

ADMINISTRATIVE HEARING  
BEFORE THE BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA

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BOARD OF ADMINISTRATION	)	
CALIFORNIA EMPLOYEES' PUBLIC	)	
RETIREMENT SYSTEM,	)	
	)	
Complainant,	)	
	)	No. 2014-010471
v.	)	
	)	
CHRISTINE MONSEN,	)	
	)	
Respondent.	)	

Office of Administrative Hearings  
1515 Clay Street, Suite 206  
Oakland, California 94612

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Friday, June 13, 2014

09:30 a.m.

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Reported by: HEATHER CALLIER, CSR No. 13758

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A P P E A R A N C E S:

Administrative Law Judge: **MARY-MARGARET ANDERSON**  
Office of Administrative Hearings  
1515 Clay Street, Suite 206  
Oakland, California 94612  
(510) 622-2743

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Also Present: SAMUEL CAMACHO JR.

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I N D E X  
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GEORG KRAMMER

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Respondent's  
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1                   Friday, June 13, 2014, Oakland, Ca, 09:30 a.m.

2                   ADMINISTRATIVE LAW JUDGE ANDERSON: All right. We're  
3 on the record before the Board of Administration, the  
4 California Public Employees' Retirement System, in the matter  
5 of the calculation of final compensation of Christine Monsen,  
6 Respondent, and Alameda County Transportation Improvement  
7 Authority, Respondent.

8                   Case No. 2012-0289. OAH number 2014-010471. Today's  
9 date is June 13, 2014. We're at the Oakland office of the  
10 Office of Administrative Hearings. My name is Mary-Margaret  
11 Anderson. I'm an administrative law judge hearing this  
12 matter. And I'll note that this case is a continued hearing  
13 from March 5th, 2014, pursuant to an order reopening the  
14 record.

15                   On March 10, 2014, I issued an order reopening the  
16 record for the limited purpose of taking additional evidence  
17 regarding pay rate publication. So that's why we're here  
18 today. And, of course, I'll take -- I'll hear any additional  
19 closing argument related to that. Okay. Let's take the  
20 appearances again for the record. Okay.

21                   MS. RODRIGUEZ: Cynthia Rodriguez, attorney for  
22 CalPERS, California Public Employees' Retirement System.

23                   MR. WASSERMAN: Zack Wasserman of Wendel Rosen Black &  
24 Dean, general counsel for the Alameda County Transportation  
25 Commission, and representing the appellant, Christine Monsen.

1 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Thank you.

2 MR. WASSERMAN: And I don't think this will come up,  
3 and we appreciate the rule that only one of us speaks on an  
4 issue or a witness, but I would like for the record, Anagha,  
5 Clifford, to state your appearance.

6 MS. CLIFFORD: Yes. My name is Anagha Dandekar  
7 Clifford, also representing Alameda County Transportation  
8 Commission and Respondent, Christine Mosen.

9 ADMINISTRATIVE LAW JUDGE ANDERSON: Thank you. And  
10 Ms. Mosen is present.

11 MR. WASSERMAN: Yes.

12 ADMINISTRATIVE LAW JUDGE ANDERSON: All right. Mr.  
13 Wasserman, the ball is in your court. I understand you have  
14 some evidence that you'd like to present on this issue. I do  
15 note that you filed something with us and requested that  
16 judicial notice be taken of it. I'm a little puzzled by  
17 that, because you can just ask for such things to be placed  
18 in evidence. Maybe you have a reason for asking for judicial  
19 notice, which by the way, is actually official notice.

20 Under our Government Code procedures, we don't operate  
21 under the Evidence Code, but that's okay. We have official  
22 notice provisions that I can take official notice of things,  
23 but, you know, you -- it looked like a public record, and  
24 there was an affidavit attached it, so I'm not -- I'm not  
25 understanding what the reasoning was. Or maybe it makes no

1 difference. I don't know.

2 MR. WASSERMAN: I don't know whether it makes any  
3 difference. I think it was, in part, a combination of  
4 excessive caution and perhaps not focusing on that  
5 distinction between the official notice that you described.  
6 We would offer into evidence the July -- I'm sorry --  
7 June 26th, 2008, agenda packet for the Alameda County  
8 Transportation Improvement Authority board meeting.

9 And direct the Court's specific attention within that  
10 official record to comment on -- which I will comment on in  
11 a moment to item C, and specifically attachment B to that.  
12 We have submitted an affidavit of the clerk of the Alameda  
13 County Transportation Commission, who is the keeper of the  
14 records for ACTIA, which no longer exists, Vanessa Lee. She  
15 is present in court. And if the hearing administrative law  
16 judge likes, we can certainly introduce testimony from her.

17 MS. RODRIGUEZ: Your Honor, if we could just slow down  
18 for a moment. I have a letter from Mr. Wasserman to you  
19 which has attached the June 26th record, but I don't have any  
20 -- I don't have -- is this the thing that you just handed  
21 me has the affidavits in it?

22 MR. WASSERMAN: Yes.

23 ADMINISTRATIVE LAW JUDGE ANDERSON: This --  
24 Ms. Rodriguez, no worries. I need to get clarity on what the  
25 exhibit is as well. So the June 11th filing had an

1 attachment that was 100 pages. We here at OAH don't print  
2 these things out unless necessary, you know. So I didn't  
3 print that out, but I think that it's the same thing as the  
4 hard copy that you sent.

5 MR. WASSERMAN: Correct.

6 ADMINISTRATIVE LAW JUDGE ANDERSON: Is that right?

7 MR. WASSERMAN: That is correct.

8 MS. RODRIGUEZ: The one I got was 200 pages, and I --

9 MS. CLIFFORD: No, this is the duplicate of what you  
10 already gave Ms. Rodriguez. This is for the Court.

11 ADMINISTRATIVE LAW JUDGE ANDERSON: Why don't we all  
12 come up and make sure that we literally are on the same page  
13 with what we are doing. Let's go off the record for a  
14 minute.

15 (Discussion held off the record.)

16 ADMINISTRATIVE LAW JUDGE ANDERSON: We're back on the  
17 record. And I've marked for identification the following  
18 documents: As Exhibit J -- I'm actually not sure -- is it  
19 161 pages?

20 MR. WASSERMAN: It's actually 162 -- three, four --  
21 five pages.

22 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. 165-page  
23 document. The title sheet is Authority Board Meeting  
24 June 26, 2008.

25 (Respondent's Exhibit J was marked for

1 identification.)

2 ADMINISTRATIVE LAW JUDGE ANDERSON: That's Exhibit J.  
3 As Exhibit K, I think it's a 7-page document. Do you want to  
4 explain that, Mr. Wasserman?

5 (Respondent's Exhibit K was marked for  
6 identification.)

7 MR. WASSERMAN: That document is a portion of  
8 Exhibit J, which contains the pieces relevant to the issue  
9 before the judge this morning. And it includes the agenda,  
10 full agenda summary on the first three pages, the staff  
11 report about salary and benefits on the next three pages, and  
12 the last page, which is attachment B, is a chart about the  
13 executive director's salary and benefits, comparing hers to  
14 other comparable agencies.

