

ATTACHMENT F
ADMINISTRATIVE HEARING TRANSCRIPT
JUNE 18, 2014

ORIGINAL

ADMINISTRATIVE HEARING
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

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In the matter of the effective
Date of CalPERS membership of:

LISA HANDWERKER,)	
)	
Respondent,)	AGENCY CASE NO.2011-0524
)	
and)	No. 2013-080276
)	
CALIFORNIA STATE UNIVERSITY)	
EAST BAY,)	
)	
Respondent.)	

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

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Wednesday, June 18, 2014

9:00 a.m.

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Reported by: KELLI A. DIAZ CSR No. 13930

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

Administrative Law Judge: RUTH ASTLE
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For Respondent: MARK KARPLUS

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EXHIBITS

CalPERS'
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1 Wednesday, June 18, 2014, Oakland, CA, 9:00 a.m.

2 ADMINISTRATIVE LAW JUDGE ASTLE: This is on the
3 record. This is before the Board of Administration of the
4 California Public Employees' Retirement System in the matter
5 of the effective date of CalPERS membership of
6 Lisa Handwerker and the California State University of East
7 Bay. This is OAH case number 2013-080276, agency number
8 2011-0524. Today's date is June 18th, 2014. We're in
9 Oakland, California. My name is Ruth Astle, I'm an
10 Administrative Law Judge. I've been assigned to hear this
11 matter. Counsel for CalPERS, would you state your appearance
12 for the record?

13 MS. SALAZAR: Yes, thank you, your Honor. Renee
14 Salazar, California Public Employees' Retirement System,
15 Senior Staff Counsel.

16 ADMINISTRATIVE LAW JUDGE ASTLE: And Ms. Handwerker
17 you're represented; is that correct?

18 THE RESPONDENT: Yes, I am.

19 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. And did you
20 want to state your appearance for the record?

21 MR. KARPLUS: My name is Mark Karplus.

22 ADMINISTRATIVE LAW JUDGE ASTLE: And we understand
23 that you're not an attorney and you're not a disbarred
24 attorney and you're not the union rep either?

25 MR. KARPLUS: Correct.

1 ADMINISTRATIVE LAW JUDGE ASTLE: So we did have a
2 discussion off the record. On the record, there are going to
3 be two amendments to the pleadings. And did you --
4 Ms. Salazar, did you want to state the two amendments for the
5 record?

6 MS. SALAZAR: Yes. Thank you, your Honor. So, the
7 last -- looking at Exhibit 1, which is the CalPERS exhibit
8 binder, it's the Statement of Issues.

9 ADMINISTRATIVE LAW JUDGE ASTLE: Yeah, I'll mark the
10 Statement of Issues as Exhibit 1 designated as the pleadings
11 are entered into evidence for jurisdictional purposes only.

12 (CalPERS' Exhibit 1 was marked for identification.)

13 (CalPERS' Exhibit 1 was admitted into evidence.)

14 ADMINISTRATIVE LAW JUDGE ASTLE: I'll take official
15 notice that Karen DeFrank made the accusation in her official
16 capacity or, the Statement of Issues in her official
17 capacity. So, you're going to now amend the pleadings,
18 correct?

19 MS. SALAZAR: Yes, thank you, your Honor. That's Line
20 5, CalPERS wishes to add --

21 ADMINISTRATIVE LAW JUDGE ASTLE: It's page 3?

22 MS. SALAZAR: Page 3, Line 5. CalPERS wishes to add
23 the following sentence, "Upon subsequent review, CalPERS
24 determined June 19th, 2006 was the correct membership date."

25 And the other correction should be at Line 11 of Page

1 3, the change would be from "March 27th, 2006," to "June
2 19th, 2006."

3 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. Pursuant to
4 the APA, you have the right to do that amendment at any time.
5 So the amendment was accepted.

6 I did give an offer to the appellant to ask for a
7 postponement, but she's been doing this for a long time and
8 doesn't want to put it off any longer. If there's anything
9 that we need because of this, we might have to give some time
10 to get it in if there's any kind of other documents that we
11 need.

12 And Exhibit 2 is the Notice of Hearing?

13 MS. SALAZAR: Yes, your Honor.

14 ADMINISTRATIVE LAW JUDGE ASTLE: And I'll also mark
15 that as Exhibit 2 and enter it for jurisdictional purposes.

16 (CalPERS' Exhibit 2 was marked for identification.)

17 (CalPERS' Exhibit 2 was entered into evidence.)

18 ADMINISTRATIVE LAW JUDGE ASTLE: And are you going to
19 have testimony about Exhibit 3, then?

20 MS. SALAZAR: Yes, I will.

21 ADMINISTRATIVE LAW JUDGE ASTLE: Did you wish to make
22 an opening statement?

23 MS. SALAZAR: Yes, I do, your Honor.

24 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. Go ahead.

25 MS. SALAZAR: Thank you. Lisa Handwerker is employed

1 as a temporary faculty member at the California State
2 University East Bay. Pursuant to her California State
3 University employment, she is a CalPERS member. The sole
4 issue in this hearing is the date Ms. Handwerker's CalPERS
5 membership began.

6 Ms. Handwerker has the burden of proof establishing
7 the membership date, if it is to be established, prior to
8 June 19th, 2006, the date CalPERS has determined.

9 For part-time employees, Government Code 20305
10 establishes the conditions for membership into the California
11 Public Employees' Retirement System. Specifically, for
12 temporary faculty members of the California State University
13 subdivision A4A of 20305 details the conditions that a CSU
14 faculty member must meet to establish CalPERS membership.

15 That subdivision provides that a faculty member who
16 works three consecutive quarters at half-time or more and is
17 not otherwise excluded from membership becomes -- their
18 membership shall be effective with the start of the next
19 consecutive quarter if that next consecutive appointment
20 requires service of half-time or more.

21 The evidence in the case will show Ms. Handwerker
22 worked three consecutive quarters at half-time or more
23 beginning in the fall of 2005, then winter 2006, spring of
24 2006, was three quarters to establish the three consecutive
25 quarters. Thereby, providing her membership as of the next

1 consecutive quarter at half-time or more, which was the
2 summer quarter of 2006. Accordingly, CalPERS determined
3 Ms. Handwerker's membership began on or about June 19th,
4 2006.

5 CalPERS asks this Court to uphold this determination
6 that Ms. Handwerker's membership began June 19th, 2006, and
7 deny her appeal in this matter. Thank you.

8 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. Did you wish
9 to make an opening statement?

10 MR. KARPLUS: Judge, if you will permit us and there's
11 no objection, we would like to divide the opening statements
12 between the two of us, each speaking briefly.

13 ADMINISTRATIVE LAW JUDGE ASTLE: Do you have any
14 objection?

15 MS. SALAZAR: No.

16 ADMINISTRATIVE LAW JUDGE ASTLE: All right.

17 MR. KARPLUS: Dr. Lisa Handwerker is a long-time
18 lecturer, a part-time temporary faculty member at California
19 State University East Bay in Hayward. She has been admitted
20 to the CalPERS Retirement System.

21 At issue here, is when she should have been admitted.
22 CalPERS, in a letter dating from February 2011 and amended
23 here today, determined that she should have been admitted in
24 2006. Dr. Handwerker argues that she should have been
25 admitted in 2004.

1 CalPERS has excluded Dr. Handwerker from admission in
2 2004 because of a single class she taught in Summer 2003.
3 And because of the narrowest of readings of Government Code
4 Section 20305, the statute that provides for the admission of
5 part-time temporary faculty in the CSU into CalPERS, that
6 narrowest of readings ignores the reality of what it means to
7 teach on a quarter-campus in the CSU, a reality expressed in
8 the Education Code and in CSU documents we will present
9 today, and expressed in Dr. Handwerker's own experience.

10 THE RESPONDENT: Okay. So, basically how this all
11 started was in about 2009 at the Cal State University. There
12 was a lot of talk about layoffs and I realized that I was
13 very close to having five years of service credit and being
14 vested in turning 50.

15 I hadn't been admitted yet into CalPERS, and I was
16 really concerned that I was going to be laid off. So, I went
17 back to look at a lot of my records and I realized --

18 ADMINISTRATIVE LAW JUDGE ASTLE: So, you understand
19 that this is an opening statement. You are not under oath.
20 I can't take this into consideration in terms of evidence.

21 THE RESPONDENT: Okay.

22 ADMINISTRATIVE LAW JUDGE ASTLE: So --

23 THE RESPONDENT: All right.

24 ADMINISTRATIVE LAW JUDGE ASTLE: I'm not sure that the
25 kind of detail you're going into --

1 THE RESPONDENT: Is useful?

2 MR. KARPLUS: Summarize the kind of evidence you're
3 going to present.

4 THE RESPONDENT: Okay. I'm going to basically talk
5 about how I was never informed that summer counted against
6 me. I'm going to talk about that particular course that I
7 taught in summer 2003. I'm going to talk about what I was
8 told by CalPERS, what I was told by California State
9 University, letters that I got from John Clark, George Diehr,
10 the board members. And I'm going to talk about also all of
11 the various mistakes that CalPERS has made around my date of
12 entrance, service credits being calculated incorrectly,
13 service credit money being charged incorrectly to me. And
14 all of those kinds of things.

15 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. So I'm not
16 sure that that was a good time to fill up the record with
17 this evidence, because we are really only talking about one
18 thing. That is what this is about. Other mistakes are not
19 going to be relevant. So, we'll see.

20 THE RESPONDENT: Yeah, I'll try to show that they
21 are.

22 ADMINISTRATIVE LAW JUDGE ASTLE: All right. Just
23 warning you.

24 THE RESPONDENT: Okay.

25 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. All right, so

1 what's going to happen is I am going to let them go first
2 even though you have the burden, because they can then put on
3 how they got to where they are. So, that was what you can
4 counter, but it's your burden of proof, you have to convince
5 me it's other than what they say. Okay?

6 Go ahead.

7 MS. SALAZAR: I first would like to call Emily Perez
8 DeFlores. It's the only witness.

9 ADMINISTRATIVE LAW JUDGE ASTLE: Just come forward.
10 Raise your right hand. Do you solemnly swear or affirm the
11 testimony you are about to give will be the the truth the
12 whole truth and nothing but the truth?

13 (Whereupon the witness was sworn.)

14 THE WITNESS: Yes.

15 ADMINISTRATIVE LAW JUDGE ASTLE: Please be seated.
16 Please state your first and last name and spell them both for
17 the record.

18 THE WITNESS: Emily Perez DeFlores. E-M-I-L-Y,
19 P-E-R-E-Z, Perez, D-E, De, F-L-O-R-E-S.

20 ADMINISTRATIVE LAW JUDGE ASTLE: Thank you.
21 Go ahead.

22 MS. SALAZAR: Thank you.

23 DIRECT EXAMINATION

24 BY MS. SALAZAR:

25 Q. Good morning.

1 A. Good morning.

2 Q. Ms. DeFlores, are you currently employed?

3 A. Yes.

4 Q. Where?

5 A. California Public Employees' Retirement System.

6 Q. And how long have you employed, approximately?

7 A. Almost 33 and a half years.

8 Q. And what was your first job before CalPERS?

9 ADMINISTRATIVE LAW JUDGE ASTLE: I don't think we need
10 to go back that far.

11 MS. SALAZAR: Okay. Fair enough.

12 Q. What's your current job title?

13 A. Okay. Staff Services Manager II.

14 Q. How long have you held that job?

15 A. February 2009, 5 years.

16 Q. And would you please briefly describe your work
17 involved as a Staff Services Manager II?

18 A. So, I'm a second-level manager that reviews staff's
19 work as it relates to complex membership terminations, plan,
20 organize, direct and control the membership management
21 section, the work load within the section. My main focus is
22 to approve staff's analysis of their membership
23 determinations.

