

BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA  
HOWARD W. COHEN, ADMINISTRATIVE LAW JUDGE

In the Matter of the Calculation of ) CASE NO. 2012-0671  
Final Compensation of: )  
BRUCE MALKENHORST, SR., ) OAH NO. 2013080917  
Respondent, )  
and )  
CITY OF VERNON, )  
Respondent. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
Los Angeles, California  
Monday, August 25, 2014

Reported by:  
BRITTANY SILVA  
CSR No. 13940  
Job No. :  
25040AH

1 BOARD OF ADMINISTRATION

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3 STATE OF CALIFORNIA

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13 \_\_\_\_\_ )

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15 TRANSCRIPT OF PROCEEDINGS, taken at

16 320 West Fourth Street, Suite 630, Los Angeles,

17 California, commencing at 9:00 a.m.

18 on Monday, August 25, 2014, heard before

19 HOWARD W. COHEN, Administrative Law Judge,

20 reported by BRITTANY SILVA, CSR No. 13940,

21 a Certified Shorthand Reporter in and for

22 the State of California.  
23  
24  
25

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18

19 Also present: Steve Stueber

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I N D E X

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DEPARTMENT'S Witnesses:	Direct	Cross	Redirect	Recross
Joaquin Leon	16	73	180	181
Tomi Jimenez	196			

E X H I B I T S

DEPARTMENT'S:	Marked for Identification	Received in Evidence
7-43 (Unidentified)	26	26
49-60 (Unidentified)	26	26
63-65 (Unidentified)	26	26
67 (Unidentified)	53	67
68 (Unidentified)	62	67
72 (Unidentified)	70	
75 (Unidentified)	26	26
79 (Unidentified)	217	
81 (Unidentified)	69	69
82 (Unidentified)	32	34
88 (Unidentified)	26	26

E X H I B I T S (Continued)

	Marked for Identification	Received in Evidence
1		
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3	RESPONDENT'S:	
4	IIIII (Unidentified)	146
5	JJJJJ (Unidentified)	180
6	KKKKK (Unidentified)	180
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1 Los Angeles, California, Monday, August 25, 2014

2 9:00 a.m.

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5 THE COURT: We are here in the Matter of the  
6 Calculation of Final Compensation of Bruce Malkenhorst,  
7 Senior, respondent; and City of Vernon, respondent; before  
8 the Board of Administration California Public Employees  
9 Retirement System, State of California. Case No. 2012-0671.  
10 Bearing OAH No. 2013080917. Today is August 25, 2014. It's  
11 9:00 a.m. My name is Howard Cohen. I'm the Administrative  
12 Law Judge for the Office of Administrative Hearings assigned  
13 to hear this case. Can I please have counsel state their  
14 appearances.

15 MR. LEVIN: Good morning, your Honor. Jason Levin  
16 of Steptoe & Johnson for CalPERS.

17 THE COURT: Good morning.

18 MR. YIM: Good morning, your Honor. Joung Yim on  
19 behalf of respondent, City of Vernon.

20 THE COURT: Good morning.

21 MR. JENSEN: Good morning, your Honor. John Jensen  
22 on behalf of respondent, Bruce Malkenhorst.

23 THE COURT: Thank you. Good morning. All right. A  
24 few preliminary matters. There were motions decided by  
25 presiding administrative law judge, Foremaker. She issued an

1 order on August 22 denying respondent Malkenhorst's motion to  
2 bifurcate, and she further clarified there will be no expert  
3 witness depositions. There are a couple of other motions  
4 outstanding brought by -- on behalf of Mr. Malkenhorst.  
5 Those motions have been thoroughly briefed. They will be  
6 marked as part of the administrative record. No oral  
7 argument will be heard. I'll issue my rulings verbally right  
8 now, and a written order rule issue today or tomorrow. Let  
9 me get to those.

10 Respondent Malkenhorst's motion to exclude all ADP  
11 payroll reports and all reference to and evidence, and  
12 testimony based on ADP reports and motion to compel; and  
13 motion for sanctions on grounds that CalPERS and Vernon  
14 selectively and intentionally omitted certain pages related  
15 to respondent Malkenhorst is denied. Mr. Malkenhorst's  
16 allegation that CalPERS and Vernon appeared to have  
17 deliberately omitted documents from production has been  
18 contested by CalPERS and Vernon and has not been established  
19 by the submissions that I have received on Mr. Malkenhorst's  
20 motion to compel discovery. I ordered Vernon to search its  
21 records and produce any missing, relevant ADP documents. I  
22 further ordered that Mr. Malkenhorst could subpoena records  
23 from ADP.

24 Vernon responded to my order by producing additional  
25 records and stating that no others are in its possession.

1 ADP responded to the subpoena that it has no response of  
2 documents. Based on the record before me, I do not find  
3 grounds sufficient to certify to the superior court that  
4 facts exist that justify contempt or to impose monetary  
5 sanctions against the City of Vernon. I have no further  
6 authority to enforce respondent Malkenhorst's discovery  
7 claims.

8 If Mr. Malkenhorst wishes to pursue any allegations  
9 of exploitation or discovery abuses in superior court, you  
10 may do so. The fact that the ADP records introduced in this  
11 hearing may be incomplete will go to the weight given to any  
12 admitted ADP payroll evidence. Respondent Malkenhorst may  
13 raise its foundational and hearsay objections if and when ADP  
14 documents are moved into evidence. With respect to  
15 respondent Malkenhorst's motion to amend its notice of  
16 defense on grounds that a recent superior court order  
17 requires him to allege additional new matter in order to  
18 exhaust his administrative remedies, and on the grounds that  
19 CalPERS initial pleading is indefinite or uncertain and does  
20 not state a basis on which the agency may proceed, is denied.

21 First, I have already ruled on a motion filed by  
22 respondent Malkenhorst as to the sufficiency of the agency's  
23 initial pleading. I have also addressed the issue of proof  
24 in this case. There are insufficient grounds to revisit that  
25 ruling, and the request is untimely. Second, respondent



1 Malkenhorst exhaustive argument is without merit. Respondent  
2 Malkenhorst filed a civil suit against the City of Vernon  
3 alleging that the City must make up any pension shortfalls  
4 should CalPERS succeed in reducing his pension. The superior  
5 court sustained the City demurrer to respondent Malkenhorst's  
6 first amended complaint without leave to amend. Holding that  
7 until this administrative process to decide respondent  
8 Malkenhorst's challenge to CalPERS pension calculation is  
9 concluded. The superior court has no jurisdiction to decide  
10 whether respondent Malkenhorst has a contract right or other  
11 common law constitutional or statutory claim against the  
12 City. That order in no way supports respondent Malkenhorst's  
13 argument that he should be permitted to add to his notice of  
14 defense.

15           New matter concerning his contract lawsuit against  
16 the City of Vernon. That contract dispute, and respondent  
17 Malkenhorst's allegations about the City expressed and  
18 implied promises, course of conduct, and policies and  
19 practices over the course of 30 years are not relevant to the  
20 issues to be determined in this hearing. Any such new matter  
21 would vastly and needlessly expand the scope of the subject  
22 matter of this hearing. As would new matter alleging that  
23 government code section 52344 is unconstitutional and that  
24 the City of Vernon has failed to contract correctly with  
25 CalPERS. Respondent Malkenhorst's request is also untimely

1 and is extinguishable from cases in which pleadings are  
2 amended to conform to proof or where no unwarranted expansion  
3 of the scope of hearing or undue prejudice to other parties  
4 will result.

5 This case concerns whether CalPERS' recalculation  
6 of respondent Malkenhorst's, quote on quote, "final  
7 compensation" is correct and whether as a matter of law,  
8 CalPERS previously adjudicated that issue and is bound by its  
9 previous calculation. Legal matters such as constitutional  
10 and charter City issues have already been briefed by  
11 respondent Malkenhorst, and his motion to dismiss, and will  
12 be ruled on in the proposed decision in this Matter as  
13 ordered by Administrative Law Judge, Rovner on April 17,  
14 2014. Respondent Malkenhorst has reserved his right to make  
15 an opening statement at the beginning of his case which will  
16 take place in two and a half days. I see from -- CalPERS  
17 filed a file brief. Does CalPERS wish to make in addition to  
18 -- make an opening statement?

19 MR. LEVIN: No, your Honor.

20 THE COURT: Okay, and you have three witnesses  
21 scheduled today; right?

22 MR. LEVIN: Yes, your Honor.

23 THE COURT: And how many tomorrow?

24 MR. LEVIN: Probably just one, your Honor, and that  
25 one witness would be Ms. Tomi Jimenez who is also in the

1 courtroom today. I anticipate that if we begin with  
2 Ms. Jimenez that her direct and cross-examination will  
3 continue through tomorrow.

4 THE COURT: Okay. So it would be two complete  
5 witnesses today, and perhaps Ms. Jimenez as well?

6 MR. LEVIN: Correct, your Honor.

7 THE COURT: And on the final half day?

8 MR. LEVIN: Uncertain at this point, your Honor, and  
9 in further explanation of that, we have overwitnessed our  
10 list in anticipation of evidentiary challenges. So to the  
11 extent of our early witnesses, we get into evidence, the City  
12 of Vernon's official records and business records, as we  
13 would argue that would significantly cut back on our number  
14 of witnesses.

15 THE COURT: All right. We have -- this hearing runs  
16 from 9:00 to 12:30 and 1:30 to 4:30 every day with 15 minute  
17 breaks in the morning and afternoon. So that's five and half  
18 hours of hearing time, and we're going to get direct and  
19 cross of all of your witnesses in two and a half days?

20 MR. LEVIN: Yes, your Honor.

21 THE COURT: That is approximately on average, of  
22 course some witnesses may be longer and some shorter, but on  
23 average 50 minutes of direct and 50 minutes of cross per  
24 witness. If that's going to be exceeded, will you please  
25 inform me well in advance so we can make adjustments, but we

1 are going to finish your case in two and a half days?

2 MR. LEVIN: Yes, your Honor.

3 THE COURT: Thank you. There is another issue that  
4 was raised on behalf of respondent Malkenhorst concerning  
5 subpoena duces tecum to -- that were included in a letter I  
6 believe to you or to your firm requesting that a certain  
7 amount of your witnesses, if they're going to be testifying  
8 about policies and procedures that are written, that they  
9 produce those written policies and procedures. Will your  
10 witnesses be testifying about written policies and procedures  
11 of CalPERS?

12 MR. LEVIN: Not that I'm aware of, your Honor.

13 THE COURT: Then I will reserve any order on  
14 compelling their production until such time as any of your  
15 witnesses do testify as to any such policies or procedures.

16 MR. LEVIN: Your Honor, to complete that issue,  
17 there was a public records act request filed concurrent with  
18 this litigation for all CalPERS written policies and  
19 procedures, and CalPERS had made the production. That public  
20 records act request was sent to CalPERS as the custodian of  
21 all that evidence and those materials were produced.

22 THE COURT: Is that correct, Mr. Jensen?

23 MR. JENSEN: I don't know if -- they produced some  
24 documents but the documents that we requested under the SDT  
25 which were the documents that the witnesses relied on in the

1 course of them making a decision in this Matter. If counsel  
2 is representing that there are no written policies and  
3 procedures on which the agency bases its decisions, then I  
4 think then the whole process under which they're going is  
5 basically an underground regulation --

6 THE COURT: Let's not get ahead of ourselves. Let's  
7 see what the witnesses testify to. If they said they did  
8 rely on written policies and procedures, you may certainly  
9 ask them to identify them. If they were produced under the  
10 public records act request, you may use them and if they were  
11 not, we're going to revisit this.

12 MR. JENSEN: And, your Honor, can I just speak to  
13 this? We requested all written policies and procedures  
14 without any reference to what the witnesses used in purposes  
15 of this calculation because it's not a discovery issue. So  
16 they produced some policies and procedures to us which we  
17 have included in these -- in these exhibit binders. However,  
18 we have no idea which documents that they used, obviously.

19 THE COURT: I imagine you'll find out when you start  
20 cross examining those witnesses. Let's proceed to your first  
21 witness, Mr. Levin.

22 MR. LEVIN: Thank you, your Honor. Our first  
23 witness will be Joaquin Leon. Would your Honor prefer that I  
24 stand during examination?

25 THE COURT: That's all right. You may sit or stand

1 as you feel most comfortable doing.

2 MR. LEVIN: Thank you, your Honor.

3 MR. JENSEN: And, your Honor, is there any  
4 possibility we can turn the air conditioning on, or may I  
5 take off my jacket?

6 THE COURT: You may take off your jacket. I don't  
7 think we have very much control over that.

8 Please rise. Raise your right hand.

9

10 JOAQUIN LEON,  
11 called as a witness, and having been first duly sworn by  
12 the Court, was examined and testified as follows:

13 THE WITNESS: Yes.

14 THE COURT: Thank you. Have a seat. Please state  
15 and spell your name.

16 THE WITNESS: My name is Joaquin Leon spelled  
17 J-o-a-q-u-i-n. My last name is L-e-o-n.

18 THE COURT: Thank you very much.

19 MR. JENSEN: Your honor, may I just move to exclude  
20 the witnesses who are in the room that are not agency  
21 representatives?

22 THE COURT: Any objection?

23 MR. LEVIN: No, your Honor. Ms. Jimenez who is a  
24 witness is the agency representative. Mr. Wall who is also  
25 present is not.

1 MR. JENSEN: And there's an additional person. Are  
2 you counsel?

3 MS. SALAZAR: Renee Salazar. I'm an attorney with  
4 CalPERS.

5 THE COURT: Okay. Thank you. Then the CalPERS  
6 official representative may remain. The other witnesses are  
7 excluded. We'll go off the record briefly. You may escort  
8 them to the attorney conference room. Do you know where that  
9 is?

10 MR. LEVIN: I don't, your Honor.

11 THE COURT: Off the record.

12 (Recess)

13 THE COURT: Let's go back on the record, and before  
14 you begin questioning your witness, while we were off the  
15 record you mentioned some documents?

16 MR. LEVIN: Yes, your Honor.

17 THE COURT: In these exhibit binders?

18 MR. LEVIN: Yes. There should be four.

19 THE COURT: You may approach.

20 MR. LEVIN: Thank you, your Honor. Sorry. I was  
21 not going to go in the well, though.

22 THE COURT: I appreciate that.

23 MR. LEVIN: May I approach the witness to get him  
24 his binders?

25 THE COURT: Yes.

1 MR. JENSEN: Your Honor, while we are doing  
2 housekeeping, would you like -- we have also binders there.  
3 I don't know if you want to see them now or if you want to --

4 THE COURT: Let's wait until your cross-examination  
5 if you're going to be using them.

6 MR. JENSEN: Okay. That's fine.

7 THE COURT: Mr. Levin, you may proceed.

8 MR. LEVIN: Thank you, your Honor.

9

10 DIRECT EXAMINATION

11 BY MR. LEVIN:

12 Q Mr. Leon, can you please describe your present  
13 employment.

14 A I'm the deputy City treasurer for the City of Vernon  
15 I deal a lot with the treasury functions of the City. I also  
16 work with the accounting department and also oversee many of  
17 the payroll responsibilities.

18 Q When did you first begin working for the City of  
19 Vernon?

20 A It was in January of 2008.

21 Q What was your position at that time?

22 A I was the assistant finance director and the -- soon  
23 thereafter, I was the deputy City treasurer.

24 Q How long have you been in your current position at  
25 the City of Vernon?



1 A Seven years.

2 Q You mentioned that one of your duties with the City  
3 of Vernon concerns payroll. Can you describe that duty in a  
4 little detail, please.

5 A Sure. Our responsibility with payroll is to -- at a  
6 general level, review the entries made by our department  
7 clerk, make sure that we have enough funds to be able to  
8 cover the payroll, and also to make sure that the accounting  
9 of the payroll is recorded properly into the City general  
10 ledger.

11 Q Has one of your job obligations been to serve as  
12 City of Vernon's custodian of records?

13 MR. JENSEN: Objection, your Honor. Leading.

14 THE COURT: Sustained.

15 BY MR. LEVIN:

16 Q Have you played a role for the City of Vernon in  
17 connection with CalPERS? Have you interacted with CalPERS as  
18 part of your job duties?

19 A Yes.

20 Q Can you please describe that interaction.

21 A Well, on a biweekly basis we submit payroll  
22 information to CalPERS to make sure that the earnings are  
23 reported to CalPERS correctly. We also maintain records that  
24 we have readily available if they are ever questioned. We  
25 keep those records as well.

1 Q Did you participate in an audit that --

2 THE COURT: Go ahead. You may finish your question.

3 BY MR. LEVIN:

4 Q That CalPERS did in connection with the City of  
5 Vernon?

6 MR. JENSEN: Objection. Leading.

7 THE COURT: I'll allow it. You may answer.

8 THE WITNESS: Yes.

9 BY MR. LEVIN:

10 Q And what was your role in connection with that  
11 audit?

12 A I was the main point person in providing all the  
13 documents, any requests -- most of the requests made by  
14 CalPERS were directed to me. If I was the -- if I was in  
15 possession of these documents, then I would then provide  
16 them. If somebody else was in possession of the documents,  
17 then I would defer the question or the request to that City  
18 staff.

19 Q When did you first begin working with or for CalPERS  
20 in connection with the audit?

21 MR. JENSEN: Objection. Misstates the testimony.

22 THE COURT: Overruled.

23 THE WITNESS: I believe it was in November of  
24 2009.

25 ///

1 BY MR. LEVIN:

2 Q And with whom at CalPERS did you communicate about  
3 the audit?

4 A With Chris Wall.

5 THE COURT: Will you state that last name again?

6 THE WITNESS: Wall.

7 THE COURT: Thank you.

8 BY MR. LEVIN:

9 Q What types of records did you, on behalf of the City  
10 of Vernon, attempt to locate for CalPERS in connection with  
11 the audit?

12 A Payroll registers, W-2s, 1099s, the quarterly and  
13 annual payroll tax returns -- employee contracts,  
14 resolutions, City ordinances, personnel action forms,  
15 personnel files. Other items, there were requests like the  
16 City departments, a list of part-time employees, payroll  
17 related items, documents.

18 Q Where did you search for the various types of  
19 records that CalPERS was requesting from the City of  
20 Vernon?

21 A Well, many of the records that we have were kept in  
22 a digital form. So a lot of these I was able to go to the  
23 City's network and save them on a separate file folder within  
24 the network to pretty much contain everything in one place.  
25 A lot of other documents I was able to get as hard copies.

1 So we needed to go to the City's storage place to pull many  
2 of these documents out.

3 Q Describe the network that you refer to.

4 A Well, this network is a network that I designed back  
5 in two thousand -- late 2008, early 2009. Many of the ADP  
6 records -- that's around the time that I came in where ADP  
7 was processing the payroll for the City were kept as hard  
8 copies. These hard copies were -- ADP also provided CDs. So  
9 it was really cumbersome to access this information by use of  
10 hard copy. So what I did early on was I created a system in  
11 the City's network where we copied all the payroll registers  
12 and payroll documents to the network so that we could easily  
13 access this information digitally rather than requesting our  
14 storage location to pull these physical documents over.

15 Q When did you create the computer network for City of  
16 Vernon?

17 A When?

18 Q Yes.

19 A I would say in 2008. It would be in 2008.

20 Q In connection with your search of records for  
21 CalPERS, where within this network did you go?

22 A I'm sorry. Can you repeat the question?

23 Q Yes. In connection with your work --

24 A Yes.

25 Q -- on the audit, where on this computer network did

1 you go to identify some of the materials that CalPERS had  
2 requested?

