ATTACHMENT C

RESPONDENT'S ARGUMENT REGARDING THE
PETITION FOR RECONSIDERATION

ATTACHMENT C

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Attorney for Respondent
CARL THOMAS

Received
OCT 6 2015
CalPERS Board Unit

BOARD OF ADMINISTRATION

CALIFORNIA PUBLIC EMPLOYEE'S RETIREMENT SYSTEM

In the Matter of the Appeal of the Decision Not to Accept the Late Application for Industrial Disability Retirement of: CARL THOMAS, Respondent, v. DEPARTMENT OF FORESTRY AND FIRE PROTECTION, Respondent.	**CASE NO.: 2013-0028** **OAH NO: 2013090141** **RESPONDENT'S ARGUMENT**

Respondent, Carl Thomas, by and through his attorney of record, Anne C. Tressler, hereby submits his written argument.

I. FACTUAL BACKGROUND

Respondent, Carl Thomas (hereinafter, "Thomas"), worked for the Department of Forestry and Fire Protection for 29.2 years and retired from service, effective November 2, 2010. Thomas submitted a service retirement election application on September 20, 2010. Thomas then submitted his application for industrial disability retirement on October 19, 2011.

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II. PROCEDURAL BACKGROUND

This matter proceeded as a contested hearing on November 3, 2014, April 14, 2015 and June 8, 2015. Thomas represented himself and Christopher Phillips represented Anthony Suine, Chief, Benefit Services Division.

On August 24, 2015 Thomas was served with the Decision of the Court, which adopted the Proposed Decision denying Thomas' request to file a Disability Retirement Election Application based on industrial disability retirement. The Court's determination was based on Government Code § 20160.

III. RESPONDENT'S REQUEST TO RECONSIDER

Government Code §11521 provides that a party may file, and the court has the jurisdiction to entertain, a motion to reconsider a prior ruling, and modify, amend or revoke that order. Section 11521 allows a party affected by the order to bring such an application within 30 days after the delivery or mailing of a decision to a respondent. The Decision was served on the parties on August 24, 2015.

A. Thomas Should Be Permitted To File A Disability Retirement Election Application Based On Industrial Disability Retirement Under Government Code § 20160

Government Code § 20160(a) states:

> *...the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist: (1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right. (2)* ***The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect,*** *as each of those terms is used in Section 473 of the Code of Civil Procedure. (3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.* (Emphasis added)

The Court in Rodie v. Board of Administration, 115 Cal. App. 3d 559, 566 (Cal.

App. 3d Dist. 1981) held:

> *We interpret section 20180 as broadly available for the correction of errors or omissions made by employees, their employers, members or beneficiaries, or the system, and resulting from inadvertence, oversight, mistake of fact, mistake of law, or other cause. In light of this interpretation, we think that an employee's inadvertent or mistaken election between disability and service retirement is embraced by the statute.* ***We can discern no reason for treating an employee's mistaken choice between two types of retirement to which he is entitled by reason of past services differently from any other mistake depriving him of benefits to which he is fairly entitled.*** (Emphasis added)

"Section 20180 [predecessor statute to Government Code § 20160] indicates that errors in the system arising *for any reason* should be rectified, if possible, by the adjustment procedure set forth in section 20165." Campbell v. Bd. of Admin., 103 Cal. App. 3d 565, 571 (Cal. App. 1st Dist. 1980). In Campbell, Section 20180 was applied to allow PERS to reclassify certain employees retroactively and then to assess them for the differences in their respective past contributions. The same course of action should be adopted here. Thomas, mistakenly, did not initially elect disability retirement and opted for service retirement instead. However, this mistake should not preclude him from benefits to which he is rightfully entitled. This Court has the jurisdiction to allow Thomas to elect industrial disability retirement under Government Code § 20180.

B. Thomas Should Be Permitted To File Disability Retirement Election Application Based On Industrial Disability Retirement Under Government Code § 21154.

Upon review of the Court record and the exhibits admitted therein, it is evident that the Court never considered Thomas' right to file a Disability Retirement Election Application based on industrial disability retirement pursuant to Government Code § 21154. Therefore, it is necessary for this Court to reconsider Thomas' right to file a Disability Retirement Election Application based on industrial disability retirement under Government Code § 21154.

Government Code § 21154, concerning application for disability retirement, reads in relevant part:

> *The application shall be made only (a) while the member is in state service, or (b) while the member for whom contributions will be made under Section 20997, is absent on military service, or (c) within four months after the discontinuance of the state service of the member, or while on an approved leave of absence, or (d)* ***while the member is physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application or motion.*** (Emphasis added)

"If the employee is able to prove that he or she has been continuously disabled from the date of discontinuance of state service to the time of the application for disability retirement, his application is timely under clause (d) of section 21154." Piscioneri v. City of Ontario, 95 Cal. App. 4th 1037, 1044 (Cal. App. 4th Dist. 2002). Further, "[P]ension statutes are to be liberally interpreted in favor of the applicant so as to effectuate, rather than defeat, their avowed purpose of providing benefits for the employee and his family." Cavitt v. Los Angeles, 251 Cal. App. 2d 623, 626 (Cal. App. 2d Dist. 1967).

Here, the testimony given during the April 14, 2015 hearing suggested that Thomas could apply for industrial disability retirement at any time, presumably a reference to Government Code § 21154. Hrg. Transcr. 68:3-69:9 (Apr. 15, 2015). The testimony of Jesus Uranga suggested the possibility that Thomas could apply for industrial disability retirement at any time, provided he could prove that he was disabled from his date of retirement to the date of his application. Nevertheless, to Thomas' distinct detriment, the Court made *no* determination of this issue, the issue was not litigated, and Government Code § 21154 was not cited on the record or in the Court's decision.

i. Thomas Was Disabled From Separation To Application

Thomas can prove that he was disabled from November 2, 2010 (date of retirement) to October 19, 2011 (date of his industrial disability retirement application).

He sustained injuries to left hip, cervical spine, lumbar spine, bi-lateral shoulders, left knee and right ankle. In addition, Thomas acquired hypertension and hearing loss.

In fact, Thomas remains disabled and has recently resolved a Worker's Compensation case whereby it has been determined that he is due permanent disability benefits for injuries he sustained during his employment with the Department of Forestry and Fire Protection. In a correspondence from the State Compensation Insurance Fund dated April 29, 2015 the permanent disability benefits due to Thomas are clearly outlined. Attached hereto as "Exhibit A" and incorporated by reference is a copy of that correspondence from the State Compensation Insurance Fund dated April 29, 2015.

In addition, on March 2, 2011 Thomas underwent a Panel Qualified Medical Evaluation by Dr. Lee B. Silver, M.D. In his report regarding that evaluation, Dr. Silver states in the discussion section that it is his opinion that "based on the available information, that there is industrial causation present." Attached hereto as "Exhibit B" and incorporated herein by reference is a copy of the Panel Qualified Medical Evaluation of Dr. Lee B. Silver, M.D. dated March 2, 2011.

Dr. Lee B. Silver, M.D. confirmed this conclusion throughout his evaluations of Thomas as recently as March 10, 2015 wherein he reiterates, "Based on the information available to me, it is my opinion that there is an industrial causation for the claimant's described industrial injury." Attached hereto as "Exhibit C" and incorporated herein by reference is a copy of Panel Qualified Medical Evaluation of Dr. Lee B. Silver, M.D. dated April 8, 2015.

Most recently, on September 22, 2015 the Worker's Compensation Administrative Law Judge approved an award to Thomas based on his Department of Forestry employment. It was determined that Thomas's hypertension, bi-lateral hearing loss and injuries to his left hip, cervical spine and lumbar spine are cumulative injuries from employment incurred between October 1, 1981 and November 1, 2010. It was further determined that Thomas received a second injury to his hip on or about

September 30, 2009. Attached hereto as "Exhibit D" and incorporated herein by reference is the Worker's Compensation Appeals Board Award.

It is evident from the attached medical records and documents that Thomas was, indeed, physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of his application. Therefore, pursuant to Government Code § 21154(d), Thomas is and was able to apply for industrial disability retirement. Accordingly, this Court should approve Thomas' request to file a Disability Retirement Election Application based on industrial disability retirement.

Dated: October 6, 2015

Respectfully Submitted,

Anne C. Tressler, Esq.
Attorney for Respondent,
Carl Thomas

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO)

I am employed in the County of San Bernardino, State of California. I am over the age of 18 years and not a party to the within action, my business address is 400 N. Mountain Ave., Suite 101, Upland, CA 91786.