24 Q. In what division do you work for?

25 A. The Customer Account Services Division.

1 Q. And, is there a subsection within that?

2 A. There's many subsections within there. My section is
3 the Membership Management Section.

4 Q. And as part of your position at CalPERS, are you
5 familiar with the rules for membership eligibility?

6 A. Yes.

7 Q. And more specifically, are you familiar with
8 membership for California State University faculty?

9 A. Yes.

10 Q. And could you tell us where the rules for membership
11 of CSU faculty are found?

12 A. In the Public Employees' Retirement Law.

13 Q. And as part of your position at CalPERS, do you review
14 member files to determine membership eligibility?

15 A. As indicated, I'm a second-level manager. I will go
16 into details of a review if things don't look right. So, I
17 will access the system in order to be able to ensure that
18 staff made an accurate determination.

19 Q. And is it fair to say that in situations where there
20 is an appeal that you will look at those determinations?

21 A. Yes.

22 Q. So, what does your review consist of?

23 A. So, we review documents and systems for CSU. In
24 particular, we access the Personnel Information Management
25 System.

1 Q. Okay. So when you refer to a "Personnel Information
2 Management System," what information, specifically, do you
3 access?

4 A. We -- or -- I access the employment history of each of
5 the appointments that Ms. Handwerker worked at CSU. Many
6 times part-time faculty carry more than one position, so you
7 have to look at each of the positions and each of the
8 time-base tenure for those positions.

9 Q. Okay. So I think I need to back up.
10 Can you tell us what's in the Personnel Information
11 Management System? Can you tell us what that is?

12 A. Okay. So the is a system that employers use to record
13 employment information, appointment information, separations
14 for their employees.

15 Q. And where is that information? Where do you access
16 that?

17 A. So, it's a State Controller Office System that the
18 State Controller's Office gives permission to certain
19 individuals, usually Human Resource personnel, to be able to
20 update employment history into the Personnel Information
21 Management System.

22 Q. And does CalPERS have access to that information now?

23 A. CalPERS has access to read the information.

24 Q. So, if I'm understanding correctly, you've got
25 employers inputting data into "PIMS" for lack of a better

1 word; is that correct?

2 A. Correct.

3 Q. And then you have the State Controller's Office that
4 sort of houses this information, provides access to an
5 organization, such as CalPERS, to look at information and to
6 make determinations based on employment history; is that
7 fair?

8 A. Yes, yes.

9 Q. Okay. So, as part of the duties at CalPERS, did you
10 review Ms. Handwerker's file regarding her membership
11 eligibility?

12 A. Yes, I did.

13 Q. And, what did that review consist of?

14 A. Again, I accessed the PIMS system. I looked at each
15 of her appointments and gathered the employment history of
16 each of the appointments that she held, and I had to develop
17 a spread sheet so that I can identify each of the positions
18 and the time base held at each of the positions to see if
19 during that quarter there was the time base for that quarter,
20 for each of the quarters that she worked.

21 Q. Okay. Let's get into that a little bit more.

22 MS. SALAZAR: If I may your Honor, I need to bring the
23 binder up.

24 ADMINISTRATIVE LAW JUDGE ASTLE: Sure.

25 BY MS. SALAZAR:

1 Q. So, if you wouldn't mind, Ms. DeFlores, looking at
2 Exhibits 8 and 9 just briefly?

3 ADMINISTRATIVE LAW JUDGE ASTLE: Exhibit 8, did you
4 say?

5 MS. SALAZAR: Yes, 8 and 9.

6 ADMINISTRATIVE LAW JUDGE ASTLE: What is Exhibit 8?

7 MS. SALAZAR: Eight is Respondent's employee position
8 numbers.

9 ADMINISTRATIVE LAW JUDGE ASTLE: And what is 9?

10 MS. SALAZAR: Nine is the Personnel Information
11 Management System documents regarding Ms. Handwerker's
12 employment history.

13 Q. So, the document that you discussed reviewing, looking
14 at Exhibits 8 and 9, do those look like the documents that
15 you reviewed?

16 A. Yes.

17 Q. And turning to Exhibit 8, do you recognize that
18 document?

19 A. Yes.

20 Q. And can you tell us what it is?

21 A. So, when you go into the Personnel Information
22 Management System for the CSU site, it will ask you for the
23 social security number. When you enter that, it will give
24 you the list of all the positions that were held under CSU.

25 Q. And so based on that information, based on

1 Ms. Handwerker's social security number, these are the
2 employee or position numbers that came up for her; is that
3 correct?

4 A. Yes.

5 Q. And how about Exhibit 9? I'm just not getting into
6 much detail, but can you tell us what it is?

7 ADMINISTRATIVE LAW JUDGE ASTLE: So, I'm kind of
8 concerned here. Is that her social security number?

9 THE WITNESS: No.

10 ADMINISTRATIVE LAW JUDGE ASTLE: In the middle?

11 THE WITNESS: No.

12 MS. SALAZAR: It's a position number; is that correct?

13 ADMINISTRATIVE LAW JUDGE ASTLE: 229065?

14 THE WITNESS: Yes.

15 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. Good. Thank
16 you.

17 THE WITNESS: Okay. So if you look at Exhibit 8 and
18 you look at the second line the 2290652358001, Exhibit 9
19 reflects all the appointments while in that position number
20 for Ms. Handwerker.

21 BY MS. SALAZAR:

22 Q. And does Exhibit 9, the documents in Exhibit 9, also
23 contain the documents that reference the additional position
24 numbers that are listed in Exhibit 8?

25 A. Yes.

1 MR. KARPLUS: I'm sorry. Could the question be
2 reviewed or the record, reread? Because I didn't follow it.

3 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. Can you read
4 that back?

5 THE REPORTER: Sure.

6 (Record read back as requested.)

7 MR. KARPLUS: Thank you.

8 BY MS. SALAZAR:

9 Q. So, if you could, can you give us sort of a synopsis
10 of what the employment records that are in Exhibit 9
11 reflected for your review?

12 A. So, if you take the first 6 pages, it will show all
13 her appointments in that position. And then starting on
14 CalPERS 007, that is the details behind each of the positions
15 with what the time base is for that position, what the job
16 title is. Are they covered? The coverage group code, the
17 account code.

18 Q. Time base?

19 A. Time base.

20 Q. Anything else?

21 A. Salary.

22 Q. And so, for each individual position, are you saying
23 that there are numerous documents that support or provide the
24 detail of what the time base, the salary, of each position
25 was?

1 A. Yes.

2 Q. So then turning your attention to Exhibit 7, which is
3 a 2-page, it's a chart and a spread sheet, for identification
4 purposes.

5 ADMINISTRATIVE LAW JUDGE ASTLE: Which one?

6 MS. SALAZAR: Number 7.

7 ADMINISTRATIVE LAW JUDGE ASTLE: I'll mark it as
8 zExhibit 7, the chart and the spread sheet.

9 (CalPERS' Exhibit 7 was marked for identification.)

10 BY MS. SALAZAR:

11 Q. And Ms. DeFlores, do you recognize those two pages?

12 A. Yes.

13 MR. KARPLUS: Excuse me. Prior to the meeting, you
14 provided us with a 3-page document -- not two pages -- as a
15 substitute for Exhibit 7. There's a spread sheet, a chart,
16 and this.

17 MS. SALAZAR: That's just a revised exhibit list so it
18 has the extra page.

19 MR. KARPLUS: I see. This is an index, a table of
20 contents. Thank you.

21 ADMINISTRATIVE LAW JUDGE ASTLE: All right.

22 MS. SALAZAR: Sorry.

23 Q. So, I think I was asking if you recognize those 2
24 pages in Exhibit 7?

25 A. Yes, I do.

1 Q. Can you tell us what these two documents are?

2 A. So, the first document was an easier way to identify
3 the time base and the qualifying quarters and the quarters
4 worked and the year that it was worked and it was based on
5 the information that's on the second page. Of all the
6 position numbers held, with many of the part-time CSU
7 positions, we have to line all of the positions held and then
8 look at each of their employment agreement information in
9 order to see when they worked a qualifying quarter.

10 And so, what I then did is identified all the
11 appointments for each of the types of positions and then some
12 corrections that were made to the appointments, and then when
13 she qualified for membership.

14 Q. Okay. So the two -- the chart and the spread sheet,
15 who created those?

16 A. I did.

17 Q. And where did the info used to create them come from?

18 A. Came from the Personnel Information Management System.

19 Q. So, the documents in Exhibit 9 that we've discussed?

20 A. Correct.

21 Q. And, based on your review of the PIMS documents, can
22 you then tell us what your chart and spread sheet basically
23 concluded?

24 A. So, based on the information and the law which,
25 requires three consecutive quarters worked at half-time or

1 more with the fourth quarter being half-time or more, they
2 qualify for membership. So, I don't see that she has that
3 three consecutive quarters until the fall of 2005 through
4 spring of 2006. And then summer 2006, she was appointed
5 again half-time or more, qualifying for CalPERS membership in
6 that fourth quarter.

7 Q. Four quarters of -- which was that? Summer of 2006?

8 A. Summer 2006. More specifically, June 19th, 2006, when
9 that quarter started.

10 MS. SALAZAR: So I'd ask to move 7 through 9 into
11 evidence, your Honor.

12 ADMINISTRATIVE LAW JUDGE ASTLE: All right, I'm going
13 to enter Exhibits 7, 8, and 9 pursuant to the testimony.

14 (CalPERS' Exhibit 7, 8, 9 were admitted into
15 evidence.)

16 ADMINISTRATIVE LAW JUDGE ASTLE: Okay.

17 MS. SALAZAR: Thank you.

18 Q. So, I believe that there was a letter that was
19 provided to Ms. Handwerker and I'll refer you specifically to
20 Exhibit 3, which is a CalPERS letter to inform the
21 Respondent.

22 ADMINISTRATIVE LAW JUDGE ASTLE: And it's dated
23 February 14, 2011?

24 MS. SALAZAR: Correct. Thank you, your Honor.

25 Q. And specifically, in that letter it advises membership

1 eligibility date of March 27th, 2006. So if you need a
2 moment to look at that --

3 A. Okay.

4 Q. But are you aware that such a letter went out with
5 that information of March 27th, 2006 being the membership
6 date?

7 A. Yes.

8 Q. Okay. And so can you -- I guess I'll refer you
9 specifically to Page 2 because there is a chart similar to
10 the chart that you prepared that was marked as Exhibit 7, and
11 ask you if you can identify for us why that March 27th, 2006
12 date is incorrect.

13 A. So, the chart in Exhibit 3, summer of 2005, is really
14 a 4/15s time base and not an 8/15s time base.

15 Q. So, just to be clear, I'm looking at Page 2 of the
16 February 14, 2011 letter. And in that chart, was it 2005?
17 The summer?

18 A. Summer of 2005.

19 Q. So your time base reflects 8/15s; is that correct?

20 A. Yes.

21 Q. Okay. And what you're saying is based on your review
22 of the PIMS documents, that's incorrect?

23 A. Correct.

24 Q. So what is the correct time base?

25 A. 4/15s.

1 Q. So is it based on that correction that CalPERS
2 determined the membership date was really June 19th, 2006,
3 rather than March 27th, 2006?

4 A. Yes.

5 MS. SALAZAR: I have nothing further at this time.

6 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. This is the
7 opportunity to ask questions of this witness. Only one of
8 you can ask questions.