15 ADMINISTRATIVE LAW JUDGE ANDERSON: All right. So  
16 Ms. Rodriguez, do you have any objection to the admission of  
17 these documents?

18 MS. RODRIGUEZ: I guess the thing I'm trying to figure  
19 out, Your Honor, is I have an objection to what they  
20 represent. But I think that's a part of the evidence, not  
21 part of the admission.

22 ADMINISTRATIVE LAW JUDGE ANDERSON: Right. So we're  
23 just talking about authentication here. Because I believe we  
24 have a custodian of records who can testify that these are  
25 business records of the agency. And we can do that if you

1 object or if you think that needs to be part of the record.  
2 Otherwise, I'll take the representation of Counsel that these  
3 documents are authentic and are what they purport to be.

4 MS. RODRIGUEZ: And so, I'm sorry. I don't mean to  
5 ask the Court my business, but I don't have an objection that  
6 these purport to be -- that these are the reports of ACTIA  
7 as they purpose to be. What I do have an objection to is  
8 that we don't yet know when or how they were posted, if we're  
9 accepting these as published documents. So I'm assuming  
10 that's part of the evidentiary issue that we can question the  
11 witness on, as opposed to just accepting these for the dates  
12 that they contain.

13 ADMINISTRATIVE LAW JUDGE ANDERSON: Right. Okay. All  
14 right. Well, that's helpful. Okay. So there's no objection  
15 as to authenticity, but it seems you folks want to put on  
16 some evidence to show what happened with them.

17 MR. WASSERMAN: Yes, please.

18 ADMINISTRATIVE LAW JUDGE ANDERSON: All right. So  
19 would you like to call a witness?

20 MR. WASSERMAN: Yes. I would call Vanessa Lee, and we  
21 have another.

22 ADMINISTRATIVE LAW JUDGE ANDERSON: Pardon me?

23 MR. WASSERMAN: We have a second witness --

24 ADMINISTRATIVE LAW JUDGE ANDERSON: Come on up,  
25 Ms. Lee. You can have a chair to my right.

1 MR. WASSERMAN: -- who is in the courtroom. You may  
2 wish to exclude him.

3 ADMINISTRATIVE LAW JUDGE ANDERSON: Well, I don't wish  
4 to exclude any witnesses. I --

5 MR. WASSERMAN: That's fine.

6 ADMINISTRATIVE LAW JUDGE ANDERSON -- rule on motions  
7 to exclude witnesses.

8 MS. RODRIGUEZ: I will make a motion to exclude  
9 witnesses. Not Ms. Monsen, because obviously it's her  
10 hearing.

11 ADMINISTRATIVE LAW JUDGE ANDERSON: Right.

12 MS. RODRIGUEZ: But I don't know who the other person  
13 is or what --

14 MR. WASSERMAN: Just to be clear, the other person is  
15 Georg Krammer of Koff and Associates who prepared the report  
16 that is summarized in what's before the Court.

17 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. So, sir, if  
18 you want to wait in the waiting room right there. The motion  
19 to exclude is granted. All right.

20 THE WITNESS: Good morning.

21 ADMINISTRATIVE LAW JUDGE ANDERSON: Please raise your  
22 right hand to be sworn.

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VANESSA LEE,

called as a witness by and on behalf of the Respondent,  
having been first duly sworn, was examined and testified as  
follows:

ADMINISTRATIVE LAW JUDGE ANDERSON: Please state your  
name and spell it for us.

THE WITNESS: Vanessa, V-A-N-E-S-S-A; L-E-E.

ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Thank you.  
All right. Mr. Wasserman.

DIRECT EXAMINATION

BY MR. WASSERMAN:

Q. Ms. Lee, would you state -- I'm sorry, are you  
currently employed by the Alameda County Transportation  
Commission?

A. Yes.

Q. And what is your position?

A. I'm clerk of the Commission.

Q. And when did you assume that position?

A. June 2011.

Q. And were you an employee of the Commission before  
then?

A. No.

Q. And could you describe the -- your duties in reference  
to the records of the Commission and its predecessor  
agencies, Alameda County Transportation Improvement Authority

1 and the Alameda County Congestion Management Agency?

2 **A.** As clerk of the Commission, I'm certainly the  
3 custodian of record. I'm also responsible for assimilating  
4 the information that goes to the Board, as well as the public  
5 noticing of meetings and maintaining those documents  
6 electronically and in hard copy.

7 **Q.** And for current matters, you -- are you responsible  
8 for coordinating the posting of agendas of the Commission  
9 meetings on the website?

10 **A.** Yes.

11 **Q.** When you started your employment in 2011, do you know  
12 whether the website for the Alameda County Transportation  
13 Improvement Authority, ACTIA, was still active and  
14 accessible?

15 **A.** Yes, it was.

16 **Q.** And is it accessible today?

17 **A.** No, the website is...

18 **THE REPORTER:** I'm sorry. I couldn't hear you. "The  
19 website is"?

20 **MR. WASSERMAN:** Actually, may I withdraw that  
21 question?

22 **ADMINISTRATIVE LAW JUDGE ANDERSON:** All right. That's  
23 withdrawn.

24 **BY MR. WASSERMAN:**

25 **Q.** Is it accessible to the public today?

1       **A.** No.

2       **Q.** And do you -- is the microphone working?

3           ADMINISTRATIVE LAW JUDGE ANDERSON: Oh, I'm sorry. We  
4 don't -- we have the court reporter. We're not recording.

5           MR. WASSERMAN: Okay. Sorry. No. No. That's for  
6 recording. It was the volume issue with the court reporter.

7           ADMINISTRATIVE LAW JUDGE ANDERSON: That doesn't help  
8 with the volume.

9           MR. WASSERMAN: Okay.

10          ADMINISTRATIVE LAW JUDGE ANDERSON: You have to speak  
11 up.

12          MR. WASSERMAN: Speak up.

13          THE WITNESS: Okay. No problem.

14 BY MR. WASSERMAN:

15       **Q.** Do you recall or do you know when the ACTIA website  
16 was taken down or became inaccessible to the public?

17       **A.** September 2013.

18          ADMINISTRATIVE LAW JUDGE ANDERSON: September what?

19          THE WITNESS: 2013.

20 BY MR. WASSERMAN:

21       **Q.** And why was that?

22       **A.** Because all of the archived documents and information  
23 had been archived. We didn't need the website anymore.

24       **Q.** The ACTIA itself was no longer in existence?

25       **A.** And ACTIA was no longer in existence, yes.

1       Q. Is there an archive that is within the records that  
2 you have custody of, of the website for ACTIA in June of  
3 2008?

4       A. Yes.

5       Q. Have you had occasion to look at that archive?

6       A. Yes.

7       Q. And did you find the record of the website posting of  
8 the June 2008 ACTIA meeting?

9       A. Yes.

10      Q. And did that include the full agenda package?

11      A. Yes.

12      Q. I would like you to look at what has been entered as  
13 Exhibit J. Showing her my copy.

14             ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.