3 A In terms of payroll registers which is the report  
4 that contains the detail of everybody's earnings, that would  
5 be to that same network folder, the digital ones. If there  
6 were any records requested prior to 2004, we went to the  
7 City's storage because that's when the City went -- they  
8 implemented or they brought over their payroll to ADP. I  
9 believe it was in 2004. So anything prior to 2004 was hard  
10 copy.

11 Q Did you personally go to the City's storage area to  
12 look for documents?

13 A No. A request is made to the City clerk, and then  
14 the City clerk was then the one that requests the information  
15 from our storage location.

16 Q Did you personally go onto the City of Vernon  
17 network looking for documents to provide to CalPERS?

18 A Yes.

19 Q How long did you spend doing that?

20 A I want to say many weeks doing that. For some of  
21 the resolutions, it was awhile, but for the payroll registers  
22 it was a couple of days. We had that information readily  
23 accessible.

24 Q Do you use the computer network independent of the  
25 work you did for CalPERS? Is that something you do as part

1 of your job?

2 A Yes.

3 Q And describe the type of duties that make you  
4 familiar with or use the City of Vernon's network in the  
5 course of your job duties.

6 A Well, sometimes department heads will have questions  
7 as to the type of pay their department is getting. Many  
8 times they want certain types of analyses done on their  
9 department. So I need to go back to these records and pull  
10 this information. So it's something that I do visit  
11 frequently.

12 Q At the end of your search for information, did you  
13 provide materials to CalPERS?

14 A Yes.

15 Q And describe that process, please.

16 A I provide the payroll registers. What I did is --  
17 since they're in digital form, I copied the files that we  
18 have in our network into a separate file, and then what I did  
19 to that file was I compressed it and then e-mailed it to  
20 Mr. Chris Wall who made the request.

21 Q What about the records apart from the payroll  
22 records? Are there some other materials you provided to  
23 CalPERS?

24 A Those I had available when he came. So he had  
25 copies of those.

1 Q Approximately how many written and oral  
2 communications or conversations did you have with CalPERS in  
3 connection with their request for information?

4 A Many. It was on and off. It was always back and  
5 forth. So there was never a moment where -- it was a lot. I  
6 can't put a number to it. It was a lot.

7 Q Over the course of those many communications, do you  
8 believe that you had a good understanding of the types of  
9 materials that CalPERS was looking for for the City of  
10 Vernon?

11 MR. JENSEN: Objection. It's a leading question.

12 THE COURT: Overruled.

13 THE WITNESS: Can you repeat your question?

14 BY MR. LEVIN:

15 Q Yes. Over the course of your various and several  
16 communications with CalPERS, did you believe that you had a  
17 good understanding of the types of materials that CalPERS  
18 wanted to receive?

19 A Overall, yes.

20 Q And describe, please, how you believe that you and  
21 the City of Vernon did in providing to CalPERS the materials  
22 you thought that it wanted?

23 A Well, we believe that all the information that we  
24 had relied on to be able to report to CalPERS, everybody's  
25 earnings, were contained in the documents that were provided

1 to Mr. Wall. Anything that needed to be calculated in terms  
2 of pay rates and earnings were contained in those documents.  
3 So we believe in good faith that everything was turned in.

4 Q Mr. Leon, can you please pull Volume 1 of the  
5 exhibits and turn first to Exhibit No. 7.

6 THE COURT: Do you wish to have that marked?

7 MR. LEVIN: For identification?

8 THE COURT: Yes.

9 MR. LEVIN: Yes, your Honor.

10 THE COURT: All right, and let me just note that at  
11 least in the Volume 1 -- Volume 1 contains tabs 1 through 28  
12 and proceeding tab one is a trial exhibit list. This looks  
13 like it identifies documents behind the tabs in all four  
14 volumes of exhibit notebooks; is that correct?

15 MR. LEVIN: Yes, your Honor.

16 THE COURT: And are the descriptions of --  
17 identifying what these documents are in the trial exhibit  
18 list accurate?

19 MR. LEVIN: Yes, your Honor.

20 THE COURT: All right, and which exhibit did you  
21 want the witness to look at?

22 MR. LEVIN: We're starting with Exhibit 7.

23 THE COURT: That exhibit is marked for  
24 identification as described in CalPERS trial exhibit list as  
25 CalPERS Exhibit 7.



1 (Department's Exhibit 7 was marked for  
2 identification by the Court.)

3 MR. LEVIN: Your Honor, in an effort to save time --

4 THE COURT: Yes.

5 MR. LEVIN: -- I would like to ask that a number of  
6 the City of Vernon resolutions be admitted into evidence. I  
7 believe that there had been stated no prior objection to  
8 their admission, and I can identify those by exhibit number  
9 if it pleases the Court.

10 THE COURT: Has there been a discussion with  
11 Mr. Jensen about this?

12 MR. LEVIN: Yes, your Honor. In the pre-trial  
13 conference statement, the parties had indicated those of the  
14 documents to which there were or were not objections, and I  
15 recognized that there are some City of Vernon records to  
16 which there was an objection stated to the admissibly, but as  
17 to the resolutions, there was not.

18 THE COURT: All right, and which of the exhibit  
19 numbers do you believe there is no dispute?

20 MR. LEVIN: First of all, Exhibits 7 through 43.  
21 Exhibits 49 through 60.

22 THE COURT: One moment.

23 MR. JENSEN: It would be easier if we could just let  
24 me look at them so I can see which ones he's talking about.

25 THE COURT: I will give you all the time you need to

1 do that. So 49 through 60.

2 MR. LEVIN: Right. 63 through 65 and 88.

3 MR. JENSEN: Can you just repeat that?

4 THE COURT: Yes. We'll go off the record while you  
5 do that.

6 (Recess)

7 THE COURT: Mr. Levin has asked me to mark for  
8 identification and has moved into evidence Exhibits 7 through  
9 43. 49 through 60. 63 through 65. 75 and 88. Mr. Jensen,  
10 there are no objections to those?

11 MR. JENSEN: No objection to those documents coming  
12 in.

13 THE COURT: Okay. Those documents are marked for  
14 identification as described in the CalPERS trial exhibit list  
15 and are admitted.

16 (Department's Exhibits 7-43, 49-60, 63-65, 75, and  
17 88 were marked for identification by the Court and  
18 received in evidence.)

19 BY MR. LEVIN:

20 Q Mr. Leon, can you please look at Exhibit 7.

21 A Okay.

22 Q Do you recognize this document?

23 A Yes.

24 Q What is it?

25 A It's a minute order.

1 Q Is this a document that you provided to CalPERS?

2 A I provide many minute orders. So to identify this  
3 one as one of them, I would not -- this is not one of the --  
4 it's not a specific one that I could say yes, but I did  
5 provide -- I'll say yes. There was a broad request that was  
6 made that CalPERS wanted all of the resolutions and all the  
7 minute orders to the City. I am going to say yes, this is  
8 one of them.

9 Q Approximately, how many resolutions and ordinances  
10 and minutes did you provide to CalPERS?

11 A I want to say from 2010 all the way to -- I believe,  
12 the request was made since 1992. So since 1992 to 2010,  
13 pretty much the present was in 2010, all of them.

14 Q Where did you find the various City of Vernon  
15 resolutions, ordinances, City minutes that you provided to  
16 CalPERS?

17 A The City clerk maintains that in the system City  
18 called Laserfiche. They're contained digitally. So I  
19 forwarded that request over to the City clerk and what they  
20 did is they put that in an external hard drive, and then I  
21 provide that hard drive to Mr. Chris Wall.

22 Q Is Laserfiche a program that you're familiar with  
23 outside of your dealings with CalPERS?

24 A Yes. From what I understand, it's a very commonly  
25 used application.

1 Q And describe how you use the Laserfiche application  
2 in your duties?

3 A Well, I have access to the all of the City's  
4 resolutions, all the minute orders. I use it for that same  
5 reason. If I need to search historical information, then I  
6 would go into Laserfiche, pull up past resolutions to give me  
7 a prospective as to the issue at hand.

8 Q Could you please turn to Exhibit 75.

9 MR. LEVIN: Your Honor, I would like to have Exhibit  
10 75 marked for identification.

11 THE COURT: Actually. It's been marked and  
12 admitted. Although you didn't say on the record initially  
13 that was one of the documents you wished to be marked and  
14 admitted. In your discussion off the record, you confirmed  
15 that it was and Mr. Jensen agreed. And I put that in my  
16 order and we went back on.

17 MR. LEVIN: Thank you, your Honor. I overlooked  
18 that.

19 THE COURT: You're welcome.

20 BY MR. LEVIN:

21 Q Exhibit 75 is one of the -- falls within the date  
22 range of the resolutions and other City you provided to  
23 CalPERS?

24 A Yes.

25 Q Do you have any discussions with CalPERS as to

1 why -- withdraw that.

2 Describe, if anything, in the communications you had  
3 with CalPERS about why it wanted City of Vernon records  
4 including resolutions and City minutes through 2010.

5 A Well, it was quite a broad request, and I confirmed  
6 it with Mr. Wall if he was positive that he wanted that  
7 amount of documents and he said yes because many of the  
8 employee contracts, many of the resolutions were referencing  
9 other resolutions. It would be easier for him to have access  
10 to all of these resolutions and search for them himself  
11 rather than making the request often to me. So he wanted to  
12 have direct access to all of these resolutions.

13 Q In connection with CalPERS audit request, did you  
14 have a discussion with CalPERS about the concept of employees  
15 having multiple positions?

16 MR. JENSEN: Objection, your Honor. Leading.

17 THE COURT: Overruled.

18 THE WITNESS: Yes.

19 BY MR. LEVIN:

20 Q Describe what you did to provide City of Vernon  
21 records to CalPERS about multiple positions?

22 A Well, what I did is I prepared a schedule that  
23 listed everyone in the scope of the dates that were given --  
24 in the scope of the CalPERS audit that held positions  
25 concurrently, and then what I did is to be able to facilitate

1 Mr. Wall's access to the resolutions and the minute orders  
2 was that I did a search in Laserfiche to identify the  
3 resolution, the minute order that would appoint that employee  
4 to that position. So I also identified whether that position  
5 was being compensated or not, and if I wasn't able to find  
6 anything, I made a note of that as well.

7 MR. JENSEN: Objection. Motion to strike. The  
8 question was multiple positions, and he answered a question  
9 about positions concurrently.

10 THE COURT: Overruled.

11 BY MR. LEVIN:

12 Q What did you understand CalPERS request for  
13 information on multiple positions you referred to?

14 A That was the concern of CalPERS; was, were the  
15 positions held concurrently, not that they had multiple  
16 positions at one point in time in their tenure, but did they  
17 hold these positions concurrently.

18 Q Do you remember -- withdraw that question.

19 Where did you obtain the information to provide to  
20 CalPERS about City of Vernon employees who held multiple  
21 concurrent positions?

22 A Well, I first relied on the schedule that was kept  
23 by City admin, and from there what I did is that I went into  
24 Laserfiche and started searching the resolutions, the minute  
25 orders. Within these resolutions, I would then identify the

1 date in which they started, and I would try to search for any  
2 other resolution where they would either be removed from that  
3 position or a new position was added when they describe what  
4 other positions they held.

5 Q What did do you with all the information that you  
6 gleaned from the records you just described?

7 A As I mentioned, I prepared a schedule that  
8 summarized all the information.

9 Q Do you remember the contents of that schedule that  
10 you prepared?

11 A Yes.

12 Q Did -- what were the names of the individuals listed  
13 on that schedule who you had identified as having held  
14 multiple concurrent position?

15 A What were the specific names?

16 Q Yes. Do you remember the names?

17 A One of them was Mr. Malkenhorst, Senior, and a lot  
18 of top key employees, City administrator, City attorney,  
19 finance director, and such.

20 Q Do you remember the complete list of the concurrent  
21 positions held by Mr. Malkenhorst, Senior and others?

22 A No.

23 MR. LEVIN: Your Honor, I'd like to mark for  
24 identification Exhibit 82.

25 THE COURT: All right. The document behind tab 82

1 as described in CalPERS witness list is marked for  
2 identification as Exhibit 82.

3 (Department's Exhibit 82 was marked for  
4 identification by the Court.)

5 BY MR. LEVIN:

6 Q Mr. Leon, can you please turn to Exhibit 82.

7 A Yes.

8 Q What is Exhibit 82?

9 A This is the schedule I described earlier that I  
10 prepared. A list of the all the employees that held  
11 concurrent positions.

12 Q Did you prepare this spreadsheet yourself?

13 A Yes.

14 Q There's -- the first column is an employee number;  
15 correct?

16 A That's correct.

17 Q Describe where you got that employee number from.

18 A From my payroll records and the ADP reports.

19 Q What's the second column of the schedule you put  
20 together?

21 A That's the employee name, last name and first  
22 name.

23 Q And the third column is what?

24 A The position, title.

25 Q Please identify those positions that you identified



1 for Bruce Malkenhorst, Senior.

2 A City clerk slash director of finance, City  
3 attorney -- City treasurer, City administrator slash City  
4 clerk, chief executive officer of the electrical department,  
5 executive director of the agency, redevelopment agency,  
6 secretary of the agency, redevelopment agency, executive  
7 director, industrial development authority, secretary of the  
8 industrial development authority, treasurer of the industrial  
9 development authority, executive director of Vernon  
10 historical preservation society, executive director of Vernon  
11 national gas, national gas finance and authority.

12 Q Exhibit 82 has columns entitled from and to;  
13 correct?

14 A Yes.

15 Q What do those describe?

16 A The from is the starting date in which the employee  
17 started that position and when he was appointed, and the to  
18 is when they were either removed from that position or from  
19 that position.

20 MR. LEVIN: Your Honor, I request that 82 be  
21 admitted into evidence.

22 THE COURT: Any objection?

23 MR. JENSEN: Your Honor, this is a document that he  
24 prepared that basically is part of this litigation and as far  
25 as it being a demonstrative exhibit, that's fine, but it's

1 incomplete and it's -- you know, it is not a -- an original  
2 document of -- that purports to indicate that these things  
3 actually existed. So if he wants to show it as his -- you  
4 know, a document prepared in anticipation of litigation for  
5 his testimony, I don't deny that, but for the truth of the  
6 matter asserted, there's multiple levels of hearsay in it and  
7 none of the foundation has been laid for this information.  
8 So it's lacking foundation, and it's purporting to accumulate  
9 a bunch of documents without going through what those  
10 underlying facts are. It certainly can't be used for the  
11 truth of the matter asserted.

12 THE COURT: At this point, Mr. Levin, I think all  
13 you have established is that this witness is testifying based  
14 on documents he reviewed. He concluded that respondent  
15 Malkenhorst held these positions for these periods of times  
16 stated and for that purpose only, I'll admit it.

17 (Department's Exhibit 82 was received in  
18 evidence by the Court.)

19 MR. JENSEN: Thank you, your Honor.

20 BY MR. LEVIN:

21 Q Mr. Leon, you testified earlier about your effort to  
22 find payroll records; correct?

23 A Yes.

24 Q Approximately how much time did you spend looking  
25 for and gathering the City of Vernon payroll records that

1 CalPERS had requested?

2 A Two weeks.

3 Q Were some of the payroll records that you  
4 identified -- did they refer to a company called ADP?

5 A Yes.

6 Q What is ADP?

7 A ADP is an outside company that prepares payroll  
8 checks for the City of Vernon or any other company. We  
9 pretty much provide them with the hours and they calculate  
10 the earnings and then provide us with reports and payroll  
11 checks which we then distribute to the employees

12 Q You mentioned "outside company." Is this a company  
13 with which the City of Vernon had a contract?

14 A Yes.

15 Q Describe the contract that the City of Vernon had  
16 with ADP.

17 MR. JENSEN: Your Honor, objection. Lacks  
18 foundation.

19 THE COURT: Sustained.

20 BY MR. LEVIN:

21 Q Are you familiar with the payroll process that City  
22 of Vernon had in place in 2004 and 2005?

23 A Yes.

24 Q Explain how you became familiar with that payroll  
25 process.

1           A     Well, the way I first became familiar with it is I  
2     was reviewing a lot of the accounting behind the payroll  
3     entries that were made and one of that -- to be familiar with  
4     that process, I need to understand exactly how payroll is  
5     being processed and so -- can you repeat your question?  
6     Sorry.

7           Q     Describe how you became familiar with the use of ADP  
8     for payroll services in 2004/2005.

9           A     It was by that. I was reviewing the accounting  
10    behind the payroll entries that were made. So I needed to go  
11    to the city records which were the ADP reports to look at  
12    that information and to verify that it was being transferred  
13    over to the City's general ledger correctly.

14          Q     Are you currently involved with payroll issues at  
15    City of Vernon?

16          A     Yes.

17          Q     And describe if or how your familiarity with ADP  
18    payroll records of 2004 and 2005 has been part of your normal  
19    day-to-day responsibilities for payroll?

20                MR. JENSEN: I'm just going to state an objection.  
21    here, your Honor, because ADP to my understanding is no  
22    longer the payroll reporting service for Vernon and hasn't  
23    been for a number of years. So that's my understanding  
24    because of the response to the SDT. So to --

25                THE COURT: We'll see what the witness says. If

1 that's the case, I'm sure the witness will discuss that in  
2 his answer; so go ahead.

3 THE WITNESS: I was responsible to do that  
4 transition from ADP over into processing payroll inhouse. So  
5 I was responsible for the conversion and implementation of  
6 the new payroll processing system done inhouse. So I'm  
7 familiar with the structure behind the current payroll  
8 system. For me to be able to do that, I needed to understand  
9 pretty much the way ADP was structured.

10 BY MR. LEVIN:

11 Q What did you find -- or withdraw that question.

12 How was the City of Vernon's relationship with the  
13 ADP structure?

14 MR. JENSEN: Objection, your Honor. Lacks  
15 foundation.

16 THE COURT: Sustained.

17 BY MR. LEVIN:

18 Q While you were -- let me withdraw that question.

19 You mentioned that you were participating in a  
20 transition from doing payroll records from ADP to in-house.  
21 When did that occur?

22 A That was almost a two-year process, but the action  
23 of the implementation occurred in May, 2011.

24 Q Describe what your role was in that process.

25 A It was to make sure that every employee was set up

1 correctly in this new payroll module, to make sure that all  
2 the individual pay categories were set up correctly, to make  
3 sure that these pay categories were actually calculating  
4 correctly, that the accounting behind it was also correct,  
5 making sure that everybody's bank account was transferred  
6 over correctly, whoever had direct deposit. So I was really  
7 involved.

8 Q In the course of that process, what did you learn  
9 about the City of Vernon's relationship with ADP in the past?

10 A I'm not sure I understand the question.

11 Q In the course of your -- your moving from one system  
12 to another, did you identify, for example, the period of time  
13 in which ADP had a relationship with the City of Vernon?

14 MR. JENSEN: Objection. It's vague as to time.

15 THE COURT: Overruled.

16 MR. LEVIN: It was a short period.

17 BY MR. LEVIN:

18 Q What was that period?

19 A From 2004 to 2011.

20 Q Was the record keeping of payroll records by ADP or  
21 the City of Vernon between 2004 and 2011 consistent over the  
22 entire period of time?

23 MR. JENSEN: Objection, your Honor. Lacks  
24 foundation. A non-percipient knowledge, and he's asking to  
25 speculate it before about records that had he no firsthand

1 knowledge of.

2 THE COURT: Sustained.

3 BY MR. LEVIN:

4 Q As part of the effort, the change of the payroll  
5 system, Mr. Leon, did you review the payroll system as it  
6 existed in 2004?

7 THE COURT: You may answer.

8 THE WITNESS: No.

9 BY MR. LEVIN:

10 Q Did you review the payroll system as existed at the  
11 City of Vernon in 2005?

12 A I was not employed -- well, at 2005 or what do you  
13 mean?

14 Q So there was a period of time when you were employed  
15 at the City of Vernon and you were working on transitioning a  
16 system, a payroll system; correct?

