOT, AS FAR AS CALPERS IS CONCERNED
19 IN APPLYING THE CONCEPT OF GROUP OR CLASS, A
20 LEGITIMATE GROUP OR CLASS; RIGHT?

21 A. GROUP OR CLASS, NO, IT'S NOT. GROUP OR
22 CLASS IS DEFINED IN (E) (1), 20636 (E) (1).

23 I MISSPOKE EARLIER. I SAID (E) (2). (E) (2)
24 DEALS WITH INCREASES. (E) (1) DEFINES GROUP OR CLASS.
25 PARDON ME.

1 Q. BUT WHEN YOU RESPONDED TO MR. BRAUN'S
2 QUESTION --

3 THE COURT: YOU'VE GOT TO LET HIM ANSWER
4 THE QUESTION.

5 THE WITNESS: NO. JUST BECAUSE THERE'S
6 LARGE INCREASES FOR SPECIFIC INDIVIDUALS, THAT'S NOT
7 HOW A GROUP OR CLASS IS DETERMINED.
8 BY MR. KENNEDY:

9 Q. BECAUSE OTHERWISE I COULD SPIKE -- I COULD
10 SELECT WHO I WANTED TO SPIKE FOR, PUT THEM IN THAT
11 CLASSIFICATION, AND THEN SAY, "WELL, EVERYBODY IN
12 THAT CLASS GOT THE SAME HUGE INCREASES. SO, CALPERS,
13 YOU CAN'T LOOK AT THAT."

14 THAT'S NOT THE WAY THE CONCEPT WORK; IS IT?

15 A. IT DEFIES THE CONCEPT OF GROUP OR CLASS.

16 MR. KENNEDY: THANK YOU.

17 NO OTHER QUESTIONS.

18 THE COURT: RE-CROSS?

19 MR. BRAUN: NONE.

20 THE COURT: THANK YOU.

21 THANK YOU, SIR.

22 MAY THIS WITNESS BE EXCUSED? I THINK HE
23 HAS TO GO BACK TO SACRAMENTO.

24 MR. KENNEDY: YES, HE MAY, BUT I'M DRIVING
25 HIM.

1 THE COURT: OH, OKAY.

2 MR. BRAUN: HOPE HE'S SAFE.

3 MR. KENNEDY: BUT YOU KNOW WHAT THOUGH --

4 THE COURT: MR. KENNEDY, YOU'VE HANDED ME A
5 DOCUMENT CALLED "REQUEST FOR JUDICIAL NOTICE."

6 COUNSEL, HAVE YOU SEEN THAT DOCUMENT?

7 MR. BRAUN: YES, I'VE SEEN IT THIS MORNING.
8 I DON'T ANTICIPATE ANY PROBLEMS WITH IT. I'D JUST
9 LIKE A CHANCE TO LOOK IT OVER. I DON'T THINK THERE'S
10 ANY PROBLEM. WE BASICALLY AGREED TO ALL THE
11 PAPERWORK ON EITHER SIDE.

12 THE COURT: SO YOU WANT TO RESERVE ON THAT?

13 MR. BRAUN: YEAH. I DON'T ANTICIPATE A
14 PROBLEM. SO I JUST WANT TO RESERVE TECHNICALLY -- IF
15 MR. KENNEDY DOESN'T HEAR FROM US WITHIN THE NEXT FEW
16 DAYS, THEN WE'LL JUST ASSUME IT'S OKAY.

17 THE COURT: WELL, I WON'T KNOW THOUGH. I'M
18 GOING TO TAKE NOTICE OF THESE MATTERS.

19 MR. BRAUN: OKAY. OKAY.

20 THE COURT: NOTICE IS TAKEN.

21 WE HAVE SOME EXHIBITS.

22 WE'VE RECEIVED CALPERS EXHIBITS 1 THROUGH
23 6.

24 MR. KENNEDY: AND WE WOULD SUBMIT THEN
25 ON -- I THINK THE ONLY ITEM REMAINING ON THAT LIST IN

1 OUR VOLUME 1, YOUR HONOR, THAT THE COURT HAD REJECTED
2 WAS THE PUBLIC RECORDS ACT REQUEST THAT IS EXHIBIT
3 14, TAB 14. I THINK THE COURT --

4 I WOULD MOVE THAT IN, BUT I BELIEVE THE
5 COURT FOUND THAT TO BE IRRELEVANT.

6 MR. BRAUN: THAT'S CORRECT, YOUR HONOR.

7 THE COURT: OH, 14 WILL NOT BE RECEIVED.

8 ARE YOU OFFERING THE REST OF THE EXHIBITS?

9 MR. KENNEDY: YES.

10 MR. ONSTOT: YOUR HONOR, COULD I HAVE A
11 MOMENT WITH MR. KENNEDY?

12 THE COURT: SURE.

13 (WHEREUPON, A DISCUSSION WAS HELD
14 OFF THE RECORD.)