On October 6, 2015, I served the foregoing document described as: **RESPONDENT'S ARGUMENT** on the interested parties in this action by delivering ( ) the original (X) a true copy thereof to :

CHEREE SWEDENSKY, ASSISTANT TO THE BOARD
EXECUTIVE OFFICE
CA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
P.O. BOX 94271
SACRAMENTO, CA 94229-2701
(BY MAIL AND FACSIMILE: (916) 795-3972)

MATTHEW G. JACOBS
GENERAL COUNSEL
(BY FACSIMILE: (916) 795-3659)

KRISTINE RODRIGUES
CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION
P.O. BOX 944246
SACRAMENTO, CA 94244-2460

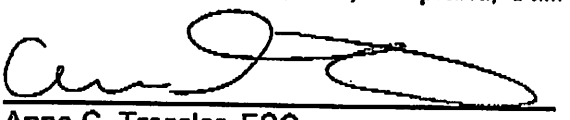
[X] **VIA FACSIMILE TRANSMISSION:** I transmitted the above documents by facsimile transmission to the FAX telephone number listed for each party above and obtained confirmation of complete transmittal thereof. (909) 795-3972 and (916) 795-3659

[X] **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully paid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more that one day after date of deposit for mailing in affidavit.

[ ] **BY PERSONAL SERVICE:** I hand delivered to the office/representative of the addressee.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 6, 2015, at Upland, Califomia.



Anne C. Tressler, ESQ.

EXHIBIT A

STATE COMPENSATION INSURANCE FUND

April 29, 2015

Carl Thomas

Employee: Carl Thomas
Date of Injury: 11/01/2010
Employer: Dept Of Forestry – Rtw Coordinator Pers Safety Members

NOTICE REGARDING PERMANENT DISABILITY BENEFITS

State Compensation Insurance Fund, the claims administrator for Dept Of Forestry – Rtw Coordinator Pers Safety Members, is handling your workers' compensation claim. This notice is to advise you of the status of permanent disability payments for your workers' compensation injury of November 1, 2010.

Based on the comprehensive reporting of Ortho/PQME Lee Silver dated 03/10/2015, Internal/AME Harvey Alpern, M.D. dated 11/28/2012 & Otolaryngology/AME Paul Goodman,M.D. dated 12/15/2011 has determined in the comprehensive medical evaluation that your injury is permanent and stationary. The findings of this report indicate that your injury has resulted in permanent disability that we estimated to be 82%. The evaluation also indicates that you are in need of continuing medical care. Enclosed please find a copy of the medical report used to make this determination. Both you and State Compensation Insurance Fund have the right to disagree with the doctor's findings in this report.

Payments for permanent disability are resuming for the period from April 14, 2015 through April 28, 2015. We are also paying you for the following period(s): $38,565.83 in Permanent Disability payments were previously made for the following dates paid at the following rates:
11/01/2010 through 12/30/2010, lump sum of $4,469.97.
03/07/2011 through 06/20/2012 at $264.50 per week=$17,834.86
06/21/2012 through 07/18/2012 at $230.00 per week=$920.00
07/19/2012 through 08/28/2013 at $264.50 per week=$15,341.00
To date $21,925.93 in Permanent Disability Benefits are due and payable based on the earliest Permanent & Stationary reporting of Dr. Paul Goodman dated 12/15/2011.
12/16/2011 through 02/12/2012 at $270.00 per week=$2,275.71.
02/13/2012 through 02/04/2013 at $310.50 per week=$15,879.86.
02/03/2015 through 04/28/2015 at $310.50 per week=$3,770.36.
Currently there is an overpayment in Permanent Disability of $16,639.90 which will placed in reserves and will be allocated toward any future benefits due and payable.

For dates of injury on or after January 1, 2005, the law also provides that if your employer has 50 or more employees and, within 60 days of your disability becoming permanent and stationary, offers you regular, alternative, or modified work for a period of at least 12

STATE CONTRACT SERVICES
6301 Day Street • Riverside, CA 92507-0902
(888) 782-8338

months, each of your remaining permanent disability payments shall be reduced by 15% from the date of such offer. If your employer does not make an offer meeting these requirements, each of your remaining permanent disability payments shall be increased by 15% from the date of the end of the 60–day period.

The payment in the amount of $621.00 was sent separately. Your weekly compensation rate is $270.00 based on your earnings of $1165.26 per week. However your employer did not offer you regular, alternative, or modified work within 60 days of your condition becoming permanent and stationary pursuant to above requirements. Thus, your weekly compensation rate is adjusted to $310.50 effective February 13, 2012.

Payments will be sent to you every two weeks on Tuesday and will continue until $193,798.77 has been paid based on based on the comprehensive reporting of Ortho/PQME Lee Silver dated 03/10/2015, Internal/AME Harvey Alpern, M.D. dated 11/28/2012 & Otolaryngology/AME Paul Goodman,M.D. dated 12/15/2011. These payments will be deducted from any award you may receive. Since you are represented by an attorney, State Compensation Insurance Fund may also withhold up to 15% or $29,069.82 of your permanent disability benefits for your attorney fees.

State Fund accepts the results of the evaluation. The law provides that if either you or State Fund disputes the results of the evaluation, you may be requested to return to the medical evaluator for a new evaluation to resolve the dispute.

We will not request a rating of the physician's report from the State of California Disability Evaluation Unit. However, you may contact an Information and Assistance Officer to have the report reviewed and rated by the Disability Evaluation Unit.

The State of California, Division of Workers' Compensation requires that you be provided with the following:

> You have a right to disagree with decisions affecting your claim. If you have any questions regarding the information provided to you in this notice, please call David Bustos at (951)697–6316. However, if you are represented by an attorney, you should call your attorney, not the claims adjuster. If you want further information on your rights to benefits or disagree with our decision, you may contact your local state Information & Assistance Office of the Division of Workers' Compensation by calling (909)383–4522.
>
> For recorded information and a list of offices, call (800)736–7401. You may also visit the DWC website at:
>
> http://www.dir.ca.gov/DWC/dwc_home_page.htm

You also have a right to consult with an attorney of your choice. Should you decide to be represented by an attorney, you may or may not receive a larger award, but, unless you are determined to be ineligible for an award, the attorney's fee will be deducted from any award you might receive for disability benefits. The decision to be represented by an attorney is yours to make, but it is voluntary and may not be necessary for you to receive your benefits.

To resolve a dispute, you may apply to the Workers' Compensation Appeals Board or the Administrative Director.

If you have moved, or are moving soon, or want to know the status of your benefit check, please call our toll free number 1-888-222-3211, Monday through Friday, between 7:00 a.m. and 5:00 p.m. PST.

Sincerely,

David Bustos
David Bustos
Adjuster
(951)697-6316

Enc: DWC Fact Sheet D (Rev 02/2013)
-Lee B Silver, M.D. of 03/10/2015
*Harvey Alpern Md of 11/28/2012
*Paul Goodman Md of 12/15/2011

cc: Dept Of Forestry - Rtw Coordinator Pers Safety Members, PO Box 944246, Sacramento, CA 94244
William Cotter, 1851 E 1st St Ste 430, Santa Ana, CA 92705-4061
Donna Gephart, Attorney

EXHIBIT B

LEE B. SILVER, M.D., F.A.C.S.
A MEDICAL CORPORATION
DIPLOMATE AMERICAN BOARD OF ORTHOPAEDIC SURGERY
QME QUALIFIED MEDICAL EVALUATOR
8050 EAST FLORENCE AVENUE
SUITE, 107, SOUTH BLDG.
DOWNEY, CALIFORNIA 90240
(562) 927-8324 FAX (562) 928-8794

ALL CORRESPONDENCE IS TO BE MAILED TO THE DOWNEY LOCATION

RE:	THOMAS, Carl
Employer:	SCIF/Cal Fire Dept of Forestry-Fire
Date of Examination:	March 2, 2011
Date of Injury:	November 2, 2010
Claim No.:	

PANEL QUALIFIED MEDICAL EVALUATION

Dear Sirs:

Carl Thomas was seen on March 2, 2011, for Panel Qualified Medical Evaluation.

The examination was performed at 8050 East Florence Avenue, Suite 107, South Building, Downey, CA 90240.

HISTORY OBTAINED FROM THE CLAIMANT:

Mr. Thomas is a 55-year-old right hand dominant male, who notes that in 2009 that he was sliding down a steep slope in an uncontrolled manner and noted pain in the left hip. He completed a "non-reportable" report. He went on his own to a chiropractor who provided him with therapy. It was soon after that injury that he noted the onset of pains involving the lumbosacral spine, the left knee and the right ankle secondary to his job duties. His employer referred him to the St. Bernadine's Medical Center, where x-rays were performed. He went on his own to Kaiser, which included specialty evaluation. He underwent x-rays, MRI, and bone scan testing. He has received medication. A left total hip arthroplasty has been recommended, and Mr. Thomas does desire to proceed with

that. He saw another doctor who performed x-rays. The claimant denies any other physician evaluation or treatment. The occurrence of any other new injury is denied. Mr. Thomas did retire from his employment in 11/10 secondary to his condition.