15      BY MR. WASSERMAN:

16      Q. Can you take a moment to not read through all pages of  
17 that, but just to look at it, please?

18      A. Okay.

19      Q. Does that appear to be what is posted on that website  
20 archive?

21      A. Yes.

22      Q. And did you have occasion to look specifically at the  
23 Item 3(c) on that package on that archived website?

24      A. Yes.

25      Q. And did you look at, attachments A and B of that

1 website -- well, attachment B of that website?

2 A. Yes.

3 Q. And were those also shown on that website?

4 A. Yes.

5 Q. Insofar as you know, that means that when that site  
6 was active, anyone from the public could have gone onto the  
7 website and seen it?

8 MS. RODRIGUEZ: Objection. Speculation; relevance.

9 ADMINISTRATIVE LAW JUDGE ANDERSON: Sustained.

10 BY MR. WASSERMAN:

11 Q. Today, if one goes onto the website of the Commission  
12 and looks at the agenda, is that available on the website  
13 today?

14 MS. RODRIGUEZ: Objection. Relevance.

15 MR. WASSERMAN: I'm laying a foundation to take care  
16 of the other question.

17 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Overruled,  
18 but I wasn't clear on what "that" meant.

19 BY MR. WASSERMAN:

20 Q. Is that agenda, the full agenda, Exhibit J that we  
21 talked about, a similar agenda packet for Commission meetings  
22 for last month or the month before, available on the website  
23 of the Commission today?

24 A. Yes.

25 Q. So just to take care in advance of a technical point,

1 showing you Exhibit K. And for this purpose, I would like to  
2 show her the one in evidence. There are items on Exhibit K  
3 that are highlighted in blue or purple, depending on your  
4 color sense; is that correct?

5 **A.** Yes.

6 **Q.** And what is the meaning of that color for that  
7 document?

8 **A.** This usually indicates that it was hyperlinked once it  
9 was placed on the website.

10 **Q.** And what does being hyperlinked mean?

11 **A.** Hyperlinking a document means that once a user clicks  
12 on the link, it takes them to the actual full document of the  
13 individual item.

14 **Q.** Returning for a moment to Exhibit J, and specifically  
15 directing your attention to the second page of Exhibit J.  
16 About the fourth line down, there's a statement underlined.  
17 The second page right there. Right there. (Indicating.)  
18 The second page of that exhibit, the fourth line down,  
19 there's a line underlined. Could you read that line, please?

20 **A.** "To view the full packet, please visit our website at  
21 [www.ACTIA2022.com](http://www.ACTIA2022.com)."

22 **MS. RODRIGUEZ:** Where is that? I'm sorry. Where is  
23 that?

24 **ADMINISTRATIVE LAW JUDGE ANDERSON:** Yeah, I'm not  
25 finding it either.

1 MR. WASSERMAN: The first page is the blank -- this  
2 is not K. I'm going to J.

3 THE WITNESS: J.

4 MR. WASSERMAN: So it's the full -- yeah, right  
5 there. Underlined at the top.

6 ADMINISTRATIVE LAW JUDGE ANDERSON: Oh, I see. Okay.  
7 Do you see it, Ms. Rodriguez?

8 MS. RODRIGUEZ: Yeah, I do, in J.

9 ADMINISTRATIVE LAW JUDGE ANDERSON: Right. Thank you.

10 BY MR. WASSERMAN:

11 Q. Is there a similar line on current agenda packet for  
12 the Commission?

13 A. Yes.

14 Q. Did you have occasion, at our request, to look at the  
15 hard copy records of ACTIA to see if Exhibit J, the full  
16 packet agenda for the June 26th, 2008, meeting, was in your  
17 records?

18 A. Yes.

19 Q. And that's what appears as Exhibit J in front of you;  
20 is that correct?

21 A. That's correct.

22 Q. As part of your duties as clerk, do you have occasion  
23 to respond to inquiries from citizens or other agencies for  
24 past matters for ACTIA?

25 A. Yes.

1 Q. And when you receive those requests, what's your  
2 process of responding to them and finding where the  
3 information is?

4 A. The process is usually to go into the archive.  
5 They're electronic, what we have on our share drive, or to go  
6 into the hard copy archive and pull the documents.

7 Q. And when I asked you to go into the 2008 records and  
8 see if you could find both Exhibit J, and within them, the  
9 information in Exhibit K, what process did you use?

10 MS. RODRIGUEZ: Objection. Relevance.

11 MR. WASSERMAN: I submit it is very relevant, because  
12 I don't want to put words in Ms. Rodriguez' mouth, but since  
13 she has questioned whether this official document is true,  
14 whether it is true that it was posted on the web and  
15 available, then I think the process of the clerk is  
16 absolutely relevant. My having to do that, I think, is  
17 unnecessary.

18 MS. RODRIGUEZ: Your Honor, I have not questioned  
19 whether it was true. I have questioned when it was published  
20 and/or if it was published. And what she does today to  
21 locate items or to assist the public has nothing to do with  
22 whether or not this salary information was published and  
23 available as required in the regulations and statute at the  
24 time that the salaries were in existence. So what she would  
25 do today to locate them or to talk to somebody has no

1 relevance.

2 MR. WASSERMAN: I would submit that as custodian of  
3 the records, getting information, including what had been  
4 available to the public and was posted, is part of her  
5 duties. And that's what she's testifying about.

6 ADMINISTRATIVE LAW JUDGE ANDERSON: But there's no  
7 objection to authentication in terms of that this is an  
8 accurate record; that she found it. So the objection is  
9 sustained. I agree with Ms. Rodriguez. That's the relevant  
10 information.

11 MR. WASSERMAN: The fundamental issue before the  
12 hearing, I believe, is whether Ms. Monsen's salary was  
13 published and publicly available.

14 ADMINISTRATIVE LAW JUDGE ANDERSON: Yes, that's true.

15 MR. WASSERMAN: The evidence that the documents that  
16 we have now admitted into evidence are official records, say  
17 on their face that they were available on the website at the  
18 time.

19 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.

20 MR. WASSERMAN: Ms. Rodriguez, in her comments on  
21 admitting the evidence and her comments just now, appears to  
22 say that's all very well, but that doesn't prove that they  
23 were, in fact, available.

24 ADMINISTRATIVE LAW JUDGE ANDERSON: Well, that's in  
25 dispute. But I've already ruled on the objection, so that's

1 sustained. The relevancy objection is sustained. So please  
2 ask another question.

3 MR. WASSERMAN: Excuse me. May I have a brief moment,  
4 Your Honor?

5 ADMINISTRATIVE LAW JUDGE ANDERSON: Uh-huh.

6 BY MR. WASSERMAN:

7 Q. When you started your job as clerk, and at that time  
8 in 2011, or between then and 2013 when the ACTIA site was  
9 taken down, were there occasions when you were asked for  
10 informational records about prior years of ACTIA where you  
11 went to the website that was then active to find that  
12 information?