15 MR. KENNEDY: THANK YOU, YOUR HONOR.

16 CALPERS WOULD -- PRIOR TO GOING ON THE
17 RECORD, WE TALKED ABOUT CALPERS SUBMITTING SOME
18 AGENDAS.

19 THE COURT: SOME WHAT?

20 MR. KENNEDY: SOME FULL AGENDAS.

21 THE COURT: YES.

22 MR. KENNEDY: AND IN THAT RESPECT, SUBJECT
23 TO -- UNDERSTANDING THAT IT INCLUDES THE FULL AGENDA
24 FROM, I BELIEVE, THE JUNE 30, 2003, CITY COUNCIL
25 MEETING FOR THE CITY OF BELL, CALPERS WOULD ASK TO

1 MOVE IN AGREEMENT NUMBER -- I MEAN EXHIBIT NO. 7.

2 THE COURT: ANY OBJECTION? IT'S AGREEMENT
3 1, DATED JULY 1, 2003.

4 MR. BRAUN: NO. THERE'S NO OBJECTION, YOUR
5 HONOR.

6 THE COURT: RECEIVED.

7 (DEPARTMENT'S EXHIBIT NUMBER 7 WAS MARKED FOR
8 IDENTIFICATION BY THE COURT AND RECEIVED
9 INTO EVIDENCE.)

10 MR. KENNEDY: CALPERS DOES NOT AT THIS TIME
11 REQUEST TO MOVE IN EXHIBITS 8, 9, 10 AND 11.

12 THE COURT: HOLD ON. EXHIBIT 8 IS THE
13 ADDENDUM. EXHIBIT 9 IS THE ADDENDUM.

14 MR. BRAUN: WE WOULD OFFER -- THOSE ARE
15 ACTUALLY DUPLICATES OF WHAT WE IDENTIFIED.

16 THE COURT: IT WILL BE RECEIVED. 8, 9, AND
17 10 BE RECEIVED.

18 (DEPARTMENT'S EXHIBIT NUMBERS 8 THROUGH 10 WERE
19 MARKED FOR IDENTIFICATION BY THE COURT AND
20 RECEIVED INTO EVIDENCE.)

21 MR. KENNEDY: AND THAT IS AT MR. BRAUN'S
22 REQUEST?

23 MR. BRAUN: YES.

24 MR. ONSTOT: FOR THE RECORD, I'D LIKE TO
25 IMPOSE AN OBJECTION AS THIS IS BEING ADMITTED FOR

1 LACK OF FOUNDATION, APPROPRIATE APPROVAL AND AGENDA
2 ITEMS BEING PROPERLY NOTICED.

3 THE COURT: YEAH. IT GOES TO THE WEIGHT,
4 NOT THE ADMISSIBILITY.

5 MR. KENNEDY: AND WE WOULD ALSO JOIN IN
6 THAT TOO.

7 THE COURT: I UNDERSTAND THAT. IT GOES TO
8 THE WEIGHT AND NOT THE ADMISSIBILITY.

9 MR. KENNEDY: THEN ITEM 12, WE WOULD LIKE
10 TO MOVE, YOUR HONOR.

11 THE COURT: LET'S SEE. 11.

12 MR. KENNEDY: I'M SORRY. 8, 9, 10, 11,
13 YOUR HONOR, ALL THE ONES WE JUST TALKED ABOUT.

14 THE COURT: IT'S BEEN RECEIVED.

15 (DEPARTMENT'S EXHIBIT NUMBER 11 WAS MARKED FOR
16 IDENTIFICATION BY THE COURT AND RECEIVED
17 INTO EVIDENCE.)

18 THE COURT: ITEM 12, ANY OBJECTION?

19 MR. BRAUN: NO OBJECTION.

20 THE COURT: BE RECEIVED.

21 (DEPARTMENT'S EXHIBIT NUMBER 12 WAS MARKED FOR
22 IDENTIFICATION BY THE COURT AND RECEIVED
23 INTO EVIDENCE.)

24 THE COURT: 13 HAS ALREADY BEEN RECEIVED.

25 14 HAS NOT BEEN RECEIVED.

1 MR. KENNEDY: SO 15.

2 MR. BRAUN: 15, YOUR HONOR, FOR THE RECORD,
3 WE'LL OBJECT TO THAT. IT'S IRRELEVANT TO THE ISSUES
4 IN THIS CASE.

5 THE COURT: 15 WILL BE RECEIVED.
6 (DEPARTMENT'S EXHIBIT NUMBER 15 WAS MARKED FOR
7 IDENTIFICATION BY THE COURT AND RECEIVED
8 INTO EVIDENCE.)

9 MR. KENNEDY: AND WE WOULD INTERPOSE THE
10 SAME OBJECTIONS TO THE --

11 THE COURT: ARE YOU OFFERING 16?

12 MR. KENNEDY: WE'RE NOT OFFERING 16, 17,
13 18.

14 THE COURT: ARE YOU OFFERING ANY OF THOSE?

15 MR. BRAUN: NO, YOUR HONOR.

16 THE COURT: 16, 17, 18 WILL NOT BE
17 RECEIVED.

18 19 IS THE PAYROLL.