Mr. Thomas does describe a constant pain in the lumbosacral spine radiating to the left knee as well as constant pain in the left hip and left knee and occasional pain in the right ankle, which are increased by ADLs and decreased by rest. There are no other lower extremity radicular pains or any sensory changes. There is giving way of the left knee. Mr. Thomas notes that it was years ago that he sustained an industrial injury to one of his ankles but there were no residuals. He believes that he did experience left hip pain in approximately 2004 from an unknown cause and he mentioned it in a physical at Kaiser, although he did not receive any treatment and he believes that it is not in the prior medical file. The claimant does not recall a history of any other prior problems, treatments, or injuries related to the allegedly affected areas. Mr. Thomas notes that his ambulation tolerance is for one block. He occasionally uses a cane. The pain does keep him from sleeping.

OCCUPATIONAL HISTORY:

The claimant was employed at the time of injury as a fire captain. This includes standing, bending, climbing, walking, squatting, sitting, and a maximum lifting of 75 to 100 pounds.

PAST MEDICAL HISTORY:

MEDICATIONS: No other pertinent orthopedic medications.

SURGERIES: No other pertinent orthopedic surgeries.

ILLNESSES: No other pertinent orthopedic illnesses.

FAMILY HISTORY: No other pertinent orthopedic illnesses.

SOCIAL HISTORY:

Children: Two children.

REVIEW OF SYSTEMS: No other pertinent orthopedic illnesses.

RE: THOMAS, Carl
PANEL QUALIFIED MEDICAL EVALUATION
DOE: March 2, 2011

PHYSICAL EXAMINATION:

GENERAL: The claimant was warned not to perform any maneuver which might cause harm. Mr. Thomas ambulated with a slight to moderate limp.

BACK: There is lower lumbosacral tenderness with significant paravertebral spasm, guarding and asymmetric loss of range of motion. The supine straight leg raise examination was negative on the right to 60 degrees and on the left to 40 degrees for radiculopathy on three repetitions and there was a negative Lasegue maneuver bilaterally. Dual inclinometer measurements revealed maximal lumbar range of motion of flexion 20, extension 10, left lateral bending 10 and right lateral bending 10 degrees.

LOWER EXTREMITIES: Circumferential measurements were made in the thighs at a point 10 cm above the patella, right/left, 47.5 / 47.0 cm. Circumferential measurements were also made in the calves at the point of maximal circumference, right/left 39.0 / 39.0 cm.

The hip range of motion right/left: Flexion 100/80, internal rotation 30/0, external rotation 40/30, abduction 45/30, and adduction 20/20 degrees. There is no flexion contracture of either hip.

The knee range of motion, right/left, extension 0/0 and flexion 120/110 degrees. There is minimal swelling in the left knee without effusion. There is no collateral ligament laxity and the Lachman examination was negative bilaterally. There is no crepitus in either knee. The patellar dislocation apprehension test was negative. The McMurray and pivot shift tests were deferred.

Ankle and hindfoot subtalar range of motion, right/left; dorsiflexion 10/20, plantar flexion 40/40, inversion 30/30, and eversion 20/20 degrees. The Anterior Drawer test was negative bilaterally. There is minimal swelling of the right ankle. There is tenderness over the right deltoid ligament. There is a negative Tinel's examination over the right posterior tibial nerve. The left hip and left knee were nontender.

NEUROLOGIC: The motor examination was 5/5 throughout the major muscle groups to manual muscle testing. Sensation was intact in the extremities. The deep tendon reflexes, right/left; quadriceps 0+/0+, and gastroc soleus 0+/0+.

MEDICAL FILE REVIEW:

RE: THOMAS, Carl
PANEL QUALIFIED MEDICAL EVALUATION
DOE: March 2, 2011

1. I reviewed correspondence.

2. I reviewed a DEU Form 100.

3. Included are records concerning unrelated conditions.

4. I reviewed testing.

5. Progress notes were reviewed.

6. I reviewed handwritten notes.

7. Histories were reviewed.

8. I reviewed vital sign records.

9. Nursing notes were reviewed.

10. I reviewed exams.

11. Requests were reviewed.

12. I reviewed status reports.

13. On 11-13-10, there is note of a left wrist ganglion cyst.

14. In October of 2004, there was a probable mild cervical strain.

15. A supervisor's review for reportable injury which is dated 9-11-09 but notes an accident of 9-30-09, indicating an injury of the left hip and at the time he did not want to file a reportable injury report.

16. On 2-6-10, there is note of some pain in the left hip for five months. X-rays were recommended.

17. An x-ray study of the left hip of 2-16-10 notes osteoarthritic changes. The superior-lateral aspect of the acetabular margin demonstrated bony erosion.

18. On 3-17-10 a bone scan was recommended. A hip x-ray was discussed.

RE: THOMAS, Carl
PANEL QUALIFIED MEDICAL EVALUATION
DOE: March 2, 2011

19. On 9-13-10, there is a note that there was pain in the left hip for one year and he had an x-ray and bone scan: DJD. He was going to see an outside doctor for workers' compensation.

20. A claim form of 9-14-10 notes an injury of 9-30-09 with injury of the left hip.

21. A doctor's first report of 9-14-10 details a history and examination with pain in the left hip and a note of a denial of hip weakness/back pain/knee pain or leg numbness. The diagnosis was a left hip pain arthritis, "non AOE-COE." It is indicated that x-rays of the left hip showed DJD.

22. An x-ray study of the left hip of 9-14-10 showed moderate degenerative changes with joint space narrowing of the superior aspect of the left hip and subchondral lucencies in the superior aspect of the acetabulum that most likely is reflecting degenerative cysts.

23. On 10-20-10, there is pain, limp and clicking of the left hip for five years, with an injury that occurred at work possibly injured the left hip stepping in a hole. The pain onset was noted to be gradual and it was constant since one year.

24. An x-ray study of the bilateral hips of 10-20-10 showed degenerative changes bilaterally, left greater than right, with no appreciable change from the previous study.

25. On 10-27-10, there is note of left hip pain for two years with a gradual onset and no history of trauma. A total hip arthroplasty versus Birmingham hip resurfacing were recommended by Dr. Namazian.

26. On 11-4-10, the treatment options were discussed by Dr. Namazian.

27. A claim form of 12-9-10 notes an injury of 9-19-81, with hypertension, hearing, back, left hip, right ankle, left knee "accumulative" over 30 years.

28. An additional claim form of 12-9-10 notes an injury of 11-1-10 with the same areas and mechanism.

29. I reviewed an employee's report of injury of 12-10-10.

RE: THOMAS, Carl
PANEL QUALIFIED MEDICAL EVALUATION
DOE: March 2, 2011

30. On 12-10-10, there is note of a left hip pain through use of years as a firefighter and also an injury of the hip in 9-09 when he stepped in a ditch while at work. There is also note of right ankle and left knee pain for about two to three months after the injury. Testing was recommended for left hip pain, moderate osteoarthritis, low back pain, left knee and right ankle pain.

31. An x-ray of the lumbar spine of 12-10-10 showed multi-level degenerative spurring and a slight scoliosis.

32. I reviewed an employee's report of injury of 12-30-10.

33. A doctor's first report of 2-10-11 from Kaiser notes an injury of 11-2-10, with an injury occurring over a period of 30 years, with pain in the left hip, low back, right ankle, left knee. It was stated that an occupational etiology was not able to be established at that time, given the known advanced degenerative disease of the lumbar spine and hips, which was often noted to be more attributable to age and genetic factors. A QME was recommended.

RADIOGRAPHIC REVIEW:

1. Right and left hips: There is significant narrowing of the left hip joint space and slight narrowing of the right hip joint space. There are no acute fractures seen. There is osteophyte formation.

2. Left knee: There is no evidence of dislocation, significant degenerative changes, or acute fracture.

3. Right ankle: There are no acute fractures. The ankle mortise is intact. There is sharpening of the tip of the medial malleolus.

4. Lumbosacral spine: There are no acute fractures. There is osteophyte formation. There is no spondylolisthesis.

5. AP pelvis: There are no acute fractures. There is severe narrowing of the left hip joint space, with apparent degenerative osteophytes, increased sclerosis, and degenerative cystic changes. There is slight narrowing of the right hip joint space with osteophyte.

DIAGNOSTIC IMPRESSION:

RE: THOMAS, Carl
PANEL QUALIFIED MEDICAL EVALUATION
DOE: March 2, 2011

1. Left hip sprain with degenerative osteoarthritis.

2. Left knee sprain with possible internal derangement.

3. Right ankle sprain with possible internal derangement.

4. Lumbosacral musculoligamentous sprain/strain.

DISCUSSION:

Having completed this evaluation, I do note that Mr. Thomas has described an industrially-related injury with orthopedic involvement. He does have objective findings. There are also subjective complaints. The accompanying diagnoses are detailed above.

In regard to the issue of causation, it is my opinion that the claimant's described mechanism of injury is consistent with the sustaining of the present orthopedic condition. I did not detect any inconsistencies in that regard. Additionally, there do appear to be objective findings present to balance with at least some of the subjective complaints. I also observe that the claimant has denied a history of any other recent injury. Therefore, it is my opinion that, based upon the available information, that there is industrial causation present. It does appear that Mr. Thomas has sustained both a specific trauma injury with involvement of the left hip as well as a cumulative trauma injury with involvement of the lumbosacral spine, the left hip, the left knee and the right ankle.