13 A. Yes.

14 MS. RODRIGUEZ: Objection. Compound; relevance.

15 ADMINISTRATIVE LAW JUDGE ANDERSON: I think this has  
16 already been gone over, actually.

17 MR. WASSERMAN: Well, no --

18 MS. RODRIGUEZ: Asked and answered.

19 MR. WASSERMAN: -- that question has not been posed.  
20 I'll rephrase it if --

21 ADMINISTRATIVE LAW JUDGE ANDERSON: Well, you can  
22 rephrase it. I also don't think that it's relevant. The  
23 witness has established that the documents were what they say  
24 they are. She found them. She brought them. She wasn't  
25 there in 2008, so she can't give direct evidence on that. So

1 I'm at a loss as to what other questions you might ask her  
2 that would have relevance to the issue here.

3 MR. WASSERMAN: So there are two issues, I believe,  
4 about whether something was published to meet the  
5 requirements of the statute. One issue is was there a public  
6 document prepared that was available to the public then and  
7 now that showed that? On that issue, I think the document in  
8 evidence suffices.

9 The second issue is whether it was available on the  
10 web to an audience didn't have to come in or hadn't received  
11 the document by mail. I believe that the custom of the  
12 Agency is a matter of the custom of business. And that, as  
13 the clerk today, even though she wasn't there in 2008,  
14 particularly since her job includes the responsibility for  
15 going back and looking at prior documents, is relevant to  
16 that issue.

17 MS. RODRIGUEZ: I'm not sure what we're -- are we  
18 talking about the objection still, because I thought that was  
19 done? And if we're not, I don't even understand what the  
20 second issue is about, the website. That's not -- that's  
21 not the issue before the Court. The first issue of whether  
22 or not there was published pay rate is the issue, not whether  
23 or not it was on the internet instead of...

24 ADMINISTRATIVE LAW JUDGE ANDERSON: Well, I'm not  
25 going to get into that, but I'm still waiting for a relevant

1 question. Mr. Wasserman, I don't necessarily disagree with  
2 anything that you said, it's just that you already  
3 established the thing I already said you established. So you  
4 can ask another question, if you'd like.

5 MR. WASSERMAN: Excuse me, Your Honor.

6 Q. If someone from the public or another government  
7 agency came to you today and asked whether the records of  
8 ACTIA showed something had been available to the public in  
9 June of 2008, what would you do?

10 MS. RODRIGUEZ: Objection. Speculation; relevance.  
11 If this witness has the capability of that such testimony, it  
12 doesn't have to be a hypothetical.

13 ADMINISTRATIVE LAW JUDGE ANDERSON: Well, that's --

14 MR. WASSERMAN: I'm sorry. What do -- I apologize --

15 MS. RODRIGUEZ: Improper hypothetical.

16 ADMINISTRATIVE LAW JUDGE ANDERSON: Just ask her what  
17 she does when that happens.

18 BY MR. WASSERMAN:

19 Q. What do you do when a member of the public or a  
20 government agency asks you about information that was  
21 available in June of 2008 through ACTIA?

22 MS. RODRIGUEZ: I think that was asked and answered.

23 ADMINISTRATIVE LAW JUDGE ANDERSON: Well, let's answer  
24 it again so that we can move on. What do you do when someone  
25 from the public asks you for information about past records

1 of ACTIA?

2 THE WITNESS: I go back to the archive and access the  
3 information that we have in hard copy.

4 BY MR. WASSERMAN:

5 Q. And is the hard copy record the only place you look?

6 A. We also maintain the documents on our share drive, the  
7 final documents on our share drive. So I access those as  
8 well and usually cross reference both to make sure that the  
9 document that's the hard copy is the same as what we maintain  
10 on the share drive.

11 Q. And that's -- did you do that for Exhibits J and K?

12 A. Yes.

13 MR. WASSERMAN: I have no further questions.

14 ADMINISTRATIVE LAW JUDGE ANDERSON: All right.

15 Ms. Rodriguez.

16 MR. WASSERMAN: Wait. Wait. I'm sorry. Go ahead. I  
17 have no further questions.

18 CROSS-EXAMINATION

19 BY MS. RODRIGUEZ:

20 Q. Ms. Lee, I'm Cynthia Rodriguez for CalPERS. You  
21 testified that the purple notations -- the purple lines, the  
22 lines that are in the color purple in Exhibit K, are  
23 hyperlinks; is that correct?

24 A. Yes.

25 Q. Does that -- and that page is posted, the page with

1 the agenda items, the first one, two -- three pages of the  
2 agenda, is that what you saw when you looked at the items?

3 **A.** Yes.

4 **Q.** And when you say "hyperlinked," does that refer to in  
5 order to see these items, you click -- the items aren't  
6 available until you click onto them; is that correct?

7 **A.** Not necessarily. What it means is that it's an option  
8 that you can use in addition to reviewing the full packet.  
9 So usually when the packet is posted on the website, it's all  
10 pages. So essentially, it's Exhibit J in full. And then the  
11 hyperlinked agenda is also posted, which if someone doesn't  
12 want to go through the entire packet, they can just click the  
13 hyperlink, and that will direct them directly there.

14 **Q.** And what is the share drive?

15 **A.** The share drive is an internal drive that we use as  
16 staff where all of our documents are stored.

17 **Q.** And it's just available to staff?

18 **A.** Yeah.

19 **Q.** It's not a public drive?

20 **A.** No.

21 **Q.** And so the share drive remains open, but there is no  
22 public drive with those items on it?

23 **MR. WASSERMAN:** Objection. Unclear as to time.

24 **BY MS. RODRIGUEZ:**

25 **Q.** At this time, the share drive remains open, but there

1 is no public drive; is that correct?

2 A. The share drive remains open and...

3 Q. You can access it?

4 A. Yes.

5 Q. So my question is: You can do it through the share  
6 drive but not through any public drive; is that correct?

7 A. Yes.

8 Q. You can access it is what I'm referring to.

9 A. Yes.

10 Q. And what kind of records do you maintain as the  
11 custodian of records? Do you maintain records that are  
12 private as well as records that are public?

13 MR. WASSERMAN: Objection. Relevance.

14 ADMINISTRATIVE LAW JUDGE ANDERSON: Overruled.

15 THE WITNESS: Yes, I do, as custodian of record,  
16 maintain some confidential information. For my purposes  
17 specifically, anything that's confidential is usually  
18 identified for public to know that it's not information that  
19 we make available to the public. I also maintain all of the  
20 resolutions and ordinances that are approved by the Board,  
21 all of the actions, all of the minute orders, all of the  
22 information that's provided before and after the meeting.  
23 And I'm also responsible for uploading all of that  
24 information to the internet.

25 BY MS. RODRIGUEZ:

1 Q. And I'm sorry. I got that you have been clerk since  
2 2011, but could you repeat what month and day?

3 A. June 28th. I believe it was a Commission meeting day.  
4 My first day was a Commission meeting day.

5 Q. And when you came, you had not previously been in  
6 charge of records at that -- for the Transportation  
7 Commission; is that correct?