19 MR. KENNEDY: DETAIL.

20 THE COURT: DETAIL. ARE YOU OFFERING THAT?

21 MR. KENNEDY: YES.

22 MR. BRAUN: NO OBJECTION.

23 THE COURT: BE RECEIVED.

24 ///

25 ///

1 (DEPARTMENT'S EXHIBIT NUMBER 19 WAS MARKED FOR
2 IDENTIFICATION BY THE COURT AND RECEIVED
3 INTO EVIDENCE.)

4 THE COURT: 20 IS RESOLUTION NUMBER 95-43.
5 IS THAT BEING OFFERED?

6 MR. ONSTOT: AND ASK IF YOUR HONOR CAN TAKE
7 JUDICIAL NOTICE OF THE OFFICIAL ACTIONS OF THE CITY
8 COUNCIL.

9 MR. KENNEDY: I NEED TO FIND MY COPY OF
10 THAT.

11 THE COURT: PARDON ME?

12 MR. KENNEDY: I NEED TO FIND MY COPY.

13 THE COURT: ONCE AGAIN, COUNSEL.

14 MR. KENNEDY: THE EXHIBIT. I DON'T HAVE
15 IT. OH, THERE IT IS.

16 THE COURT: MR. ONSTOT, ONCE AGAIN.

17 MR. ONSTOT: IF YOUR HONOR CAN TAKE
18 JUDICIAL NOTICE OF THE OFFICIAL ACTIONS OF THE CITY
19 COUNCIL. THESE RESOLUTIONS --

20 THE COURT: RIGHT. DO YOU HAVE ANY
21 OBJECTION TO MY RECEIVING IT?

22 IT WILL BE RECEIVED.

23 (DEPARTMENT'S EXHIBIT NUMBER 20 WAS MARKED FOR
24 IDENTIFICATION BY THE COURT AND RECEIVED
25 INTO EVIDENCE.)

1 THE COURT: 21 IS THE BUDGET. IT'S THE
2 SEPARATE FOLDER.

3 ANY OBJECTION TO THAT?

4 MR. BRAUN: NO OBJECTION.

5 THE COURT: ARE YOU OFFERING THAT?

6 MR. KENNEDY: YES.

7 THE COURT: 21 IS RECEIVED.

8 (DEPARTMENT'S EXHIBIT NUMBER 21 WAS MARKED FOR
9 IDENTIFICATION BY THE COURT AND RECEIVED
10 INTO EVIDENCE.)

11 THE COURT: 22 IS THE RULE MAKING FILE, AND
12 I THINK WE'VE TAKEN NOTICE OF THAT. IT WILL BE
13 RECEIVED.

14 (DEPARTMENT'S EXHIBIT NUMBER 22 WAS MARKED FOR
15 IDENTIFICATION BY THE COURT AND RECEIVED
16 INTO EVIDENCE.)

17 THE COURT: 23 IS THE CIRCULAR LETTER.

18 MR. BRAUN: NO OBJECTION.

19 THE COURT: IT'S BEEN RECEIVED; NOTICE HAS
20 BEEN TAKEN.

21 (DEPARTMENT'S EXHIBIT NUMBER 23 WAS MARKED FOR
22 IDENTIFICATION BY THE COURT AND RECEIVED
23 INTO EVIDENCE.)

24 THE COURT: 24.

25 MR. KENNEDY: PAYROLL DETAIL SHEETS.

1 THE COURT: IT'S FOR A WHOLE BUNCH OF
2 PEOPLE OTHER THAN --

3 MR. BRAUN: WE HAVE NO OBJECTION, YOUR
4 HONOR.

5 THE COURT: ARE YOU OFFERING THOSE?

6 MR. KENNEDY: YES.

7 THE COURT: IT WILL BE RECEIVED.

8 (DEPARTMENT'S EXHIBIT NUMBER 24 WAS MARKED FOR
9 IDENTIFICATION BY THE COURT AND RECEIVED
10 INTO EVIDENCE.)

11 THE COURT: 25 IS THE LEGISLATIVE HISTORY
12 ANY OBJECTION.

13 MR. BRAUN: NO OBJECTION YOUR HONOR.

14 THE COURT: BE RECEIVED.

15 (DEPARTMENT'S EXHIBIT NUMBER 25 WAS MARKED FOR
16 IDENTIFICATION BY THE COURT AND RECEIVED
17 INTO EVIDENCE.)

18 THE COURT: 26 ALSO THE LEGISLATIVE
19 HISTORY. THAT WILL BE RECEIVED.

20 (DEPARTMENT'S EXHIBIT NUMBER 26 WAS MARKED FOR
21 IDENTIFICATION BY THE COURT AND RECEIVED
22 INTO EVIDENCE.)

23 THE COURT: 27 IS ONE OF MY VERY FAVORITE
24 PRECEDENTIAL DECISION. NOTICE WILL BE TAKEN OF THAT.

25 ///

1 (DEPARTMENT'S EXHIBIT NUMBER 27 WAS MARKED FOR
2 IDENTIFICATION BY THE COURT AND RECEIVED
3 INTO EVIDENCE.)