17 A Yes.

18 Q And when were you -- when were you personally  
19 working on that transition?

20 A That would be in 2010.

21 Q So in 2010, did you familiarize yourself with the  
22 payroll system that the City of Vernon had in place in 2004?  
23 Is that something you did?

24 MR. JENSEN: Objection, your Honor. It's a vague  
25 question. Familiarize yourself?

1 THE COURT: I'll allow it, but it's a rather vague  
2 question and a vague answer of course.

3 MR. LEVIN: It was just a foundational question.

4 THE COURT: That's why I'm allowing it. Go ahead.

5 THE WITNESS: Yes. If we're referring to how the  
6 information was entered into ADP and then from there, the  
7 check would come out, then, yes.

8 MR. JENSEN: Objection, your Honor. Motion to  
9 strike that answer. He's talking about how the information  
10 was entered into ADP in the period before he was there.  
11 There's no possible way that he could testify to that.

12 THE COURT: Lay a foundation, Mr. Levin.

13 BY MR. LEVIN:

14 Q When you were at City of Vernon in 2010 working on  
15 this transition, what information was in the City of Vernon's  
16 records that described the payroll process in 2004, 2005?

17 A Can you repeat your question?

18 Q When you were working on the transition to a new  
19 payroll system in 2010, what information existed in the City  
20 of Vernon's records as to the nature of the payroll system in  
21 2004, 2005?

22 A Well, nothing had -- nothing has really changed. It  
23 was pretty consistent as far as how information was entered  
24 into ADP, and the documents that existed at the time.

25 MR. JENSEN: Objection, your Honor.



1           THE COURT: I'm going to ask the witness what are  
2 you basing that on? How do YOU know how information was  
3 entered in 2004, 2005.

4           THE WITNESS: Because I was responsible for payroll  
5 in 2010 and the information that was entered into ADP, I  
6 reviewed. So I knew how the information was entered into  
7 ADP, how you could calculate it, and then provide payroll  
8 reports and checks. So even though I was not employed in  
9 2005 or 2004, much of the way that information was entered  
10 into ADP was the same.

11          THE COURT: You're talking about the format of the  
12 information?

13          THE WITNESS: The structure of it. How the  
14 information was entered.

15          THE COURT: Why don't you describe that further.

16          THE WITNESS: Sure. Every department has a clerk  
17 who enters this information online. ADP has a website where  
18 from any computer an individual can enter their hours and  
19 that's what these department clerks would do. They would  
20 enter in all of their hours, and then the payroll clerk would  
21 then review all this information and then verify based on the  
22 information that they entered and compare this to what we  
23 call a payroll certification, which is every department  
24 submitting -- every department head submitting a letter  
25 verifying that the hours that had been submitted for

1 processing for payment are correct.

2 So she would review the supporting documents that  
3 are contained in the payroll certification against the time  
4 that was there in the ADP. If there were any changes or any  
5 questions, she would, you know, make the changes herself, or  
6 have the department head or department clerk clarify the  
7 information. She would then go ahead and finalize that step  
8 and ADP would then -- because there's a deadline that we need  
9 to have this information within that-- take that  
10 information, process, calculate the earnings, process  
11 reports, and then the final product would be reports and  
12 payroll checks.

13 MR. JENSEN: Your Honor, I move to strike that whole  
14 narrative because he's talking about what a clerk did prior  
15 to his experience. He has no ability to testify to that  
16 and --

17 THE COURT: I don't need a further speaking  
18 objection. Mr. Levin, I still don't have foundation for  
19 that. The objection is well taken until this witness can  
20 explain how he knows what a clerk did in 2005.

21 BY MR. LEVIN:

22 Q Mr. Leon, how is it that you became aware of --  
23 well, as a foundational question, Mr. Leon, what was the  
24 period of time in which the City of Vernon had a contractual  
25 relationship with ADP for payroll?

1 A 2004 -- April, 2004 to May, 2011.

2 Q And you started with City of Vernon in what year?

3 A 2008.

4 Q When you began at the City of Vernon in 2008, did  
5 you become familiar with the --

6 A Excuse me. I'm sorry. Let me clarify that. I used  
7 to work for an accounting firm where the City was the client  
8 of the accounting firm, and I actually began working on the  
9 City of Vernon, the client, in 2006 -- January 2006. So I  
10 had a two-year span before I actually began employed by the  
11 City of Vernon in 2008 and I was reviewing this information.

12 Q What was the name of the company you worked for in  
13 2008?

14 A Gurseley Schneider.

15 THE COURT: Could you spell that, please.

16 THE WITNESS: Gurseley, G-u-r-s-e-y. Schneider, S-h  
17 -- excuse me. S-c-h-n-e-i-d-e-r.

18 Q Was Gurseley Schneider a contractor for the City of  
19 Vernon?

20 A Yes.

21 Q What was it that you did for Gurseley Schneider that  
22 brought you into contact with the payroll process at the City  
23 of Vernon?

24 A I was an accountant and I was brought in to help the  
25 City with their accounting, and so what I was doing was doing

1 a lot of the bank -- reviewing a lot of the payroll entries  
2 to make sure they were recorded properly. In order for me to  
3 understand that, I need to familiarize myself with the  
4 documents and just understand the system, understanding the  
5 documents, and how they needed to be recorded into the  
6 system.

7 MR. JENSEN: I'm just going to move to strike too  
8 because this is even -- this new period is after any time  
9 where the relevant documents are that that are in this case.  
10 So to the extent that he is testifying about a different job  
11 that's not ADP about what he did outside -- all of this is  
12 lacking percipient knowledge and trying to sort of boot strap  
13 a bunch of arguments in which are inappropriate.

14 MR. LEVIN: May I address, your Honor?

15 THE COURT: You may.

16 MR. LEVIN: Your Honor, what we're headed to is of  
17 course a foundation for the business records or official  
18 records exception to the hearsay rule. A custodian of  
19 records does not need to have personal knowledge as to the  
20 particular preparation of a document. If that were the rule,  
21 you would never get any business record in because you would  
22 always have to call to the stand the person who actually  
23 prepared it. What you need is a custodian who's familiar  
24 generally, with the process by which records are kept as  
25 opposed to individual records, and so the foundation is to

1 describe a continuous process between 2004 through 2011 and  
2 the lack of any information showing that there had been a  
3 change which clearly would have been apparent to somebody who  
4 is responsible for payroll.

5 MR. JENSEN: But, your Honor, it's not even the  
6 correct time period.

7 THE COURT: One moment. This witness has testified  
8 that his knowledge of the system goes back as far as 2006?

9 MR. LEVIN: That's correct. So far.

10 THE COURT: Okay. Let's see if we can get to 2004,  
11 2005 with this witness.

12 BY MR. LEVIN:

13 Q So Mr. Leon, when you were working for Gurse  
14 Schneider in 2006, did you have the opportunity to review how  
15 the City of Vernon was having its payroll prepared?

16 MR. JENSEN: Objection, your Honor. Again, we're  
17 now several steps removed from the point that he is  
18 supposedly testifying to.

19 THE COURT: Overruled. You may answer.

20 THE WITNESS: Can you repeat your question?

21 BY MR. LEVIN:

22 Q When you were working for Gurse Schneider in 2006,  
23 did you have the opportunity to become familiar with the way  
24 the City of Vernon was having its payroll done?

25 A Yes.

1 Q What type of information did you have access, to  
2 you, that informed you as to how the City of Vernon was and  
3 had been doing payroll?

4 A It's a pretty small city. So I pretty much have  
5 access to many personnel, and I was at a position where I had  
6 direct access to the payroll clerk and as I mentioned  
7 previously, one of my responsibilities was to make sure that  
8 the accounting behind payroll was correct. Even though  
9 necessarily it wasn't the overseeing of the payroll process,  
10 it was the accounting behind it. So in order for me to  
11 understand that, in the process of understanding that, I  
12 became familiar on how the information was provided to  
13 CalPERS -- excuse me. To ADP as well as CalPERS and then in  
14 that process, that's how I became familiar with it.

15 MR. JENSEN: Objection.

16 THE WITNESS: I needed to understand the records  
17 that I was looking at. Who provided them, who were the ones  
18 actually providing the information to be able to determine  
19 how the accounting was -- if it was being done correctly.

20 MR. JENSEN: And, your Honor, I'm just going to move  
21 to strike as far as multiple levels of hearsay. He's  
22 referring to becoming familiar with the payroll clerk as the  
23 basis of his knowledge.

24 MR. LEVIN: Your Honor, that's not hearsay. He did  
25 not testify as to any statement given him by the payroll

1 clerk. So it's not introduced by the truth of the matter  
2 asserted.

3 THE COURT: I don't need further argument. Thank  
4 you. The objection is overruled at this time. I may revisit  
5 that. You may continue.

6 BY MR. LEVIN:

7 Q Mr. Leon, apart from conversations with individuals  
8 like a payroll clerk, were there documents that you had  
9 available to you that gave you insight into how the City of  
10 Vernon had been doing its payroll -- how it had been doing  
11 its payroll?

12 A The payroll registers, pretty much the ADP reports,  
13 they were consistent from 2004 all the way to when I was  
14 responsible for them. Nothing had changed.

15 MR. JENSEN: Objection, your Honor. I move to  
16 strike. He's talking about nothing had changed starting  
17 looking back from 2004 to 2006. The only thing he can  
18 testify to is 2006 forward. He has no idea whether something  
19 changed between 2004 and 2006.

20 THE COURT: I don't know that he has no idea, but he  
21 hasn't testified to that yet.

22 MR. JENSEN: Well, to the extent that he has  
23 testified to that --

24 THE COURT: He has not testified to that yet. We're  
25 in 2006 right now.

1 BY MR. LEVIN:

2 Q Mr. Leon, are you talking about the visual  
3 appearance of documents?

4 A The visual -- yes.

5 Q So you had in 2006, payroll records from 2006, 2005,  
6 and 2004; correct?

7 A That's correct.

8 Q And compare and contract them if you will.

9 A Well, the documents are identical in the sense of  
10 the format, structure. I know that if I needed to go back  
11 without knowing how the information is being entered, if I  
12 knew at the time that I was looking at the payroll  
13 records -- if I go back to 2004, I know that these were  
14 different reports because there were -- a different system  
15 being used, and because there was a different system, there's  
16 a different method of entering information. So unless ADP  
17 had actually completely changed their system, the system is  
18 the same. That continuity, it was the same company and all  
19 the information is entered and processed the same way. This  
20 is an outside company that's publicly traded. They're pretty  
21 much stolid in terms of how the information is entered.

22 MR. JENSEN: I renew my objections, your Honor.

23 THE COURT: Do you have any follow up on that?

24 MR. LEVIN: I do, your Honor.

25 THE COURT: Go ahead.



1 BY MR. LEVIN:

2 Q In 2006, were you familiar with ADP outside of your  
3 work at City of Vernon?

4 A Yes. I worked for several accounting firms where  
5 the clients had ADP has a payroll processing company. So I  
6 was very familiar with ADP. It wasn't something I became  
7 aware of when I was employed by the City of Vernon. So I  
8 know -- I was familiar with the reports from all the  
9 companies that I dealt with.

10 Q At anytime since 2006, had you come aware of any way  
11 that ADP takes payroll data other than somebody going to a  
12 portal and entering it in electronically?

13 A No.

14 Q Apart from the payroll records themselves, did you  
15 have other information available to you in 2006 about how ADP  
16 had been doing payroll for the City of Vernon in 2004,  
17 2005?

18 A Yes. I used to work for a company where I would  
19 also review the timesheets and make sure that it agreed to  
20 what was being entered at ADP.

21 Q In 2006, did you have communications with employees  
22 of the City of Vernon to find out how they had been entering  
23 payroll?

24 A Can you repeat that?

25 Q In 2006, did you have conversations or

1 communications with employees of the City of Vernon as to how  
2 they were doing payroll?

3 A I can't recall specific conversations. I do  
4 remember inquiring, but it would have been at a very general  
5 level.

6 Q Have you ever seen payroll entered at the City of  
7 Vernon?

8 A Yes.

9 Q During the period of time that ADP was doing the  
10 payroll?

11 A Yes.

12 Q When did you first see that happen? When were you  
13 first a witness to that payroll process?

14 A I want to say at the earliest in 2008 when I  
15 actually became responsible for overseeing payroll.

16 Q And from 2006 forward, were there in place policies  
17 at the City of Vernon about the method and timing of doing  
18 payroll?

19 MR. JENSEN: Objection, your Honor. It lacks  
20 foundation and he has no percipient knowledge.

21 THE COURT: Why don't we establish that first, Mr.  
22 Levin.

23 BY MR. LEVIN:

24 Q When you came to the City of Vernon you were  
25 responsible for accounting; correct?

1 A Yes.

2 Q And that including payroll?

3 A That's correct.

4 Q And in your duties of payroll, were you responsible  
5 for insuring that payroll was properly and timely  
6 submitted?

7 A Not when I was reviewing the payroll. I was only  
8 reviewing it to make sure that the accounting behind it was  
9 correct. The actual processing and the timeliness of it, I  
10 was not responsible for that.

11 Q How is it that you became aware of the timing and  
12 submission of payroll data?

13 A Once I became the manager of payroll.

14 Q And that was in what year?

15 A 2008.

16 Q And when you became the manager in 2008, did you do  
17 any investigation or review of records or information in the  
18 City of Vernon to see how that process had been taken place  
19 in the past?

20 MR. JENSEN: Vague as to time, your Honor.

21 Objection.

22 THE COURT: Overruled. You may answer.

23 THE WITNESS: Yes. I remember sitting down with the  
24 payroll clerk and going over her workload, but also asking  
25 her to familiarize me with everything in detail, the whole

1 process, to give me the details, basically the blanks that I  
2 wasn't aware of; the timing.

3 BY MR. LEVIN:

4 Q Based on all your review of information,  
5 conversations, records, did you come across any information  
6 to suggest to you that the entry and manner of payroll at the  
7 City of Vernon had been different with ADP -- different from  
8 the time in which you had actually seen it done in 2008?

9 MR. JENSEN: Objection, your Honor. Vague as to  
10 time.

11 MR. LEVIN: I'll rephrase the question.

12 THE COURT: Thank you very much.

13 BY MR. LEVIN:

14 Q In 2008, when you became payroll manager, you  
15 reviewed systems and records and had conversations to  
16 familiarize yourself with the way that payroll was being done  
17 with ADP; correct?

18 A Yes.

19 Q And in the course of that familiarity process in  
20 2008, did you become aware of any information that suggested  
21 to you that the City of Vernon's relationship with ADP, and  
22 its submission of payroll information to ADP had at any time  
23 been different?

24 A No.

25 MR. LEVIN: I'd like to mark for identification

1 Exhibit 67.

2 THE COURT: All right, and the document behind tab  
3 67 as described in CalPERS exhibit list is marked for  
4 identification as Exhibit 67.

5 (Department's Exhibit 67 was marked for  
6 identification by the Court.)

7 THE COURT: I want to inform you, Mr. Levin, it's  
8 been almost an hour with this witness on direct just that you  
9 know, and as you know, we're getting through two and possibly  
10 part of a third witness today; correct?

11 MR. LEVIN: Possibly, your Honor. I'm very  
12 comfortable that we will not run over our two and a half day  
13 allotment.

14 THE COURT: And, your Honor, at this point, I would  
15 just like to renew my motions in limine to exclude these  
16 documents based on already pending motions in limine. Renew  
17 them based off of hearing the testimony, especially of the  
18 witness.

19 THE COURT: Denied. Continue, please.

20 BY MR. LEVIN:

21 Q Mr. Leon, have you turned to Exhibit 67?

22 A Yes.

23 Q Do you recognize the exhibit?

24 A Yes.

25 Q What are these?

1           A     These are payroll registers from ADP.

2           Q     Are these payroll records -- were these payroll  
3 records something that you found in your work for CalPERS?

4           A     Yes. I did provide these.

5           MR. JENSEN: Can you repeat your answer?

6           THE COURT: Could you repeat your answer, please.

7           THE WITNESS: Yes. I did provide these.

8           THE COURT: I'm sorry. You provided these to whom?

9           THE WITNESS: CalPERS.

10          THE COURT: Thank you.

11         BY MR. LEVIN:

12          Q     To Chris Wall?

13          A     Chris Wall.

14          Q     Were the contents of Exhibit 67 among the documents  
15 that you found on the City of Vernon network?

16          A     Yes.

17          Q     Are you familiar with the City of Vernon's record  
18 keeping practices with respect to ADP payroll records?

19          A     Yes.

20          Q     And how is it that you're familiar with those  
21 practices?

22          A     The reason for that is because when I became -- many  
23 of these records were kept as hard copies in boxes, and there  
24 was really no file structure for them. Once they were pretty  
25 much two years old, they would throw them off to the storage,

1 but onsite there was no filing structure. So what I did is I  
2 created an actual filing structure for the hard copies that  
3 we have, and also the electronic filing structure and I'm the  
4 one that designed that one.

5 Q So if I understand you correctly, ADP payroll  
6 records that are kept by City of Vernon, are kept either on  
7 hard copy or electronic copy; is that right?

8 A That's correct.

9 Q And how is it or -- how has it been determined in  
10 the past; the format in which the ADP payroll records would  
11 be kept by the City of Vernon?

12 MR. JENSEN: Objection, your Honor. Lacks  
13 foundation.

14 THE COURT: Sustained.

15 BY MR. LEVIN:

16 Q The payroll records kept by the City of Vernon  
17 electronically, do you know how they were -- how they were  
18 kept, how they came to be on the City of Vernon's network?

19 A Yes. Well, they were pretty much kept as hard  
20 copies, but when I came on board, what I did is I instructed  
21 the payroll clerk and her assistant to begin copying the  
22 CDs -- every time ADP provided hard copies, they also  
23 provided a digital copy of the reports on a CD. So I had her  
24 copy all of the CDs to the City's network into this filing  
25 structure that I created and so that's how it got there.

1 Q And what year was that?

2 A This was in 2008.

3 Q Prior to 2008, the City of Vernon had a number of  
4 ADP CDs?

5 A Yes.

6 Q Are those CDs something that you've examined  
7 yourself?

8 A Not every document within there, but they were  
9 pretty much consistent. My instructions to the payroll clerk  
10 where to copy the payroll registers. I gave them the names  
11 of how I wanted the names copied over and written, and so the  
12 CDs that we did have -- although she was able to copy them  
13 over. So there was a lot of them that yes, predated me, but  
14 I still had access to them and I still created the filing  
15 structure for those reports.

16 Q In the course of your work as a payroll manager, did  
17 you learn how those CDs came into existence?

18 A Yes.

19 Q What did you learn about the creation of those CDs?  
20 Including how and when they were prepared.

21 A Because when ADP would come and deliver the payroll  
22 checks along with the reports, the CDs would be included in  
23 there. So that's how I was aware that there were CDs.

24 Q When you were a payroll manager, did you become  
25 aware of particular City of Vernon practices or policies as



1 to review of time records before they are entered with ADP?

2 MR. JENSEN: Objection. It's vague as to time.

3 THE COURT: Sustained.

4 BY MR. LEVIN:

5 Q In 2008, when you became payroll manager, did you  
6 become familiar with City of Vernon policies and practices  
7 for reviewing time records before they were submitted to  
8 ADP?