8 A. For the Transportation Commission, no, I was not.

9 Q. And you had not, yourself, previously reviewed  
10 transportation records?

11 A. No.

12 Q. For the Commission?

13 A. No.

14 Q. Or its prior names. There were a couple of other  
15 names for transportation groups in this area, right?

16 A. No, I was -- I had not.

17 Q. You had not previously reviewed them?

18 A. No, I had not previously reviewed them.

19 Q. You, yourself, have no knowledge of what was posted in  
20 2008, do you?

21 MR. WASSERMAN: Objection. The question calls for a  
22 conclusion.

23 ADMINISTRATIVE LAW JUDGE ANDERSON: Many do.

24 Overruled. You can answer.

25 THE WITNESS: I wouldn't necessarily say I don't have

1 any knowledge. And the reason I wouldn't say that is because  
2 as the custodian of record, I have seen these documents.  
3 They are in my possession.

4 BY MS. RODRIGUEZ:

5 Q. Now?

6 A. Yes.

7 Q. But in 2008, were you working with them or did you see  
8 them published?

9 A. No. 2008, no.

10 Q. So you, yourself, don't have any knowledge of whether  
11 or not or when they were specifically published in 2008?

12 A. No, I don't.

13 MS. RODRIGUEZ: Okay. Thank you. I have nothing  
14 further.

15 ADMINISTRATIVE LAW JUDGE ANDERSON: Any redirect?

16 MR. WASSERMAN: Just a couple.

17 REDIRECT EXAMINATION

18 BY MR. WASSERMAN:

19 Q. When you came in -- between 2011 when you joined the  
20 authority and 2013 when the ACTIA website was no longer  
21 maintained and accessible, in that period of time, was it  
22 accessible to the public?

23 A. Yes.

24 Q. And were there times when you had occasion to go onto  
25 that website?

1       **A.** Yes.

2           MS. RODRIGUEZ: Asked and answered.

3           ADMINISTRATIVE LAW JUDGE ANDERSON: Overruled.

4 BY MR. WASSERMAN:

5       **Q.** And on occasion, did you go back and look at prior  
6 years before 2011?

7       **A.** Yes.

8       **Q.** And the information was available through the website,  
9 accessible to the public?

10       **A.** Yes.

11       **Q.** And that was website information about agendas and  
12 attachments and specific items?

13       **A.** Yes.

14           MS. RODRIGUEZ: Objection. Relevance.

15           ADMINISTRATIVE LAW JUDGE ANDERSON: Well, overruled.

16           MR. WASSERMAN: I have no other questions.

17           ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Recross?

18           MS. RODRIGUEZ: Nothing.

19           ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Thank you,  
20 very much, Ms. Lee. You're excused.

21           THE WITNESS: Do you want your exhibits?

22           ADMINISTRATIVE LAW JUDGE ANDERSON: I want the exhibit  
23 back; just the one with the stickers on it. Thanks. All  
24 right. Mr. Wasserman, do you have any other evidence to  
25 present?

1 MR. WASSERMAN: Yes. We would call Georg Kramer. I  
2 can go get him.

3 MS. CLIFFORD: No. I'll go get him.

4 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Are you  
5 ready?

6 MR. WASSERMAN: We call Georg Kramer.

7 THE WITNESS: Good morning.

8 ADMINISTRATIVE LAW JUDGE ANDERSON: Please have a seat  
9 in the chair to my right. Please raise your right hand to be  
10 sworn.

11

12

GEORG KRAMMER,

13 called as a witness by and on behalf of the Respondent,  
14 having been first duly sworn, was examined and testified as  
15 follows:

16 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Would you  
17 please state your name and spell it for the record.

18 THE WITNESS: Use the microphone?

19 ADMINISTRATIVE LAW JUDGE ANDERSON: You don't need to  
20 pay attention to the microphone. You need to keep your voice  
21 up.

22 THE WITNESS: Okay.

23 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. All right  
24 then.

25 THE WITNESS: My name, I'm sorry?

1 ADMINISTRATIVE LAW JUDGE ANDERSON: And spell them.

2 THE WITNESS: Spell them. Georg Kramer. First name,  
3 G-E-O-R-G. Last name, K-R-A-M-M-E-R.

4 DIRECT EXAMINATION

5 BY MR. WASSERMAN:

6 Q. Mr. Kramer, what is your profession?

7 A. I am a human resources consultant. I'm chief  
8 effective officer and principal of the firm.

9 Q. And what's the name of the firm?

10 A. Koff and Associates.

11 Q. Will you spell that for the Court?

12 A. K-O, double F, as in Frank, and Associates.

13 Q. And have you been retained -- were you retained as a  
14 consultant by the Alameda County Transportation Improvement  
15 Authority?

16 A. Yes.

17 Q. Do you recall approximately when you started working  
18 for them?

19 A. I started working for them approximately 2003 when I  
20 first joined Koff and Associates.

21 Q. And what was the nature of the work you did for ACTIA?

22 A. We would do annual compensation surveys for them.

23 Q. And were these compensation surveys for all employees?

24 A. Yes.

25 Q. Including the executive director?

1       **A.** Yes.

2       **Q.** And do you do that type of work for other government  
3 agencies?

4       **A.** I do.

5       **Q.** Approximately how many?

6       **A.** So I've been doing this for about 11 years. I would  
7 say probably about a good 200, 250 different public agencies.

8       **Q.** And directing your attention to Exhibit J, and  
9 specifically -- this is Exhibit J, pages 113 and forward,  
10 through 156. Did you prepare that report?

11       **A.** Yes.

12       **Q.** And is that similar to reports you prepared for other  
13 government agencies?

14               MS. RODRIGUEZ: I'm sorry. What pages are you showing  
15 him? Oh, it's K. Okay.

16               MR. WASSERMAN: It's within K. It's not within J.  
17 I'm sorry. It's within J; it's not within K.

18               MS. RODRIGUEZ: Here's J.

19               MR. WASSERMAN: Right. It's this. (Indicating.)

20       **Q.** And just for the record, the first page that I  
21 directed you to within that, on page 110 says: "Final  
22 report. Total compensation study for the Alameda County  
23 Transportation Improvement Authority"; is that correct?

24       **A.** Correct.

25       **Q.** With your company's name and logo on it?

1       **A.** Correct.

2       **Q.** And that's the report that you prepared for that  
3 June 26, 2008, meeting?

4       **A.** Yes.

5       **Q.** And is that the kind of report you prepare for other  
6 agencies when you do comparative surveys?

7       **A.** Yes.

8       **Q.** Directing your attention to page 156. Let's use  
9 Exhibit K so that we're clearer for opposing counsel and the  
10 Court. The last page, page 156 of that exhibit, did you  
11 prepare that?

12       **A.** Yes.

13       **Q.** And can you explain what it is?

14       **A.** This page is a side-by-side comparison of the  
15 compensation survey results. So this is sort of a one-page  
16 summary of all the data we submitted in our report. And it  
17 shows the current compensation levels of each of the  
18 positions at ACTIA, including the executive director, as well  
19 as the average and median of the market survey and the  
20 percentage differences between ACTIA's current compensation  
21 and the market. And we do that for both base salaries, as  
22 well as total compensation where total compensation includes  
23 base salaries plus benefits.

24       **Q.** And the executive director at the time was Christine  
25 Monsen?

1       **A.** Yes.

2       **Q.** Were you at the 2008 June 26 Commission meeting?

3       **A.** Yes.

4       **Q.** Either before or after that meeting, did you have  
5 occasion to go on the website to look at the agenda?