4 MR. BRAUN: DID YOU WRITE IT?

5 THE COURT: YEAH, I DID.

6 MR. BRAUN: OKAY.

7 THE COURT: 28 IS A PRECEDENTIAL DECISION.
8 NOTICE WILL BE TAKEN OF THAT.

9 (DEPARTMENT'S EXHIBIT NUMBER 28 WAS MARKED FOR
10 IDENTIFICATION BY THE COURT AND RECEIVED
11 INTO EVIDENCE.)

12 MR. KENNEDY: EXCEPT, YOUR HONOR, IT'S
13 NON-PRECEDENTIAL, BUT IT'S BEING OFFERED UNDER --

14 THE COURT: NOTICE WILL BE TAKEN BECAUSE IT
15 GOES TO SHOW THE INTERPRETATION GIVEN BY CALPERS.

16 MR. KENNEDY: THANK YOU.

17 THE COURT: 29, THAT'S THE CALPERS AUDIT.

18 MR. KENNEDY: FROM 2010.

19 THE COURT: ANY OBJECTION TO THAT?

20 MR. BRAUN: NO OBJECTION, YOUR HONOR FOR
21 IT'S LIMITED PURPOSE. IN OTHER WORDS, IT OCCURRED.

22 WE DON'T ACCEPT A LOT OF THESE STATEMENTS
23 IN THERE, BUT IN TERMS OF HISTORY OF THE CASE, IT
24 SHOULD COME IN.

25 THE COURT: BE RECEIVED.

1 (DEPARTMENT'S EXHIBIT NUMBER 29 WAS MARKED FOR
2 IDENTIFICATION BY THE COURT AND RECEIVED
3 INTO EVIDENCE.)

4 THE COURT: EXHIBIT 30.

5 MR. KENNEDY: IT'S ACTUALLY THE
6 VALIDATION -- IT'S THE SUMMARIES OF THE OFFICIAL
7 DOCUMENTS FROM THE CITY OF BELL FORWARDED ON AND WERE
8 OBTAINED DURING THE AUDIT, ADDRESSING THE SALARIES
9 OF --

10 THE COURT: DO THEY HELP IN ANY WAY?

11 MR. KENNEDY: THEY HELP EXPLAIN THE AUDIT.

12 THE COURT: NO ONE HAS TALKED ABOUT THEM.

13 MR. KENNEDY: THEY'RE CONTAINED WITHIN THE
14 AUDIT, BUT THEY TALK ABOUT THE --

15 THE COURT: ANY OBJECTION?

16 MR. BRAUN: NO OBJECTION.

17 THE COURT: BE RECEIVED.

18 (DEPARTMENT'S EXHIBIT NUMBER 30 WAS MARKED FOR
19 IDENTIFICATION BY THE COURT AND RECEIVED
20 INTO EVIDENCE.)

21 THE COURT: EXHIBIT 31 IS THE OCTOBER 2ND,
22 2006, LETTER TO CALPERS AND ATTACHMENTS.

23 YOU'RE OFFERING THAT?

24 MR. KENNEDY: YES, I AM.

25 MR. BRAUN: NO OBJECTION.

1 THE COURT: BE RECEIVED.

2 (DEPARTMENT'S EXHIBIT NUMBER 31 WAS MARKED FOR
3 IDENTIFICATION BY THE COURT AND RECEIVED
4 INTO EVIDENCE.)

5 THE COURT: EXHIBIT 32 IS THE CIRCULAR
6 LETTER. ANY OBJECTION?

7 MR. BRAUN: WHAT NUMBER WAS THAT, YOUR
8 HONOR.

9 THE COURT: 32.

10 MR. BRAUN: IS IT THAT --

11 THE COURT: IT'S A CIRCULAR DATED
12 NOVEMBER 17, 1995.

13 MR. BRAUN: WRONG NUMBER.

14 NO OBJECTION, YOUR HONOR.

15 THE COURT: BE RECEIVED.

16 AND 33, THE SPREADSHEETS HAVE BEEN
17 RECEIVED.

18 ARE THERE ANY OTHER EXHIBITS FROM CALPERS
19 AT THIS TIME?

20 MR. KENNEDY: I DON'T BELIEVE SO, AT THIS
21 TIME, YOUR HONOR.

22 THE COURT: ANY EXHIBITS FROM THE CITY AT
23 THIS TIME?

24 MR. KENNEDY: YOUR HONOR, THERE WAS ONE,
25 AND THAT WAS THE SUMMARY SHEET. I THINK YOU MARKED

1 IT AS 33.

2 MR. ONSTOT: IT'S BEEN RECEIVED.

3 THE COURT: IT'S BEEN RECEIVED.

4 MR. KENNEDY: BEEN RECEIVED. OKAY. THANK
5 YOU.

6 MR. ONSTOT: THE CITY OFFERS NONE.

7 THE COURT: OKAY. YOU WANT TO WAIT UNTIL
8 YOUR EXPERT GETS TESTIFYING BEFORE WE GO THROUGH YOUR
9 EXHIBITS?

10 MR. BRAUN: YES, WE COULD DO THAT.

11 THE COURT: IS THAT OKAY WITH YOU,
12 MR. KENNEDY?

13 MR. KENNEDY: SURE.

14 THE COURT: MR. ONSTOT?

15 MR. ONSTOT: YES.

16 THE COURT: OKAY. LET'S TALK ABOUT YOUR
17 EXPERT.

18 MR. BRAUN, MY UNDERSTANDING IS THAT YOU'RE
19 GOING TO SEEK THE ASSISTANCE OF AN EXPERT TO HELP
20 REVIEW ALL THESE MATTERS AND TO DETERMINE THE
21 CALCULATIONS AND THE INTERPRETATIONS THAT'S BEEN
22 PROVIDED HERE.