9 MR. KARPLUS: Okay.

10 ADMINISTRATIVE LAW JUDGE ASTLE: You can chose which
11 one. This is not your opportunity to make a statement.
12 Neither of you are under oath. It doesn't help me to try and
13 make a statement. But if you have questions for this
14 witness, you can ask them.

15 MR. KARPLUS: Judge, I expect I'll have a series of
16 questions prepared and based on the testimony so far. After
17 we get answers to those, would I have the opportunity to then
18 consult with Dr. Handwerker to see if we have additional
19 questions?

20 ADMINISTRATIVE LAW JUDGE ASTLE: Sure.

21 MR. KARPLUS: So I'll do my questions and then we'll
22 consult; is that okay?

23 DR. HANDWERKER: Mm-hmm.

24 ///

25 ///

CROSS EXAMINATION

1
2 BY MR. KARPLUS:

3 Q. Ms. DeFlores -- may I call you Ms. DeFlores?

4 A. Yes.

5 Q. During her opening remarks, Ms. Salazar stated that
6 CalPERS determined that Dr. Handwerker was admitted on or
7 about June 19th, 2006. Is that accurate? Or is it on
8 June 19th?

9 A. On June 19th.

10 Q. Thank you.

11 A. 2006.

12 Q. You stated that when you reviewed the rules of
13 membership eligibility, where you find the rules are in the
14 Public Employees' Retirement Law; is that correct?

15 A. Yes.

16 Q. Do you find them anywhere else?

17 A. We look at the law. The law is the one that, you
18 know, identifies what we should follow.

19 Q. And I need to follow up. You stated, "We follow the
20 law." Did you mean the Public Employees' Retirement Law?

21 A. Correct.

22 Q. And not other law?

23 MS. SALAZAR: Objection. Vague.

24 ADMINISTRATIVE LAW JUDGE ASTLE: Sustained.

25 MR. KARPLUS: I'll move on.

1 BY MR. KARPLUS:

2 Q. You stated that you are a second-level manager?

3 A. Yes.

4 Q. And I gather it was in that capacity that you reviewed
5 Dr. Handwerker's file?

6 A. Yes.

7 Q. Who was it's first-level manager?

8 A. Rob Jarzombek.

9 ADMINISTRATIVE LAW JUDGE ASTLE: Can you spell that
10 for the court reporter, please.

11 THE WITNESS: R-O-B, Jarzombek, J-A-R-Z-O-M-B-E-K.

12 ADMINISTRATIVE LAW JUDGE ASTLE: Thank you.

13 THE WITNESS: I think.

14 BY MR. KARPLUS:

15 Q. And was he the only first-level manager that reviewed
16 her case?

17 A. That I'm aware of, yes.

18 Q. We have established that you reviewed her file. Can
19 you state on what date or dates you did that review? And a
20 range or period or periods would be sufficient to answer.

21 MS. SALAZAR: Objection, relevance.

22 ADMINISTRATIVE LAW JUDGE ASTLE: Oh, I'll allow it, if
23 you know.

24 THE WITNESS: It was this year.

25 BY MR. KARPLUS:

1 Q. "This year" meaning 2016?

2 A. '14.

3 Q. 2014. What month?

4 A. On around February, I believe.

5 Q. Does that mean that the determination that she was in
6 fact admitted June 19th, 2006 was already known in February?

7 A. Yes.

8 Q. Now, I asked if there were multiple times when you
9 reviewed the file. I gather, since Exhibit 3 is your letter
10 dating from 2011, that you must have also reviewed the file
11 at or around that time; is that correct?

12 A. So around that time I briefly reviewed -- I, if you
13 look at Exhibit 3 --

14 Q. Uh-huh.

15 A. It has my signature block, but I did not sign it.

16 Q. Hm.

17 A. So that would only mean that I must have been out on
18 vacation during that time. Otherwise, I would have signed it
19 if I was there.

20 Q. Nonetheless, did you in any way review
21 Dr. Handwerker's file or case in 2010 or 2011?

22 A. I briefly dealt with Ms. Handwerker's case. I was
23 kind of a conduit between different areas while we were still
24 determining the eligibility for Ms. Handwerker, but for the
25 most part Rob and other staff worked on her case.

1 Q. I understand that your signature -- well, yes. I
2 understand that your signature does not appear on Exhibit 3,
3 but your name does. At the time, did you understand and
4 agree with with what is in Exhibit 3?

5 A. Again, I was probably not in the office when this was
6 generated and that's why Rob Jarzombek signed it. So, I
7 wouldn't have known about it until after it had been signed
8 and stamped.

9 Q. So, although you stated that in your position as
10 second-level manager, you would make determinations like it
11 appears you did in February 2014, that the date should be
12 June 19th, 2016?

13 ADMINISTRATIVE LAW JUDGE ASTLE: And I don't think that
14 sounds right.

15 MR. KARPLUS: June 19, 2006. Thank you, Judge.

16 Q. You were not involved in the decision in this letter
17 that the date should be in March of 2006?

18 MS. SALAZAR: Objection. I think it misstates the
19 testimony.

20 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. So this was not
21 signed by you; is that correct?

22 THE WITNESS: Correct.

23 ADMINISTRATIVE LAW JUDGE ASTLE: You had some
24 knowledge of it; is that correct?

25 THE WITNESS: I had some knowledge of Ms. Handwerker's

1 inquiries to CalPERS.

2 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. But you didn't
3 endorse this letter in any particular way; is that correct?

4 THE WITNESS: Correct. I did not approve it for Rob to
5 sign it, nor did I sign it.

6 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. Move on.

7 MR. KARPLUS: Mm-hmm.

8 Q. Looking at Exhibit 8, there is no date on it. Can you
9 explain?

10 A. This is what appears on the system.

11 ADMINISTRATIVE LAW JUDGE ASTLE: Is it like a screen
12 shot?

13 THE WITNESS: It's a screen shot.

14 ADMINISTRATIVE LAW JUDGE ASTLE: Thank you.

15 THE WITNESS: And normally this includes SSN, which
16 has been redacted.

17 MR. KARPLUS: I'm sorry? Normally includes a --

18 THE WITNESS: Social Security number. But it was
19 redacted.

20 ADMINISTRATIVE LAW JUDGE ASTLE: Social security
21 number. Thank you.

22 BY MR. KARPLUS:

23 Q. And what, if anything, are we to make of the entry
24 under time base on Exhibit 8?

25 A. Again, this is just a screen shot of all the positions

1 held, but within each position number there's multiple
2 appointments that were given. So, that is the latest time
3 base for each of the position numbers.

4 Q. And when was the screen shot captured?

5 A. I want to say in February of 2014.

6 ADMINISTRATIVE LAW JUDGE ASTLE: So, there are date
7 and time indications at the bottom of the page. Do you see
8 that?

9 THE WITNESS: On 8?

10 ADMINISTRATIVE LAW JUDGE ASTLE: On 8, yes.

11 MR. KARPLUS: Our copy does not have that.

12 ADMINISTRATIVE LAW JUDGE ASTLE: Okay.

13 THE WITNESS: On June 13, 2014, is what this --

14 ADMINISTRATIVE LAW JUDGE ASTLE: So is that the date
15 it was captured or copied or --

16 THE WITNESS: So, this page was captured on that date.
17 Yeah, this page was captured on that date.

18 MS. SALAZAR: Your Honor, if I may just clarify. I
19 don't believe that any of the exhibit binders have the date
20 that yours does.

21 ADMINISTRATIVE LAW JUDGE ASTLE: Okay.

22 MR. KARPLUS: May I come just look it to see?

23 ADMINISTRATIVE LAW JUDGE ASTLE: Yeah, just wait a
24 second, I've got to put this back together.

25 MR. KARPLUS: Thank you.

1 ADMINISTRATIVE LAW JUDGE ASTLE: This is falling
2 apart. All right. Lets try it.

3 MR. KARPLUS: May I approach?

4 ADMINISTRATIVE LAW JUDGE ASTLE: Yes, uh-huh.

5 MR. KARPLUS: Thank you.

6 Q. Ms. DeFlores, you testified that in updating the table
7 that's now in Exhibit 7 and that had appeared in Exhibit 3,
8 the time base changed for summer of 2005?

9 A. Yes.

10 Q. Can you tell us what class that was, that if -- what
11 class was removed in making that change?

12 A. So, the document that was used for Exhibit No. 3 --

13 Q. Mm-hmm.

14 A. -- may have been incorrectly done. But when I
15 reviewed and developed the document, Page 2 in Exhibit 7 --

16 Q. Uh-huh.

17 A. -- it doesn't appear that there was any change to
18 summer of 2005. There's only one appointment that was held
19 at a 4/15s time base.

20 Q. And just so it's clear that we're all looking at the
21 same thing, I'm looking at the table that is landscaped and
22 has under the entry for 2005, 4/15s summer, and then reading
23 across it says A52:62005:004/015?

24 A. Correct.

25 Q. Are you able now to find what I assume would be the

1 corresponding record in Exhibit 9?

2 A. It will take me a minute. Okay. So if you look at
3 CalPERS --

4 Q. Mm-hmm.

5 A. --104.

6 Q. CalPERS 104.

7 A. In Exhibit 9.

8 Q. Yes, CalPERS' 104 in Exhibit 9.

9 A. The 62005A52 appointment.

10 Q. I'm sorry. You'll need to repeat it.

11 A. So, on CalPERS 104 --

12 Q. Mm-hmm.

13 A. -- if you go down to effective date 62005A52
14 appointment.

15 Q. I'm sorry. What line? If you could count line
16 numbers because I do not find --

17 ADMINISTRATIVE LAW JUDGE ASTLE: Five.

18 MR. KARPLUS: Oh, 62005. Yes, uh-huh.

19 Q. Ms. DeFlores, having reviewed Dr. Handwerker's file
20 and recognizing the changes that were just noticed to her
21 today, would you agree that CalPERS has made numerous errors
22 over the years?

23 MS. SALAZAR: Objection. Argumentative; assumes facts
24 not in evidence. I don't know.

25 ADMINISTRATIVE LAW JUDGE ASTLE: I'm going to sustain

1 the objection. It doesn't help me any.

2 BY MR. KARPLUS:

3 Q. Looking at Exhibit 3, were there errors in Exhibit 3?

4 A. Yes.

5 Q. And what were they?

6 A. The membership date identified in Exhibit 3 of March
7 27th, 2006, is an error. The chart on Page 2 of summer 2005,
8 the time base 8/15s should be 4/15s.

9 Q. Having reviewed Dr. Handwerker's file apart from the
10 letter Exhibit 3, has CalPERS made other errors regarding
11 Dr. Handwerker's CalPERS membership eligibility?

12 MS. SALAZAR: Objection, vague.

13 ADMINISTRATIVE LAW JUDGE ASTLE: If you are talking
14 about the membership date, I'll allow that.

15 BY MR. KARPLUS:

16 Q. Back to Exhibit 3, if you would look at Page 4 under
17 "determination" the first sentence states, "CalPERS --

18 ADMINISTRATIVE LAW JUDGE ASTLE: Don't read into the
19 record.

20 MR. KARPLUS: Yes.

21 ADMINISTRATIVE LAW JUDGE ASTLE: You can ask her to
22 read it.

23 BY MR. KARPLUS:

24 Q. Is the date on the second line correct? January 6th,
25 2003?

1 A. The date on what line?

2 Q. Under "determination," the second line. It gives a
3 date of January 6th, 2003. In the context of that sentence,
4 is that date correct?

5 A. So, based on Exhibit 7 the second Page and Line 2
6 after the determination of January 6, 2003. The January 6,
7 2003 is incorrect because she started September 21st, 1999.