9 MR. JENSEN: Objection, your Honor. Vague as to  
10 time.

11 THE COURT: For the policies and practices in effect  
12 in 2008? I think that's the basis of counsel's objection.

13 MS. LEVIN: We'll start with 2008.

14 THE COURT: Thank you.

15 THE WITNESS: Yes.

16 BY MR. LEVIN:

17 Q What was the source of information that you had for  
18 the policies and practices that were in place as of 2008?

19 A For the practices, it was interviewing the payroll  
20 clerk who was responsible for reviewing the details behind  
21 the data entry. That's where I got the information on how  
22 every department provides a payroll certification letter with  
23 all the supporting documents, meaning leave of absence sheets  
24 and any personnel action forms.

25 Q In 2008, did you also attempt to determine what the

1 policies and practices were of the City of Vernon for  
2 submitting payroll information to ADP in years prior to 2008?

3 MR. JENSEN: Objection. Vague as to which years  
4 prior to 2008.

5 THE COURT: Overruled. You may answer.

6 THE WITNESS: Repeat your question.

7 BY MR. LEVIN:

8 Q In 2008 when you were familiarizing yourself with  
9 the City of Vernon's policies and practices for entering  
10 payroll data, did you investigate or familiarize yourself or  
11 attempt to familiarize yourself with the polices and  
12 practices that had been in place in the years before you  
13 became payroll manager?

14 A Yes.

15 Q And what did you do to familiarize yourself with the  
16 policies and practices that had been in place prior to  
17 2008?

18 A Well, what I would do is access the City's laser  
19 fiche system and research resolutions where they would  
20 approve the certain type of pay or a certain type of pay  
21 practice, any minute orders. So it wasn't just -- I would  
22 also interview the City payroll clerk who had -- who predated  
23 me, who had knowledge of the system, but when it came to  
24 actual practices of the system, I would go rely on  
25 resolutions, minute orders.

1 Q So let's start with 2008 when you were a payroll  
2 manager.

3 A Uh-huh.

4 Q Please describe the process by which time gets  
5 entered by the City of Vernon into the ADP system.

6 A That's done by department clerks. There's a web  
7 portal where every department clerk enters the time for their  
8 department. They then prepared the payroll certification  
9 letter. The department head reviews it and then signs it and  
10 they have to submit this payroll letter by Wednesday of the  
11 prior week in which payroll is processed. So that gives the  
12 payroll clerk sufficient time to review that information  
13 against the time entered on the web portal, and then the  
14 payroll clerk gives the okay to ADP to go ahead and process  
15 that information. ADP would then process, calculate the  
16 earnings, process the reports, provide the payroll checks,  
17 and we would get that in on Tuesday on the phone.

18 THE COURT: Okay. We're taking a 15 minute break.  
19 Off the record.

20 (Recess)

21 THE COURT: Back on the record. Mr. Levin.

22 MR. LEVIN: Thank you, your Honor.

23 BY MR. LEVIN:

24 Q Mr. Leon, when you started as payroll manager in  
25 2008, was there other individuals at the City of Vernon who

1 helped you familiarize yourself with the way that the payroll  
2 records were done at the City of Vernon?

3 A Yes.

4 Q What person or persons did you rely upon for that  
5 information?

6 A The payroll clerk. Her name is Raquel Franco.

7 Q And do you know when Ms. Franco first began working  
8 at the City of Vernon?

9 A Approximately 1995.

10 Q And based on your communications with Ms. Franco,  
11 did you reach a conclusion as to whether the City Vernon's  
12 data time entries with ADP had changed overtime?

13 MR. JENSEN: Objection, your Honor. The question  
14 tries to incorporate multiple levels of hearsay again into --  
15 to try to qualify -- well, it's an objectionable question.

16 THE COURT: I'll allow the witness to testify as to  
17 what he concluded.

18 THE WITNESS: Yes. She would inform me as to what  
19 the practices were, how information was entered, any  
20 questions to give me a historical perspective, I would go to  
21 her and get her experience on the matter.

22 BY MR. LEVIN:

23 Q Was it important to you as a payroll manager in 2008  
24 to know whether the ATP payroll process had changed over  
25 time?

1           A     Yes.  Again, to give me -- a lot of these practices  
2     were already in place before I became aboard.  So I needed  
3     somebody who had knowledge to help me understand the  
4     practices, when they were established, and who were the ones  
5     involved with practicing payroll.  So I needed to know  
6     everyone involved in the process.

7           Q     What are the City of Vernon's policies about keeping  
8     historical payroll records?

9           MR. JENSEN:  Objection, your Honor, as far as  
10    time.

11          THE COURT:  Let's limit it to a time period.

12    BY MR. LEVIN:

13          Q     What are the City of Vernon's policies now about  
14    keeping historical payroll records?

15          A     We do have a retention policy.  I don't have the  
16    duration memorized, but there is one.

17          Q     Are payroll records kept in the ordinary course of  
18    business for the City of Vernon?

19          A     Yes.

20          Q     To your understanding, have payroll records always  
21    been kept copies of them -- withdraw that question.

22                 Has it always been, as far as you know, the practice  
23    of the City of Vernon to keep copies of the payroll records  
24    that are submitted to ADP?

25          MR. JENSEN:  Objection, your Honor.

1 THE COURT: Sustained.

2 MR. LEVIN: I'd like to have marked for  
3 identification Exhibit 68.

4 THE COURT: All right. The document behind tab 68  
5 is marked for identification.

6 (Department's Exhibit 68 was marked for  
7 identification by the Court.)

8 MR. JENSEN: So 67 has not been offered? Is that my  
9 understanding?

10 THE COURT: That's my understanding too. Not yet.  
11 As Exhibit 68.

12 BY MR. LEVIN:

13 Q Mr. Leon, do you recognize Exhibit 68?

14 A Yes.

15 Q And what's Exhibit 68?

16 A A payroll register from ADP.

17 Q Are these copies of ADP payroll registers that you  
18 provided to CalPERS as part of its audit?

19 A It would be part of it, yes.

20 Q Are the payroll records in Exhibit 67 and 68 -- were  
21 those kept in the ordinary course of business by the City of  
22 Vernon at the time they were created?

23 MR. JENSEN: Objection, your Honor. It calls for a  
24 legal interpretation and it calls for an opinion and it's  
25 vague as to time.

1 THE COURT: Overruled.

2 THE WITNESS: They were either kept as a hard copy  
3 or a CD.

4 BY MR. LEVIN:

5 Q There is a server on which the ADP keeps copies of  
6 the payroll records; correct?

7 MR. JENSEN: Objection. Misstates testimony.

8 THE COURT: Why don't you rephrase that.

9 BY MR. LEVIN:

10 Q Is there a server on which ADP keeps payroll  
11 information submitted by City of Vernon?

12 A Yes.

13 Q And describe that server.

14 MR. JENSEN: Objection, your Honor. Describe ADP  
15 server is beyond his ability to describe the computer of  
16 ADP.

17 THE COURT: It may or may not be. We haven't had a  
18 foundation laid.

19 MR. JENSEN: It lacks foundation.

20 THE COURT: Sustained.

21 BY MR. LEVIN:

22 Q Are you familiar with the server on which ADP stores  
23 information submitted by the City of Vernon?

24 MR. JENSEN: And objection. Vague as to what a  
25 server is.

1 THE COURT: Overruled. You may answer.

2 THE WITNESS: Yes.

3 BY MR. LEVIN:

4 Q And how are you familiar with the server on which  
5 the City of Vernon keeps -- that ADP keeps the City of Vernon  
6 payroll records?

7 A Again, the process of verifying a lot of this  
8 information for accounting requires that I look at all sorts  
9 of documents and familiarizing myself how the data moves,  
10 let's say, ADP to the City's books and I speak with the IT  
11 manager and in the process of understanding all of this, I  
12 came to understand that the City has a dedicated server in  
13 its location where ADP actually delves into. We process the  
14 information, and it is kept in that server. ADP then takes  
15 that information and calculates the payroll. From my  
16 understanding, the data that's contained in that server  
17 belongs to the City.

18 Q And how did you reach that conclusion?

19 A The IT manager told me that that that's the City's  
20 data, and I believe in my conversation with ADP because I  
21 have called them in the past, I believe they also said  
22 that.

23 MR. LEVIN: Your Honor, at this time, I move to have  
24 Exhibit 67 and 68 entered into evidence.

25 MR. JENSEN: And your Honor, I object. It lacks



1 foundation. It's hearsay. It doesn't qualify under any of  
2 the exceptions to hearsay. They're offering it for the truth  
3 of the Matter asserted and it lacks -- it lacks any of the --  
4 it lacks satisfying all of the business records exceptions or  
5 the public record act exceptions. In particular, he has not  
6 testified and, he cannot testify, as to how it was prepared  
7 at the time of the act in 2004 and '5 which is required to be  
8 both of those exceptions; and otherwise it's an out of court  
9 statement offered for the truth of the Matter asserted and I  
10 could go on and on. But I think it's objectionable on many  
11 grounds including lack of foundation, lack of authentication.

12 The records that are being offered are apparently --  
13 were not kept in any regular course of business. He said  
14 hard copies were put in storage and then he digitized them  
15 himself. And there was testimony about there being CDs  
16 available, but in the motion in limine in which we submitted  
17 to you, the documents that were provided to us were clearly  
18 paper printouts and not -- not the computerized documents.  
19 And I think for offering these even under the computerized  
20 printout version exception which we previously briefed to the  
21 court, once there has been issues about missing pages and  
22 other defects in it, the person who is offering its burden to  
23 prove that the documents are a clear representation of what  
24 is an accurate representation of this input.

25 Those documents were available apparently at the

1 time that we put the DSI hold letter on both CalPERS and  
2 Vernon, and they were not maintained in electronic form and  
3 here we're offering that -- they're attempting to offer  
4 something that doesn't satisfy any of those exceptions, and  
5 indeed he testified that there are underlying documents, that  
6 he doesn't know about the retention policy which would be  
7 better evidence of what they're supposedly suggesting.

8 THE COURT: All right. Thank you. Mr. Levin, what  
9 are these being offered for?

10 MR. LEVIN: They're being offered to explain why and  
11 how CalPERS reaches the termination of final compensation.  
12 They're not hearsay first of all because they're not being  
13 offered to prove the truth of any information within these  
14 payroll records. In fact, the evidence will show that even  
15 if the particular details of these payroll records are  
16 incorrect, it doesn't matter. In any event, even if there  
17 was some hearsay -- hearsay aspect to these records, the  
18 evidence establishes both the official records exception to  
19 the hearsay rule as well as the business records exception.

20 If your Honor would like additional briefing on this  
21 point, I can provide several published decisions accepting a  
22 company's payroll records as its business records, and we  
23 have on top of it the fact that this is an official record of  
24 a public entity so that you can even eliminate the  
25 requirement under the business records exception of having to

1 have testimony on the sources of information and the method.

2 THE COURT: All right. Well, we discussed this at  
3 an earlier prehearing conference, but I did not get briefing  
4 on that and I would entertain that briefing limited to three  
5 pages, both sides, and I will take the motion to admit  
6 Exhibits 67 and 68 under submission. We'll talk about a  
7 schedule later.

8 (Department's Exhibits 67 and 68 were received  
9 in evidence by the Court.)

10 MR. JENSEN: And your Honor, can I just address this  
11 briefly? If the only reason that these could be offered in  
12 is for some sort of truth of what's stated in here --

13 THE COURT: That's not the only reason, and it will  
14 be addressed in the briefs. Let's move on. Let's move on.

15 BY MR. LEVIN:

16 Q Mr. Leon, back to Exhibit 68 which is in front of  
17 you, in the first column do you see reference to department,  
18 the letters "DEPT" colon?

19 A Yes.

20 Q Based on your familiarity with ADP payroll records,  
21 what is the department refer to?

22 A It refers to a department in the City, and it's  
23 very -- to the way the City's accounting system is kept. The  
24 account -- the expenditure account numbers also reflect these  
25 department numbers as a whole.

1 Q Are you familiar with the various numerical  
2 identifiers for City of Vernon departments?

3 A Yes.

4 Q Where is that information kept?

5 A That's kept in the City's general ledger accounting  
6 system.

7 Q Did you make an effort to go to the -- that City  
8 ledger program and identify the various City of Vernon  
9 departments and their numerical identifiers?

10 A Can you repeat your question?

11 Q Sure. What is the name again of the ledger? Is it  
12 a program? Is it a computer?

13 A That's an accounting -- the general ledger is pretty  
14 much a broad name given to the entire book of the City, and  
15 it consists of expenditure codings that each expense account  
16 has a particular number assigned for it. For the City, it  
17 has -- now it has a three segment number. The first one is  
18 the fund. The second one is the department, and the third is  
19 the object of the expense. These department numbers existed  
20 prior to me, and the way I became familiar with them were by  
21 looking at the general ledger and seeing what, for example,  
22 the first one which is 1002 meant and that's the way I became  
23 familiar with it by looking at the City's accounting system.

24 MR. LEVIN: I'd like to mark for identification  
25 exhibit 81.

1 THE COURT: All right. The document behind tab 81  
2 is marked as described in the CalPERS exhibit list is marked  
3 as Exhibit 81.

4 (Department's Exhibit 81 was marked for  
5 identification by the Court.)

6 BY MR. LEVIN:

7 Q Mr. Leon, do you recognize Exhibit 81?

8 A Yes.

9 Q And what is this?

10 A This is a list of the City's departments. It's a  
11 list that I prepared by extracting this information from the  
12 City's accounting system into Excel just to make it more  
13 presentable, something I provided Mr. Chris Wall.

14 MR. LEVIN: I'd like to offer Exhibit 81 into  
15 evidence.

16 MR. JENSEN: Again, your Honor, this seems like it's  
17 another document insufficiently prepared for litigation. It  
18 looks like a demonstrative exhibit. I don't know if they're  
19 offering it for the truth of the Matter asserted, but these are  
20 different departments and if so, they would have to lay some  
21 foundation, and if so, it lacks foundation and let's just say  
22 that.

23 THE COURT: Overruled. The exhibit is admitted.

24 (Department's Exhibit 81 was received in  
25 evidence by the Court.)

1 MR. LEVIN: I'd like to mark for identification  
2 Exhibit 72.

3 THE COURT: All right. The document behind tab  
4 Exhibit 72 described in CalPERS exhibit list is marked for  
5 identification as Exhibit 72.

6 (Department's Exhibit 72 was marked for  
7 identification by the Court.)

8 BY MR. LEVIN:

9 Q Mr. Leon, do you recognize Exhibit 72?

10 A It appears to be an organizational chart.

11 MR. JENSEN: And objection, your Honor. It's  
12 nonresponsive to the question.

13 THE COURT: Why don't you follow up, Mr. Levin.

14 BY MR. LEVIN:

15 Q Have you seen Exhibit 72 before?

16 A I can't recall, no. The titles are familiar.

17 MR. JENSEN: Your Honor, move to strike the last --

18 THE COURT: Stricken.

19 MR. LEVIN: Mr. Leon, Thank you. No further  
20 questions at this time.

21 THE COURT: All right.

22 MR. JENSEN: My witness?

23 THE COURT: Your witness.

24 BY MR. JENSEN:

25 Q Your Honor, I'd like to do just some document --

1 authenticating some documents.

2 THE COURT: Okay.

3 MR. JENSEN: We have 18 wonderful binders full of  
4 documents. So it might take a few minutes. Can I ask  
5 Mr. Leon to look at those -- they're on the floor in front of  
6 him. May I approach the witness?

7 THE COURT: Please do.

8 MR. LEVIN: If -- your Honor, if I may for the  
9 record. I had offered a stipulation before that if a document  
10 came from the City of Vernon and was provided to CalPERS, we  
11 would stipulate to it's authenticity. We'd save time that  
12 way. So I don't know if that offer is still available.

13 MR. JENSEN: But there are some other documents that  
14 we would not stipulate to their admission and authenticity  
15 and authentication on foundation. So that's why we have to  
16 just broadly familiarize himself with it, because there's  
17 some documents that were offered that were clearly  
18 objectionable. So may I approach the witness?

19 THE COURT: One moment. I just want to understand.  
20 The documents that you're about to show the witness, some of  
21 those Mr. Levin has admitted -- has agreed to a stipulation  
22 to their authenticity?

23 MR. JENSEN: Mr. Levin made a very broad statement  
24 just like he just has that all of the documents that Vernon  
25 offered to CalPERS, he stipulated to their authenticity and

1 admissibility and we couldn't do that, because some of those  
2 documents that were offered we believe lack foundation or may  
3 not be authentic or otherwise inadmissible. So that's why I  
4 didn't accept his stipulation.

5 THE COURT: All right. Let's go through them.

6 MR. JENSEN: Okay, and I think I can just do it  
7 broadly, but you understand I'm not trying to be an  
8 obstructionist. I'm just trying to --

9 THE COURT: Well, is there a category of documents  
10 that the two of you agree on?

11 MR. JENSEN: We're offering in -- there are minutes  
12 of the City of Vernon --

13 THE COURT: We're going to go off the record and  
14 have counsel discuss this for the next five minutes.

15 (Discussion off the record)

16 THE COURT: Let's go back on the record. Mr. Levin?

17 MR. LEVIN: Yes, your Honor. The parties have  
18 discussed evidentiary admission issues. CalPERS agrees to  
19 the admissibility of all City of Vernon resolutions, ordinances,  
20 City minutes, City charter, and codes. Mr. Jensen and I will  
21 prepare a written stipulation that identifies by name and  
22 exhibit number those particular documents that respondent  
23 wants to admit.

24 MR. JENSEN: And your Honor, I accept that  
25 stipulation, and it will allow us to get more quickly into



1 the issues, but the documents -- the City of Vernon documents  
2 that would otherwise be authenticated by the witness have  
3 been stipulated to.

4 THE COURT: Very good.

5 MR. JENSEN: Thank you, your Honor. So I'm sorry.

6

7

CROSS-EXAMINATION

8 BY MR. JENSEN:

9 Q Can I ask you to state your name?

10 A Sure. Joaquin Leon.

11 BY MR. JENSEN:

12 Q Mr. Leon, thank you for coming here today. Let me  
13 just turn your attention to Exhibit 67.

14 MR. JENSEN: And your Honor, I'm just going to -- I  
15 believe these documents are inadmissible. So I'm going to  
16 elicit some testimony on them only on a proviso that we  
17 reassert all of our challenges to it, but you haven't made a  
18 ruling yet. So I feel like I have to elicit this testimony.

19 THE COURT: Go right ahead.

20 MR. JENSEN: Thank you, your Honor.

21 BY MR. JENSEN:

22 Q Mr. Leon, how many exempt employees are in the City  
23 of Vernon?

24 A Exempt?

25 Q Do you know what an exempt employee is?

1 A Yes.

2 Q What is an exempt employee?

3 A An exempt employee is an employee who is exempt from  
4 FLSA overtime laws.

5 Q And what is your understanding of the work week of  
6 an exempt employee?

7 A The work week? There is none in terms of when he's  
8 paid. There is none.

9 Q And are there any requirements that you are aware of  
10 -- that you are aware of for the City of Vernon and its  
11 exempt employees?

12 MR. LEVIN: Objection. Foundation.

13 THE COURT: Overruled.

14 THE WITNESS: Yes. The FLSA has stated what those  
15 requirements are.

16 BY MR. JENSEN:

17 Q And what is your understanding of those  
18 requirements?

19 A Well, one of them has to deal with the monthly  
20 compensation that has to be a fixed amount, pretty much  
21 there's a threshold. There's also the level of decision that  
22 the employee has to have of authority, and there's other ones  
23 that I haven't memorized, but I if ever need to know what  
24 those are, I know where to go to get that information.