23 MR. BRAUN: YES, YOUR HONOR.

24 THE COURT: AND HOW LONG DO YOU THINK THAT
25 WILL TAKE?

1 MR. KENNEDY: YOUR HONOR, IF I MAY.

2 THE COURT: YES.

3 MR. KENNEDY: IT'S MY UNDERSTANDING THAT
4 MR. BRAUN IS REQUESTING A CONTINUANCE OF THE HEARING
5 FOR THE PURPOSES OF SEEKING -- WHAT WOULD YOU CALL
6 IT? -- REBUTTAL TESTIMONY OR --

7 MR. BRAUN: I DON'T CARE WHAT YOU CALL IT.
8 I JUST WANT TO SET A DATE.

9 THE COURT: HERE'S THE WAY IT WORKS: THE
10 INITIAL BURDEN OF PROOF WAS WITH THE APPLICANT. THEY
11 MET THAT BURDEN OF PROOF.

12 CALPERS PUT ON ITS EVIDENCE, AND NOW THE
13 APPLICANT HAS THE RIGHT TO GO BACK AND PUT ON IT'S
14 EVIDENCE AND SAY, "GEE, I THINK THAT'S WHERE CALPERS
15 WENT WRONG."

16 YOU HAVE THE RIGHT -- AND I'M GOING TO GIVE
17 YOU THAT RIGHT -- TO PUT ANY ON RESPONSE TO THEIR
18 EXPERT WITNESS.

19 THE BURDEN OF PROOF SHIFTS DURING THESE
20 MATTERS, DEPENDING ON THE STRENGTH OF THE EVIDENCE AS
21 PRESENTED. AND I'M GOING TO GIVE EVERY PARTY AN
22 OPPORTUNITY TO PUT ON ALL THE EVIDENCE THEY THINK IS
23 NECESSARY TO PROVE THEIR CASE.

24 SO IF CALPERS NEEDS MORE TIME, THEY CAN
25 HAVE IT TOO. BUT I THINK IT'S APPROPRIATE AT THIS

1 POINT, SINCE YOU HAVE PUT ON EXPERT TESTIMONY, FOR
2 THE APPLICANT TO SECURE AN EXPERT TO SEE IF THERE IS
3 SOME BASIS ON WHICH EXPERT TESTIMONY CAN BE PROVIDED
4 THAT HAS MORE PROBATIVE VALUE THEN THAT PROVIDED BY
5 YOUR PEOPLE. OKAY.

6 MR. KENNEDY: WE DON'T -- CALPERS, WITHOUT
7 NECESSARILY CONCEDING THE ASSERTIONS MADE BY THE
8 COURT AS FAR AS THE SHIFTING OF THE BURDEN AND AS FAR
9 AS CALPERS -- AS FAR AS THE EXPERT'S COMING ON --
10 CALPERS' WITNESSES ARE TESTIFYING AS TO THE
11 APPLICATION OF THE P.E.R.L. AND THE IMPLEMENTATION BY
12 CALPERS.

13 BUT I JUST WANT TO MAKE SURE THAT YOU KNOW
14 WE CAME TO THIS CASE -- WE'VE COME TO THIS CASE, AND
15 WE HAVE HAD TIME TO PREPARE. WE PRESENTED THE CASE.
16 WE CALLED EVERYONE HERE.

17 THERE WAS A REQUEST FOR A CONTINUANCE. I
18 UNDERSTAND THE COURT'S GOING TO GRANT THAT BECAUSE HE
19 WANTS MR. BRAUN TO HAVE THE CHANCE TO PRESENT THE
20 FULL EVIDENCE ON THE RECORD THAT HE MADE. SO HE'S
21 GOING TO MUSTER THAT.

22 THE COURT: ARE YOU OBJECTING TO THE
23 CONTINUANCE?

24 MR. KENNEDY: I BELIEVE THE COURT'S ALREADY
25 INDICATED THAT HE'S GOING TO GRANT THAT.

1 THE COURT: WOULD YOU LIKE TO OBJECT TO IT
2 ON THE RECORD SO THAT YOU CAN MAKE YOUR RECORD?

3 MR. KENNEDY: NO. I'M NOT GOING TO OBJECT
4 TO THE CONTINUANCE.

5 THE COURT: OKAY.

6 MR. ONSTOT?

7 MR. ONSTOT: THE CITY DOES NOT OBJECT TO A
8 CONTINUANCE AS LONG AS IT'S FOR A LIMITED PURPOSE AND
9 SCOPE AND NOT JUST TO KEEP THE ENTIRE MATTER OPEN.