8 Q. Thank you. So, to summarize including the 2 errors
9 that you cited and the one that I just cited, you would agree
10 that there are at least three errors in the letter that
11 Dr. Handwerker received dated February 14, 2011.

12 MS. SALAZAR: Objection, relevance.

13 ADMINISTRATIVE LAW JUDGE ASTLE: I'll allow it. You
14 know --

15 MR. KARPLUS: I understand, Judge.

16 ADMINISTRATIVE LAW JUDGE ASTLE: -- it kind of speaks
17 for itself. Either there are or there aren't.

18 MR. KARPLUS: I'll move on.

19 ADMINISTRATIVE LAW JUDGE ASTLE: All right.

20 MR. KARPLUS: Judge, I have a question about
21 procedure.

22 ADMINISTRATIVE LAW JUDGE ASTLE: Okay.

23 MR. KARPLUS: Anticipating that we would be presenting
24 our case first, and having already had Dr. Handwerker
25 introduce an exhibit, I would like to present one of those

1 exhibits for Ms. DeFlores to look at. If that's not
2 possible, I can still ask the question, but by providing the
3 exhibit, it will make the questioning go much --

4 ADMINISTRATIVE LAW JUDGE ASTLE: No, I can mark the
5 exhibit and you need to give it to Ms. Salazar to look at.

6 MR. KARPLUS: Is that acceptable?

7 MS. SALAZAR: Go ahead. Is that a copy for me?

8 MR. KARPLUS: That's a copy for you.

9 ADMINISTRATIVE LAW JUDGE ASTLE: I'll mark that as
10 Exhibit A, some e-mail chain with the top date of January
11 8th, 2014. You know any references to settlement have to be
12 redacted?

13 MR. KARPLUS: I was not aware of that.

14 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. You can't talk
15 about settlement in this hearing. It's inappropriate, it's
16 problematic. If that's what this is about --

17 MR. KARPLUS: It is not.

18 ADMINISTRATIVE LAW JUDGE ASTLE: Okay.

19 MR. KARPLUS: If I may, the purpose is to use the last
20 page, which was not as part of settlement, but as part of the
21 case, an information request, is to use that now that we have
22 a witness to ask those questions here today.

23 MS. SALAZAR: And I'll object as to relevance.

24 ADMINISTRATIVE LAW JUDGE ASTLE: Yeah, I'm going to
25 sustain the objection.

1 MR. KARPLUS: The relevance to the -- to use this?

2 ADMINISTRATIVE LAW JUDGE ASTLE: Yes, you can't do it
3 this way.

4 MR. KARPLUS: All right.

5 ADMINISTRATIVE LAW JUDGE ASTLE: And --

6 MR. KARPLUS: Would it be possible to submit simply
7 the last page as an exhibit?

8 ADMINISTRATIVE LAW JUDGE ASTLE: I'm not sure what the
9 purpose is. If you have questions related, you can ask them.

10 MR. KARPLUS: Then I shall do that.

11 ADMINISTRATIVE LAW JUDGE ASTLE: There is no
12 interrogatory request or admissions or anything like that in
13 administrative proceedings. So, there's no downside to them
14 not having answered those questions. If those questions are
15 relevant, you can ask them. If she knows or doesn't know,
16 we'll see where we go.

17 MR. KARPLUS: Thank you, Judge.

18 Q. If I may draw your attention to Exhibit 3, Page 2, the
19 table on that. It shows in 2003 time bases in winter of
20 8/15s, spring 8/15s, summer 4/15s, fall 8/15s. And then
21 winter 12/15s. You're aware because of this case that
22 Dr. Handwerker believes she should have been admitted in
23 winter 2004; is that correct?

24 A. Because of the case that's when she feels she should
25 have been a member.

1 Q. And you're aware of that? That that's how she --
2 that's what she believes?

3 MS. SALAZAR: Objection. How would the witness know
4 what she believes?

5 ADMINISTRATIVE LAW JUDGE ASTLE: Sustained.

6 BY MR. KARPLUS:

7 Q. Are you aware -- have you seen her appeal letter in
8 which she states that she should have been admitted in winter
9 2004?

10 A. I don't recall.

11 ADMINISTRATIVE LAW JUDGE ASTLE: So --

12 MR. KARPLUS: Yes?

13 ADMINISTRATIVE LAW JUDGE ASTLE: -- Exhibit 4 under
14 your tab 4, which I'll mark as Exhibit 4, are you familiar
15 with this letter?

16 (CALPERS' Exhibit 4 was marked for identification.)

17 MR. KARPLUS: Thank you.

18 THE WITNESS: I haven't seen it for a long time.

19 MR. KARPLUS: Excuse me?

20 ADMINISTRATIVE LAW JUDGE ASTLE: She hasn't seen it for
21 a long time.

22 THE WITNESS: I haven't seen it for a long time.

23 MR. KARPLUS: Thank you.

24 Q. Do you see in the last line that she states, "which
25 means that my CalPERS membership should have been effective

1 winter 2004?"

2 A. Yes.

3 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. So, that
4 doesn't get us anywhere. We know --

5 MR. KARPLUS: Yes, I --

6 ADMINISTRATIVE LAW JUDGE ASTLE: What do you want from
7 this witness? What are you asking her?

8 BY MR. KARPLUS:

9 Q. If Dr. Handwerker had taught 8/15s time base in summer
10 2003, would she have been admitted to CalPERS sooner than
11 2006?

12 A. Is that a question?

13 Q. Yes.

14 A. Yes, if she worked 8/15s during the summer of 2003.

15 Q. And, when would she have been admitted and it would
16 suffice to say the end of "X-quarter" or the beginning of
17 "Y-quarter"?

18 MS. SALAZAR: I'm going to object as to relevance.

19 ADMINISTRATIVE LAW JUDGE ASTLE: Well, it's their
20 position. If she had worked that summer, is she correct that
21 she should have been a member as of the winter of 2004?

22 THE WITNESS: If Ms. Handwerker would have worked the
23 summer of 2003 at 8/15s, she would have qualified for
24 membership the fall of 2003.

25 ADMINISTRATIVE LAW JUDGE ASTLE: Okay.

1 BY MR. KARPLUS:

2 Q. And what if Dr. Handwerker had not worked at all?
3 What if her time base in summer 2003 had been 0/15s, would
4 she have been admitted to CalPERS before 2006?

5 A. She didn't work the 3 consecutive quarters if she
6 would not have worked. If she didn't work in the summer of
7 2003, she would not have worked the 3 consecutive quarters
8 required for membership.

9 Q. So the answer is no, she would not have.

10 A. Correct.

11 MR. KARPLUS: Another question on procedure, Judge.

12 ADMINISTRATIVE LAW JUDGE ASTLE: Sure.

13 MR. KARPLUS: We have an e-mail from 2011 including
14 Ms. DeFlores that we'd like to ask her about, but we only
15 have one copy of it handy. The others are hidden in the
16 back.

17 ADMINISTRATIVE LAW JUDGE ASTLE: Have you shown it to
18 Ms. Salazar?

19 THE RESPONDENT: It was faxed to her.

20 MR. KARPLUS: May I show it to her?

21 ADMINISTRATIVE LAW JUDGE ASTLE: Yes, uh-huh.

22 (At which point a short discussion was held off the
23 record.)

24 ADMINISTRATIVE LAW JUDGE ASTLE: What do you want to
25 ask her about this.

1 MR. KARPLUS: It --

2 ADMINISTRATIVE LAW JUDGE ASTLE: What is the
3 relevancy? What are you trying to ask her about this?

4 MR. KARPLUS: If it would refresh her memory of her
5 involvement in Dr. Handwerker's case in 2011. The e-mail
6 from her that I believe begins on Page 3.

7 ADMINISTRATIVE LAW JUDGE ASTLE: What is the purpose
8 of that? I don't understand where you're going. The issue
9 seems pretty clear here. Ms. Handwerker believes she has
10 qualifying time in winter, spring, and fall of 2003 and
11 CalPERS has stated that she doesn't because there was a not
12 qualifying summer quarter in between that that disqualified
13 her.

14 MR. KARPLUS: We'll move on. I'll take it back.
15 Thank you.

16 ADMINISTRATIVE LAW JUDGE ASTLE: All right.

17 MR. KARPLUS: Judge, as we discussed earlier after the
18 first round of questions, we may be done, but I'd like to
19 consult with Dr. Handwerker. Could we take a short break to
20 do that?

21 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. Let's take the
22 morning break. How long do you need?

23 THE REPORTER: Maybe ten minutes?

24 MR. KARPLUS: Thank you.

25 ADMINISTRATIVE LAW JUDGE ASTLE: All right. We'll take

1 the morning break for 10 minutes.

2 (At which time the morning recess taken.)

3 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. We can go back
4 on the record. Are you okay?

5 THE WITNESS: Yes, ma'am.

6 ADMINISTRATIVE LAW JUDGE ASTLE: Go ahead. Do you
7 have any further questions?

8 MR. KARPLUS: Yes.

9 Q. Ms. DeFlores, thank you for your patience. If
10 Dr. Handwerker had worked on a semester campus, would whether
11 she had worked in summer or not have had any effect on her?

12 MS. SALAZAR: Objection. Relevance.

13 ADMINISTRATIVE LAW JUDGE ASTLE: Sustained. There's
14 no evidence that there was any issue about working semesters.
15 This is a quarter campus. That's irrelevant.

16 MR. KARPLUS: I'd like to speak to the relevance if I
17 may?

18 ADMINISTRATIVE LAW JUDGE ASTLE: Sure.

19 MR. KARPLUS: In the Government Code as cited in
20 Exhibit 1 gives the criteria for both semesters and quarters,
21 as does the CSU technical letter, Exhibit 5. And part of our
22 case will be to point out disparity in language and the
23 disparity in treatment between semesters and quarters.

24 ADMINISTRATIVE LAW JUDGE ASTLE: You need to take that
25 issue up somewhere else. If you think that that's

1 unconstitutional and not fair, you've got to go someplace
2 else. That's not my job. I can't declare anything
3 unconstitutional. I can't make things fair that don't seem
4 to be fair. I have to follow the law. And the fact that
5 semesters may be treated differently than quarters is not
6 within my jurisdiction. It doesn't have any legal relevance
7 to this particular matter.

8 You need to move on.

9 MR. KARPLUS: The key to our case, as you will see,
10 will be different interpretations of the word "consecutive"
11 within statute and in --

12 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. Well you can
13 argue that. I don't have a problem with you arguing that
14 there are different interpretations possibly under the law.

15 MR. KARPLUS: So, it goes to our case to find out from
16 the person who would make that determination not only about
17 quarters but about semesters to see how that word is
18 interpreted regarding semesters.

19 MS. SALAZAR: If I may, your Honor?

20 ADMINISTRATIVE LAW JUDGE ASTLE: Yes.

21 MS. SALAZAR: That's really a legal argument, which
22 goes to another witness possibly, so I don't think it's a
23 relevant question or line of questioning for the witness.

24 ADMINISTRATIVE LAW JUDGE ASTLE: You know there are
25 times when it's really a shame, but the legal requirements

1 are different than what we might argue in a non-legal forum,
2 and there's really no value to go into this hearing. You can
3 make a legal argument that it's interpreted differently.