6       **A.** Yes.

7       **Q.** Why did you do that?

8       **A.** I prepare myself for every public meeting that I am  
9 speaking at to understand where I am on the agenda and which  
10 agenda item I am, and then to see how the agenda packet is  
11 structured. And I'm looking for the correct pagination,  
12 because my own personal report that I produce has different  
13 page numbers than what's usually in the agenda.

14       **Q.** And when you looked on the website, did you do that  
15 through a publicly accessible website?

16       **A.** Yes.

17       **Q.** So that was not the internal ACTIA website?

18       **A.** That's correct.

19       **Q.** And when you went on the website on that day -- or do  
20 you recall whether it was that day or before?

21       **A.** I don't recall exactly, but probably that day or the  
22 day before. That's what I usually do.

23       **Q.** And you looked at your report?

24       **A.** Yes.

25       **Q.** And you -- the report was, in fact, what is contained

1 -- I'm sorry. Exhibit K, consisting of seven pages, was  
2 that available to you on that website at that time?

3 A. I don't think I've seen Exhibit J, because this is --  
4 I'm sorry, K. Are you asking me about K or J?

5 Q. You're right. My bad. Thank you. Showing you  
6 Exhibit K.

7 A. Okay.

8 Q. Were those available on the website on that day?

9 A. I will say it looks that way. It's -- you know, I  
10 can't remember all the detail, but...

11 Q. And directing your attention to, in specific, to the  
12 last page of that. Is that the same as the attachment B we  
13 just discussed that's contained within Exhibit J?

14 A. Yes.

15 Q. The item that was before the Commission was salary and  
16 benefit resolution; is that correct?

17 A. Correct.

18 Q. And for -- and you work with staff to prepare that  
19 resolution; is that correct?

20 A. Yes. Yes.

21 Q. You provide information for them to do that?

22 A. Right. Yes.

23 Q. For employees other than the executive director, does  
24 that contain the salaries and benefit resolution in the  
25 information you provide for it provide a range of salaries

1 for each position?

2 **A.** Yes.

3 **Q.** Is that true for the executive director?

4 **A.** No.

5 **Q.** And do you know how, not in this case, but as a  
6 general rule for your client, the executive director's pay  
7 rate was determined?

8 **A.** It would usually be a negotiation between --

9 MS. RODRIGUEZ: Objection. Foundation.

10 ADMINISTRATIVE LAW JUDGE ANDERSON: Well, I don't see  
11 the relevance of that question.

12 MR. WASSERMAN: The potential relevance is my  
13 recollection in the prior hearing, amongst the discussions,  
14 was the issue that the executive director salary was  
15 different than the -- treated differently in a number of  
16 ways. It wasn't part of an established pay rate schedule.  
17 I'm trying to produce the explanation for that fact to the  
18 extent that it's relevant.

19 ADMINISTRATIVE LAW JUDGE ANDERSON: The objection is  
20 sustained.

21 BY MR. WASSERMAN:

22 **Q.** In your experience with other public agencies over the  
23 course of your career, is it common that the executive  
24 director salaries -- salary is determined differently than  
25 the other employees?

1 MS. RODRIGUEZ: Objection. Relevance.

2 THE WITNESS: Yes.

3 ADMINISTRATIVE LAW JUDGE ANDERSON: Sustained.

4 BY MR. WASSERMAN:

5 Q. Do you recall how you determined Christine Monsen's  
6 then current salary for the 2008 survey?

7 A. I'm not sure if I understand the question. I mean --

8 Q. Well, I'll restate. You put her salary as \$17,105 per  
9 month. Do you know how you determined that was her salary?

10 A. I see. Sure. It would be just a phone call to or  
11 requesting documentation from ACTIA to give us the  
12 information regarding salary and benefits. So it would be  
13 documentation provided by the -- by ACTIA.

14 Q. And in your obtaining information for the comparator  
15 results listed in the bottom schedule on B, how did you  
16 obtain the information about executive director salaries?

17 MS. RODRIGUEZ: Objection. Relevance.

18 ADMINISTRATIVE LAW JUDGE ANDERSON: Sustained.

19 MR. WASSERMAN: Your Honor, Ms. Rodriguez has put the  
20 credibility of my clients into serious question. She did it  
21 quite aggressively at the last hearing, in my opinion. She  
22 has indicated that the fact that the document in front of us,  
23 which says on its face it's available on the web, doesn't  
24 mean it was actually available on the web. The general  
25 practice of agencies, it seems to me, is relevant to show

1 that this agency reacted in exactly the same way other  
2 agencies do.

3 ADMINISTRATIVE LAW JUDGE ANDERSON: The objection is  
4 sustained, Mr. Wasserman.

5 MR. WASSERMAN: Okay.

6 ADMINISTRATIVE LAW JUDGE ANDERSON: I would also  
7 remind you that we're limited today to issues of publication.

8 MR. WASSERMAN: I appreciate that, and I accept this  
9 is a rule, but publication does have to with availability in  
10 part. I don't have any other questions.

11 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.  
12 Ms. Rodriguez?

13 CROSS-EXAMINATION

14 BY MS. RODRIGUEZ:

15 Q. How did you select the nine positions that you  
16 recorded the salaries of?

17 MR. WASSERMAN: Objection. Relevance.

18 ADMINISTRATIVE LAW JUDGE ANDERSON: What's the  
19 relevance of this, Ms. Rodriguez?

20 MS. RODRIGUEZ: Publication requires that all salaries  
21 be listed, knowing whether or not these are all salaries.

22 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. I  
23 understand. So rephrase the question again.

24 BY MS. RODRIGUEZ:

25 Q. Did you survey the salaries of every employee of

1 Activia -- ACTIA -- or is that the yogurt?

2 ADMINISTRATIVE LAW JUDGE ANDERSON: Not the yogurt.

3 BY MS. RODRIGUEZ:

4 Q. ACTIA?

5 A. Yes.

6 Q. And there were nine employees total at the agency?

7 A. Yes.

8 Q. And in 2008, do you remember every website you visited  
9 in 2008?

10 A. I do not.

11 Q. And as you testified earlier, when you look at this  
12 agenda in Exhibit K, you don't have a specific recollection  
13 as to whether or not it looked exactly like this?

14 A. I couldn't attest to the exact look -- the exact look.  
15 But the document does look like a document I've frequently  
16 seen, having worked for ACTIA for a long period of time.

17 Q. It looks like other documents you have seen, but you  
18 don't know. But you cannot testify that K was as it is at  
19 the time you looked at it in 2008?

20 A. I couldn't attest to, you know, every word being  
21 exactly as it is in this document.

22 Q. But it looks like an agenda?

23 A. Yes. Yes.

24 Q. And you've looked at their agendas many times over the  
25 years?

1       **A.** Many times. Exactly.

2       **Q.** Since 2008, you look at one every month?

3       **A.** I do not.

4       **Q.** How many have you looked at since 2008?

5           MR. WASSERMAN: Objection. Vague.

6           ADMINISTRATIVE LAW JUDGE ANDERSON: Overruled.

7           THE WITNESS: I would -- I have to guess, but it's  
8 probably going to be within five to ten.

9 BY MS. RODRIGUEZ:

10       **Q.** And do you look at other commissions' agendas and  
11 websites?