It is my opinion that further evaluation and/or treatment is indicated. Therefore, it is my opinion that the claimant has not yet attained a maximum medical improvement. Their orthopedic condition is not yet considered Permanent and Stationary or at a Maximum Medical Improvement.

RECOMMENDED TREATMENT:

Mr. Thomas does appear to be a candidate for left hip surgical intervention with the total hip arthroplasty with a postoperative formal therapy and medication, as well as durable medical equipment. He is a candidate for an MRI study of the left knee. He can utilize light supportive braces over the lumbosacral spine, left knee and right ankle. Mr. Thomas can attempt formal therapy treatments for his lumbosacral spine, left knee and right ankle. For persisting symptoms in the right ankle, an MRI study can be performed.

WORK RESTRICTIONS:

RE: THOMAS, Carl
PANEL QUALIFIED MEDICAL EVALUATION
DOE: March 2, 2011

Mr. Thomas is restricted from squatting, climbing or kneeling, as well as prolonged standing and walking. He is restricted from repetitive bending and stooping. He should not lift greater than 10 pounds.

CAUSATION:

Based upon the information available to me, it is my opinion that there is industrial causation for the claimant's described industrial injury.

APPORTIONMENT:

There is a basis for apportionment relative to naturally occurring degenerative changes in the left hip relative to a degenerative osteoarthritis. The issue of apportionment will be addressed at the time of permanent and stationary rating and maximum medical improvement.

VOCATIONAL REHABILITATION/SUPPLEMENTAL JOB DISPLACEMENT:

It is premature to comment upon a need for vocational rehabilitation/supplemental job displacement benefits.

I do recommend that Mr. Thomas be evaluated by the appropriate specialist for his described injury of heart and both ears, as those are outside the area of my expertise as a Board Certified Orthopedic Surgeon.

I hope the above brings you up to date in regard to the claimant's orthopedic condition. Please do not hesitate to call upon me should any questions arise.

EXHIBIT C

SCIF Rec 04/14/2015 FRSCAN 22 04/14/2015 12:28 PM 069808 24 4

LEE B. SILVER, M.D., F.A.C.S.
A MEDICAL CORPORATION
DIPLOMATE AMERICAN BOARD OF ORTHOPAEDIC SURGERY
QME QUALIFIED MEDICAL EVALUATOR
8060 E. FLORENCE AVE., SUITE 107, SOUTH BLDG.
DOWNEY, CALIFORNIA 90240
(562) 927-8324 FAX (562) 926-8794
ALL CORRESPONDENCE IS TO BE MAILED TO THE DOWNEY LOCATION

RE:
Employer: THOMAS, Carl L.
Date of Injury: Cal Fire Department of Forestry and Fire
Claim No.: 10/19/81 to 11/1/10: 9/30/09
Date of Examination: March 10, 2015

PANEL QUALIFIED MEDICAL EVALUATION

THIS EVALUATION WAS AUTHORIZED.

This is a Panel Qualified Medical Evaluation Medical-Legal Evaluation arranged by the employer's insurance, SCIF, and the applicant. This Medical-Legal Evaluation is **PAYABLE ONLY BY THE MEDICAL-LEGAL FEE SCHEDULE** with the ML Codes, and **NOT** by the Official Medical Fee Schedule (O.M.F.S.).

This Panel Qualified Medical Evaluation Medical-Legal Evaluation is arranged by the employer's insurance, SCIF, and the applicant, and it is **PAYABLE EVEN IF THE CLAIM IS DENIED** as the employer's insurance, SCIF, and the applicant have requested it for determination of the issues including causation. The examination was performed at 12241 Industrial Blvd., Suite 102, Victorville, CA 92395.

This evaluation qualifies as an **ML104** as 4 or more of the complexity factors are present including:

3 complexity factors for 6 or more hours were spent in the **RECORD REVIEW** by the physician, **MEDICAL RESEARCH** by the physician, and **FACE-TO-FACE TIME** by the the physician with the injured worker which counts as 3 complexity factors.

AND 1 complexity factor as this report addresses the issue of medical **CAUSATION** upon written request of the party or parties requesting the report, or if a bona fide issue of medical causation is discovered in the evaluation.

AND 1 complexity factor as this report addresses the issue of **APPORTIONMENT** as determination of the issues required the evaluation of 2 or more injuries involving 2 or more body systems or body regions as delineated in the Table of Contents of the AMA Guides, Fifth Edition.

5 TOTAL COMPLEXITY FACTORS

Time Spent

33 minutes FACE-TO-FACE TIME by the physician with the injured worker.
11 hours RECORD REVIEW by the physician. The submitted records measure greater than 3 ½ inches in thickness.
15 minutes of MEDICAL RESEARCH by the physician.
11 hours 46 minutes TOTAL TIME SPENT

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HISTORY OBTAINED FROM THE CLAIMANT:

Mr. Thomas is a 59 year-old right hand dominant male who notes that he was treated at Kaiser. He underwent a left total hip arthroplasty, which he indicates did not benefit him. He received medication, therapy, and a right shoulder injection. He has gone on his own for massage therapy. The claimant denies any other physician evaluation or treatment. The occurrence of any other new injury is denied. Mr. Thomas has not returned to work. Mr. Thomas indicates that he wants to close his case.

Mr. Thomas does describe constant pain in the cervical spine and bilateral shoulders that are increased by ADL's and decreased by rest. There is constant pain in the lumbosacral spine, constant moderate to severe pain in the left hip, and occasional pain in the left knee and right ankle which are increased by ADL's and decreased by rest. There is giving-way of the left knee. There are paresthesias over both tibia. Mr. Thomas does utilize a cane for long walks. He can ambulate up to three blocks. He does utilize a rail for stair-climbing. He has difficulty putting on his shoes and socks. He can sit in any chair for one hour. He could take public transportation.

OCCUPATIONAL HISTORY:

The employment at the time of injury was Fire Captain. This includes standing, bending, climbing, walking, squatting, sitting, and a maximum lifting of 200 pounds.

PAST MEDICAL HISTORY:

MEDICATIONS: Hydrocodone. No other pertinent orthopedic medications.

SURGERIES: Left hip replacement. No other pertinent orthopedic surgeries.

ILLNESSES: No other pertinent orthopedic illnesses.

FAMILY HISTORY: No other pertinent orthopedic illnesses.

SOCIAL HISTORY:

Children: Two.

PHYSICAL EXAMINATION:

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GENERAL: The claimant was warned not to perform any maneuver which might cause harm. Mr. Thomas ambulated with a slight limp.

NECK: There was diffuse tenderness. There was significant paravertebral spasm, guarding, and asymmetric range of motion. Please see the examination form.

BACK: There was diffuse lumbosacral tenderness. There was significant paravertebral spasm, guarding, and asymmetric range of motion. The supine straight leg raise examination was negative bilaterally. The Lasegue maneuver was negative bilaterally. Please see the examination form.

UPPER EXTREMITIES: Circumferential measurements were made in the upper arms at the mid biceps level, right over left; 35.0 / 34.0 cm. Circumferential measurements were made in the forearms at the point of maximal circumference, right over left; 31.0 / 30.0 cm. The shoulder range of motion, right over left; abduction 130/130, flexion 130/130, internal rotation 90/90, external rotation 60/50, extension 30/30, and adduction 30/30 degrees. The Dislocation Apprehension and drop arm tests were negative, bilaterally. All movements of both shoulders, including the impingement testing, created pain. There was diffuse tenderness of both shoulders. There was a negative Tinel over the median and ulnar nerves, bilaterally.

LOWER EXTREMITIES: Circumferential measurements were made in the thighs at a point 10 cm above the patella, right/left, 47.0 / 46.0 cm. Circumferential measurements were also made in the calves at the point of maximal circumference, right/left 38.0 / 38.0 cm. The hip range of motion, right/left, flexion 110/80, internal rotation 30/15, external rotation 40/30, abduction 50/30, and adduction 20/15 degrees. There was no flexion contracture of either hip. There was an 18 cm posterolateral left hip surgical scar. There was no leg length discrepancy.

The knee range of motion, right/left, extension 0/0 and flexion 120/110 degrees. There was minimal swelling of the left knee without effusion. There is no collateral ligament laxity and the Lachman examination was negative. There is no crepitus. The patellar dislocation apprehension test was negative. There was guarding for the McMurray and pivot shift tests. Ankle and hindfoot subtalar range of motion, right/left; extension 10/20, plantar flexion 30/40, inversion 20/30, and eversion 10/20 degrees. The Anterior Drawer test was negative bilaterally. The left knee and right ankle were nontender.

NEUROLOGIC: Manual muscle testing revealed grade 4-5/5 strength of the bilateral shoulders with testing otherwise intact. The Jamar grip strength, right/left, 62, 54, 45 / 36,

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52, 52 pounds, second setting. Sensation was intact in the extremities. The deep tendon reflexes, right/left, biceps 2+/2+, triceps 1+/1+, quadriceps 1+/1+, and gastroc soleus 0+/0+. There was no clonus.