10 THE COURT: NO. AND THAT'S WHY I STARTED
11 OFF BY SAYING IT'S MY UNDERSTANDING HE'S GOING TO GO
12 OUT AND FIND AN EXPERT.

13 I WAS TRYING TO GET THE TIMELINES
14 INVOLVED --

15 MR. KENNEDY: I AGREE WITH WHAT MR. ONSTOT
16 SAID.

17 THE COURT: -- UNTIL WELL WE GOT
18 SIDETRACKED SOMEHOW.

19 TELL ME HOW LONG DO YOU THINK YOU NEED?

20 MR. BRAUN: I'LL TRY TO DO IT WITHIN 30
21 DAYS, YOUR HONOR. I HAVE TO FIND AN EXPERT THAT'S
22 AVAILABLE.

23 THE COURT: HOW ABOUT IF I GIVE YOU 60
24 DAYS. I GIVE YOU 60 DAYS, WHICH IS AN
25 EXTRAORDINARILY BRIEF PERIOD OF TIME AS I SEE THESE

1 THINGS.

2 AT THE END OF 60 DAYS HENCE, WHAT DATE WILL
3 THAT BE.

4 MR. KENNEDY: IT WILL BE THE END OF
5 NOVEMBER. IT WOULD PROBABLY BE RIGHT AFTER
6 THANKSGIVING.

7 MR. ONSTOT: NO. END OF OCTOBER.

8 MR. BRAUN: OCTOBER.

9 MR. KENNEDY: SORRY. AROUND HALLOWEEN. SO
10 THE END OF OCTOBER, BEGINNING OF NOVEMBER.

11 THE COURT: WHAT'S THE FIRST FRIDAY IN
12 NOVEMBER?

13 MR. ONSTOT: IT'S FRIDAY, NOVEMBER 2ND, THE
14 DAY OF THE DEAD.

15 THE COURT: THIS IS GOING TO BE THE ORDER:

16 GO OUT AND DO WHAT YOU HAVE TO DO. BY THE
17 CLOSE OF BUSINESS ON NOVEMBER 2ND, 2002, I WANT YOU
18 TO PROVIDE TO BOTH COUNSEL, YOUR EXPERT'S NARRATIVE
19 REPORT THAT SETS FORTH HIS OR HER OPINIONS AND
20 CONCLUSIONS AND A C.V. THAT DESCRIBES HIS OR HER
21 QUALIFICATIONS TO RENDER THE OPINIONS THAT ARE SET
22 FORTH IN THAT REPORT.

23 AND IS THAT GOING TO BE A PROBLEM?

24 MR. BRAUN: WE'LL DO IT.

25 THE COURT: OKAY.

1 MR. ONSOTO: YOUR HONOR, I THINK YOU
2 MISSPOKE. I THINK YOU SAID 2002. I THINK YOU MEANT
3 2012.

4 THE COURT: 2012. THANK YOU.

5 IT WAS THE DAY OF THE DEAD.

6 AND WHAT'S GOING TO BE THE BEST WAY TO
7 COORDINATE ALL OF OUR CALENDARS, DO YOU THINK?

8 MR. BRAUN: PROBABLY TO CALL YOUR HONOR AT
9 SOME POINT AROUND THAT TIME, MAYBE JUST SHORTLY
10 THEREAFTER, AFTER THEY SEE THE REPORT. THEN THEY'LL
11 KNOW WHETHER THEY'LL NEED SOME TIME.

12 THE COURT: WELL, DO YOU WANT TO SET THE
13 DATE AFTER YOU RECEIVE THE REPORT?

14 MR. KENNEDY: I THINK THAT WOULD BE BEST.

15 THE COURT: OKAY.

16 YES, SIR.

17 MR. ONSTOT: MY UNDERSTANDING -- AND YOU
18 FOLKS WOULD KNOW BETTER WITH RESPECT TO CALENDER
19 ISSUES -- BUT THE LONGER WE WAIT, THE FURTHER WE'RE
20 GOING TO GET PUSHED OUT.

21 SO I THINK WE'RE PROBABLY LOOKING AT
22 JANUARY, FEBRUARY, MARCH NOW TO GET A DATE WITH YOUR
23 HONOR.

24 THE COURT: I THINK THAT'S PROBABLY THE
25 CASE.

1 MR. ONSTOT: SO IN FAIRNESS TO MS. SPACCIA,
2 I THINK WE SHOULD DO IT AS EARLY AS POSSIBLE, IF WE
3 COULD.

4 MR. BRAUN: IF WE COULD. SHE'S OBVIOUSLY
5 IN FORECLOSURE ON HER HOME.

6 THE COURT: WELL, WHAT I'D LIKE TO DO WOULD
7 BE TO SET IT IN NOVEMBER, BUT I DON'T HAVE MY
8 CALENDAR IN FRONT OF ME, NOR DO YOU.