4 MR. KARPLUS: We'll move on.

5 ADMINISTRATIVE LAW JUDGE ASTLE: All right.

6 MR. KARPLUS: We have no more questions.

7 ADMINISTRATIVE LAW JUDGE ASTLE: All right. Any
8 further questions for this witness?

9 MS. SALAZAR: No, your Honor.

10 ADMINISTRATIVE LAW JUDGE ASTLE: All right. Thank you
11 very much for your testimony.

12 Is she excused or would you like her to stay?

13 MS. SALAZAR: No. I'd like her to stay.

14 ADMINISTRATIVE LAW JUDGE ASTLE: Did you have any
15 further witnesses?

16 MS. SALAZAR: No, your Honor.

17 ADMINISTRATIVE LAW JUDGE ASTLE: All right. So this is
18 your opportunity to call your witnesses.

19 MR. KARPLUS: We call Dr. Handwerker.

20 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. Dr. Handwerker,
21 could you come forward, please? Raise your right hand. Do
22 you solemnly swear or affirm that the testimony you are about
23 to give will be the truth the whole truth and nothing but the
24 truth?

25 (Whereupon the witness was sworn.)

1 THE WITNESS: I do.

2 ADMINISTRATIVE LAW JUDGE ASTLE: Please be seated.

3 Please state your first and last name and spell them for the
4 record.

5 THE WITNESS: My first name is Lisa, L-I-S-A. My last
6 name is Handwerker, H-A-N-D-W-E-R-K-E-R.

7 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. Thank you.
8 Go ahead.

9 MR. KARPLUS: Judge, we have a series of exhibits that
10 I'll be questioning Dr. Handwerker about not in the binder.
11 May I present them as a stack? And then I have copies for
12 all parties.

13 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. Have you shown
14 them to Ms. Salazar?

15 MR. KARPLUS: I believe so.

16 ADMINISTRATIVE LAW JUDGE ASTLE: Yes she's got one.
17 Are you giving her that as her copy?

18 MR. KARPLUS: Yes. And I have a copy for the witness,
19 as well.

20 ADMINISTRATIVE LAW JUDGE ASTLE: Okay.

21 MR. KARPLUS: You'll note that the cover page on the
22 first one is Exhibit A, I wonder if there's some way to
23 perhaps label this one A-2 so that we do not need to renumber
24 all the exhibits?

25 ADMINISTRATIVE LAW JUDGE ASTLE: Yeah, sure. Yes,

1 certainly. Do you have any problem with that?

2 MS. SALAZAR: No, your Honor.

3 ADMINISTRATIVE LAW JUDGE ASTLE: Well make it A-2 and
4 it's the witnesses CV. Go ahead.

5 (Respondent's A-2 was marked for identification.)

6 DIRECT EXAMINATION

7 BY MR. KARPLUS:

8 Q. Dr. Handwerker, I'd like you to look at Exhibit A, is
9 that your curriculum vitae?

10 A. Yes it is. Let me just check one thing. Yes, it is.

11 ADMINISTRATIVE LAW JUDGE ASTLE: Any objection to my
12 considering her curriculum vitae?

13 MS. SALAZAR: No objection.

14 ADMINISTRATIVE LAW JUDGE ASTLE: All right. That will
15 be entered.

16 (Respondent's A-2 was admitted into evidence.)

17 BY MR. KARPLUS:

18 Q. It's based on the first page that you earned your
19 Ph.D. in the joint medical anthropology program at UCSF and
20 UC Berkeley --

21 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. So she's
22 testifying, not you. That isn't a good way to start a
23 question. You can ask her to highlight things from the CV if
24 you'd like. Otherwise, I will consider the CV in total.

25 BY MR. KARPLUS:

1 Q. Would you please highlight your degree?

2 A. Sure. So, I received a Ph.D. from the joint program in
3 UC Francisco and Berkeley, it's a joint medical anthropology
4 degree in December 1993. I received my Master's also in
5 public health from UC Berkeley, the School of Public Health
6 from 1983 to 1985.

7 I can also highlight some other things about my
8 career.

9 ADMINISTRATIVE LAW JUDGE ASTLE: Whatever you'd like
10 to highlight about your career.

11 THE WITNESS: That I was employed at Cal State East
12 Bay, I first taught there in 1999. I also taught in and have
13 taught in more than four departments. I've taught in the
14 Department of Human Development which is now jointly Human
15 Development and Woman's Studies. I've taught in the
16 Department of Anthropology, which is now the Department of
17 AGES. I've taught in The Department of Health Science. I've
18 taught in the Department of Public Health Administration, and
19 I've also taught in the extension program.

20 BY MR. KARPLUS:

21 Q. You are a lecturer faculty member, so not the tenure
22 track; is that correct?

23 A. That's correct. I'm not a tenure track faculty
24 member.

25 Q. You are a single mother correct?

1 A. Yes, I am.

2 Q. And you adopted your daughter as a single mother,
3 correct?

4 MS. SALAZAR: Objection, relevance.

5 ADMINISTRATIVE LAW JUDGE ASTLE: Sustained.

6 THE WITNESS: Okay.

7 BY MR. KARPLUS:

8 Q. Looking at Exhibit B.

9 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. Exhibit B is
10 exactly the same as Exhibit 3, correct?

11 MR. KARPLUS: Yes.

12 ADMINISTRATIVE LAW JUDGE ASTLE: All right. Did you
13 wish to offer Exhibit 3?

14 MS. SALAZAR: Yes, your Honor. In fact if I may, 3
15 and 4. Those were jurisdictional and we did go over that.

16 ADMINISTRATIVE LAW JUDGE ASTLE: Actually Exhibit C,
17 that they've presented, now that I look at it, is exactly the
18 same as Exhibit 4, so I'll enter them.

19 (CALPERS' Exhibits 3 and 4 admitted into evidence.)

20 (Respondent's Exhibit C was admitted into evidence.)

21 MS. SALAZAR: Thank you.

22 MR. KARPLUS: May I proceed?

23 ADMINISTRATIVE LAW JUDGE ASTLE: Sure.

24 BY MR. KARPLUS:

25 Q. Looking at Exhibit B, is that a letter you received

1 from CalPERS in February 2011?

2 A. Yes, it is.

3 Q. In the third paragraph on Page 1, the letter states --

4 MR. KARPLUS: May I read a short sentence?

5 ADMINISTRATIVE LAW JUDGE ASTLE: Sure. It's just not
6 a good idea to read things into the record. I mean, we've got
7 this letter actually in the record. Do you want her to
8 review it and ask her a question about it, that's fine.

9 What part did you want her to look at.

10 MR. KARPLUS: The date that CalPERS determined she
11 qualified for membership, March 27, 2006.

12 Q. Is that when you believe you qualified for membership
13 in CalPERS?

14 A. So, when I received this letter, I had been having
15 many correspondence e-mails back and forth between CalPERS
16 and myself and I believe that I was eligible in the winter of
17 2004. So, no.

18 Q. Looking at what's been marked as Exhibit C --

19 ADMINISTRATIVE LAW JUDGE ASTLE: Again, C is exactly
20 the same as Exhibit 4.

21 MR. KARPLUS: It is. Is it not appropriate for me to
22 ask her that this is the letter she sent?

23 ADMINISTRATIVE LAW JUDGE ASTLE: No. You can ask her.
24 It's just that, really, you know, I'm not going to get into
25 it, but we don't really like to duplicate things that are in

1 the record. So, when somebody else looks at the record,
2 they'll wonder why there is two of the same thing, but, of
3 course, you can ask if she wrote the letter. I've already
4 admitted it into evidence, so...

5 MR. KARPLUS: Thank you, Judge. There will be one
6 more case of this, and I'll do my best to refer to the number
7 of the exhibit.

8 Q. Looking at what's been marked as Exhibit C, is that
9 the letter you sent to CalPERS in March 2011 appealing the
10 decision in the previous letter?

11 A. Yes.

12 Q. And in the last sentence where your letter states, "My
13 CalPERS membership should have been effective winter 2004."
14 Is that when you believe CalPERS membership?

15 A. Yes.

16 Q. Your letter references California Code of Regulations,
17 Title 5, Section 42751. Looking at Exhibit D, is that what
18 you were referencing?

19 A. Yes.

20 Q. Looking at the first sentence --

21 MR. KARPLUS: May I read that sentence, Judge?

22 ADMINISTRATIVE LAW JUDGE ASTLE: No. We can all read.

23 BY MR. KARPLUS:

24 Q. Looking at the first sentence, what to you are the
25 most significant words in that sentence?

1 A. So, for me, the most significant words were "Any
2 3 quarters at 4 consecutive quarters."

3 Q. Please look at the next sentence. The period
4 referenced in that sentence, what quarter did that period
5 begin for you?

6 A. Winter.

7 Q. Looking at Exhibit E, is this a document you received
8 from Cal State East Bay, formerly Hayward, in 2003?

9 A. Yes.

10 Q. Is this an employment and salary verification
11 generated as part of the adoption process for your daughter?

12 A. Yes.

13 Q. Looking at the table entitled "Employment History," it
14 appears from the first two lines that you taught single
15 classes in fall 1999 and winter 2000; is that correct?

16 A. Yes.

17 Q. And the time base of .267 corresponds to 4/15s of full
18 time or one class?

19 MS. SALAZAR: Objection. Leading.

20 THE WITNESS: Yes.

21 ADMINISTRATIVE LAW JUDGE ASTLE: It is leading, but
22 it's preliminary. We're not arguing about it, right? It's
23 correct, so.

24 MR. KARPLUS: I'm making an effort to make the
25 document more easy to interpret.

1 ADMINISTRATIVE LAW JUDGE ASTLE: Well, we don't want
2 to lead the witness. We want testimony from the witness in
3 general.

4 THE WITNESS: I can tell you that a .267 is 4/15s full
5 time for one class.

6 ADMINISTRATIVE LAW JUDGE ASTLE: This is not at issue.
7 We all agree to that, so.

8 BY MR. KARPLUS:

9 Q. It then appears you did not teach again until winter
10 2002; is that correct?

11 A. Yes.

12 Q. So you had a break in service of almost two years,
13 correct?

14 A. Yes.

15 Q. After teaching in winter 2002, it appears you then
16 taught spring 2000, skipped summer 2002, and then taught fall
17 2002; is that correct?

18 A. Yes.

19 Q. So, in the four quarters beginning winter 2002, which
20 three quarters in terms of Section 42751, which we discussed
21 previously -- which three quarters composed your academic
22 year?

23 MS. SALAZAR: Objection, relevance. The section 42751
24 deals with the Education Code. The issue for this hearing is
25 related to the Public Employees' Retirement Law.

1 ADMINISTRATIVE LAW JUDGE ASTLE: Well, I'm not going to
2 cut their -- I'm going to let them argue that. But you know,
3 I'll take official notice of all the laws, rules, and
4 regulations that deal with this. And I understand that
5 there's really not a lot of factual discrepancies in terms of
6 the evidence here.

7 So, you're claiming you worked for three quarters in a
8 year fall, winter, spring and fall, and you missed the summer
9 and you're saying it doesn't qualify in the spring.

10 All right. Let's proceed.

11 MR. KARPLUS: There's a finer point here, Judge.
12 We're looking at the year prior to the one at issue.

13 ADMINISTRATIVE LAW JUDGE ASTLE: Okay.

14 BY MR. KARPLUS:

15 Q. So, I will repeat, in the four quarters beginning
16 winter 2002, which three quarters in terms of Section 42751,
17 which we discussed previously which three quarters composed
18 your academic year?

19 A. Winter, spring and fall.

20 Q. Going back to Exhibit B, the CalPERS letter. Looking
21 at the table on Page 2. Does that show you teaching two
22 classes in winter 2003, spring 2003, and fall 2003, followed
23 by three classes in winter 2004?

24 A. Yes.

25 Q. Is that why you believe you qualified for CalPERS

1 membership in winter 2004?

2 A. Yes.

3 Q. Because you had three consecutive quarters at
4 half-time or more followed by a fourth quarter at half-time
5 or more?