MEDICAL FILE REVIEW:

1. I reviewed correspondence.
2. I reviewed a DWC-AD Form 100 (DEU).
3. I reviewed a report of 7/2/13 from Dr. Monsale.
4. I reviewed a report of 2/24/13 from Dr. Alpern.
5. I reviewed records from Dr. Alpern of 11/28/12.
6. I reviewed a report of 1/11/12 from Dr. Arora.
7. I reviewed a report of 12/15/11 from Dr. Goodman.
8. I reviewed records from Dr. Alpern of 11/29/11.
9. I reviewed prescriptions.
10. I reviewed requests.
11. I reviewed status reports.
12. I reviewed case management notes.
13. I reviewed registrations.
14. I reviewed prescriptions.
15. I reviewed therapy notes.
16. I reviewed utilization review matters.
17. Submitted is a Doctor's First Report of 9/14/10.

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18. Submitted is a report from Kaiser of 10/17/12.
19. Submitted is a report from Kaiser of 5/7/12.
20. Submitted is a report from Kaiser of 3/12/12.
21. Submitted is a report from Kaiser of 1/19/12.
22. Submitted is a report from Kaiser of 12/6/11.
23. Submitted is a report from Kaiser of 10/11/11.
24. Submitted is a report from Kaiser of 2/10/11.
25. Submitted is an application of 4/8/11 for a cumulative trauma.
26. Submitted is an application of 4/8/11 for a specific trauma.
27. Submitted is an acupuncture report of 6/26/12.
28. Submitted is an acupuncture report of 7/16/12.
29. Submitted is a report of an x-ray study of the left hip of 9/14/12.
30. Submitted is a report of an x-ray study of the lumbar spine of 12/10/10.
31. Submitted is a Doctor's First Report of 10/12/10.
32. Submitted is a report of an x-ray study of the bilateral hips of 12/10/10.
33. Submitted is a report of an x-ray study of the right ankle of 12/10/10.
34. Submitted is a report of an x-ray study of the left knee of 12/10/10.
35. Submitted is a report of an x-ray study of the left hip of 10/11/12.

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36. On 12/10/10, there was note of left hip pain secondary to an accumulation of use as a fire fighter, with a diagnosed left hip pain with moderate osteoarthritis and a low back pain, left knee pain, and right ankle pain.

37. A progress report from Dr. Hemsley at Kaiser of 3/12/13 recommends treatment. An updated report was detailed.

38. On 4/25/13, a progress report from Dr. Hemsley at Kaiser recommends treatment. An updated report was detailed.

39. On 6/10/13, a progress report from Dr. Hemsley at Kaiser recommends treatment. An updated report was detailed.

40. On 7/11/13, a progress report from Dr. Hemsley at Kaiser recommends treatment. An updated report was detailed.

41. On 8/20/13, a progress report from Dr. Hemsley at Kaiser recommends treatment. An updated report was detailed.

42. On 9/24/13, a progress report from Dr. Hemsley at Kaiser recommends treatment. An updated report was detailed.

43. On 10/22/13, a progress report from Dr. Hemsley at Kaiser recommends treatment. An updated report was detailed.

44. On 11/21/13, a progress report from Dr. Hemsley at Kaiser recommends treatment. An updated report was detailed.

45. On 2/19/14, a progress report from Dr. Hemsley at Kaiser recommends treatment. An updated report was detailed. A right shoulder injection was performed.

46. On 3/10/14, a progress report from Dr. Hemsley at Kaiser recommends treatment. An updated report was detailed. The right shoulder was much-improved after the injection.

47. On 4/21/14, a progress report from Dr. Hemsley at Kaiser recommends treatment. An updated report was detailed.

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48. On 6/2/14, a progress report from Dr. Hemsley at Kaiser recommends treatment. An updated report was detailed.

49. On 9/25/14, a progress report from Dr. Hemsley at Kaiser recommends treatment. An updated report was detailed.

50. An orthopedic report of 12/4/12 from Dr. Namazian detailed an updated report. Treatment was discussed.

51. On 4/4/13, an orthopedic report from Dr. Namazian detailed an updated report. Treatment was discussed.

52. On 4/23/14, an orthopedic report from Dr. Namazian detailed an updated report. Treatment was discussed.

53. On 6/24/14, an orthopedic report from Dr. Namazian detailed an updated report. Treatment was discussed.

54. An x-ray study of the left hip of 7/11/14 shows the joint prosthesis and there is no evidence of fracture or loosening. There is mild to moderate DJD of the right hip.

55. On 8/25/14, Dr. Namazian noted objective findings and subjective complaints. Increased activities were recommended along with home therapy, with a three month follow-up.

56. On 11/6/14, Dr. Hemsley detailed subjective complaints and objective findings. Permanent modified work was recommended. He was to finish his therapy and see orthopedics.

57. A Physician Assistant report of 12/15/14 from Mr. Wider detailed a history and examination with note of status post left hip total hip arthroplasty. A four month follow-up was recommended.

DIAGNOSTIC IMPRESSION:

1. Cervical musculoligamentous strain/sprain.

2. Right shoulder sprain with impingement and possible internal derangement.

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3. Left shoulder sprain with impingement and possible internal derangement.

4. Status post left total hip arthroplasty.

5. Left knee sprain with possible internal derangement.

6. Right ankle sprain with possible internal derangement.

7. Lumbosacral musculoligamentous sprain/strain.

DISCUSSION:

The opinions which I express are based upon a reasonable medical probability. Having completed this evaluation, I do note that the claimant has undergone additional evaluation and treatment subsequent to my last evaluation. The claimant does have remaining subjective complaints and objective findings. The accompanying diagnoses are detailed above.

It does remain my opinion that there is industrial causation present. I have detailed in my prior reporting the facts supporting that opinion. My opinions in that regard remain unchanged.

Mr. Thomas did undergo an injection for his right shoulder condition. That would be considered reasonable or necessary. It is supported by peer-reviewed medical literature. In an article in the Journal of Bone and Joint Surgery, 1996, Volume 78, titled "Efficacy of Injections of Corticosteroids For Subacromial Impingement Syndrome," Dr. Blair indicated that subacromial injections are an effective short term therapy for the treatment of symptomatic subacromial impingement. The use of injections can substantially decrease pain and increase range of motion of the shoulder. In addition, in an article in the Journal of Surgical Orthopedic Advances, 2006, Volume 15, titled "Conservative Treatment of Rotator Cuff Injuries," Dr. Bytomski, et. al., indicated that most rotator cuff injuries can be treated conservatively by using non-steroidal anti-inflammatory drugs, corticosteroid injections and functional rehabilitation therapy. In an article in the British Journal of Bone and Joint Surgery, 2010, Volume 92, titled "A Double Blind Randomized Controlled Study Comparing Subacromial Injection of Tenoxicam or Methylprednisolone In Patients With Subacromial Impingement," Dr. Karthikeyan, et. al., indicated that corticosteroid is significantly better than Tenoxicam for improving shoulder function in tendinitis of the rotator cuff after six weeks. The improvement was consistently greater in the steroid group. In an article in the Orthopedic Knowledge Update 6, it is indicated on page 302 that patients

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who received corticosteroid injection for subacromial impingement syndrome had better pain relief and greater increases in active motion and were much more likely to have a negative impingement sign than those in the controlled group. It was stated that subacromial injection of corticosteroids was found in the study to be an effective short term therapy for the treatment of subacromial impingement. In an article in the American Journal of Roentgenology, 2007, Volume 189, titled "Rotator Cuff Impingement, Correlation Between Findings on MRI and Outcome After Fluoroscopically Guided Subacromial Bursography and Steroid Injection," Dr. Hambly, et. al., indicated that imaging-guided subacromial steroid injection may be of benefit in the short term management of clinically and MRI proven subacromial impingement with 83% reporting symptom relief at six month follow-up evaluation. Additionally, in an article in the British Journal of General Practice, 2005, Volume 55, titled "Corticosteroid Injections for Painful Shoulder: A Meta-Analysis," Dr. Arroll indicated that subacromial injections of corticosteroids are effective for improvement of rotator cuff tendinitis up to a nine month period. They are probably more effective than anti-inflammatory medication. Furthermore, in an article in the Journal of Rehabilitation Medicine, 2005, Volume 37, titled "Exercise Therapy for Shoulder Pain Aimed at Restoring Neuromuscular Control, A Randomized Comparative Clinical Study," Dr. Ginn, et. al., indicated that exercise therapy aimed at restoring neuromuscular control, corticosteroid injections, and multiple physical modalities and range of motion exercises are equally effective in the short term treatment of shoulder pain with exercise, therapy, and corticosteroid injection being less costly to administer. I also observe that in an article in Clinical Rheumatology, 2004, Volume 23, titled "Is Local Subacromial Corticosteroid Injection Beneficial in Subacromial Impingement Syndrome?", Dr. Akgun indicated that subacromial corticosteroid injections in the acute or subacute phase of subacromial impingement syndrome provided additional short term benefit without any complication when used together with anti-inflammatory drugs and exercise. In addition, in an article in the American Family Physician, 2003, Volume 67, titled "Diagnostic and Therapeutic Injection of the Shoulder Region," Dr. Tallia, et. al., indicated that subacromial injections are useful for conditions including impingement syndrome. In addition, in an article in the Chang Gung Medical Journal, 2006, Volume 29, titled "Subacromial Injections of Corticosteroids and Xylocaine for Painful Subacromial Impingement Syndrome," Dr. Yu, et. al., indicated that subacromial injection of corticosteroids and local anesthesia is an effective therapy for treatment of symptomatic subacromial pathology such as impingement pain, tendinitis, and bursitis. The injection can substantially reduce pain and increase range of motion of the shoulder.