9 SO, WHAT I NEED IS A DATE THAT WE CAN ALL
10 GET ON A TELEPHONE CONFERENCE AND SAY THESE ARE THE
11 DATES THAT WE'RE GOING TO NEED.

12 CAN WE CONCLUDE IT IN ONE DAY?

13 MR. BRAUN: I THINK SO.

14 MR. KENNEDY: I DON'T KNOW. I'D HAVE TO
15 SEE THE REPORT. THE COURT'S OFFERING CALPERS --

16 THE COURT: YOU MAY WANT REBUTTAL?

17 MR. KENNEDY: YES.

18 THE COURT: SO SHALL WE SET IT FOR TWO
19 DAYS?

20 MR. KENNEDY: PROBABLY, TO BE SAFE.

21 THE COURT: OKAY.

22 ONE OF THE THINGS THAT I KNOW FOR CERTAIN
23 IS THAT AFTER CHRISTMAS, EVERY YEAR, NOTHING HAPPENS
24 IN THE COURTROOMS.

25 SO THAT'S PROBABLY A TIME WE COULD DO IT,

1 BUT NO ONE WANTS TO -- THERE IS A REASON FOR THAT.

2 NO ONE WANTS TO DO ANYTHING BETWEEN CHRISTMAS AND

3 NEW YEAR'S. I KNOW THOSE DATES ARE AVAILABLE.

4 MR. BRAUN: I CAN DO IT, YOUR HONOR.

5 MR. KENNEDY: ACTUALLY, DECEMBER 26 IS MY

6 BIRTHDAY, AND I USUALLY TAKE THAT OFF.

7 THE COURT: OKAY. THAT WOULD LEAVE THE 27,

8 28, 29.

9 MR. BRAUN: FINE WITH ME, YOUR HONOR.

10 MR. KENNEDY: THIS IS FOR HEARING?

11 THE COURT: YES.

12 MR. ONSTOT: 27 IS A THURSDAY; 28 IS

13 FRIDAY.

14 MR. KENNEDY: AND I WILL AS SOON AS --

15 THE COURT: OKAY. LET'S GO OFF THE RECORD.

16 (WHEREUPON, A DISCUSSION WAS HELD

17 OFF THE RECORD.)

18 MR. KENNEDY: YOUR HONOR, WE'D LIKE ON THE

19 RECORD JUST THE CAVEAT THAT I HAVEN'T COORDINATED

20 THIS WITH ANY EXPERT OR ANY REBUTTAL EXPERT I MAY

21 HAVE.

22 THE COURT: SURE.

23 MR. KENNEDY: AND IF I MAY MAKE A REQUEST

24 FOR A CONTINUANCE OF THAT DATE BASED ON THAT.

25 THE COURT: IF YOU COME IN HERE, AND YOU

1 TELL ME THAT YOU MADE AN EFFORT TO HAVE SOMEONE LOOK
2 AT THE EXPERT'S REPORT AND THE C.V. AND THEY CAN'T
3 TESTIFY ON THESE DAYS AND THERE IS NO ONE ELSE
4 AVAILABLE TO DO THAT, YOU'LL GET A CONTINUANCE.

5 I MEAN, THAT'S FAIR.

6 MR. BRAUN: I THINK THE ISSUES ARE GOING TO
7 BE PRETTY NARROW.

8 THE COURT: BUT WE DON'T KNOW.

9 MR. KENNEDY: OKAY. I DON'T KNOW WHAT THE
10 ARGUMENT IS.

11 THE COURT: EVERY TIME I GUESS SOMETHING,
12 I'M WRONG.

13 MR. KENNEDY: JUST SO -- I DON'T WANT TO
14 INTERRUPT THE COURT AND PARTIES.

15 ON THE -- CALPERS' UNDERSTANDING WAS AND IS
16 THAT THE EXPERT IS GOING TO BE CALLED -- OR THE
17 EXPERT THAT MR. BRAUN IS CALLING IS GOING TO BE
18 BASICALLY REVIEWING THE MANUAL CALCULATIONS THAT ARE
19 IN TAB 13 AND BASICALLY MAKING A DETERMINATION AS TO
20 WHETHER, BASED UPON ANY OTHER EVIDENCE IT MAY THINK
21 THOSE CALCULATIONS ARE TRUE AND CORRECT OR ACCURATE,
22 ARE OFFERING AN EXPLANATION --

23 THE COURT: I DON'T KNOW WHAT THEIR EXPERT
24 WILL OR WON'T DO.

25 MR. KENNEDY: THE ONLY OBJECTION CALPERS

1 HAS AND WILL MAKE THEIR OBJECTION NOW -- AND WE
2 TALKED OFF THE RECORD ON THIS -- IS CALPERS WOULD
3 OBJECT TO MR. BRAUN'S OR THE COURT'S BRINGING ON AN
4 EXPERT WHO WILL BE INTERPRETING PROVISION OF LAW OR
5 PROVISIONS OF CONTRACT.

6 WE FILE THAT'S A -- THEY'RE NOT COMPETENT
7 TO DO THAT, AND THAT WOULD BE IMPROPER OPINION
8 TESTIMONY IF OFFERED BY THE EXPERT.