25 Q Is the City administrator position at the City of

1 Vernon an exempt position?

2 A For the FLSA, yes.

3 THE COURT: The FLSA?

4 THE WITNESS: Yes. The Fair Labor Standards Act.

5 THE COURT: Thank you. Just so the record is clear.

6 MR. JENSEN: Thank you, your Honor.

7 BY MR. JENSEN:

8 Q And how many hours -- is an exempt employee paid by  
9 the hour?

10 A At the City of Vernon, yes.

11 Q And how is that so?

12 A It's determined by the salary resolution, the salary  
13 resolution has only allowed two classes to be paid on a  
14 salary basis which is the counsel members and the City  
15 attorney. All other employees are paid on an hourly basis,  
16 and it's stated on the salary resolution.

17 Q And have you reviewed the salary resolutions or  
18 other documents relevant to Mr. Malkenhorst?

19 A There is nothing specific to him. The salary  
20 resolution is pretty broad, and it identifies the two classes  
21 that are paid on a salary basis.

22 Q And are you familiar with any salary or hours  
23 requirements for the City administrator during  
24 Mr. Malkenhorst's time?

25 A No.

1 MR. JENSEN: Your Honor, may I approach the witness?

2 THE COURT: You may.

3 BY MR. JENSEN:

4 Q Mr. Leon, I'm going to ask you to review some  
5 documents here, and I'm going to try to do this quickly your  
6 Honor, but there a number of documents. Can you look at the  
7 first exhibit book there. This is CalPERS exhibits actually.  
8 Sorry.

9 THE COURT: Oh, thanks for clarifying.

10 BY MR. JENSEN:

11 Q Yes. I'm sorry. Okay. Let me just turn your  
12 attention to Exhibit 24 which is resolution 5294, Bates  
13 stamped COVMALSR 11,892 to 11,934.

14 THE COURT: Okay. I'm going to mark this as Exhibit  
15 24?

16 MR. JENSEN: Yes. Have all of these -- these have  
17 already been admitted, I believe, because these are CalPERS  
18 exhibits.

19 THE COURT: One moment. I want to look at the range  
20 again. Yes. You're right.

21 MR. JENSEN: Thank you, your Honor.

22 BY MR. JENSEN:

23 Q So if I can turn your attention to page 23 -- which  
24 is page 23 which is Bates stamped 11,914 and actually, it's  
25 the prior page, 2 it starts on 11,913. Can you look at that

1 for a second and familiarize yourself with that. Do you see  
2 subsection C at the bottom of page 22?

3 A Yes.

4 Q And can you read it to the court?

5 A Section C?

6 Q Yes.

7 A It says "All personnel in the City  
8 administrator/City clerk department except the City  
9 administrator/City clerk, the director of environmental  
10 health required to work hours in additional to those  
11 regularly established for their respective job  
12 classifications shall be paid for such additional work at  
13 their assigned hourly rate."

14 Q And did you review this document when you were  
15 providing information to CalPERS about the City  
16 administrator/City clerk position?

17 A I can't recall this resolution specifically.

18 Q Have you seen this language before?

19 A Yes.

20 Q And what does this language mean to you?

21 A It's requiring that every employee within this  
22 department with the exception of these two positions are  
23 required to work hours in addition to those -- to those -- to  
24 those regularly established for their respective job  
25 classification.

1 Q I'm sorry. Can you clarify that?

2 A It's pretty much saying that they're going to be  
3 paid on an hourly basis with the exception of the City  
4 administrator slash City clerk and the director of  
5 environment health. Every employee under this department  
6 will be paid on an hourly basis.

7 Q Except for?

8 A The City administrator/City clerk and director of  
9 environmental health.

10 Q And in your understanding, what position did Mr.  
11 Malkenhorst have at this time?

12 A I wouldn't know.

13 Q Whoever occupied the City administrator/City clerk  
14 position, were they paid an hourly rate under this provision?

15 A No.

16 Q And yet you just testified that everyone was paid  
17 under an hourly rate?

18 A With the exception -- according to this resolution,  
19 with the exception of these two positions everyone within  
20 this department would be paid on an hourly rate.

21 We're just talking about the City administrator/City  
22 clerk. Can you clarify your understanding as --

23 A Sure. That's what my understanding of the current  
24 existing salary resolution whether that changed back when  
25 this was in place -- then that was the law back then.

1 Q Thank you. So what you're saying is, that at this  
2 time period in -- effective July 1st, 1986, there was no  
3 hourly requirement or rate payable to the City  
4 administrator/City clerk; is that correct?

5 MR. LEVIN: Objection. Foundation.

6 THE COURT: Sustained.

7 BY MR. JENSEN:

8 Q So what -- what is the date of Exhibit 24?

9 THE COURT: Do you want to refer the witness to a  
10 page?

11 MR. JENSEN: You can -- it's either on the first  
12 page -- the last -- the --

13 THE WITNESS: June 6, 1986 and that's on page 11,  
14 915.

15 THE COURT: So exhibit -- that's page 24 of the this  
16 exhibit.

17 MR. JENSEN: Your Honor, it might help if we can use  
18 this board here just as a demonstrative exhibit so we can  
19 clarify the time period.

20 THE COURT: Go ahead.

21 MR. JENSEN: Can I erase that and ask the witness --  
22 may I approach?

23 THE COURT: You may.

24 MR. JENSEN: Thank you. I'm just going to erase  
25 this, and I'm going to ask you to -- does this work? Is this

1 what I do?

2 THE COURT: I don't know.

3 MR. JENSEN: We'll see if I -- it's written on the  
4 other side. If I ruin this, then I'm going to owe the State  
5 a new board. Can I ask the witness to just write down on a  
6 piece of paper, and then -- these calculations because I  
7 can't use the board, and then we can show it to counsel  
8 afterwards and use it as a demonstrative exhibit?

9 THE COURT: Any objection, Mr. Levin?

10 MR. LEVIN: I have no objection to the process. I'm  
11 just not quite sure what it is he wants to enter.

12 THE COURT: I'm not sure either.

13 MR. JENSEN: I'm just offering it, just trying to  
14 let you know what I'm going to try to do. I'm going to offer  
15 him a piece of paper, blank piece of paper, which I will mark  
16 as a proposed exhibit. I think we went all the way  
17 through -- we went through 5F's. So we're going to do this;  
18 5G.

19 THE COURT: All right.

20 MR. JENSEN: So if you guys just want to take a look  
21 at this? I just wrote 5G on the top of it. I'm going to  
22 hand it to the witness, and this is a blank piece of paper  
23 that has 5Gs on the top of it. I'm going to hand him a pen  
24 and ask him to write down his understanding of when this was  
25 applicable that there was no -- actually, the exercise we're



1 going to do is the period over which there was no hourly  
2 requirement for the City administrator.

3 BY MR. JENSEN:

4 Q Is that your understanding of what this section --

5 A If I were to approach this the way I would at work,  
6 I would not base it just solely on this resolution. I would  
7 do further research to see when this ascended.

8 Q I'm just asking you to -- you know, in your job do  
9 you look at resolutions?

10 A Yes.

11 Q And in your job, when you looked at this resolution  
12 by itself, what would you make of this resolution?

13 A Well, I would have to read it to get the entire  
14 context. I wouldn't just read one subsection.

15 Q Did you read these resolutions before you provided  
16 them to CalPERS?

17 A As I mentioned, there was a broad request made for  
18 all the resolutions from 1992 to 2010. I could not read all  
19 of them.

20 MR. JENSEN: Your Honor, should we let the witness  
21 read it so that he understands what it is?

22 THE COURT: If you need him to read it to the answer  
23 the question?

24 MR. JENSEN: I just need him to read that section.  
25 If you need to read more than that in order to understand

1 it --

2 THE WITNESS: What page was it again?

3 MR. JENSEN: It's page 23 and just for your --

4 THE COURT: On the bottom right it will say exhibit  
5 24-23.

6 THE COURT: Actually, 22 to 23, section 19,  
7 subdivision C.

8 THE WITNESS: I'm just trying to get the context.

9 THE COURT: Sure.

10 MR. YIM: Your Honor, if I could just interpose an  
11 objection; while the witness is looking at this. That the  
12 paragraph of this section speaks for itself and as the  
13 witness mentioned, he has no foundation or recollection  
14 concerning what happened at this period of time to attest for  
15 what was actually in place during this period of time.

16 MR. JENSEN: And your Honor, I agree. He doesn't  
17 have any ability to testify to what happened at that time.  
18 So to the extent that that's the objection, I'm not trying to  
19 elicit his opinion about what happened at that period of  
20 time, but I am trying to get his opinion about what the  
21 foundation is for his supplying these documents to CalPERS  
22 and what he purports them to mean and that -- these are  
23 CalPERS exhibits, your Honor, and interpreted through  
24 Mr. Leon who provided them to CalPERS is his testimony.

25 THE COURT: Did you interpret this document for

1 CalPERS?

2 THE WITNESS: No, I did not.

3 THE COURT: All right. Then I'm going to sustain  
4 the objection.

5 MR. JENSEN: Okay, and so, your Honor, I would like  
6 him though to --

7 BY MR. JENSEN:

8 Q Did you review any of these resolutions?

9 A When I was doing the multiple position schedules,  
10 yes.

11 Q So you did review these resolutions then?

12 A Not all of them. I don't -- can't recall  
13 specifically which ones they were. Whatever the matter at  
14 hand was, I reviewed those resolutions. I can't identify a  
15 particular resolution. I wouldn't be able to do that.

16 Q What was the earliest state that you suggested that  
17 there was in that document that you supplied to CalPERS  
18 regarding quote, "multiple responsibilities"?

19 A The earliest?

20 Q The earliest date.

21 A I can't recall.

22 Q You can't recall the date -- earliest date. So I'll  
23 just have to look for it. In the mean time, can you read  
24 that document while I locate this? In document 82, you  
25 reviewed resolutions from 1977 apparently.

1 A Exhibit 77?

2 Q Exhibit 82.

3 A Where are you getting the date from?

4 Q These are just dates that you put on here.

5 THE COURT: Yes. Please identify for the witness  
6 where you're looking.

7 MR. JENSEN: Okay. May I approach the witness?

8 THE COURT: You may.

9 BY MR. JENSEN:

10 Q Okay. This is in Exhibit 82. So this is -- you  
11 mentioned here -- sorry about that. It's 1977 and then '78  
12 all the way through 2006.

13 A Yes.

14 Q Does that refresh your recollection?

15 A Yes.

16 Q And so did you review resolutions from 1977 -- each  
17 resolution from 1977 there after?

18 A No. Just that specific one which I identified as a  
19 footnote, which is B. No. I'm sorry. D.

20 Q So you didn't review any of the resolutions in  
21 between these dates?

22 A That's correct. What I did, just to clarify the  
23 schedule is that, I went to the City's laser fiche system and  
24 you're able to do keyword searches through out all the minute  
25 orders and laser fiche documents -- excuse me. Resolution

1 documents, and what I was doing is looking for keywords, such  
2 as Malkenhorst, the word "point," and titles that were given  
3 to me in this schedule.

4 Q Who gave them to you?

5 A Well, as I mentioned, I first started off with a  
6 schedule that was given to me by the -- in the city clerk  
7 department. They had a list they were keeping who had  
8 positions especially on that top -- for those top positions,  
9 and so I took that and I did my search.

10 Q Did you hold multiple positions?

11 A Yes.

12 Q Did CalPERS threaten to reduce your pension?

13 MR. LEVIN: Objection.

14 THE COURT: Sustained.

15 BY MR. JENSEN:

16 Q Okay. Let's get back to this. The date you have  
17 here is 1988. So let's find the resolution from 1988.  
18 Actually, let's find the one for 1981. I'm sorry. So that  
19 would be in that first book and that's where -- so actually,  
20 let me just turn your attention to Exhibit 14 first of all.  
21 On your Exhibit 82, you mentioned here that you added the  
22 title of -- on this you documented that he was chief  
23 executive officer. Have you looked at Exhibit 14 before?

24 A Yes.

25 Q Okay. Can you look at section one on the bottom of

1 14 that goes onto the top of the second page of 14?

2 A Yes.

3 Q And can you read that out loud?

4 A "City counsel, section one. City counsel of the  
5 City of Vernon hereby creates the position of chief executive  
6 officer and appoints the City administrator, Bruce V.  
7 Malkenhorst to serve as the chief executive officer of the  
8 electrical department in which said Mr. Malkenhorst shall  
9 serve in said capacity with no increase in compensation, and  
10 shall have the duties and responsibilities described in  
11 Exhibit A which is attached hereto and made apart of here  
12 of."

13 Q And what is your understanding of "no increase in  
14 compensation"?

15 MR. LEVIN: Objection. Foundation.

16 MR. YIM: Objection. Relevance.

17 MR. JENSEN: His understanding of no compensation is  
18 this document --

19 THE COURT: I'll allow the question.

20 THE WITNESS: He's receiving no additional  
21 compensation for the added position.

22 BY MR. JENSEN:

23 Q So in your capacity of -- your current capacity as  
24 payroll administrator, how would you input this information  
25 in your ADP reports or your payroll reports?

1 A ADP reports?

2 Q In your payroll reports.

3 A Well, he has an added responsibility. It's not a  
4 position that we would -- well, what I did in the past is we  
5 had two -- any positions that the employee had, we would add  
6 it to his employee profile. The thing is with the current  
7 payroll module that we have is it creates some kind of  
8 confusion. So we opted out to exclude it, but since he's not  
9 receiving any form of compensation for that position, we will  
10 not add it to the payroll module.

11 Q So currently, if under your current rules, his  
12 position would not show up in the payroll records?

13 A That's correct.

14 Q And so why -- why -- you had some experience with  
15 ADP? How would it have worked in the ADP?

16 A If we're referring to calculations and his earnings  
17 being reflected in our general ledger, that is correct. If  
18 you're referring to his personnel action form, that's -- his  
19 personnel file, that's something totally different. His  
20 personnel file should reflect that he was appointed to this  
21 position.

22 Q And my question -- that's interesting, but my  
23 question was if you received this information while you were  
24 working in ADP, how would you input that on the ADP sheets?

25 A We wouldn't. He's not being paid. Since he --

1 since there's no change in compensation, there's nothing to  
2 change.

3 Q So now let me point your attention to Exhibit 66 and  
4 67. Again, I renew my objections to these documents coming  
5 into evidence but based on -- I'd like you to take a look at  
6 it and see --

7 MR. LEVIN: Do you mean 67 and 68?

8 MR. JENSEN: The ADP documents

9 THE COURT: Those are 67 and 68 for the record.

10 MR. JENSEN: 67 and 68. I apologize.

11 BY MR. JENSEN:

12 Q Are you familiar with the department codes  
13 associated with the electric department?

14 A Yes.

15 Q And are those reflected on the ADP reports?

16 A The departments? Is that what you said?

17 Q Is the electric department reflected on the ADP  
18 reports for Bruce Malkenhorst?

19 A Yes.

20 Q And what term is associated with the electric  
21 department?

22 MR. LEVIN: Objection.

23 THE WITNESS: Can you repeat your question?

24 BY MR. JENSEN:

25 Q With reference to --



1 THE COURT: Before you continue counsel, just so I'm  
2 clear, where on this report in Exhibit 67 is the department  
3 code for the electric department reflected for Respondent  
4 Malkenhorst? Which line? What's the number?

5 THE WITNESS: 9,000 and that's --

6 THE COURT: So that's the last entry on the first  
7 page for Mr. Malkenhorst?

8 THE WITNESS: Yes.

9 THE COURT: Thank you.

10 MR. JENSEN: And just with reference to 67, do you  
11 mind, your Honor, if I walk through each one of those

12 THE COURT: I don't.

13 BY MR. JENSEN:

14 Q Okay. So Mr. Leon, I'm going to just turn your  
15 attention to Exhibit 67 on page one. You said electric  
16 department is 9,000; Is that correct?

17 A Yes. That's Light & Power.

18 Q And how many hours does it purport to attribute to  
19 the electric department?

20 A 16.

21 Q And what sort of pay does it purport to attribute to  
22 the electric department?

23 A \$3,954.74.

24 Q And based on your understanding of the resolution;  
25 is that correct?

1 MR. LEVIN: Objection. Foundation.

2 THE COURT: Overruled.

3 THE WITNESS: We're talking about two different time  
4 periods. This is 1981 and this payroll report is in 2004.

5 BY MR. JENSEN:

6 Q So how -- is your understanding that he was -- what  
7 is your understanding?

8 A It's all based on the accounting. How they are  
9 choosing to account for this. You're asking me what my  
10 interpretation of the resolution on its own means. My  
11 interpretation of the resolution by itself is that he is not  
12 receiving additional compensation for this.

13 Q And so there would have to be a resolution in  
14 between that time and another time where he is paid for it,  
15 there is a salary designated for it to be reported; is that  
16 correct?

17 A That's correct.

18 MR. JENSEN: Okay. Your Honor, this is going to  
19 take some time. I'm sorry. This is -- you know, this is  
20 every year. We have to look through each one of those  
21 resolutions, and it will show that the pay is included, but  
22 the pay is zero and so we have to walk through these  
23 exhibits. I just want to tell you what it says.

24 THE COURT: You can point the witness to the  
25 exhibits you would like him to review, and he can review them

1 and then we can go back on the record and ask your  
2 question.

3 MR. JENSEN: I'd rather do it on the record if  
4 that's okay. We can do it quickly.

5 THE COURT: Well, his review of the record doesn't  
6 have to be on the record.

7 MR. JENSEN: Well, it's -- but it's probably easier  
8 for me just to show it to him and then get through it that  
9 way if that's okay?

10 THE COURT: Okay. Go ahead.

11 BY MR. JENSEN:

12 Q Let's first go through these ADP reports if you  
13 don't mind while we're here at 67. So on the second page of  
14 Exhibit 67 -- does the electric department show up there?

15 THE COURT: I'm sorry. Which page?

16 MR. JENSEN: On the second page of 67.

17 THE COURT: Thank you.

18 THE WITNESS: Yes.

19 BY MR. JENSEN:

20 Q And where does it show up?

21 A The last entry of Mr. Malkenhorst, 9,000.

22 Q And how many hours?

23 A Well, if I may expand on this?

24 Q No. Please answer the question.

25 A Say that again.

1 Q How many hours were associated with that?

2 A 14 hours.

3 Q And how much pay is associated with that?

4 A \$3,460.40, and then it has additional compensation  
5 of \$494.34 and \$25.

6 Q And let me turn your attention to page four of  
7 Exhibit 7. Is there an entry for the electric department  
8 associated with Mr. Malkenhorst on that page?

9 A Yes.

10 Q And what is that?

11 A 16 hours and the pay is \$3,954.74.

12 Q And moving onto page five. Are there amounts  
13 associated with the electric department on this page?

14 A Yes.

15 Q And what are those?

16 A It's \$4,819.84 and \$25.

17 Q And are there hours associated with it?

18 A Yes.

19 Q And what are those hours?

20 A 19 and a half hours.

21 Q Let me turn your attention to the next page. Are  
22 there amounts -- hours associated with Mr. Malkenhorst with  
23 the electric department on this page, page six?

24 A Yes.

25 Q And what are those?

1           A     52.

2           Q     And how much pay is associated with it?

3           A     \$13,238.40.

4           Q     And turn to page seven.  On page seven, are there

5 amounts associated with the electric department for

6 Mr. Malkenhorst on that page?

7           A     Yes.

8           Q     And what are those?

9           A     52 hours.

10          Q     And how much is the pay?

11          A     \$13,238.40 and \$25.

12          Q     And on page eight, are there amounts associated with

13 the electric department for Mr. Malkenhorst?

14          A     Yes.

15          Q     And what are those hours?

16          A     39.

17          Q     And what is the pay?

18          A     \$9,928.80.

19          Q     And on page nine, are there amounts associated with

20 the electric department for Mr. Malkenhorst?