Mr. Thomas has undergone the additional treatments. That has included a left total hip arthroplasty. He is not desirous of additional interventions at this time. His orthopedic

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condition can be considered to be Permanent And Stationary and at a Maximum Medical Improvement with a provision for future medical care.

PERMANENT IMPAIRMENT:

According to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Mr. Thomas has a 42% whole person impairment which is derived by combining an 8% whole person impairment for a DRE Cervical Category II from table 15-5 on page 392, an 8% whole person impairment for a DRE Lumbar Category II from table 15-3 on page 384, a 4% whole person impairment for the loss of range of motion of the right shoulder (upper extremity impairments of 3% for flexion, 2% for abduction, and 1% each for extension and adduction from figures 16-40 and 16-43 on pages 476 and 477 totaling a 7% upper extremity impairment which is then converted to that 4% whole person impairment from table 16-3 on page 439), a 5% whole person impairment for the loss of range of motion of the left shoulder (upper extremity impairments of 3% for flexion, 2% for abduction, and 1% each for extension, adduction, and external rotation from figures 16-40 through 16-46 on pages 476 through 479 totaling an 8% upper extremity impairment which is then converted to that 5% whole person impairment from table 16-3 on page 439), a 4% whole person impairment for the loss of range of motion of the right ankle (lower extremity impairments of 7% for extension, 2% for inversion, and 2% for eversion from tables 17-11 and 17-12 on page 537, yielding an 11% lower extremity impairment which is then converted to that 4% whole person impairment from table 17-3 on page 527), a 20% whole person impairment for the left total hip arthroplasty and a 1% whole person impairment for a pain-related impairment for the left knee as it is my opinion that the burden of Mr. Thomas' condition does warrant that. The use of the DRE II category is supported by the presence of those qualifying factors including the presence of muscle guarding, muscle spasm, and asymmetric range of motion. I have assigned the percentage of permanent disability within the range allowed for that DRE II category based upon my own evaluation and understanding of the affect on the activities of daily living. That 20% whole person impairment for the left total hip arthroplasty is for a fair result from table 17-33 on page 546 for 50 points, including 15 for pain, 8 for limp, 7 for supportive device, 5 for distance walked, 2 for stair climbing, 2 for putting on shoes and socks, 4 for sitting, 1 for public transportation, 5 for deformity, and 1 for abduction, from table 17-34 on page 548.

It is my opinion based upon a reasonable medical probability that this impairment rating most accurately reflects the permanent impairment/disability within the four corners of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, in consideration of the Almaraz/Guzman Decisions.

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WORK RESTRICTIONS:

Mr. Thomas is restricted from squatting, climbing or kneeling, as well as prolonged standing and walking. He is restricted from repetitive bending and stooping. He should not lift greater than 25 pounds. Mr. Thomas is restricted from repetitive cervical spine movements as well as repetitive work with the upper extremities above the shoulder level.

CAUSATION:

Based upon the information available to me, it is my opinion that there is industrial causation for the claimant's described industrial injury.

APPORTIONMENT:

There are 2 or more injuries involving 2 or more body systems or body regions as delineated in the Table of Contents of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition.

APPORTIONMENT:

In accordance with the Labor Code Sections 4663 and 4664 and according to the concepts of apportionment with which I am readily familiar, it is my opinion based upon a reasonable medical probability that 90% of the permanent disability for the left hip was caused by and is apportioned to the direct result of the injury arising out of and occurring in the course of employment, and 10% of the permanent disability for the left hip was caused by and is apportioned to other factors either before or subsequent to the industrial injury. That 10% of the permanent disability for the left hip noted above is attributed to naturally-occurring degenerative osteoarthritic changes as those are a cause of Mr. Thomas' permanent disability. However, 100% of the permanent disability for the lumbosacral spine, the left knee, cervical spine, right shoulder, left shoulder, and the right ankle is attributed to Mr. Thomas' industrial injury.

VOCATIONAL REHABILITATION/SUPPLEMENTAL JOB DISPLACEMENT BENEFITS:

Mr. Thomas is a qualified injured worker and medically eligible for vocational rehabilitation/supplemental job displacement benefits.

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TREATMENT/FUTURE MEDICAL CARE:

Mr. Thomas should be provided with access to future medical care including office visits, medication, testing, bracing, injection, and future surgical interventions for the left hip and potentially the left knee, right shoulder, left shoulder, and right ankle with postoperative formal therapy.

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[redacted]

Name Thomas, Carl Soc. Sec. No. _____ Date 3/10/15

Movement	Description	Range					
Cervical flexion	Calvarium angle	30	30	30			
	T1 ROM	0	0	0			
	Cervical flexion angle						
	±10% or 5°	Yes	No				
	Maximum cervical flexion angle						
	% impairment						
Cervical extension	Calvarium angle	20	20	15			
	T1 ROM	0	0	0			
	Cervical extension angle						
	±10% or 5°	Yes	No				
	Maximum cervical extension angle						
	% impairment						
Cervical ankylosis in flexion/extension	Position						
	% impairment	(Excludes any impairment for abnormal flexion or extension motion)					
Cervical left lateral bending	Calvarium angle	25	25	25			
	T1 ROM	0	0	0			
	Cervical left lateral flexion angle						
	±10% or 5°	Yes	No				
	Maximum cervical right lateral flexion angle						
	% impairment						
Cervical right lateral bending	Calvarium angle	20	20	20			
	T1 ROM	0	0	0			
	Cervical right lateral flexion angle						
	±10% or 5°	Yes	No				
	Maximum cervical right lateral flexion angle						
	% impairment						
Cervical ankylosis in lateral bending	Position						
	% impairment	(Excludes any impairment for abnormal lateral flexion or extension motion)					
Cervical left rotation	Cervical left rotation angle	20	25	30			
	±10% or 5°	Yes	No				
	Maximum cervical left rotation angle						
	% impairment						
Cervical right rotation	Cervical right rotation angle	30	35	40			
	±10% or 5°	Yes	No				
	Maximum cervical right rotation angle						
	% impairment						
Cervical ankylosis in rotation	Position						
	% impairment	(Excludes any impairment for abnormal rotation)					
Total cervical range of motion and ankylosis* impairment _____ %							
Total cervical range of motion = % impairments of flexion + extension + left lateral bending + right lateral bending + left rotation + right rotation							

* If ankylosis is present, combine the ankylosis impairment with the range-of-motion impairment (Combined Values Chart, p. 604). If ankylosis in several planes are present, combine the estimates (Combined Values Chart), then combine the result with the range-of-motion impairment.

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[redacted]

Name Thomas, Carl Soc. Sec. No. [redacted] Date 3/10/15

Movement	Description	Range					
Lumbar flexion	T12 ROM	40	40	35			
	Sacral ROM	10	10	10			
	True lumbar flexion angle						
	±10% or 5°	Yes	No				
	Maximum true lumbar flexion angle						
	% impairment						
Lumbar extension	T12 ROM	10	10	10			
	Sacral ROM	0	0	0			
	True lumbar extension angle						
	±10% or 5°	Yes	No				
	Maximum true lumbar extension angle						
	% impairment	(Add sacral flexion and extension ROM and compare to tightest straight-leg-raising angle)					
Straight leg raising (SLR), left	Left SLR	10	10	10			
	±10% or 5°	Yes	No	(If tightest SLR ROM exceeds sum of sacral flexion and extension by more than 15%, lumbar ROM test is invalid)			
	Maximum SLR Left						
Straight leg raising (SLR), right	Right SLR	30	30	30			
	±10% or 5°	Yes	No	(If tightest SLR ROM exceeds sum of sacral flexion and extension by more than 15%, lumbar ROM test is invalid)			
	Maximum SLR right						
Lumbar left lateral bending	T12 ROM	20	20	15			
	Sacral ROM	0	0	0			
	Lumbar left lateral bending angle						
	±10%-or 5°	Yes	No				
	Maximum lumbar left lateral bending angle						
	% impairment						
Lumbar right lateral bending	T12 ROM	18	18	5			
	Sacral ROM						
	Lumbar right lateral bending angle						
	±10% or 5°	Yes	No				
	Maximum lumbar right lateral bending angle						
	% impairment						
Lumbar ankylosis in lateral bending	Position						
	% impairment	(Excludes any impairment for abnormal flexion or extension motion)					
Total lumbar range-of-motion and ankylosis* impairment		%					

* If ankylosis is present, combine the ankylosis impairment with the range-of-motion impairment (Combined Values Chart, p. 604).
If ankylosis in several planes is present, combine the ankylosis estimates (Combined Values Chart), then combine the result with the range-of-motion impairment.