6 A. Yes.

7 Q. What about the single class you taught in summer 2003?

8 A. Well, as we just established, summer was not part of
9 my academic year. So I don't believe it should count against
10 me.

11 Q. I'd now like to clarify something that appears in
12 Exhibit C, your letter. Looking at the next to last sentence
13 which reads, "I believe that 42751 makes clear that in my
14 case since I began in winter 2003, summer 2003 should not
15 count against me."

16 Just to clarify, as we established, you actually began
17 after the almost two years break in service in winter 2002,
18 correct?

19 A. Yes.

20 Q. And, when you wrote, quote "I began in winter 2003,"
21 close quote, you were relying on the information as presented
22 in the table on Page 2 of Exhibit B, correct?

23 A. Yes.

24 Q. Nevertheless, winter 2003 is, in fact, when you began
25 the first of the three quarters that you believe lead to your

1 qualifying for CalPERS membership in winter 2004, correct?

2 A. Yes.

3 Q. Looking at Exhibit F, the Statement of Issues, which
4 once again --

5 ADMINISTRATIVE LAW JUDGE ASTLE: I'm not even going to
6 mark Exhibit F, it's in here already.

7 MR. KARPLUS: So, I will refer to Exhibit 1.

8 ADMINISTRATIVE LAW JUDGE ASTLE: Yeah, and I will just
9 return it to you.

10 THE WITNESS: This is the original exhibit that
11 CalPERS originally gave us without the change of date?

12 MR. KARPLUS: Yeah, it's in the file.

13 ADMINISTRATIVE LAW JUDGE ASTLE: Yeah, it's
14 irrelevant.

15 MR. KARPLUS: Made in -- so you'll need to look at the
16 binder, Exhibit 1.

17 Q. So, not looking at F, but rather, looking at 1. If
18 you would look at Page 2 you see the excerpt of Government
19 Code 20305?

20 A. Yes.

21 Q. And you're familiar with this as it states pertinent
22 parts of that section?

23 A. Mm-hmm, yes.

24 Q. Is it your understanding as a long-time lecturer in
25 the CSU, that a lecturer working at a semester campus in the

1 CSU, if they work half-time in fall semester and then
2 half-time in spring semester, that when they're appointed
3 half-time the following fall, they are admitted to CalPERS?

4 A. Yes, that is my understanding.

5 Q. And is it likewise your understanding, that if they
6 work half-time in spring semester, and then half-time in fall
7 semester, that when they're appointed half-time the following
8 spring, they are admitted to CalPERS?

9 A. Yes.

10 Q. In each of those two cases, would you agree that the
11 three semesters are consecutive in that there's no summer
12 semester intervening between spring and fall?

13 A. Yes.

14 Q. Now let's look at a lecturer like you working at a
15 quarter campus and the three cases there. Is it your
16 understanding that for a lecturer working at a quarter campus
17 in the CSU, if they work half-time in the fall quarter, then
18 half-time in winter quarter, and then half-time in the spring
19 quarter, that when they're appointed half-time the following
20 fall, they are admitted to CalPERS?

21 A. Yes.

22 Q. Is it likewise your understanding that if they work
23 half-time in winter quarter, then half-time in spring
24 quarter, and then half-time in fall quarter, that when
25 they're appointed half-time the following winter, they are

1 admitted to CalPERS?

2 A. Yes.

3 Q. Is it likewise your understanding that if they work
4 half-time in spring quarter, then half-time in fall quarter,
5 and then half-time in winter quarter, that when they're
6 appointed half-time the following spring, they are admitted
7 to CalPERS?

8 MS. SALAZAR: Objection as to relevance. This whole
9 line of questioning with scenarios --

10 ADMINISTRATIVE LAW JUDGE ASTLE: Well, that's her
11 belief. I'll let it stand as her belief.

12 Let's move on.

13 BY MR. KARPLUS:

14 Q. And, in each of those three cases, would you agree
15 that the four quarters are not consecutive in that there is a
16 summer quarter intervening between spring and fall?

17 A. Yes.

18 Q. Yet, in each case the lecturer is admitted to CalPERS,
19 correct?

20 A. Yes.

21 Q. Looking at Exhibit G, are you familiar -- and looking
22 at Exhibit 5, not G.

23 A. Mm-hmm.

24 ADMINISTRATIVE LAW JUDGE ASTLE: So 5 and G are the
25 same.

1 MS. SALAZAR: Yes.

2 ADMINISTRATIVE LAW JUDGE ASTLE: All right I'm going to
3 return G.

4 BY MR. KARPLUS:

5 Q. Are you familiar with this technical letter "HR
6 Benefits 2003-'27"?

7 A. Yes.

8 Q. And can it be downloaded from the CSU website,
9 calstate.edu?

10 A. Yes.

11 Q. Looking at the first full sentence on page 2, would
12 you interpret the inclusion of the word "normally" as
13 acknowledging that there may be exceptions?

14 A. Absolutely, yes.

15 Q. Looking at the same sentence, would you interpret the
16 inclusion words, "the understanding is" as likewise
17 acknowledging that there may be exceptions?

18 A. Yes.

19 Q. Looking at the previous page at the next to last
20 sentence beginning, "All part-time faculty appointed," what
21 do you make of the fact that the word "consecutive" appears
22 in the phrase "third consecutive semester," but does not
23 appear in the phrase "fourth quarter?"

24 A. Well, I think that quarters are treated differently
25 and that the quarters do not need to be consecutive.

1 Q. Looking at the sentence that begins at the bottom of
2 the page, the one that begins, "The employee must work,"
3 what do you make of the fact that the word "consecutive"
4 appears in the phrase "two consecutive semesters" but does
5 not appear in the phrase "three quarters"?

6 MS. SALAZAR: Objection. The document speaks for
7 itself.

8 ADMINISTRATIVE LAW JUDGE ASTLE: Sustained.

9 BY MR. KARPLUS:

10 Q. One of the cases that I went through earlier was for a
11 lecturer who, if they work half-time in winter quarter, then
12 half-time in spring quarter, and then half-time in fall
13 quarter, that when they're appointed half-time the following
14 winter, they are admitted to CalPERS. In that case, there is
15 a quarter intervening between spring and fall, in which they
16 do not work.

17 In your opinion as a long-time lecturer on a quarter
18 campus in the CSU, if that same lecturer had taught one
19 class, so less than half-time during that summer quarter,
20 should that be a reason to exclude them from CalPERS?

21 A. No.

22 Q. Why?

23 A. Because, if they don't teach at all in the summer they
24 would have gotten in. Which, again, to keep them out is like
25 penalizing them.

1 MS. SALAZAR: I'd object. It assumes certain facts not
2 in evidence. But it's a legal conclusion as to when the
3 membership began.

4 ADMINISTRATIVE LAW JUDGE ASTLE: I'm going to let it
5 stand. But honestly, you're trying to argue your case
6 through a witness, and that's really not the way to do it.
7 It says what it says, and you can argue --

8 THE WITNESS: Well, do you want me to reword it?

9 ADMINISTRATIVE LAW JUDGE ASTLE: No. It doesn't
10 matter what you think. Okay? You can argue that your
11 position is right, but it's not evidence that it's correct.

12 BY MR. KARPLUS:

13 Q. Is it true that in general there is a lot less work in
14 summer?

15 MS. SALAZAR: Objection, relevance.

16 ADMINISTRATIVE LAW JUDGE ASTLE: Sustained.

17 MR. KARPLUS: The relevance, Judge, is to show that --

18 MS. SALAZAR: The objection was -- you've sustained
19 the objection.

20 MR. KARPLUS: I had no chance to --

21 ADMINISTRATIVE LAW JUDGE ASTLE: You can make an offer
22 of proof. Go ahead.

23 MR. KARPLUS: The relevance is to show that in reality
24 and in Dr. Handwerker's experience, summer on a quarter
25 campus is different, not only in the manner it's treated in

1 statute, but in the manner that it actually occurs in how
2 faculty are appointed and Exhibit H, which I will introduce
3 next, goes directly to that, and that was the purpose of the
4 question. I can rephrase it in the context of Exhibit H.

5 ADMINISTRATIVE LAW JUDGE ASTLE: You can try to
6 rephrase it, but it's irrelevant. So, move on.

7 BY MR. KARPLUS:

8 Q. Dr. Handwerker, looking at Exhibit H, are you familiar
9 with this table and tables like it?

10 ADMINISTRATIVE LAW JUDGE ASTLE: This is Exhibit --
11 what is it? What is this? Not from you. I would like the
12 witness to tell me what it is.

13 THE WITNESS: Oh, it's basically a chart that's
14 showing the different full-time appointments and other
15 appointments during the by-term and it shows the differences
16 in summer, fall, winter and spring.

17 BY MR. KARPLUS:

18 Q. Could you read the title on the cover page?

19 A. Yes, "Total Full-Time Equivalent Students, FTES's life
20 term without an agreement for a college year."

21 Q. And it can it be downloaded from the CSU website,
22 calstate.edu?

23 A. Yes.

24 Q. Looking at the first four columns and the line for
25 Hayward, now called East Bay, they show full-time equivalent

1 students, or FTES, for summer 2003, fall 2003, winter 2004,
2 and spring 2004, correct?

3 A. Mm-hmm

4 ADMINISTRATIVE LAW JUDGE ASTLE: Is that yes?

5 THE WITNESS: Yes. I'm sorry. Sorry.

6 BY MR. KARPLUS:

7 Q. Is the FTES in summer 2003 slightly less than half of
8 what it was in each of the following three quarters?

9 A. Yes. It's showing 4,946 in fall; it's showing 10,777
10 in winter; 2,085 in spring --

11 MS. SALAZAR: Objection. The document speaks for
12 itself. Are we really --

13 ADMINISTRATIVE LAW JUDGE ASTLE: All right. I'll let
14 it stand, sorry. But, okay.

15 MR. KARPLUS: I have one more question on this.

16 ADMINISTRATIVE LAW JUDGE ASTLE: All right.

17 BY MR. KARPLUS:

18 Q. Recognizing that the number of classes and work
19 available for faculty may not exactly correlate with FTES, do
20 these numbers suggest that there were a lot fewer classes and
21 a lot less work available for faculty in summer 2003 as
22 compared to the other three quarters?

23 A. Definitely, yes.

24 MR. KARPLUS: We have a few more exhibits I'd like to
25 present.

1 ADMINISTRATIVE LAW JUDGE ASTLE: All right.

2 MR. KARPLUS: One at a time.

3 ADMINISTRATIVE LAW JUDGE ASTLE: Okay.

4 MR. KARPLUS: And I have copies for Ms. Salazar.

5 ADMINISTRATIVE LAW JUDGE ASTLE: All right. I'll mark
6 those as Exhibit I, a request for service credit.

7 MS. SALAZAR: I'm objecting to this, the relevancy of
8 this document.

9 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. What's the
10 relevancy?

11 MR. KARPLUS: The relevancy goes to what has been an
12 ongoing difficulty in Dr. Handwerker's establishing her date
13 of entry into CalPERS that will be evidenced in additional
14 exhibits and that this is a critical part of her file. That
15 her goal in having this established relates to her inability
16 to timely purchase service credit, a right that's no longer
17 afforded to the faculty in the CSU. We will revisit this.

18 ADMINISTRATIVE LAW JUDGE ASTLE: So, this is not part
19 of the Statement of Issues. Whatever the consequences are,
20 if I decide that Ms. Handwerker is correct or Dr. Handwerker
21 is correct, whatever the consequences of that are, somebody
22 else has to deal with. If I decide that PERS is correct,
23 then the consequences of that are whatever they are. This is
24 not part of the Statement of Issues. There's nothing I can
25 do with it. I will mark it as an exhibit so it can go along

1 with the record.