21          A     Yes.

22          Q     And what are the hours?

23          A     52 hours.

24          Q     And what is the pay?

25          A     \$13,238.40.

1 Q And on page 10, are there amounts associated with  
2 the electric department for Mr. Malkenhorst?

3 A Yes.

4 Q And what are those -- what are the hours?

5 A 45 hours.

6 Q And how much is the pay?

7 A \$11,583.60.

8 Q And on page eleven, are there amounts associated  
9 with Mr. Malkenhorst for the electric department?

10 A Yes.

11 Q And what are those hours?

12 A 52 hours.

13 Q And what is the earnings?

14 A \$13,238.40.

15 Q And on page twelve, are there amounts associated  
16 with the electric department for Mr. Malkenhorst?

17 A Yes.

18 Q And what are those hours?

19 A 45 and a half.

20 Q And what is the pay?

21 A \$11,583.60.

22 Q And on page 13, are the amounts associated with Mr.  
23 Malkenhorst for the electric department?

24 A Yes.

25 Q And what are the hours?

1 A 45 hours.

2 Q What is the pay?

3 A \$11,583.60.

4 Q And exhibit 15 -- on page 14 of Exhibit 67, are  
5 there amounts associated with Mr. Malkenhorst for the  
6 electric department?

7 A Yes.

8 Q And what are those hours?

9 A 52.

10 Q And what is the pay?

11 A \$13,238.40.

12 Q And on page -- Exhibit 68, page one. Are there  
13 amounts associated with the electric department for  
14 Mr. Malkenhorst?

15 A Yes.

16 Q And what the hours?

17 A 45 and a half.

18 Q And what is the pay?

19 A \$11,583.60.

20 Q And on page two of Exhibit 68?

21 A Yes.

22 Q What are the hours associated with Mr. Malkenhorst  
23 in the electric department?

24 A 45 and a half.

25 Q And what is the pay?

1 A \$11,583.60.

2 Q And on page three of Exhibit 68?

3 A Yes.

4 Q Are there amounts associated with Mr. Malkenhorst in  
5 the electric department?

6 A Yes.

7 Q And what is the hours?

8 A 52 hours.

9 Q And what is the pay?

10 A \$13,238.40.

11 Q And on page four of Exhibit 68. Are the amounts  
12 associated with Mr. Malkenhorst in the electric department?

13 A Yes.

14 Q And what are those amounts?

15 A \$13,238.40.

16 Q And how many hours?

17 A 52.

18 Q And on page five of Exhibit 8, are there amounts  
19 associated with Mr. Malkenhorst for the electric  
20 department?

21 A Yes.

22 Q What are the hours?

23 A 52.

24 Q What is the earnings?

25 A \$13,238.40.



1 Q And on page six of Exhibit 68, are there amounts  
2 associated with Mr. Malkenhorst for tasks associated with the  
3 electric department?

4 A Yes.

5 Q And what are those?

6 A 45 and a half.

7 Q And what is the pay?

8 A \$11,583.60.

9 Q And on page seven of Exhibit 68, are there amounts  
10 associated with Mr. Malkenhorst for duties of the electric  
11 department?

12 A Yes.

13 Q And what are those amounts?

14 A 52 hours.

15 Q And what is the pay?

16 A \$13,238.40.

17 Q And on page eight of Exhibit 68?

18 A Yes.

19 Q Are there amounts associated with Mr. Malkenhorst  
20 for duties of the electric department?

21 A Yes.

22 Q And how many hours?

23 A 52.

24 Q And what is the pay?

25 A \$13,238.30.

1 Q And on page nine of Exhibit 68, are there amounts  
2 associated with Mr. Malkenhorst for performing the duties in  
3 the electric department?

4 A Yes.

5 Q And what are the hours?

6 A 52.

7 Q And what are the earnings?

8 A \$3,238.40.

9 Q Let the record reflect it's \$13,238.40. On page ten  
10 of exhibit 68, are there amounts associated with  
11 Mr. Malkenhorst for performing duties in the electric  
12 department?

13 A Yes.

14 Q And what are those amounts? What are the hours?

15 A 52.

16 Q And what is the pay?

17 A 13,238.40.

18 Q And on exhibit -- page 11 of Exhibit 68, are there  
19 amounts associated with Mr. Malkenhorst performing the duties  
20 of City -- of the electric department?

21 A Yes.

22 Q What are the hours?

23 A 52.

24 Q And what is the earnings?

25 A 13,238.40.

1 Q And on page 12 of Exhibit 68?

2 A Yes.

3 Q Are there amounts associated with Mr. Malkenhorst  
4 for performing duties in the electric department?

5 A Yes.

6 Q And what are the hours?

7 A 52.

8 Q And what is the pay rate?

9 A 13,238.40.

10 Q And on page 13 of Exhibit 68, are there amounts  
11 associated with Mr. Malkenhorst for performing duties in the  
12 electric department?

13 A Yes.

14 Q And what is the hours?

15 A 45 and a half.

16 Q And what is the pay?

17 A \$11,583.60.

18 Q And on page 14 of Exhibit 68, are there amounts  
19 associated with Mr. Malkenhorst performing duties in the  
20 electric department?

21 A Yes.

22 Q And what are the hours?

23 A 52.

24 Q And what is the pay rate?

25 A 13,238.40.

1 Q And on page 15 of Exhibit 68, are the amounts  
2 associated with Mr. Malkenhorst's work in the electric  
3 department?

4 A Yes.

5 Q What are the hours?

6 A 26.

7 Q And what is the pay rate?

8 A 6,919.20.

9 Q So now let's start from the -- that period where he  
10 was first appointed to the electric department starting in  
11 Exhibit 14. Can I draw your attention back to that?

12 A Yes.

13 Q Okay. So let's actually go to Exhibit 15, just the  
14 next exhibit. I'll draw your attention to section one where  
15 it says "appoints Bruce Malkenhorst to service as treasurer  
16 of the City of Vernon." Do you see that?

17 A Yes.

18 Q And so at this point, he was serving as treasurer  
19 from that point forward; is that correct?

20 A From what date again?

21 Q From the date of this resolution 4/8/10?

22 A The top of the paragraph says that the minute order  
23 appointed Malkenhorst in July 24th, 1978, and that this  
24 resolution, I believe, that does is to reaffirm that  
25 appointment.

1 Q Let's say from -- resolution dated 1981. From there  
2 on, was Mr. Malkenhorst serving as treasurer to your  
3 knowledge?

4 A From '82 forward.

5 Q '81 forward?

6 A I know as of '81 he was.

7 Q Was there any pay associated with performing that  
8 position?

9 MR. LEVIN: Objection. Foundation.

10 BY MR. JENSEN:

11 Q Based on this resolution or the other documents that  
12 you have reviewed, is there any pay associated with the  
13 treasurer position?

14 A I can't recall. I would need to review my  
15 schedules.

16 Q Okay. Let's move to Exhibit 16. Do you know what  
17 this exhibit is?

18 A The salary resolution for the fiscal year '82.

19 Q And for purposes of moving forward, do you see any  
20 pay increase in here for Mr. Malkenhorst for serving as the  
21 electric department?

22 A It's quite a lengthy resolution. I would need to  
23 read it.

24 Q Well, then, where would it be if there was -- would  
25 it be a section in which it designates that he was paid money

1 for serving in that position?

2 A Normally, those kind of resolutions are stand alone  
3 resolutions. The salary resolution is a broad resolution,  
4 pretty much publicizing or publishing the monthly salary for  
5 the entire city. So something that specific would not  
6 necessarily be found.

7 Q It actually says in Exhibit 4 -- let's look at that?  
8 Okay. So it's on Exhibit 16, page 20. Can you review that  
9 for a second? It's Bates stamped SOVML --

10 THE COURT: We don't need the Bates stamps. Let's  
11 refer to these exhibit page numbers.

12 MR. JENSEN: Page 20 and the first paragraph.

13 THE COURT: That's the page where at the top it says  
14 schedule roman numeral four?

15 MR. JENSEN: Yes, your Honor.

16 BY MR. JENSEN:

17 Q Is it your understanding that Mr. Malkenhorst was  
18 appointed to serve as chief executive officer of the electric  
19 department?

20 A Yes.

21 Q And so with respect to the chief executive officer  
22 salary schedule, maybe you can read that paragraph?

23 A It says, "The City administrator slash City clerk  
24 shall serve as the chief executive officer in the Light &  
25 Power department and the compensation for said position is

1 included in the compensation established for the position of  
2 City administrator/City clerk department, schedule seven."

3 Q So what is the compensation that Mr. Malkenhorst  
4 would receive for serving as chief executive officer in the  
5 Light & Power?

6 MR. YIM: Objection. Vague as to time Objection.

7 THE COURT: I'm sorry?

8 MR. YIM: Vague as time.

9 MR. LEVIN: Objection. Foundation.

10 THE COURT: Overruled. You may answer.

11 THE WITNESS: That would be following the hourly  
12 rate given for the City administrator slash City clerk.

13 BY MR. JENSEN:

14 Q What was his -- what was his compensation as chief  
15 executive officer of the Light & Power department?

16 A For this resolution? For this particular one?  
17 4817?

18 Q Yes. What's your understanding of 4817?

19 A My understanding is that his compensation for this  
20 position is added -- as it states here, is included in the  
21 compensation established for the position of the  
22 administrator slash City clerk department which is following  
23 schedule seven.

24 Q What was his position for serving as chief executive  
25 officer in the Light & Power?

1 A What was his position?

2 Q What was his compensation for serving as chief  
3 executive officer of Light & Power?

4 A It doesn't say. It says that it's included. It  
5 doesn't give a specific --

6 Q Let me just point back to Exhibit 14, and you just  
7 told us that there was no compensation for serving as chief  
8 executive officer. Do you want to review that again?  
9 Exhibit 14, page one and two.

10 A Uh-huh.

11 THE COURT: Is that a yes?

12 THE WITNESS: Yes as to what? Can you repeat your  
13 question?

14 BY MR. JENSEN:

15 Q What was his compensation for serving as chief  
16 executive officer of the Light & Power department?

17 A As of when?

18 Q With reference to Exhibit 14.

19 A Yes.

20 Q What was his compensation for serving as chief  
21 executive officer of Light & Power?

22 A There was no additional --

23 MR. LEVIN: Objection. Objection, your Honor. It's  
24 uncertain to me whether he's asking the witness to testify  
25 based on personal knowledge, or if he's just asking the



1 witness to read the document. So on that basis, lack of  
2 foundation. I'll object.

3 MR. JENSEN: I think he has articulated that they're  
4 holding multiple jobs and that these are -- multiple  
5 concurrent positions, and then he has testified that if there  
6 was no compensation, they shouldn't show up in the ADP  
7 reports and CalPERS as using these ADP reports or presuming  
8 that -- the stipulating of hours attached to it.

9 THE COURT: But Counsel, you have already gone  
10 through Exhibit 14 with this witness.

11 MR. JENSEN: Right.

12 THE COURT: He has already testified that it  
13 reflects no compensation. Why are we going over that ground  
14 again? I don't see a reason for that.

15 MR. JENSEN: Okay. That's fine. So let's move  
16 forward.

17 BY MR. JENSEN:

18 Q With your review of this Exhibit 16, page 20, where  
19 does it specify the compensation for performing the chief  
20 executive officer of Light & Power?

21 A In schedule seven.

22 Q And what part of schedule seven shows that he is  
23 paid for --

24 A It's included in the City administrator slash City  
25 clerk position.

1 THE COURT: And we are looking at page 33 now of  
2 Exhibit 16.

3 BY MR. JENSEN:

4 Q And so at this point, if you were running the ADP  
5 reports, how would you report his compensation knowing these  
6 facts?

7 A I would need to have further instruction.

8 Q Based on your experience and the review of these  
9 documents that are proposed to you, how would you prepare the  
10 ADP reports?

11 A I'm not quite understanding the question because  
12 there's two different -- there's two different things.

13 Q Would you have separately listed the electric  
14 department on an ADP report at that time?

15 A If I received a personnel action form telling me  
16 this is the allocation of the earnings, then yes.

17 Q If it says there's no compensation paid for it?

18 A Well, the thing is this resolution, which is a month  
19 later, after the resolution that you mentioned; it does state  
20 that there is -- his compensation is included in this. So as  
21 I mentioned earlier, I just don't look at a resolution and  
22 leave it at that. I do further research to see if there's  
23 another resolution that proceeds the previous one. So this  
24 one which is a month later says that the chief executive  
25 officer in the Light & Power department and the compensation

1 for said position is included. So I would need to do further  
2 research, ask people whether his compensation increased since  
3 the last time he was appointed to that position to see  
4 whether it did go up. So I would need to look at other  
5 resolutions to see, yes, his compensation did go up, let's  
6 say as an example, 2,000 which would reflect that added  
7 responsibility.

8 Q So any pay increase over a year is associated with  
9 that job responsibility? Is that what you're saying?

10 A No. That's why I said I would need to speak to  
11 whoever drafted the resolution. I would need to look at any  
12 contracts that may have existed. I would need to gather more  
13 information.

14 Q So in other words, are you postulating that there  
15 might be a resolution that attributes a salary to the chief  
16 executive officer position for the electric department?

17 A There might be a contract.

18 Q Are you postulating there's some document that  
19 should exist which would tell you that there is pay  
20 associated with that position or in order to include on the  
21 ADP reports?

22 A Yes. There would have to be something in writing.

23 Q And if there is no document --

24 A Uh-huh.

25 Q -- then it would not be included as a separate

1 position?

2 A As far as how the practice was done then?

3 Q Okay. Let me just ask you, if there's no document  
4 that designates a salary for the chief executive officer  
5 position of the electric department, then there would be no  
6 salary attributed to that position; is that correct?

7 A That's correct.

8 Q Have you found in your search of the documents any  
9 document that attributes any pay to the chief executive  
10 officer position for Light & Power for Bruce Malkenhorst?

11 A I think we just covered a lengthy list attributing  
12 to an amount to that position.

13 Q You're talking about the ADP reports.

14 A You said any documents.

15 Q No, no. Any document that establishes pay for that  
16 position, resolution?

17 A So what you're asking, just to clarify your question  
18 if I may, is there a resolution or a minute order that carves  
19 out that amount that specifically says, for this position,  
20 this is how much we're going to pay?

21 Q Yes. That is -- is there such a document?

22 A If it does, then I didn't find it. I wouldn't know.  
23 I did not find it.

24 Q Okay. So the ADP reports themselves are not  
25 evidence that he received compensation for that position

1 where there is a separate pay for that position; is that  
2 correct?

3 MR. LEVIN: Objection. Lacks foundation. Calls for  
4 a legal opinion.

5 THE COURT: Overruled.

6 THE WITNESS: Can you repeat your question?

7 BY MR. JENSEN:

8 Q The ADP reports themselves don't establish pay for  
9 hours for that position, for the chief executive officer  
10 position; is that correct?

11 A When you say "ADP reports," what reports are you  
12 referring to?

13 Q The ADP reports in 67 and 68 aren't authority for  
14 establishing compensation for those positions; is that  
15 correct?

16 A I would not know.

17 Q You just testified there needs to be a contract,  
18 resolution, or an ordinance that establishes, designates some  
19 pay for performing that position; is that correct?

20 A When I said this should be a document, I was  
21 referring -- in my mind, I was thinking of a personnel action  
22 form, something instructing the payroll clerk or me that we  
23 need to make a change in the system to assign a pay to that  
24 particular position. If I need to clarify my answer, then  
25 I'll do that now.

1 Q Did you find any of those documents that would  
2 establish a salary or a pay for the chief executive officer  
3 position or any position in the electric department for Bruce  
4 Malkenhorst?

5 A I can't recall. I don't think that I did.

6 Q You did not?

7 A No.

8 Q And so are the ADP reports themselves authority for  
9 establishing hours for compensation for that chief executive  
10 officer of the Light & Power department?

11 A I don't know the rules and guidelines. You're  
12 asking me to make a determination based on their policies.

13 THE COURT: You're asking the witness, and I'm  
14 reconsidering the objection to come to a conclusion about the  
15 way -- or the meaning of that evidence.

16 MR. JENSEN: Okay.

17 THE COURT: I'm going to sustain the objection.

18 MR. JENSEN: I'm sorry. So you're going to -- can  
19 you clarify?

20 THE COURT: This witness cannot testify to the  
21 evidentiary value of the ADP reports.

22 MR. JENSEN: Okay. So basically, are you excluding  
23 them?

24 THE COURT: I'm not excluding anything.

25 MR. JENSEN: Okay. I'm sorry. He's -- he --

1 THE COURT: If you're asking this witness whether as  
2 a matter of evidence if the ADP reports establish hours or  
3 compensation for the CEO position, that's a legal question.

4 MR. JENSEN: Oh, I wasn't trying to get a legal  
5 determination.

6 THE COURT: Do you want to rephrase your question.

7 BY MR. JENSEN:

8 Q Okay. When your reporting payroll, what documents  
9 do you look at to establish the positions and compensation  
10 due to an individual?

11 A The salary resolutions and personnel action forms  
12 that establish that individual.

13 Q And in your position of payroll reporting --

14 A Uh-huh.

15 Q -- would you have reported the -- a separate  
16 position for -- associated with the electric department for  
17 Mr. Malkenhorst based on the record that you have here?

18 A No.

19 THE COURT: We're breaking for lunch. We'll  
20 reconvene at 1:30.

21 (Lunch recess)

22 THE COURT: Back on the record. Go ahead,  
23 Mr. Jensen.

24 MR. JENSEN: Thank you, your Honor. May I approach  
25 the witness just to pick up where we left off?

1 THE COURT: You may.

2 BY MR. JENSEN:

3 Q Mr. Leon, can I ask you to direct your attention to  
4 Exhibit 16, and in particular, page 33 of Exhibit 16.

5 MR. JENSEN: Your Honor, may I approach the witness?

6 THE COURT: You may.

7 BY MR. JENSEN:

8 Q Mr. Leon, I'm going to come just to make sure you're  
9 on the right page. Great. Okay. Right before the break,  
10 you testified that you -- as I recall and you'll correct me  
11 that you believe that the appropriate pay rate for the City  
12 administrator was included in schedule seven as City  
13 administrator, City clerk; is that correct?

14 A That's correct.

15 Q Okay. I want to move onto exhibit 17 and turn your  
16 attention to page 22 of Exhibit 17, and on the first  
17 paragraph, could you take a moment to read the chief  
18 executive officer.

19 A Okay.

20 Q What is your understanding of that language?

21 A That the compensation for the chief executive  
22 officer position is included in the compensation with the  
23 position of City administrator and City clerk.

24 Q Do you have any evidence that -- or that the  
25 compensation is more than zero?



1 A Evidence?

2 Q Did you have any document or resolution or minute or  
3 contract that indicated that there was amount attributable  
4 for the CEO position in the electric department to either the  
5 City administrator or to Mr. Malkenhorst?

6 A I didn't come across to any document.

7 Q So I'll turn your attention to page 36 of that  
8 document. So what would be the appropriate pay rate for that  
9 position?

10 A The City administrator?

11 Q Yes.

12 A \$6,235 per month.

13 Q And if you worked at Vernon at this period and you  
14 were using the ADP reports, what amount would you -- how  
15 would you report this?

16 A Well, this would be an hourly rate or at least a  
17 biweekly rate.

18 THE COURT: I beg your pardon? What was the last  
19 thing you said?

20 THE WITNESS: For a biweekly rate, depending on how  
21 the salary resolution determines the calculation would be.  
22 That's how it would be paid.