12       **A.** I do.

13       **Q.** And in 2000 -- since 2008, can you estimate how many  
14 of those you've looked at?

15       **A.** Hundreds.

16           MS. RODRIGUEZ: Okay. I have nothing further.

17           ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Any  
18 redirect, Mr. Wasserman?

19           MR. WASSERMAN: Two questions. Well, I'm sorry. Just  
20 a couple questions.

21   REDIRECT EXAMINATION

22 BY MR. WASSERMAN:

23       **Q.** Do you have a specific recollection of looking at the  
24 June 2026 -- 2008 agenda on the website and package for  
25 ACTIA?

1 MS. RODRIGUEZ: Objection. Asked and answered.

2 MR. WASSERMAN: Well, I'm --

3 ADMINISTRATIVE LAW JUDGE ANDERSON: Overruled. Okay.  
4 Overruled.

5 MR. WASSERMAN: Thank you. Thank you.

6 THE WITNESS: Yes, I do.

7 BY MR. WASSERMAN:

8 Q. And in specific, do you recall looking at Exhibit B,  
9 attachment B?

10 A. This was the -- yes.

11 Q. And was the figure that is in Exhibit B before you in  
12 Exhibit K, the same as the figure that you saw on the website  
13 that you had submitted?

14 A. I can't necessarily attest to that. Again, I would  
15 suspect yes.

16 Q. And you have no reason to believe otherwise?

17 MS. RODRIGUEZ: Objection. Speculation. Move to  
18 strike.

19 ADMINISTRATIVE LAW JUDGE ANDERSON: Overruled. Motion  
20 to strike denied. It was a quite honest answer, frankly. Go  
21 ahead.

22 BY MR. WASSERMAN:

23 Q. The report that you prepared that was submitted listed  
24 Ms. Monsen's then current salary as \$17,105 per month; is  
25 that correct?

1       **A.** That is correct.

2           MR. WASSERMAN: Thank you. I have no further  
3 questions.

4           ADMINISTRATIVE LAW JUDGE ANDERSON: Any recross?

5           MS. RODRIGUEZ: None.

6           ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Thank you.  
7 You're excused. If you -- do you have anything with a  
8 sticker on it?

9           THE WITNESS: Yes.

10          ADMINISTRATIVE LAW JUDGE ANDERSON: Can you give that  
11 to me? Thank you. All right. Any other evidence,  
12 Mr. Wasserman?

13          MR. WASSERMAN: I think so, Your Honor. May I have  
14 five minutes? It will be short.

15          ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.

16                (Recess taken.)

17          ADMINISTRATIVE LAW JUDGE ANDERSON: Back on the  
18 record. Mr. Wasserman?

19          MR. WASSERMAN: We have no further witnesses,  
20 Your Honor.

21          ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.  
22 Ms. Rodriguez, did you wish to call any witnesses?

23          MS. RODRIGUEZ: No. We don't have any witnesses  
24 today, Your Honor.

25          ADMINISTRATIVE LAW JUDGE ANDERSON: All right. Okay.

1 Then we can proceed to closing. Let's see. Would either  
2 side wish to be heard in form of further closing argument on  
3 the issue?

4 MR. WASSERMAN: Yes, please.

5 ADMINISTRATIVE LAW JUDGE ANDERSON: All right.

6 Mr. Wasserman, why don't you begin.

7 MR. WASSERMAN: Just so we're all clear, Exhibits J  
8 and K have been admitted into evidence?

9 ADMINISTRATIVE LAW JUDGE ANDERSON: Any further  
10 objections to those?

11 MS. RODRIGUEZ: Not the -- no.

12 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Exhibits J  
13 and K are admitted.

14 (Respondent's Exhibits J and K were received into  
15 evidence.)

16 MR. WASSERMAN: The issue before the hearing officer  
17 this morning is the narrow issue of whether Ms. Monsen's pay  
18 rate of the \$205,260 annually or the \$17,105 monthly was  
19 published. There is no detailed statutory description  
20 published. There is an indication about published and  
21 available pay rate. The items of evidence, J and K, show  
22 that as part of the official record of the agency, her pay  
23 rate was put out there in public, was published in that  
24 sense.

25 The clerk clearly authenticated that. The document on

1 its face says it's available on the web. There's no reason  
2 to question that. The clerk testified that the record or  
3 records were available on the web until 2013. She did not  
4 have knowledge of the specific June 26, 2008, meeting being  
5 on the web, because she had not had occasion to look at it  
6 until preparing for this hearing.

7 She testified it continues to be available internally  
8 upon request. Mr. Krammer testified that he's the consultant  
9 for the agency. He prepared the report. The salary  
10 information is correct. He testified that he looked at the  
11 website contemporaneously just before the day of the hearing  
12 for a specific reason so that he knew, one, when it was  
13 coming up. And, two, because of the pagination difference  
14 between the report that he submitted and the one that was  
15 published both at the meeting available to the public there,  
16 and at the web.

17 So I think we have more than met our burden of proof  
18 on the fact that it was published. I want to note that this  
19 issue, like the other ones we've discussed, are -- the  
20 determination of them, I believe, should fairly include due  
21 process concerns, because we're dealing with this now seven  
22 years later. If Caltrans had acted in any way more promptly  
23 -- CalPERS, sorry. I always do that, don't I?

24 If CalPERS had acted more promptly, the website until  
25 2013 would have still been here. We could have gone on it

1 from this courtroom. And to take the position in any way  
2 that it was not published and not fairly done now, truly  
3 denies her fair rights, including of course, the fact that  
4 she bought and CalPERS approved her buying additional service  
5 credit on the basis of that published pay rate. I think we  
6 met our burden on all bases, Your Honor.

7 ADMINISTRATIVE LAW JUDGE ANDERSON: Thank you.  
8 Ms. Rodriguez?

9 MS. RODRIGUEZ: Thank you, Your Honor. The materials  
10 submitted today do not comport with the requirements of the  
11 regulation at 570.5(a), which lists specific things which  
12 must be done in order to be considered a published pay rate.

13 ADMINISTRATIVE LAW JUDGE ANDERSON: Can you give me  
14 the number again?

15 MS. RODRIGUEZ: In just a moment, Your Honor. I have  
16 it on -- it's 2 CCR 570.5, the requirement that -- the title  
17 of that section is titled: "Requirements for a Publicly  
18 Available Pay Schedule." And under (a), there are specific  
19 requirements listed, including "Identifies a position title  
20 for every employee."

21 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.  
22 Ms. Rodriguez, could you slow down your rate of speech,  
23 please?

24 MS. RODRIGUEZ: Thank you. Including "Identifies the  
25 position title for every employee position." And number six,

1 "Indicates an effective date and date of any revisions." And  
2 number eight, "Does not reference another document in lieu of  
3 disclosing the pay rate." Certainly, the document that is a  
4 comparison of pay rates throughout the area does not qualify  
5 as a published pay rate.