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REASONS FOR OPINION

1. Factual history and subjective complaints.
2. Objective findings upon physical examination.
3. The description of occupational duties.
4. Review of any available medical records.
5. Review of any available diagnostic studies.

The following personnel took part in this examination:

Transcriber:

Transwest Transcription

The history of injury was reviewed and the entire examination performed by Dr. Lee B. Silver who also personally reviewed a completed questionnaire concerning the Occupational History, Past Medical History, Family History, Social History, and Review of Systems. Any available prior medical records have been compiled and arranged into correct chronological order for my use by V. Cazarez, O. Cazarez or J. Felix, office staff members who are qualified by training and experience, and these were reviewed by myself. The evaluation performed and the time spent performing such evaluation was in compliance with the Guidelines established by the Industrial Medical Council or the administrative director pursuant to paragraph (5) of subdivision (j) of Section 139.2. The evaluation was performed on the date and the location noted on page one.

ALL OTHER PARTS OF THIS EXAMINATION INCLUDING MEASUREMENTS, PHYSICAL FINDINGS, OPINIONS, X-RAY INTERPRETATIONS, REVIEW OF MEDICAL RECORDS AND INTERPRETATION OF SUCH, PERFORMED BY LEE B. SILVER, M.D.

The above report is not to be construed as a complete physical examination for general health purposes. Only those symptoms which I believe to have been involved in the injury, or might relate to the injury, have been assessed. Regarding the general health of the patient, the patient is advised to get a physical examination for general purposes by their personal physician.

Additionally, "I declare under the penalty of perjury that the information contained in this report and its attachments, if any is true and correct to the best of my knowledge and beliefs, except as to information that I have indicated I received from others. As to that information, I declare under penalty or perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true."

The sources of information utilized in this consultation include my own history and examination and any medical records or radiographs received above.

I have not violated Labor Code Section 139.3 and the contents of the report and bill are true to the best of my knowledge. This statement is made under penalty of perjury."

Date of report 4-8-15

Dated this 8 day of April, 2015, at Los Angeles County, California.

Signature of Physician
Lee B. Silver, M.D.
Q.M.E. Qualified Medical Evaluator
Diplomate, American Board of Orthopedic Surgery
Fellow, American Academy of Orthopedic Surgeons

EXHIBIT D

Applicant/Employee: CARL THOMAS WCAB No(s).

AWARD

AWARD IS MADE in favor of CARL THOMAS against

DEPT OF FORESTRY
(entity legally obligated to pay the award) of:

(A) Additional temporary disability indemnity in accordance with paragraph 2(a) above,

(B) Permanent disability indemnity in accordance with paragraph 3 above,

Less the sum of $[redacted] payable to applicant's attorney as the reasonable value of services rendered.

☒ Fees are to be commuted pursuant to Paragraph 6.

(C) Liens in accordance with Paragraph 7 above,

(D) Further medical treatment in accordance with Paragraph 4 above,

(E) Reimbursement for medical-legal expenses in accordance with Paragraph 5 above,

(F) Stipulations in Paragraph 8 and 9 are approved.

(G) The matter is ordered off calendar / set for status/lien conference.

(H)

9/22/15
(Dated)

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE
WORKERS' COMPENSATION APPEALS BOARD

On _____, this document ☐was personally served on all persons appearing at the hearing on said date, as set forth in the minutes of that hearing ☐was personally served on

_____

_____

_____

_____

☐was served by mail on all persons listed on the Official Address Record ☐was served by mail on following party or parties: _____

_____

_____

_____

By A MS. GEPHART

☐NOTICE TO: _____

Pursuant to Rule 10500, you are designated to serve this document on all parties shown on the Official Address Record, together with a proof of service. You shall maintain this proof of service, which shall not be filed with the WCAB unless a dispute arises regarding service. A copy of the current Official Address Record accompanies this notice.

TB

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION
WORKERS' COMPENSATION APPEALS BOARD

CARL THOMAS

Applicant,

vs.

DEPT OF FORESTRY
LEGACY UNINSURED;
SCIF SCS ADMINSTNG

Defendants.

WALK THROUGH APPEARANCE SHEET
ADJ_____

Efiler: Yes ✓ No_____
Case set for hearing: Yes___No ✓
Walk through document:
_____C&R ✓ STIP WITH AWARD
_____5710 DEPOSITION ATTORNEY'S FEES
_____PETITION TO COMPEL ATTENDANCE AT MEDICAL EVALUATION/DEPO
_____ PETITION FOR STAY ORDER-PJ ONLY

APPEARANCES

APPLICANT ☐PRESENT ☐NOT PRESENT
APPLICANT REPRESENTED BY _____ ☐ ATTORNEY ☐HEARING REP.
DEFENDANT REPRESENTED BY: DONNA GERHART/SCIF SCS ☐ATTORNEY ☐ HEARING REP.
OTHERS APPEARING _____ ☐ATTORNEY ☐HEARING REP.
INTERPRETER _____ CERTIFICATION NO.: _____

DISPOSITION: ☐OTOC. ☐ ORDER SUSPENDING ACTION ON C&R/STIPS ☒C&R/ STIPS APPROVED

ORDER(s)/COMMENT(s):_____

☐PETITION APPROVED: ☐ 5710 FEES ☐ PETITION TO COMPEL ATTENDANCE AT MEDICAL EVALUATION/DEPO ☐PETITION FOR STAY ORDER

☐ 30 DAYS TO SUBMIT REQUESTED DOC. ☐PETITION DISAPPROVED ☐ SET FOR STATUS CONF.

Date:_____ Time:_____ Judge:_____ Location:_____

DATE: 9/22/15

WORKERS' COMPENSATION JUDGE

NOTICE TO: SCIF Pursuant to Rule 10500, you are designated to serve this/ these document(s) on all interested parties including all lien claimants.
[ ] Served on parties and lien claimants present
Date 9/22/15 By _____

RECEIVED
SEP 22 2015
DWC
SAN BERNARDINO

FOR WCAB USE ONLY:
JUDGE ASSIGNED: PRO TEM

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION
WORKERS' COMPENSATION APPEALS BOARD
STIPULATIONS WITH REQUEST FOR AWARD

Case No.

Date of Injury 10/01/1981 to 11/01/2010
MM/DD/YYYY

SSN (Numbers Only)

Venue Choice is based upon: (Completion of this section is required)

[X] County of residence of employee (Labor Code section 5501.5(a)(1) or (d).)

[ ] County where injury occurred (Labor Code section 5501.5(a)(2) or (d).)

[ ] County of principal place of business of employee's attorney (Labor Code section 5501.5(a)(3) or (d).)

SBR

Select 3 Letter Office Code For Place/Venue of Hearing (From the Document Cover Sheet)

Applicant (Completion of this section is required)

CARL
First Name

MI

THOMAS
Last Name

RECEIVED
SEP 22 2015
DWC
SAN BERNARDINO

Address/PO Box (Please leave blank spaces between numbers, names or words)

City

State

Zip Code

Employer #1 Information (Completion of this section is required)

[ ] Insured [ ] Self-Insured [X] Legally Uninsured [ ] Uninsured

DEPT OF FORESTRY
Employer Name (Please leave blank spaces between numbers, names or words)

P O BOX 944246
Employer Street Address/PO Box (Please leave blank spaces between numbers, names or words)

SACRAMENTO
City

CA
State

94244
Zip Code

ADJUSTER: DAVID RUSTICS RIVERSIDE- STATE CONTRACTS

Tracking Id: 18470472

Insurance Carrier Information (If known and if applicable - include even if carrier is adjusted by claims administrator)

Insurance Carrier Name (Please leave blank spaces between numbers, names or words)

Insurance Carrier Street Address/PO Box (Please leave blank spaces between numbers, names or words)

City State Zip Code

Claims Administrator Information (If known and if applicable)

SCIF STATE EMPLOYEES RIVERSIDE
Name (Please leave blank spaces between numbers, names or words)

PO BOX 65005
Street Address/PO Box (Please leave blank spaces between numbers, names or words)

FRESNO CA 93650
City State Zip Code

Employer #2 Information (Completion of this section is required)

☐ Insured ☐ Self-Insured ☐ Legally Uninsured ☐ Uninsured

Employer Name (Please leave blank spaces between numbers, names or words)

Employer Street Address/PO Box (Please leave blank spaces between numbers, names or words)

City State Zip Code

Insurance Carrier Information
(If known and if applicable - include even if carrier is adjusted by claims administrator)

Insurance Carrier Name (Please leave blank spaces between numbers, names or words)