23 BY MR. JENSEN:

24 Q So let's just turn to page 38 and schedule seven,  
25 second paragraph down.

1           A     You said 38?

2           THE COURT:   37.

3           MR. JENSEN:   Page 38 of Exhibit 17?

4           THE COURT:   The last page I have is page 37.

5           MR. JENSEN:   Oh, you know what?  Let me just show  
6 this to counsel.  This is page 38.  It was missing and I made  
7 copies of it.  I didn't know if it was missing from  
8 everyone's --

9           THE COURT:   Let's go off the record.

10          (Recess)

11          THE COURT:   Mr. Jensen, you have just asked me to  
12 include at the end of Exhibit 17 a page 38.  I have shown it  
13 to counsel.  Counsel, do you have any objections.

14          MR. LEVIN:   No objection.

15          THE COURT:   Okay.  Mr. Yim?

16          MR. YIM:     No objection.

17          THE COURT:   All right.  Then the page that has just  
18 been added shall be included as part of Exhibit 17, and it is  
19 now also in the witness's notebook.

20          MR. JENSEN:   Thank you, your Honor.

21          THE COURT:   Go ahead.

22   BY MR. JENSEN:

23           Q     Then, Mr. Leon, can I just turn your attention to  
24 the second written paragraph there.

25           A     Okay.

1 Q And is this similar to the paragraph in the prior  
2 resolutions?

3 A Yes.

4 Q And what is your understanding of this paragraph?

5 A Any additional work will be assigned at their  
6 assigned hourly rate --

7 Q What about for the City --

8 A -- with the exception of City administrator, City  
9 clerk.

10 Q So what is the position of the City administrator?  
11 What is your understanding of this position?

12 MR. LEVIN: Objection. Vague.

13 THE COURT: Sustained.

14 BY MR. JENSEN:

15 Q With respect to this document, does the City  
16 administrator have -- is he an exempt employee?

17 A Exempt from what?

18 Q Under the FLSA and the other law, there seems to  
19 be -- do you understand what an exempt employee is?

20 A Yes.

21 Q What is an exempt employee to your understanding?

22 A In my understanding an exempt employee is exempt  
23 from the FLSA in terms of overtime, the amount of hours they  
24 need to work to be subject for overtime pay.

25 Q And are exempt employees paid at the hourly rate?

1 A Yes.

2 Q Are exempt employees have a set number of hours they  
3 have to work?

4 A To clarify what I said is, the way our accounting  
5 system -- the way our payroll module is set up is that even  
6 though they work, let's say more than the 80 hours that are  
7 reported biweekly, we still pay them the 80 hours. So in the  
8 system, we have them as an hourly rate.

9 Q Do they keep timesheets?

10 A No, they don't. Not the exempt employees.

11 Q I'm sorry. Can you clarify?

12 A Well, in general you're saying they don't keep  
13 timesheets, but in the City, we keep -- we don't have -- we  
14 don't clock in, but we do report hours on the days that they  
15 work. So for me, I'm considered exempt. If you look at my  
16 payroll record as it's recorded in the system, you'll see so  
17 many hours for each day that I worked.

18 Q And when is that established?

19 A When? Each pay period is established -- was  
20 established by salary resolution many years ago before I was  
21 around.

22 Q When is -- when is the percentage of hours allocated  
23 to each department established?

24 A I don't know.

25 Q Is it established as part of the budgeting

1 process?

2 A In terms of?

3 Q Is the number of hours -- the allocation of the  
4 hours established as part of the budgeting process once a  
5 year?

6 A I'm not understanding your question.

7 Q Are you involved in the budgeting process?

8 A Yes.

9 Q What is your understanding of how exempt employees  
10 hours are distributed across departments?

11 A Well, currently, it's based on the department's  
12 understanding the amount of time the individual is spending  
13 on their departments. If they that their cost is significant  
14 and it needs to extend to more than just one department, then  
15 they will allocate based -- based on their understanding of  
16 that portion.

17 Q And how is that done?

18 A I don't know specifically how each department head  
19 does it, giving an amount at the end or during the budget  
20 process. Such individual cost should be allocated to these  
21 departments and in this manner.

22 Q So it's a cost allocation method; is that correct?

23 A Yes.

24 Q It is not an hourly rate method?

25 A You're --

1 Q Let me clarify. Is it an indication of how many  
2 actual hours an individual worked in any department?

3 MR. YIM: Calls for speculation. Objection.

4 MR. LEVIN: Join.

5 THE COURT: Do you understand the question pertains  
6 to your own personal knowledge of how this is done? Do you  
7 understand that?

8 THE WITNESS: No.

9 THE COURT: Okay. Why don't you rephrase your  
10 question.

11 BY MR. JENSEN:

12 Q In your personal knowledge, do you understand how  
13 costs are allocated over different departments?

14 A No. How our department -- how it derives that -- I  
15 don't know.

16 Q Do you understand the concept of allocation of costs  
17 over departments?

18 A Yes.

19 Q And what is the concept of allocation of costs over  
20 the department?

21 A Well, it's based on activity factors. I studied  
22 accounting. I'm an accountant. So I know how costs could be  
23 allocated. It could be based on hours. It could be based on  
24 a lot of different factors. So how were those factors  
25 determined by the department, I don't know.

1 Q Let me ask you a question, when is it done?

2 A It's during the budgeting process.

3 Q And is it by percentage?

4 A Yes.

5 Q Is it by hours worked in that department?

6 A Currently it's by percentage, and the way the system  
7 is design, our current system, is that it takes the salary as  
8 a whole and based on these percentages, it just applies to  
9 those percentages. So the hours are not factored in.

10 Q The hours are not factored in?

11 A Not in the current system.

12 Q Were the hours in your knowledge for exempt  
13 employees ever factored in?

14 A To the budgeting process? If they were, I am not  
15 aware of that.

16 Q Do you know if there's any timesheets for  
17 Mr. Malkenhorst?

18 A I don't know.

19 Q And are there some, in your experience, costs that  
20 are -- which costs are allocated across departments?

21 A Salaries is one of them.

22 Q Is overhead a cost?

23 A Yes.

24 Q And why are they allocated across departments?

25 A Those are the departments that absorb or benefit

1 from those costs.

2 Q And are you aware of enterprise funds?

3 A Yes.

4 Q And why are costs allocated across different  
5 departments that are enterprise funds?

6 A That's an accounting rule on an accounting basis.

7 Q Can you explain why they're done though?

8 A The reason is you're trying to match your cost to  
9 the actual departments that incurred the cost, and you also  
10 want to match the earnings that -- excuse me -- the revenue  
11 derived from those activities to the cost to that.

12 Q But are they future projections?

13 A It's based off of historical activity.

14 Q When you're making these percentage allocations  
15 across departments for overhead, are they future predictions,  
16 or are they future allocations of events that have not yet  
17 occurred?

18 A Well, currently, it's the way they see an employee  
19 currently absorbing those costs. If an employee will be  
20 reclassified, and they know this individual is going to spend  
21 more time in this department than another, than it's a fact  
22 that they know starting next fiscal year, this is how we're  
23 going to do it.

24 Q Can an employee work in one job that's allocated  
25 across different departments?



1           A     Within the same fund, yes.  Meaning Light & Power is  
2 fund 55, and within fund 55, we have department 9,000 which  
3 is administration, and then you have other -- if they're  
4 working, yes, you can, but if they're going to allocate that  
5 cost to a different fund which is considered a different  
6 entity, I would question why.  Why are you going to do that?  
7 What's the basis of that?  There has to be a reason why that  
8 individual's cost is being allocated to a different  
9 department, that if he doesn't want it in that department, we  
10 have to find out.

11          Q     But there are people who have single jobs that are  
12 allocated to multiple departments; is that correct?

13          A     Within the same fund, yes.

14          Q     And what do you mean but "fund"?

15          A     Fund -- this is another accounting term.  Fund is  
16 considered a different entity, like a separate business where  
17 costs are accounted for separately under this business  
18 entity, this fund.  So we have the Light & Power fund, and we  
19 have the general fund and these costs are classified  
20 separately.

21          Q     And what fund was -- are you aware of the fund from  
22 which Mr. Malkenhorst was paid?

23          A     Yes.  He was paid both from Light & Power, in the  
24 general, and looking at these documents, it looks like the  
25 RDA as well.  Which are three separate -- it could be

1 considered, like, three separate entities.

2 THE COURT: Would you explain that last  
3 abbreviation? RDA did you say?

4 THE WITNESS: RDA, redevelopment agency.

5 BY MR. JENSEN:

6 Q And do have you any evidence of that that he was  
7 paid from three different funds?

8 A The payroll records, the ADP payroll register  
9 reflects that.

10 Q Where would the checks come from?

11 A I would need to do research to know that.

12 Q Has any check -- are the checks drawn from the  
13 general fund?

14 A Currently, yes.

15 Q And do you have any knowledge of them ever being  
16 drawn from a different fund?

17 A Just to give you --

18 Q Just answer the question.

19 THE COURT: Just just answer the question.

20 THE WITNESS: Yes.

21 BY MR. JENSEN:

22 Q No, no. Answer the question. Has a payroll check  
23 from the City of Vernon ever been drawn from anything other  
24 than the general fund?

25 A Yes.

1 Q And which payroll check has been drawn out of the  
2 general fund?

3 A The payroll account which is funded through the  
4 Light & Power fund.

5 Q The payroll account --

6 A Yes.

7 Q -- is not part of the general fund?

8 A It is and it's funded by Light & Power.

9 Q So where's the evidence of that?

10 A You can look at the bank statements, and you'll see  
11 every payroll, Light & Power, which is separate fund,  
12 transfers money over into the general fund to the Light &  
13 Power account.

14 THE COURT: Hold on a minute. Let him finish his  
15 answer.

16 BY MR. JENSEN:

17 Q So let's do this math again. Let's start -- start  
18 from this process. So where does the Light & Power transfer  
19 its money?

20 A Into the payroll account.

21 Q And where is the payroll account?

22 A In the general fund.

23 Q It's in the general fund?

24 A Yes.

25 Q So it's in the general fund?

1 A That's correct.

2 Q So it's not in the separate account?

3 A The accounting behind that though is --

4 Q No, no. Listen. You're talking about fund sources.

5 A Uh-huh.

6 Q Okay. No --

7 THE COURT: One moment. Let him ask his question.

8 We're going to speak one at a time. The court reporter only

9 has two hands.

10 BY MR. JENSEN:

11 Q Okay. The money is in the electric department; is  
12 that correct?

13 A Yes.

14 Q How often are transfers made to the general fund?

15 A Almost -- by week, biweekly.

16 Q How long has that practice to your knowledge?

17 A Since day one that I've been there.

18 Q And do have any knowledge of it prior to that  
19 time?

20 A No.

21 Q Have you understood in the past that there was one  
22 transfer annually from the Electric Power to the general  
23 fund?

24 A No.

25 Q So you have no knowledge of the transfer of funds

1 prior -- what was the date that you first got knowledge of  
2 the transfer of the money?

3 A Some time in 2006 when I was reviewing the  
4 accounting, and that was part of it because the -- yes. You  
5 have -- you're talking about two separate things. You have  
6 the transfer of funds, but you also have to account for it,  
7 and like I said, you're dealing with three different  
8 entities. You have to account for it separately.

9 Q Let me ask you a question, where was the payroll --  
10 what fund was the payroll paid from?

11 A The general fund.

12 Q All of the payroll was paid from the general fund?

13 A Yes.

14 Q There was never a check written to Mr. Malkenhorst  
15 for a payroll check directly from the electric department?

16 A During my tenure, I've never seen it.

17 Q Do you have any evidence, anything in here, that  
18 there was a transfer from the electric department of payroll  
19 to Mr. Malkenhorst?

20 MR. YIM: Objection. Calls for speculation.

21 BY MR. JENSEN:

22 Q Any of it.

23 THE COURT: Do you have any knowledge of that?

24 THE WITNESS: Of? Can you repeat your question?

25 ///

1 BY MR. JENSEN:

2 Q Do you have any evidence or knowledge or documents  
3 of a check written for payroll from the electric department  
4 to Mr. Malkenhorst?

5 MR. YIM: Same objection.

6 THE COURT: Overruled.

7 THE WITNESS: No.

8 BY MR. JENSEN:

9 Q And to your knowledge, all of the payroll was from  
10 the general fund itself?

11 A That was the final result.

12 Q Okay, and you just said that you said it was okay to  
13 have multiple departments as long as they were paid from the  
14 same fund; is that correct? Is that your testimony?

15 A We're talking about two different things.

16 Q Was that your testimony that it could be across  
17 different departments as long as it was paid from the same  
18 fund?

19 A That was my testimony and to clarify --

20 THE COURT: Just answer the questions. Mr. Levin  
21 has follow up questions for you that he can ask you.

22 BY MR. JENSEN:

23 Q Okay. Are you familiar with the charter provisions  
24 for accounting?

25 A No.

1 Q Did you review the City charter as far as its  
2 accounting provisions?

3 A There are a lot of resolutions I read that the  
4 charter that defines it, sometimes yes.

5 Q Let me just briefly -- I'll get back to the other  
6 thing. I just want to quickly ask him to review -- okay.  
7 Hold on a second. Okay. I'm sorry. It is Exhibit 29. Can  
8 you just briefly look at that and we'll move on? Actually, a  
9 couple of pages just because we're here. If you can just  
10 look at page 24 of Exhibit 29?

11 A Yes.

12 Q The section three, budget contents?

13 A Yes.

14 Q And it says -- maybe you can just read 3A?

15 A "The estimate of the revenues and expenditures for  
16 each City department for the ensuing fiscal year."

17 Q And so what is your understanding of the budget --  
18 this charter's direction for the budget?

19 A That it would contain estimates of revenues and  
20 expenditures for each department for the coming year, fiscal  
21 year.

22 Q And so was this consist with what your understanding  
23 of why there was monies allocated to different City  
24 departments?

25 A It's part of it, yes.

1 Q I just want to turn your attention back on that same  
2 exhibit to page 19. Actually, let's first move to page 18  
3 for a second. Have you --

4 A Exhibit --

5 Q Exhibit 29. Yeah. Did you review the charter in --  
6 when you were providing documents to CalPERS?

7 A I'm not sure if it was one of the documents they  
8 requested. I don't recall.

9 Q Are you familiar with the terms of the charter?

10 A Not everything, no.

11 Q Let me just turn your attention to the next page to  
12 Exhibit 29, page 19 goes into 20, and it says "the  
13 compensation for City administrator may be set by the City  
14 counsel." Do you see that?

15 A What paragraph?

16 Q On the top of page 20 and then it goes into duties.  
17 Did you review this section at all when you were providing  
18 documents? In particular, section four, the last sentence  
19 there says "The specific duties of the City administrator may  
20 by specified by ordinance, resolution or order of the City  
21 counsel."

22 A No. I can't recall.

23 Q And then let me just turn your attention to section  
24 seven in the next page. It says "other positions." Did you  
25 read that?



1 A I can't recall.

2 Q So maybe you can just read that, and let me know  
3 what your understanding of that is.

4 THE COURT: Which section are you having him read?

5 MR. JENSEN: I'm sorry. It's section seven on page  
6 21 of Exhibit 29.

7 BY MR. JENSEN:

8 Q Can you read it out loud so the court reporter can  
9 get it?

10 A "City counsel may appoint the City administrator to  
11 any other office in the city and direct the City  
12 administrator to carry out the duties of that office or any  
13 other position of employment with the City in addition to his  
14 or her duties as City administrator."

15 Q And what does that mean to you?

16 A That City counsel could appoint other positions to  
17 the City administrator.

18 Q And so the City administrator position is acting in  
19 other positions; is that correct?

20 A That's correct.

21 Q So it's not a question of them appointing Bruce  
22 Malkenhorst to those other positions. It's the City -- the  
23 City administrator position is acting in those other  
24 positions; is that correct?

25 A That's correct.

1 Q Would that make a difference to you?

2 A In terms of?

3 Q If he is holding one job, the City administrator,  
4 and the City is appointing that position to other positions,  
5 you're not appointing him to the other positions, it's the  
6 position holding other positions. does that make sense to  
7 you?

8 A Yes.

9 MR LEVIN: Objection. Argumentative.

10 THE COURT: Overruled.

11 BY MR. JENSEN:

12 Q Okay. Let's keep going on this other thing. I'm  
13 going to pull you back to this electric department business,  
14 and we can hopefully finish that. So can I turn your  
15 attention to actually, Exhibit 18. It's in the other binder.  
16 Have you looked at Exhibit 18 at all when you were supplying  
17 information to CalPERS?

18 A Have I reviewed this particular resolution? I can't  
19 recall.

20 Q Okay. So can I just quickly ask you to look at page  
21 eight of Exhibit 18?

22 A Okay.

23 Q And section 2.7-3. Can you read that out loud?

24 A "City clerk administrator is hereby appointed to  
25 serve as a City clerk and shall have the powers and duties

1 provided for in the government code."

2 MR. JENSEN: And your Honor, I want to just alert  
3 you that this language in here where it says "clerk  
4 administrator" was subsequently corrected as being a typo.  
5 So it should be the City administrator, but it's in the  
6 documents. So with respect --

7 THE COURT: Well, you recognize that what you just  
8 told me is not evidence.

9 MR. JENSEN: Right. I just wanted to alert you to  
10 it, and then I'll follow up. There's a lot of balls in the  
11 air here.

12 BY MR. JENSEN:

13 Q So looking at this language here, was it the  
14 position, "City administrator" that was serving as City  
15 clerk, or was it Bruce Malkenhorst who was separately  
16 appointed?

17 MR. YIM: Objection. Vague and ambiguous.

18 THE COURT: Do you understand the question?

19 THE WITNESS: Not really.

20 BY MR. JENSEN:

21 Q Looking at this document, if you were in your  
22 experience of putting together payroll sheets --

23 A Uh-huh.

24 Q -- how would you designate this -- this language?

25 A Well, I would say that the City administrator is

1 being appointed to the City clerk position.

2 Q And do you see any compensation associated with  
3 that?

4 A Not in this section.

5 Q And if there wasn't any compensation associated with  
6 it, how would you include this in the payroll report?

7 A Well, if there was none, then going back, based on  
8 how much time they're spending. Even though it doesn't have  
9 any compensation, the department might decide, well, even  
10 though he's not being compensated for that particular  
11 position, he is performing tasks of a City clerk and that  
12 incurs cost. So they may want to allocate a portion of his  
13 earnings to that department. So we're talking about two  
14 different things.

15 Q So now what you're doing is -- you're doing cost  
16 accounting?

17 A Yes.

18 Q Okay. Which is different than hours worked in the  
19 position; is that correct?

20 A That's correct.

21 Q Can you explain to the court the difference?

22 A Well, the difference is the percentage. An  
23 individual may work -- well, they kind of go hand and hand.  
24 You can't pay an individual -- an individual may work 80  
25 hours, let's say, but there's no timesheet. There's no --

1 unless the employee is actually keeping a very specific --  
2 very specific track of how many hours you're working for that  
3 department, there's no way to find out concretely. He could  
4 pretty much just give an estimate we feel this is how much  
5 time he's spending in this department, but there is an  
6 acknowledgement that there's time being spent.

7 Q What position is he working in?

8 A Here it's saying the City clerk.

9 Q What position is his job?

10 A Both. The City administrator and City clerk.

11 Q So let me just parse your logic a little bit. I'm  
12 working -- this is a hypothetical. I'm working full time in  
13 the finance department as deputy treasurer and that's in the  
14 finance department?

15 A Yes.

16 Q I'm making, say, \$5,000 a month. The City says to  
17 me, Jensen, hey, we need some personnel work done. They're  
18 not going to pay me any more, but is personnel a separate  
19 department?