2 (Respondent's Exhibit I was marked for
3 identification.)

4 MR. KARPLUS: Yes, I think that alone is important to
5 us, regardless of the weight that it's given here today.

6 ADMINISTRATIVE LAW JUDGE ASTLE: Well, it's not
7 admissible. It's not a issue in the Statement of Issues.
8 There's only one issue I have to decide: Which date is
9 correct.

10 THE WITNESS: That date is incorrect and so many other
11 things --

12 ADMINISTRATIVE LAW JUDGE ASTLE: I understand that,
13 but there's nothing I can do about it. Whatever the
14 consequences of that are, you have to deal with it someplace
15 else.

16 MR. KARPLUS: Would it be out of order to have her
17 identify what these are, but not ask any questions? Because
18 there are actually two application letters.

19 ADMINISTRATIVE LAW JUDGE ASTLE: Well, I'm marking
20 them as an exhibit and they go with the record.

21 MR. KARPLUS: Okay. Thank you.

22 Q. Next are a series of e-mails actually split into three
23 exhibits, M, N, and O.

24 ADMINISTRATIVE LAW JUDGE ASTLE: Why did we go from I
25 to M?

1 THE WITNESS: I made a mistake, I think.

2 MR. KARPLUS: I believe J was already entered and --

3 ADMINISTRATIVE LAW JUDGE ASTLE: All right.

4 MS. SALAZAR: Wasn't J entered as A?

5 MR. KARPLUS: Correct.

6 ADMINISTRATIVE LAW JUDGE ASTLE: I think that's right.

7 MR. KARPLUS: So, we have no -- at this time we have

8 no --

9 ADMINISTRATIVE LAW JUDGE ASTLE: All right. Well, I
10 am ready to --

11 MR. KARPLUS: Is it possible to label them out of
12 order and --

13 ADMINISTRATIVE LAW JUDGE ASTLE: No. The record is
14 already a mess. No. So I'm going to make it M as J, N as K.

15 MR. KARPLUS: Yes.

16 ADMINISTRATIVE LAW JUDGE ASTLE: And O as L.

17 MR. KARPLUS: Thank you.

18 ADMINISTRATIVE LAW JUDGE ASTLE: J is a string of
19 e-mails with the top date being June 17th, 2014. Exhibit K
20 are e-mails with the top date of January 14th, 2010.

21 (Respondent's Exhibits J and K were marked for
22 identification.)

23 THE WITNESS: I'm sorry. Can you say that one again?

24 ADMINISTRATIVE LAW JUDGE ASTLE: Oh, it doesn't matter.
25 They're all in order.

1 THE WITNESS: Okay. I get it.

2 ADMINISTRATIVE LAW JUDGE ASTLE: And Exhibit L are
3 some e-mails with the top date of January 15th, 2010.

4 (Respondent's Exhibit L was marked for
5 identification.)

6 BY MR. KARPLUS:

7 Q. Dr. Handwerker, can you look at the first page of
8 Exhibit J?

9 A. Formerly Exhibit M?

10 Q. Correct.

11 A. Okay.

12 Q. And can you describe who that -- can you state from
13 who that e-mail is, what their title is? And its relevance
14 to this case?

15 MS. SALAZAR: The documents speak for themselves, your
16 Honor.

17 THE WITNESS: Yeah, it's George Diehr who is the --
18 who is on the Board of Administration at CalPERS. And I had
19 contacted him when I was -- when there was this issue about
20 whether that summer counted or not. And he sent me an e-mail
21 saying that, "Unless the summer work was to fulfill an
22 entitlement due to lower an entitlement during non-summer
23 terms" --

24 ADMINISTRATIVE LAW JUDGE ASTLE: You're going way too
25 fast, slow down.

1 THE WITNESS: Okay. I'm sorry. I'll do it again.
2 "Unless the summer work was to fulfill an entitlement due to
3 lower an entitlement during non-summer terms, then summer,"
4 does not -- would not count towards service credit or
5 eligibility for membership in PERS. If the summer term was
6 simply an -- quote end quote, extra and if she were in
7 CalPERS, it would not count towards service credit, and if
8 she were not in CalPERS it should not enter her until March
9 towards eligibility."

10 MR. KARPLUS: Judge, this first e-mail which is four
11 pages, the string, it's a different one following that. We
12 would ask that this be entered more than just that we've
13 added it to the record, but that it be one of our -- it be --
14 forgive me. I don't know the term -- accepted?

15 ADMINISTRATIVE LAW JUDGE ASTLE: All right. Any
16 objection?

17 MS. SALAZAR: Yes, the relevance. I mean --

18 ADMINISTRATIVE LAW JUDGE ASTLE: Well, it's first of
19 all, it's hearsay, so I can admit it as hearsay. I'm not
20 sure what the relevance is. So, does CalPERS concede that if
21 she hadn't worked that summer, she would be eligible?

22 MS. SALAZAR: No.

23 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. So that's not
24 the issue as you see it?

25 MS. SALAZAR: No, it isn't.

1 ADMINISTRATIVE LAW JUDGE ASTLE: All right. This is
2 hearsay. I will admit it as administrative hearsay and I'll
3 let it go to the weight.

4 (Respondent's Exhibit L was admitted into evidence.)

5 THE WITNESS: Should I say something about this
6 letter?

7 MS. SALAZAR: Your Honor, there is no question pending
8 and --

9 ADMINISTRATIVE LAW JUDGE ASTLE: There isn't any
10 question pending, and I have admitted this as administrative
11 hearsay. The documents speak for themselves, as they say.

12 And, why don't we move on?

13 MR. KARPLUS: Without going through the rest of the
14 e-mails that are contained in exhibits J, K, and L?

15 ADMINISTRATIVE LAW JUDGE ASTLE: Well, K is different.
16 K talks about buying time back, and I'll let that go with the
17 record, but I'm not going to make any findings based on that.
18 It's not an issue.

19 MR. KARPLUS: And likewise with L?

20 ADMINISTRATIVE LAW JUDGE ASTLE: I don't know. I
21 haven't looked at L yet.

22 MR. KARPLUS: I'll restrict L then, revise my question
23 and restrict it simply to the first e-mail of J.

24 ADMINISTRATIVE LAW JUDGE ASTLE: Okay.

25 BY MR. KARPLUS:

1 Q. Does this document go into the long time that you've
2 spent trying to establish your admission date into CalPERS?

3 A. I have been trying since 2009 to establish a different
4 date. I was also originally told that I was entered in
5 CalPERS in 2009. That was then changed to 2006, then it
6 changed from June to March 2006, and now today, for the first
7 time, I'm hearing, even though they knew in February 2014,
8 that I never received any notification that it's now stating
9 that it's been changed back to 2014 -- or, I'm sorry, June of
10 2006. So, it's been changed at least four times. Can I
11 continue with that?

12 Q. Did you have more to say on that point?

13 A. Yes. And this also was my correspondence with Emily
14 DeFlores starting in 2010 and 2011. There is an e-mail in
15 there which was also CC'd to her first-level manager, that
16 she was aware that this was going on and that they thanked me
17 for my patience and that they were still trying to figure it
18 out to Rob Jarzombek.

19 Q. For the record, can you tell us where to find that in
20 the exhibits you're looking at?

21 A. Yes. So, it was Exhibit formerly M which is now
22 Exhibit --

23 Q. J?

24 A. -- J and in it is my -- it says --

25 Q. You need to tell us which e-mail. Is it four pages

1 long?

2 A. It says 3 of 10.

3 Q. Very good.

4 A. Where an e-mail from Emily DeFlores telling me that I
5 received my CalPERS membership date of March 27th, 2006, "if
6 you have any questions, please contact me." And all of this
7 came about because I have been constantly getting incorrect
8 information from CalPERS and was sending e-mail saying I
9 don't think this is correct, I don't think this is correct,
10 and so then corrections and recorrections and then
11 recalculations.

12 And in addition the e-mail from Emily DeFlores is on
13 page 4 out of 10, also sent me February 2011, where she
14 states, "We have made a determination of your membership" and
15 it is from her, and she also said she would have staff
16 validate the change in my time base because there was a time
17 base change at California State University and --

18 MS. SALAZAR: Objection as to relevance of that.

19 ADMINISTRATIVE LAW JUDGE ASTLE: All right. Sustained.
20 That part will be stricken.

21 MR. KARPLUS: Judge, before I finish my questioning of
22 the witness, would it be appropriate for me to consult with
23 her regarding any additional exhibits we would like to enter?

24 ADMINISTRATIVE LAW JUDGE ASTLE: I don't know that she
25 was finished with her answer.

1 MR. KARPLUS: I'm sorry.

2 THE WITNESS: Yeah, I wasn't. I did want to say in
3 terms of relevance of the other issues was, Emily, in her
4 e-mail to me on February 11th -- February 9th, 2011, which is
5 CC'd to Rob Jarzombek and Anne Stausboll, who is the CEO,
6 said, "Hi Lisa, we have made a determination of your
7 membership date in CalPERS, which has changed to be
8 March 27th, 2006, instead of June 2006:" --

9 MS. SALAZAR: Objection. The document speaks for
10 itself.

11 ADMINISTRATIVE LAW JUDGE ASTLE: Yeah, don't read the
12 document. This really isn't getting us anywhere.

13 THE WITNESS: It says something about the service
14 credit.

15 ADMINISTRATIVE LAW JUDGE ASTLE: I'm not going into
16 your service credit. There's nothing I can do about that.
17 It's not in the Statement of Issues.

18 THE WITNESS: Okay. It just shows it was incorrect,
19 so, okay.

20 ADMINISTRATIVE LAW JUDGE ASTLE: I understand there
21 are consequences to the decision. So, it's almost the lunch
22 hour. About how long do you think your questioning will be?

23 MS. SALAZAR: Not too long.

24 ADMINISTRATIVE LAW JUDGE ASTLE: What does "not too
25 long" mean?

1 MS. SALAZAR: I have two questions, so maybe five
2 minutes.

3 ADMINISTRATIVE LAW JUDGE ASTLE: So, if you want to
4 confer with the witness, we'll take five minutes.

5 MR. KARPLUS: And then we'll continue?

6 ADMINISTRATIVE LAW JUDGE ASTLE: Yeah, we need to
7 finish this up.

8 MR. KARPLUS: Yes, thank you.

9 MS. SALAZAR: So we're going to take a break, right?

10 ADMINISTRATIVE LAW JUDGE: Yes.

11 (At which point a short recess was held.)

12 ADMINISTRATIVE LAW JUDGE ASTLE: All right. We'll go
13 back on the record. Go ahead.

14 MR. KARPLUS: Judge, we have three additional exhibits
15 we'd like to get on the record and we have copies. And the
16 next would be M; is that correct? I'll give it to you.

17 ADMINISTRATIVE LAW JUDGE ASTLE: Yes M, correct.

18 MR. KARPLUS: I need to make the correction.

19 THE WITNESS: Can I get off the stand to get something?

20 ADMINISTRATIVE LAW JUDGE ASTLE: No. Look, this is on
21 the record. You're the witness, you need to not do that.

22 THE WITNESS: I'm sorry. I'm sorry.

23 ADMINISTRATIVE LAW JUDGE ASTLE: Exhibit M? What is
24 Exhibit M?

25 BY MR. KARPLUS:

1 Q. Dr. Handwerker, do you recognize Exhibit M?

2 A. Yes, I do.

3 Q. What is it?

4 A. It was FedExed to me yesterday by CalPERS and it's my
5 member -- what they said was my member file.

6 Q. Are you sure that this was sent to you yesterday and
7 not the one that was sent to you in November?

8 A. Yeah.

9 MS. SALAZAR: Objection. Lacks foundation.

10 ADMINISTRATIVE LAW JUDGE ASTLE: Well, I'm not going
11 to put it into evidence. I'm not sure. It's the theory of
12 getting everything from your briefcase into mine, it doesn't
13 really work very well.