Insurance Carrier Street Address/PO Box (Please leave blank spaces between numbers, names or words)

City State Zip Code

Claims Administrator Information (If known and if applicable)

Name (Please leave blank spaces between numbers, names or words)

Street Address/PO Box (Please leave blank spaces between numbers, names or words)

City State Zip Code

Employer #3 Information (Completion of this section is required)

☐ Insured ☐ Self-Insured ☐ Legally Uninsured ☐ Uninsured

Employer Name (Please leave blank spaces between numbers, names or words)

Employer Street Address/PO Box (Please leave blank spaces between numbers, names or words)

City State Zip Code

Insurance Carrier Information
(If known and if applicable - include even if carrier is adjusted by claims administrator)

Insurance Carrier Name (Please leave blank spaces between numbers, names or words)

Insurance Carrier Street Address/PO Box (Please leave blank spaces between numbers, names or words)

City State Zip Code

Claims Administrator Information (If known and if applicable)

Name (Please leave blank spaces between numbers, names or words)

Street Address/PO Box (Please leave blank spaces between numbers, names or words)

City State Zip Code

Employer #4 Information (Completion of this section is required)

☐ Insured ☐ Self-Insured ☐ Legally Uninsured ☐ Uninsured

Employer Name (Please leave blank spaces between numbers, names or words)

Employer Street Address/PO Box (Please leave blank spaces between numbers, names or words)

City State Zip Code

Insurance Carrier Information
(If known and if applicable - include even if carrier is adjusted by claims administrator)

Insurance Carrier Name (Please leave blank spaces between numbers, names or words)

Insurance Carrier Street Address/PO Box (Please leave blank spaces between numbers, names or words)

City State Zip Code

Claims Administrator Information (If known and if applicable)

Name (Please leave blank spaces between numbers, names or words)

Street Address/PO Box (Please leave blank spaces between numbers, names or words)

City State Zip Code

The parties hereto stipulate to the issuance of an Award and/or Order, based upon the following facts, and waive the requirements of Labor Code section 5313:

1. CARL
Employees First Name

THOMAS,
Employees Last Name

birth date _____ MM/DD/YYYY,

while employed at SAN BERNARDINO, CA
State

as a(n) FIRE CAPTAIN B, 490 in
Occupation Group

☐ More than 4 Companion Cases

Case Number 1

☐ Specific Injury
☒ Cumulative Injury

10/01/1981 (Start Date: MM/DD/YYYY) 11/01/2010 (End Date: MM/DD/YYYY)
(If Specific Injury, use the start date as the specific date of injury)

Body Part 1: 440 HIPS Body Part 2: 801 CIRC SYS Body Part 3: 124 EAR

Body Part 4: 200 NECK Other Body Parts: 420 BACK

Case Number 2

☒ Specific Injury
☐ Cumulative Injury

09/30/2009 (Start Date: MM/DD/YYYY) (End Date: MM/DD/YYYY)
(If Specific Injury, use the start date as the specific date of injury)

Body Part 1: 440 HIPS Body Part 2: Body Part 3:

Body Part 4: Other Body Parts:

Case Number 3

☐ Specific Injury
☐ Cumulative Injury

(Start Date: MM/DD/YYYY) (End Date: MM/DD/YYYY)
(If Specific Injury, use the start date as the specific date of injury)

Body Part 1: Body Part 2: Body Part 3:

Body Part 4: Other Body Parts:

Case Number 4

☐ Specific Injury
☐ Cumulative Injury

(Start Date: MM/DD/YYYY) (End Date: MM/DD/YYYY)
(If Specific Injury, use the start date as the specific date of injury)

Body Part 1: Body Part 2: Body Part 3:

Body Part 4: Other Body Parts:

by the employer(s) and their insurer(s) listed above and who sustained injury(ies) arising out of and in the course of employment to

PARTIES AGREE THAT THEY ARE SETTLING THE FOLLOWING BODY PARTS:
LEFT HIP, HYPERTENSION, BI-LATERAL HEARING LOSS, CERVICAL SPINE, LUMBAR SPINE, BI-LATERAL SHOULDERS, LEFT KNEE & RIGHT ANKLE.

(Please list all body parts injured)

Tracking Id: 18470472

2. The injury (ies) caused temporary disability for the period 02/05/2013 (MM/DD/YYYY) through 02/02/2015 (MM/DD/YYYY) for which indemnity has been paid at $ _____ (Indemnity Paid) per week.

2(a). The injury(ies) caused additional temporary disability for the period _____ (MM/DD/YYYY) through _____ (MM/DD/YYYY) at the rate of $ _____ (Rate) in the amount of $ _____ (Indemnity Paid)

3. The injury(ies) caused permanent disability of 82 % for which indemnity is payable at $ _____ (Indemnity Rate) per week beginning 12/16/2011 (MM/DD/YYYY) in the sum of $ _____, less credit for such payments previously made. [X] And a life pension of $ _____ (Life Pension) per week thereafter.

Labor Code §4658(d) adjustment:

[ ] Increase rate to $ _____ as of _____ (MM/DD/YYYY)

[ ] Decrease rate to $ _____ as of _____ (MM/DD/YYYY)

[X] Not Applicable

* See Addendum "A"

An informal rating [X] has / [ ] has not (Select one)been previously issued in case no(s) DEU File No. I 80382

4. There [X] is [ ] is Not a need for medical treatment to cure or relieve from the effects of said injury (ies).

5. Medical-legal expenses and/or liens are payable by defendant as follows:

SEE LIEN ADDENDUM

6. Applicant's attorney requests a fee of $ [redacted]

[X] Fees to be commuted as follows:

From the side of the Award - See Addendum "B"

7. Liens Against compensation are payable as follows:

NONE

8.Any accrued claims for Labor Code section 5814 penalties are included in this settlement unless expressly excluded.

9.Other stipulations:

A-PARTIES AGREE THAT THIS STIPULATION RESOLVES ALL ISSUES REGARDING COMPENSTATION OF MEDICAL TEMPORARY DISABLITY AND PERMANENT DISABILITY THROUGH THE DATE OF APPROVAL BY THE WCAB.
B-INTEREST AND PENATLIES ARE WAIVED IF INITIAL AWARD PAYMENT IS MADE WITHIN 25 DAYS OF STATE FUND'S RECEIPT OF AWARD APPROVAL.
~~C-APPLICANT IS NOT PREVENTED FROM RETURNING OR HAS RETURNED TO WORK FOR THE EMPLOYER, THEREFORE, APPLICANT IS NOTE ENTITLED TO THE SUPPLEMENTAL JOB DISPLACEMENT BENEFIT.~~ WC
D-PARTIES AGREE TO DISMISS WITH PREJUDICE THE ALLEGED INJURY TO THE FOLLOWING BODY PARTS:

F-PARTIES AGREE THAT THIS SETTLEMENT IS BASED ON THE MEDICAL REPORTS OF: PQME/LEE SILVER,M.D.DATED 03/10/15, AME/HARVEY ALPERN,M.D. DATED 11/28/12 & AME/PAUL GOODMAN,M.D. DATED 12/15/11.
C. APPLICANT IS ENTITLED TO AN SJDB IN AMOUNT OF [redacted] DY

Dated 09-17-2015
MM/DD/YYYY

x [signature]
Applicant

Applicant's Attorney or Authorized Representative:

[X] Law Firm/Attorney [ ] Non Attorney Representative

WILLIAM
First Name

COTTER
Last Name

5122197
Firm Number

Lawrence Whiting Santa Ana
Law Firm name

1851 E 1ST ST
Address/PO Box (Please leave blank spaces between numbers, names or words)

SANTA ANA
City

CA
State

92705
Zip Code

Dated 09/21/2015
MM/DD/YYYY

[signature]
Applicant Attorney Signature

Tracking Id: 18470472

Defendant's Attorney or Authorized Representative:

[X] Law Firm/Attorney [ ] Non Attorney Representative

DONNA
First Name

GEPHART
Last Name

5294475
Firm Number

SCIF STATE EMPLOYEES RIVERSIDE
Law Firm Name

PO BOX 65005
Address/PO Box (Please leave blank spaces between numbers, names or words)

FRESNO
City

CA
State

93650
Zip Code

Dated 9/22/15
MM/DD/YYYY

Defense Attorney Signature

Defendant's Attorney or Authorized Representative:

[ ] Law Firm/Attorney [ ] Non Attorney Representative

First Name

Last Name

Firm Number

Law Firm Name

Address/PO Box (Please leave blank spaces between numbers, names or words)

City

State

Zip Code

Dated
MM/DD/YYYY

Defense Attorney Signature

Defendant's Attorney or Authorized Representative:

☐ Law Firm/Attorney ☐ Non Attorney Representative

First Name

Last Name

Firm Number

Law Firm Name

Address/PO Box (Please leave blank spaces between numbers, names or words)

City State Zip Code

Dated MM/DD/YYYY

Defense Attorney Signature

Interpreter Licence Number:

Interpreter Name

Interpreter License Number