6 It's a comparison, not a pay rate publication. And  
7 it's in another document other than a salary publishing. And  
8 none of those documents have dates and revisions. They don't  
9 list when it happened, when things were changing, et cetera.  
10 I don't think they qualify.

11 In addition to the fact that there's been no testimony  
12 at all that they were posted at the time that they were put  
13 into place, the fact that the document says on its face that  
14 the full packet will be available at a website does not  
15 verify the date at which that publication on the website will  
16 happen. Certainly, we all know over time, preciseness and  
17 web accuracy has changed.

18 So what went on in 2008 is not discernible by what is  
19 happening today and by what somebody who began their  
20 employment in 2011 felt was her duty to accomplish. So I  
21 don't think there's been evidence that this item was properly  
22 published or widely available. There's no evidence of any  
23 other kind of publication.

24 Even the petitioner's own witness -- excuse me. The  
25 respondent's own witness stated that in order to get the pay

1 scale, he had to call or request documents. It was not  
2 available for him. He had to call and request documents in  
3 order to know the pay rate that he was going to use to  
4 compare to the other cities. That was Mr. Krammer's  
5 testimony. That was how he learned her pay rate.

6 The problem here is that we have a case where there  
7 was a conversion of a benefit, and now years later, an  
8 attempt to make that look like it was not final settlement  
9 pay. The Craig Woods case at 12-01, it's a CalPERS  
10 precedential case -- which I would be happy to provide to the  
11 Court and Counsel if they don't have a copy of it. It's also  
12 on the website, the CalPERS website -- makes it quite clear  
13 that converting these disallowed items such as deferred comp  
14 paid by the employer instead of the employee is final  
15 settlement pay and is an attempt to increase the PERS-able  
16 amount reported in order to increase the retirement.

17 And nothing said here has given any indication of  
18 anything different. And we would ask the Court to uphold  
19 CalPERS determination. That's all.

20 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Can you  
21 give me the name of the CalPERS case again and sort of the  
22 way to --

23 MS. RODRIGUEZ: Yeah. The long name is: *In the*  
24 *Matter of the Appeal Regarding Calculation of Final*  
25 *Compensation of Craig F. Woods, Respondent, and the Tahoe*

1 *Truckee Sanitation Agency, Respondent.* And that's  
2 precedential decision 12-01. And it is on the CalPERS  
3 website as precedential decision. And I would be happy to  
4 send the Court and Counsel a copy of that to alleviate the  
5 need to go to that website, if you prefer.

6 ADMINISTRATIVE LAW JUDGE ANDERSON: That won't be  
7 necessary. Thank you. All right. Mr. Wasserman, anything  
8 in final response?

9 MR. WASSERMAN: A couple things in rebuttal, Your  
10 Honor.

11 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.

12 MR. WASSERMAN: I would, one, Ms. Rodriguez said a  
13 comparison with other agencies, not a published pay rate.  
14 Attachment B has two tables. One lists all of the employees  
15 of the agency at that time, including the executive director.  
16 The second table, that shows comparisons by averages.

17 Second, I would direct the Court's attention to  
18 page 141 in Exhibit J, which has a table that is a  
19 comparative table, but does show the date of adjustment.  
20 This is a 2008 document. It shows the adjustment of  
21 Ms. Monsen's salary in July of '07.

22 So by negotiation in '07, as has been testified, she  
23 negotiated that they agency would no longer pay her deferred  
24 compensation. It would be paid as part of her salary. She  
25 had the option to make it deferred compensation, which option

1 she took. That was different than had been done previously.

2 This was not a last-minute adjustment. She did not  
3 retire until 2010, at the end of the 2010. And she has  
4 explained that even then, if she had her druthers, she would  
5 not have retired. But because of the merger and the search  
6 for a new executive director for the merged agencies, she did  
7 so.

8 So there are -- there's no question -- and I  
9 appreciate this is beyond the scope of this hearing. I'm  
10 going to be very brief, but Ms. Rodriguez brought it out.  
11 There's no question that this change was intentional. It is  
12 also perfectly legal, was not done in view of imminent  
13 retirement. And the -- so on the agency's side and  
14 Ms. Monsen's side, there's nothing improper that, in fact,  
15 has been shown. Lots of allegations, but nothing shown.

16 Finally, Ms. Rodriguez suggests, at least as I  
17 interpret it, that this published pay rate needs to be in a  
18 particular form in a particular case. That's not what the  
19 law says. It needs to be published. It needs to be  
20 available, and it was. It was available clearly to anybody  
21 who asked, but more importantly, was published in this 2008  
22 document. And Ms. Rodriguez' suggestion that simply because  
23 the official document of the agency says it was the official  
24 document and it was posted, is not sufficient.

25 Absent any indication that this agency doesn't follow

1 the Brown Act; that anybody in CalPERS, in fact, looked and  
2 tried to find it here, and that it wasn't posted here, I  
3 think, does not have any bearing. I think we've demonstrated  
4 that it was honestly, openly, and fairly done, and indeed was  
5 published sufficient to meet the requirements of the law.  
6 That's all I have.

7 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Thank you.  
8 All right. That concludes the hearing on the matter. I'll  
9 be preparing that proposed decision for CalPERS, and  
10 hopefully it will go to them within 30 days from today. And  
11 then you'll find out some time after that. They have  
12 100 days?

13 MS. RODRIGUEZ: 90.

14 ADMINISTRATIVE LAW JUDGE ANDERSON: 90 days. The  
15 agency is different now, so they have 90 days to decide  
16 whether to adopt the decision or not. And if they don't  
17 adopt it, it becomes a decision by operation of law. If they  
18 don't adopt it, then there are all sorts of things that  
19 happen that they'll tell you about. But my role is over once  
20 I submit the proposed decision.

21 MR. WASSERMAN: Does your proposal come to us as well?

22 ADMINISTRATIVE LAW JUDGE ANDERSON: Well, it goes to  
23 the agency, and they send you a copy. That's how it works.  
24 Okay. So that concludes the hearing. And I just need you to  
25 wait until I give you the court reporter form.

1 MR. WASSERMAN: Thank you.

2 ADMINISTRATIVE LAW JUDGE ANDERSON: All right. We're  
3 off the record.

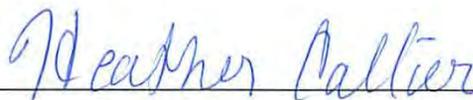
4 (The hearing was concluded at 11:15 a.m.)  
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COURT REPORTER'S CERTIFICATE

I, HEATHER CALLIER, hereby certify that I am a Certified Shorthand Reporter and that I recorded verbatim in shorthand the proceedings had Friday, June 13, 2014, in the matter of BOARD OF ADMINISTRATION CALIFORNIA EMPLOYEES' PUBLIC RETIREMENT SYSTEM, Complainant, versus CHRISTINE MONSEN, Respondent, Case Number 2014-010471, completely and correctly to the best of my ability; that I have caused said shorthand to be transcribed into typewriting and the foregoing pages, 1 through 52, constitute a complete and accurate transcript of said shorthand writing taken in the above-mentioned proceedings.

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Dated at Oakland, California, this 28th day of August, 2014.



HEATHER CALLIER, CSR No. 13758