9 THE COURT: I'LL LET THEIR EXPERT HAVE THE
10 SAME LATITUDE THAT YOUR EXPERTS HAD.

11 MR. KENNEDY: MY EXPERTS ARE NOT EXPERTS
12 SPEAKING -- THEY'RE SPEAKING AS CALPERS EMPLOYEES WHO
13 ARE ESSENTIALLY RELATING --

14 THE COURT: I'LL GIVE THEIR EXPERTS THE
15 SAME LATITUDE THAT CALPERS HAD.

16 MR. KENNEDY: MY EXPERTS --

17 THE COURT: MR. KENNEDY, WE AREN'T GOING TO
18 ARGUE ANYMORE ABOUT IT.

19 MR. KENNEDY: OKAY. ALL RIGHT.

20 MR. ONSTOT: YOUR HONOR, IS IT YOUR
21 PREFERENCE TO HAVE CLOSING ORALLY OR IN WRITING?

22 MR. BRAUN: WE CAN DECIDE THAT THEN BECAUSE
23 WE WILL HAVE A BETTER IDEA --

24 THE COURT: YEAH. I'M REALLY NOT -- AGAIN,
25 I'M NOT SURE BECAUSE WE DON'T KNOW WHERE EXACTLY

1 WE'LL BE.

2 IT MAY BE THAT THERE'S JUST ONE OR TWO
3 FACTUAL ISSUES THAT I MIGHT HAVE TO DECIDE. IF
4 THAT'S THE CASE, THEN ORAL ARGUMENT'S THE SOLUTION.

5 IF IT IS TURNS OUT THERE'S SOME SORT OF
6 REAL COMPLICATED ISSUE OF LAW THAT'S GOING TO TAKE A
7 LOT OF LEGAL RESEARCH AND STUFF, THEN I'M MUCH BETTER
8 OFF HAVING YOU FOLKS SIT DOWN AND TELL ME WHAT THE
9 LAW IS AND WHY IT SHOULD BE APPLIED.

10 MR. ONSTOT: I AGREE WITH THAT. I'M JUST
11 THINKING IN FAIRNESS TO MS. SPACCIA IF WE COME BACK
12 IN DECEMBER, WHICH IS FOUR MONTHS FROM NOW, IF YOUR
13 HONOR WANTS TO --

14 THE COURT: IN FAIRNESS TO HER --

15 MR. ONSTOT: -- ADD 60 DAYS OF RESEARCH --

16 THE COURT: -- THE FAIREST THING FOR HER IS
17 TO HAVE IT DECIDED CORRECTLY --

18 MR. ONSTOT: I UNDERSTAND.

19 THE COURT: -- WHICH MEANS IF IT'S A
20 LIMITED FACTUAL ISSUE, TO ARGUE IT ORALLY BECAUSE
21 THERE'S NO NEED TO DELAY TIME.

22 BUT IF IT'S A COMPLICATED LEGAL ISSUE, TO
23 TAKE THE TIME TO DO IT RIGHT SO THAT ON APPEAL -- IF
24 THERE IS AN APPEAL FROM IT -- THE THING IS
25 WELL-CONSIDERED.

1 MR. ONSTOT: I DON'T DISAGREE WITH THAT. I
2 JUST THINK THAT IT COULD BE DONE CONCURRENTLY AS
3 OPPOSED TO SEQUENTIAL.

4 THE COURT: I DON'T KNOW WHAT THEIR EXPERT
5 IS GOING TO SAY IN THE ABSENCE OF KNOWING WHAT THEIR
6 EXPERT IS GOING TO SAY.

7 NOW, IF YOU WANT TO BRING IN A DOCUMENT
8 THAT SAYS, "THIS IS WHAT I THINK. I THINK, FOR
9 EXAMPLE, THAT THE EMPLOYMENT AGREEMENT AFTER SUCH AND
10 SUCH A DATE DO NOT APPLY BECAUSE, ONE, THEY WERE NOT
11 PART OF A PUBLISHED PAY SCHEDULE AND, TWO, WEREN'T
12 DULY APPROVED," BRING IN THAT.

13 MR. ONSTOT: OKAY.

14 THE COURT: I MEAN, THAT WOULD BE REALLY
15 HELPFUL TO ME. SO I ENCOURAGE THAT. BRING IN THE
16 REASONS THAT YOU THINK YOUR CLIENT SHOULD PREVAIL, IN
17 WRITING. I MEAN, THAT HELPS ME DRAFT MY DECISION.

18 MR. ONSTOT: UNDERSTOOD.

19 THE COURT: OKAY. ANYTHING ELSE?

20 OKAY. THANK YOU.

21

22 (WHEREUPON, AT THE HOUR OF
23 12:15 P.M., THE PROCEEDINGS
24 WERE CONCLUDED.)

25

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1 STATE OF CALIFORNIA)
)SS

2 COUNTY OF LOS ANGELES)

3

4 I, REYNA OTA, A 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 26TH DAY OF SEPTEMBER, 2012.

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