14 MR. KARPLUS: Judge, our goal is two-fold.

15 THE WITNESS: Can you reword?

16 ADMINISTRATIVE LAW JUDGE ASTLE: I'm not going to
17 admit it into evidence. It's in the record.

18 MR. KARPLUS: Thank you.

19 BY MR. KARPLUS:

20 Q. This is the next one.

21 A. Okay. I understand.

22 Q. Dr. Handwerker, I've handed the next exhibit, which I
23 believe is N?

24 A. Yes.

25 Q. What is it?

1 A. It's a -- this was the one that was FedExed to me
2 yesterday from CalPERS saying that this was my member file.

3 Q. So would you like to change what you said regarding
4 the previous exhibit?

5 A. Yes, that as an earlier one that had been sent to me.

6 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. I'm going to
7 hand these back to you. I am not putting the files with the
8 record. The record will reflect that you attempted to put
9 them into evidence.

10 MR. KARPLUS: Thank you.

11 BY MR. KARPLUS:

12 Q. Just to clarify, Dr. Handwerker, the previous exhibit,
13 what was that? The one that was initially marked as M, what
14 was that?

15 A. That was an earlier member file that was sent to me.

16 Q. Can you speak up and say approximately when was it
17 sent to you?

18 MS. SALAZAR: Objection. Relevance.

19 ADMINISTRATIVE LAW JUDGE ASTLE: Sustained. It
20 doesn't get me anywhere. It doesn't get this any further
21 along the way. If you have a relevant question to ask,
22 please do. I'm trying to find a code section, regulation.
23 It's very difficult to find regulations.

24 Go ahead.

25 ///

1 MR. KARPLUS: Judge, given your response to the two
2 previous exhibits, we have one more in a similar vein, but it
3 is not a copy of the file, there is more substantive
4 information that was sent from Ms. Salazar yesterday. We
5 would likewise like to get it in the file.

6 ADMINISTRATIVE LAW JUDGE ASTLE: Let me look at it.
7 This was a response to the subpoena that they issued?

8 MS. SALAZAR: I'm not sure what he handed you. Sorry.

9 MR. KARPLUS: I have a copy. It documents a request
10 or a response to a subpoena.

11 MS. SALAZAR: Okay. I haven't seen this first page
12 but, let's see. The document that you've been handed, Judge,
13 are documents that Ms. Handwerker faxed to CalPERS, I
14 believe. That's what it looks like to me.

15 ADMINISTRATIVE LAW JUDGE ASTLE: This is not a
16 response to the subpoena?

17 MS. SALAZAR: No, our response to the subpoena was
18 providing the member file again and, I think, providing a
19 couple of additional documents.

20 ADMINISTRATIVE LAW JUDGE ASTLE: All right, I'll mark
21 this as Exhibit N. It's not relevant and it won't be put
22 into evidence.

23 (Respondent's Exhibit N was marked for
24 identification.)

25 MR. KARPLUS: We have no further questions of

1 Dr. Handwerker.

2 ADMINISTRATIVE LAW JUDGE ASTLE: Do you have any
3 questions?

4 MS. SALAZAR: Sure. Just one your Honor.

5 ADMINISTRATIVE LAW JUDGE ASTLE: Sure.

6 CROSS-EXAMINATION

7 BY MS. SALAZAR:

8 Q. Ms. Handwerker, is it your understanding that the
9 corrections that we've discussed regarding your qualifying
10 quarter for membership were based upon the employment history
11 in your PIMS record?

12 A. There were some -- yes, I would say the PIMS record
13 was used, but also my employment history was used.

14 MS. SALAZAR: I don't have any further questions, your
15 Honor.

16 ADMINISTRATIVE LAW JUDGE ASTLE: I am trying to find
17 the regulation that the Regulation 42751 applies to, which is
18 supposed to be 4274. I can't find it.

19 MR. KARPLUS: Is this addressed to us, Judge?

20 ADMINISTRATIVE LAW JUDGE ASTLE: Anybody. Do you have
21 a set of regulations? No?

22 MS. SALAZAR: Not of those. We have our -- the
23 CalPERS --

24 ADMINISTRATIVE LAW JUDGE ASTLE: No, I know.

25 MS. SALAZAR: -- retirement remarks, and it doesn't

1 reference --

2 ADMINISTRATIVE LAW JUDGE ASTLE: No. I understand
3 that.

4 MS. SALAZAR: I just mean it doesn't reference the
5 Education Code.

6 MR. KARPLUS: If I may in response, Exhibit 3
7 references numerous times as precise California Code of
8 Regulations, Title 5, Section 42700, and this is a few
9 sections later. So, I think that gets to the relevance of
10 it. CalPERS saw fit to reference and Dr. Handwerker cites
11 this in her appeal letter Exhibit 4 precisely, CCR Title 5,
12 albeit a different section and we're citing a neighboring
13 section.

14 ADMINISTRATIVE LAW JUDGE ASTLE: Unfortunately, Title
15 5 starts somewhere in 3870. I'll have to use something else.

16 MR. KARPLUS: I found that by searching through the
17 subsections, California State University and then employee --

18 ADMINISTRATIVE LAW JUDGE ASTLE: Yeah, I see. I'll
19 have to use some other way to get it. All right. You can
20 return to the seat.

21 THE WITNESS: Thank you.

22 ADMINISTRATIVE LAW JUDGE ASTLE: Thank you. And take
23 all your documents with you, if you would.

24 THE WITNESS: I will.

25 ADMINISTRATIVE LAW JUDGE ASTLE: So, did you offer

1 Exhibit 5, Ms. Salazar?

2 MS. SALAZAR: It was identified but, no, I did not
3 offer it.

4 ADMINISTRATIVE LAW JUDGE ASTLE: Do you want to offer
5 it?

6 MS. SALAZAR: Sure, I'll offer it.

7 ADMINISTRATIVE LAW JUDGE ASTLE: All right. That will
8 be entered.

9 (CalPERS' Exhibit 5 was admitted into evidence.)

10 ADMINISTRATIVE LAW JUDGE ASTLE: And what about
11 Exhibit 6?

12 MS. SALAZAR: It isn't necessary. I wasn't sure if it
13 was relevant.

14 MR. KARPLUS: In that case, we needed that exhibit in.
15 I think that may have been the first one that we renumbered.

16 MS. SALAZAR: No, not Exhibit 6.

17 ADMINISTRATIVE LAW JUDGE ASTLE: Not 6.

18 MR. KARPLUS: Okay. So we got 6 in as a letter?

19 MS. SALAZAR: 5.

20 ADMINISTRATIVE LAW JUDGE ASTLE: 5 is in. 6?

21 MR. KARPLUS: I'm looking at their 6, and it was one of
22 our exhibits, as well.

23 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. Where?

24 MS. SALAZAR: You're looking at Exhibit 5.

25 MR. KARPLUS: Oh, thank you. I withdraw my question.

1 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. 6 is not
2 offered. And then Exhibit E, any objection to that?

3 MS. SALAZAR: No, your Honor.

4 ADMINISTRATIVE LAW JUDGE ASTLE: All right, that will
5 be entered.

6 (Respondent's Exhibit E was admitted into evidence.)

7 ADMINISTRATIVE LAW JUDGE ASTLE: Exhibit F is the same
8 as 5. Exhibit H, any objection?

9 MS. SALAZAR: Sorry, I'm trying to find it.

10 ADMINISTRATIVE LAW JUDGE ASTLE: That's okay.

11 MS. SALAZAR: It was H you said?

12 ADMINISTRATIVE LAW JUDGE ASTLE: Yeah, I've got them
13 out of order, too.

14 MS. SALAZAR: Well, I think objection on relevance.

15 ADMINISTRATIVE LAW JUDGE ASTLE: I'm going to admit it
16 as to whatever the weight be given.

17 (Respondent's Exhibit H was admitted into evidence.)

18 ADMINISTRATIVE LAW JUDGE ASTLE: I understand the
19 argument. Okay. Let me make sure I have everything. Do you
20 have any rebuttal?

21 MS. SALAZAR: No, your Honor.

22 ADMINISTRATIVE LAW JUDGE ASTLE: Or other evidence?

23 All right, I assume you want to make a final argument.

24 MS. SALAZAR: Yes, I'll make a closing.

25 ADMINISTRATIVE LAW JUDGE ASTLE: I am missing some

1 documents. So, I have A and A-2 and then I have B, I have C,
2 but it's the same as 3, I have D, it's the same as 4. I have
3 E, which are the regulations you gave me. F is withdrawn,
4 okay. And then we go with H. So, there is no G. And then I
5 have everything else. Okay. All right, go ahead.

6 MS. SALAZAR: Thank you, your Honor. Government Code
7 Section 20305A4 is clear that to establish membership as a
8 Cal State University Faculty Member requires three
9 consecutive quarters with membership to begin at that next
10 consecutive quarter. No technical letter, no amount of
11 e-mail exchanged describing a different scenario can affect
12 that, because that is the law. Government Code Section is
13 part of the Public Employee Retirement Law and it
14 specifically provides for what is required for membership.
15 That's three consecutive quarters at half-time or more with
16 the next consecutive quarter becoming the date that
17 membership applies.

18 For that reason CalPERS respectfully requests that
19 this Court finds the June 19th, 2006, membership
20 determination be upheld. Thank you.

21 ADMINISTRATIVE LAW JUDGE ASTLE: So you're relying on
22 Government Code 20305, correct?

23 MS. SALAZAR: That's correct.

24 ADMINISTRATIVE LAW JUDGE ASTLE: Fine. All right.
25 Final argument?

1 MR. KARPLUS: We've heard today that, and we have
2 evidence to show, that it took two years for CalPERS to reach
3 its initial decision regarding Dr. Handwerker's admission
4 into CalPERS. And that since then, there have been four
5 different changes. The interpretation of the law that
6 Ms. DeFlores presented today that even if a lecturer did not
7 teach at all in a summer, that that would count against them,
8 and that defies what's stated in Exhibit 5, the technical
9 letter; specifically, the first full sentence on the second
10 page.

11 In closing, Judge, we ask that you find that
12 Dr. Handwerker be admitted to CalPERS in 2004. Doing so
13 would be consistent with the following statement: "A
14 temporary faculty member of the California State University,
15 not yet admitted to CalPERS, will not be excluded from
16 CalPERS solely because of working during a summer quarter at
17 less than half-time."

18 ADMINISTRATIVE LAW JUDGE ASTLE: That's it?

19 MR. KARPLUS: Yes.

20 ADMINISTRATIVE LAW JUDGE ASTLE: Okay. Did you wish
21 to make a final statement? It's really his burden of proof
22 so he gets the last word. Anything else?

23 MS. SALAZAR: No.

24 ADMINISTRATIVE LAW JUDGE ASTLE: All right. Is the
25 matter submitted.

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MR. KARPLUS: Yes.

ADMINISTRATIVE LAW JUDGE ASTLE: All right. Thank you
very much. We'll go off the record.

(Proceedings concluded.)

COURT REPORTER'S CERTIFICATE

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I, KELLI A. DIAZ, hereby certify that I am a Certified Shorthand Reporter and that I recorded verbatim in shorthand the proceedings had Wednesday, June 18, 2014, in the matter of LISA HANDWERKER, RESPONDENT, versus CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM, Case Number 2013-080276, 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 82, 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 18 day of June, 2014.



KELLI A. DIAZ CSR No. 13930