20 A Yes.

21 Q And so they say listen, Jensen, you have to work an  
22 extra 20 hours a week, but we're not going to pay you any  
23 more. It's in your job as deputy treasurer?

24 A Uh-huh.

25 Q So I was working -- I was getting paid \$5,000 a

1 month beforehand on the ADP; right?

2 A Uh-huh.

3 THE COURT: Is that a yes?

4 THE WITNESS: Is that a yes to -- I'm confirming  
5 with --

6 THE COURT: You have to confirm vocally so the court  
7 reporter can take it down.

8 THE WITNESS: Okay his question was more --

9 MR. JENSEN: Actually, can we just do it on paper?  
10 This will be helpful, I think, to the court.

11 THE COURT: Go ahead.

12 BY MR. JENSEN:

13 Q So Mr. Leon, if can you go up and use that wonderful  
14 board Mr. Levin just brought in and just mark it some kind of  
15 exhibit. Write some number on the top, like, say, five Is or  
16 something like that so we know what it is. So because, say,  
17 June 1st I'm working as -- if you can just write June 1st,  
18 2014. Let me get you a better pen because that is not a good  
19 one.

20 MR. JENSEN: Your Honor, may I approach?

21 THE COURT: You may.

22 BY MR. JENSEN:

23 Q This is a green Sharpie. So if you can just rewrite  
24 that. So say I'm in your position. You're deputy  
25 treasurer?

1 A Yes.

2 Q So just write deputy treasurer, and for these  
3 purposes, let's say I make \$5,000 a month, and what  
4 department would that be in?

5 A It would be under the treasurer department.

6 Q And what number is the treasurer department?

7 A 1015.

8 Q And in the budget process, what is your fiscal  
9 year?

10 A June. July or June.

11 Q July 30th. So let's say at the end of the fiscal  
12 year, the City comes to you and says -- comes to me and says  
13 Jensen, you got a take on an extra job. We're not going to  
14 pay you any more, still going to call you deputy treasurer,  
15 but you've got to work an extra 20 hours in -- an extra --  
16 make it simple 40 hours in the -- doing personnel. Still  
17 \$5,000. How would you -- under your method, how would you  
18 write that up?

19 A At that time, I would determine how much this cost I  
20 would put over into the City clerk -- personnel.

21 Q Write a payroll slip out like you would for ADT for  
22 these purposes.

23 A I'm not following. Sorry.

24 Q Now that there's extra work done, title remains the  
25 same, extra duties, same pay. How would you -- how would you

1 change those numbers so that it's -- so that it's appropriate  
2 with your methodology. Can you write it down?

3 A The decision would have to come from the department  
4 head, whether they want to absorb the cost or not. They  
5 might say just keep the cost under treasury and nothing would  
6 be done.

7 Q Just tell me what I just -- an extra 40 hours in the  
8 personnel department?

9 A If it's exempt, it doesn't matter.

10 Q So you would not change the -- you would not change  
11 the allocation at all?

12 A There's more involved than what you're actually  
13 wanting me to do because it's not as simple than what --

14 Q Then explain that then.

15 THE COURT: Mr. Jensen, allow him to finish speaking  
16 before you go to your next question.

17 MR. JENSEN: Okay. Sorry.

18 THE COURT: Thank you.

19 THE WITNESS: Whoever is going to make that  
20 decision, has to realize they're only paying him \$5,000 a  
21 month. If they want to not recognize that he's taking on  
22 additional responsibilities, whether it's 20 hours more, 10  
23 hours, 5 hours, it doesn't matter. He's exempt. It comes  
24 back to what we're saying, it doesn't matter hours he has  
25 worked. He's exempt. He could work 100 hours a week. He



1 could work 20 hours a week. He's exempt. He's being paid  
2 \$5,000 in a month. So now the determination has to come  
3 whether they want to allocate his expense to the personnel  
4 department. If they don't, than nothing is going to be  
5 drafted as far as a personnel action form or resolution as to  
6 this cost. If they do, then somebody has to be instructed to  
7 do that, and if we're being instructed to allocate a portion  
8 of his earnings, whether it's 20, 10, however many hours,  
9 whatever that cost is, we have to receive either a personnel  
10 action form or direction from somebody above telling us how  
11 much they want to be allocated to the personnel department.

12 Q And Bruce Malkenhorst's case --

13 A So when you're asking me -- I'm sorry. So when  
14 you're asking me how would you do it, there's more to it than  
15 just how we do it.

16 Q Finish this example. If -- if -- first of all, let  
17 me ask you this question, is there any information in any --  
18 in any of the documents outside of the payroll, ADP payroll  
19 reports that Mr. Malkenhorst's costs were allocated over  
20 different departments?

21 A I didn't see them if there are.

22 Q You didn't see any. So the only information you  
23 have is the ADP reports?

24 A Yes.

25 Q So now let's just finish this example. So if you

1 can just draw a line under that, and then new fiscal year  
2 because the department -- well, first of all, the charter  
3 says that the costs have to be allocated over different  
4 departments; is that correct?

5 A Uh-huh.

6 THE COURT: Is that a yes?

7 THE WITNESS: Yes.

8 THE COURT: Thank you.

9 BY MR. JENSEN:

10 Q And so if they're adding personnel duties to you, do  
11 you think those costs have to be allocated over different  
12 departments?

13 A That's the decision that's made. It could be at  
14 that point. It could be mid year. Sometimes decisions are  
15 made mid year or towards the end of the fiscal year.

16 Q This is what we're talking about -- this fiscal year  
17 right here. So say they say, you know, pursuant to the  
18 charter we have to allocate some of these costs to the  
19 personnel department. So you were previously working 80  
20 hours in deputy treasurer, and now you have 40 hours extra in  
21 personnel. Can you write down what that payroll slip would  
22 look like?

23 A 80 and 40?

24 Q Yeah.

25 A You're being -- you're accounting for only -- let's

1 say for me, it's 80 hours because you're going to pay me --  
2 the way our system is designed is they analyze my monthly  
3 rate and determine an hourly rate based off of 2,800 hours in  
4 a year.

5 Q Okay.

6 A Regardless of how many hours I work or not. I could  
7 work 2,800 and I have worked more than that. Our accounting  
8 system only recognizes 80 to be able to --

9 Q Because you're an exempt employee?

10 A Yes.

11 Q So the hourly -- so -- in other words, the hourly  
12 amounts associated on the ADP for exempt employees are not --  
13 are not accurate?

14 A They're a natural representation of the cost paid to  
15 the individual, not necessarily of the hours worked because I  
16 am paid. I am paid. It's an actual representation that I am  
17 being paid. Let's just say \$5,000. That is correct. That  
18 is accurate.

19 Q And that should be your pay rate?

20 A That is correct.

21 Q And so when it says on these payroll sheets the  
22 number of the amount that Mr. Malkenhorst is actually paid,  
23 that should be his pay rate?

24 A That's what's listed.

25 Q That's what should be his pay rate in your opinion?

1           A     That's his pay rate.

2           Q     That should be -- that should be the pay rate that  
3 CalPERS accepts?

4                   MR. LEVIN:  Objection.  Calls for a legal  
5 conclusion.  Lacks foundation.

6                   THE COURT:  Sustained.

7 BY MR. JENSEN:

8           Q     Okay.  Okay.  So let's -- let's just fill this out  
9 because it's interesting.  So say, you know, they're forcing  
10 you to work a 120 hours.  80 in the treasury and 40 in  
11 personnel.  What would it look like?  So it's basically two  
12 thirds -- you know, if you're doing percentage, two thirds to  
13 treasury and one third to personnel; is that right?

14          A     Say that again.

15          Q     So if they're asking you to work an extra 40 hours,  
16 so that would be a 120 hours.

17          A     That example is not a natural representation of how  
18 an additional responsibility would be carried, and the reason  
19 why I'm speaking that is because I used to be the City  
20 administrator, and I was given other responsibilities, deputy  
21 city treasurer.  That additional position may encompass more  
22 of your time in one day than it would the next.  When I  
23 was -- it's going to be 40 hours more or 20 hours more.  You  
24 have a new position and it entails this much.  It could be  
25 many more hours than just 40, and again, we're looking at

1 this and then we're accommodating our payroll system to be  
2 able to accommodate the earnings, not the hours.

3 Q Right. So basically, the hours listed on that -- on  
4 those ADP sheets are all related to cost and --

5 A The percentages.

6 Q Unrelated to actual hours worked?

7 MR. YIM: Objection. Calls for speculation.

8 THE COURT: Overruled. You may answer.

9 THE WITNESS: It is a representation -- if I were to  
10 look and I would make a judgment on it, it's a representation  
11 of what management determined that's the allotted time on  
12 each department, and I need to specify that the reason why we  
13 moved away from ADP is because ADP was very limited in terms  
14 of how we could report the costs. Again, if you look at  
15 these hours, they're really a representation of a percentage,  
16 and how can this information be entered into ADP? It has to  
17 be recorded as hours. There's no other way. You can't  
18 record a percentage. It was hours. So you have to convert  
19 20 percent of this into how much does it equate in 20  
20 hours.

21 BY MR. JENSEN:

22 Q That's all cost accounting; right?

23 A That's the way the system works.

24 Q But that's not related to hours worked in a  
25 position?

1 A It's a representation of it it.

2 Q It's an estimate of future costs to a different  
3 department?

4 A Well, it's the management's estimate of the amount  
5 of time spent there.

6 Q But it's not pay rate?

7 A Excuse me?

8 Q Is it pay rate?

9 A The pay rate is applied to that percentage. So you  
10 have the pay rate and you have the allocated time -- on that  
11 time.

12 Q So in other words, what you're saying is that the  
13 pay rate is really a 100 percent of the different  
14 percentages? It's the sum? The pay rate is the sum of those  
15 numbers that are broken up?

16 A It's the annual amount for the year. To explain, we  
17 use 5,000 as an example which equates to however much it does  
18 in a year.

19 Q 60,000.

20 A And I didn't get paid more unless City counsel  
21 determines that you are. So if they add more  
22 responsibilities to an individual, they may give you more  
23 pay, and you'd have to determine a new hourly rate, but the  
24 amount of hours you work is really not a representation of  
25 how much you get paid. You get paid so much and you're going

1 to work as many hours as you're going to work.

2 Q So when you said --

3 A They have to make an estimate on how much that time  
4 is allotted to every department, and as I mentioned, you  
5 might one day spend more time under one department than you  
6 do the other, but that's management's best estimate.

7 Q You said you once worked at City administrator?

8 A No.

9 Q You said -- did you say you once were asked to take  
10 on more responsibilities?

11 A Yes.

12 Q And were you paid extra in context with that?

13 A No.

14 Q How much was the additional responsibilities that  
15 you were asked to take on?

16 A I never sat down and quantified it if that's what  
17 you're asking.

18 Q Were you ever compensated for taking on those extra  
19 responsibilities?

20 A No, no.

21 Q Do you understand whether Mr. Malkenhorst took on  
22 additional responsibilities without pay?

23 A I think it was evident through the resolutions that  
24 I read that was he appointed to additional positions.

25 Q And would that be consistent with your understand of

1 Vernon's practices?

2 A Without additional compensation? I don't know if  
3 that was the case with him.

4 Q But in your experience at Vernon, has that been the  
5 case?

6 A Well, with me, that was the case.

7 Q And how often did that happen with you?

8 A Just once.

9 Q Can we just finish up this example because I think  
10 it -- I don't know how -- you know, maybe you want to do an  
11 extra 20 hours. Would that be better? So you're working  
12 full time as deputy treasurer, and then they give you an  
13 additional responsibility in a different department for 20  
14 hours. Just do the best you can. Just following through  
15 this as though in the format of the ADP.

16 A So you want me to allocate this between the two  
17 apartments?

18 Q Is that what you think --

19 A Because this doesn't really reflect the additional  
20 hours and that's what you want me to do. You want me to  
21 reflect 20 hours more. To allocate the cost -- if you're  
22 looking at 20 hours from, let's say, 100 hours. That's 20  
23 percent.

24 Q Right.

25 A So just take 20 percent from this --



1 Q Can you just work it out so that we can see what --

2 A The end result would be 100.

3 Q I think it would be interesting. No, no. Do -- if  
4 you can do numbers so that it looks like the ADP reports  
5 do?

6 A So you said 20 --

7 Q So what would those numbers be?

8 A It's 1,000. 4,000.

9 Q So just to clarify, so you're working still with the  
10 title of deputy treasurer and you got these additional duties  
11 in personnel, and then what do you think your pay rate would  
12 be under that example?

13 A I'm not working just as the deputy City treasurer  
14 anymore. I'm working as the personnel manager. That's the  
15 position you used. I can't remember the name. I have both  
16 now.

17 Q So what would be -- what would be --

18 A Because these -- this responsibility carries just  
19 that responsibilities that I have to answer for.

20 Q And what is your full time job?

21 A Right now it's just deputy City treasurer.

22 Q And what would be your pay rate?

23 A \$5,000 a month.

24 Q Even though it's allocated over two different  
25 departments?

1           A     You're asking me right now, but right now in this  
2     example, it's these two positions.

3           Q     What would be your -- what would be your  
4     compensation?

5           A     5,000.

6           Q     And in the second example?

7           A     This? 5,000.

8           Q     It would still be 5,000? The sum of both of them?

9           A     Yes.

10          Q     Thank you, Mr. Leon. You may sit down.

11               MR. JENSEN: I'd like to move into evidence what's  
12     marked as Exhibit III as a one page poster sized board by  
13     Mr. Leon. It says deputy treasurer, and it's in green ink  
14     and I'd like to mark it as III and admitted into evidence.

15               THE COURT: But I think there are five Is up there.  
16     How many do you want?

17               MR. JENSEN: I'm sorry. Five Is would be good.

18               THE COURT: All right. Any Objection?

19               MR. LEVIN: Yes, your Honor. I do object. I don't  
20     believe it's relevant, and I don't believe it's proper to  
21     have demonstratives of the nature of those numbers entered  
22     into evidence. I don't think they're tied to any of the  
23     issues. It's purely reflective of a hypothetically.

24               THE COURT: Exhibit IIIII is admitted.

25               (Respondent's Exhibit IIIII was received in

1 evidence by the Court.)

2 MR. JENSEN: Thank you, your Honor.

3 BY MR. JENSEN:

4 Q And Mr. Leon, if we just quickly go through this  
5 Exhibit 18-8. The same pages we left off at City clerk. It  
6 says "municipal employee relations representative." Do you  
7 see that there?

8 A Yes.

9 Q And you see the City administrator is appointed to  
10 that position?

11 A Yes.

12 Q Do you know if there's any compensation associated  
13 with that position?

14 A No. I'm not aware.

15 Q And the next one it says -- section 2.7-5. It says  
16 "personnel director"?

17 A Yes.

18 Q At the bottom of Exhibit 18, page eight?

19 A Uh-huh.

20 Q It says the City administrator shall serve as  
21 personnel director of the City?

22 A Yes.

23 Q Do you know if there was any -- a compensation paid  
24 for being personnel director?

25 A I'm not aware.

1 Q Did you see any documents or anything that  
2 established a separate compensation for performing the duties  
3 of personnel director?

4 A I can't recall.

5 Q And I just want to turn your attention to page 15 of  
6 exhibit 18, and it says on P it says "full time duties." It  
7 says to devote his entire time to the duties and interest of  
8 the City." Is it your understanding that's in the capacity  
9 as City administrator?

10 A Page 14?

11 Q I'm sorry. It's page 15. Some are marked page 11.

12 A What would be the starting of the section?

13 THE COURT: Excuse me. In the bottom right is says  
14 Exhibit 18-15.

15 MR. JENSEN: May I approach, your Honor?

16 THE COURT: You may.

17 BY MR. JENSEN:

18 Q Mr. Leon, is it okay if I just show you what page it  
19 is?

20 A Sure.

21 Q It's page 15. It says full time duties.

22 A The paragraph falls under the City administrator.

23 Q I think it's --

24 A I want to make sure it's in reference to the City  
25 administrator.

1 Q I think it's section 2.8 -- it's under the powers  
2 and duties of the City administrator, and that's on page 11  
3 of Exhibit 18.

4 A Then, yes.

5 Q So that would be, as City administrator, his full  
6 time duties?

7 A Yes.

8 Q Thank you.

9 MR. JENSEN: Your Honor, I don't know what your  
10 break is in the afternoon? 2:30?

11 THE COURT: How much --

12 MR. JENSEN: You know, we got to get through this  
13 electric department stuff because -- to show there's no  
14 raises in it so --

15 THE COURT: Let's go off the record.

16 (Recess)

17 BY MR. JENSEN:

18 Q Mr. Leon, can I turn your attention to Exhibit 19 on  
19 page 16.

20 A Okay.

21 Q And do you recognize that top paragraph there? It  
22 says "the compensation for this position is included in the  
23 compensation for the City administrator"?

24 A Yes.

25 Q Has there been any other document that indicates

1 that there was pay for -- separate pay designated or  
2 allocated for that chief executive officer of Light &  
3 Power?

4 A If it did exist, I didn't see it.

5 Q I just want to turn your attention briefly to -- and  
6 I'm going to bring this back to your attention, but to page  
7 30 of Exhibit 19. At the top it says "the salary of the City  
8 administrator/City clerk." Would you consider that to be the  
9 salary for performing all of the duties within that  
10 position?

11 A Within this one? The City administrator/City clerk?

12 Q Yes.

13 A That includes -- I see that's the monthly, but it  
14 includes more than that.

15 Q What else is included in it?

16 A The -- based on this resolution, it also includes  
17 the chief executive officer for Light & Power.

18 Q And is there compensation -- any amount of  
19 compensation that is separately designated for that  
20 position?

21 A If there is, I'm not aware of whether there was a  
22 separate document that would determine this calculation.

23 Q Did you look for all of the documents that were  
24 about this compensation?

25 A I did the best I could.

1 Q Did you find any documents?

2 A If I had any missing, I wouldn't have been aware of  
3 it.

4 Q So you did not find any document that allocated --  
5 that indicated that Mr. Malkenhorst was paid any amount of  
6 money for performing the CEO position of Light & Power?

7 A That was not the intent of my search.

8 Q Did you find any documents?

9 A I wasn't looking for it.

10 THE COURT: Did you see any? Among the ones that  
11 you looked at, did you see any?

12 THE WITNESS: No.

13 BY MR. JENSEN:

14 Q Okay, and I just want to -- just for -- I want to  
15 point your attention to the purchasing agent here. There's a  
16 purchasing agent for \$2746. Do have you some way of tabbing  
17 that?

18 MR. JENSEN: Your Honor, may I approach with this?

19 THE COURT: Yes.

20 BY MR. JENSEN:

21 Q If you could just tab that page and then we'll come  
22 back to this. So I want to point your attention to  
23 exhibit -- page 32 of Exhibit 19 and the third paragraph down  
24 it has that language again, "with the exception of the City  
25 administrator/City clerk"?

1 A Yes.

2 Q Does that mean it continues to be an exempt  
3 position?

4 A That's correct.

5 Q And now I want to turn your attention to Exhibit 20  
6 and on the top of page 23, and it will say "chief executive  
7 officer." Do you see that?

8 A What page?

9 Q Page 23 of Exhibit 20.

10 A Okay.

11 Q And does that language say that it is included in  
12 any compensation that is included in the City  
13 administrator/City clerk?

14 A Does it say it's included? Is that your question?

15 Q Does it say it's included?

16 A The compensation for --

17 Q The CEO of Light & Power. Does that include --

18 A Yes.

19 Q So do you have any reason to believe there's any  
20 separate compensation ever paid for the CEO position?

21 A Yes.

22 Q And what is your evidence?

23 A This resolution because it states that the  
24 compensation is -- it's making a statement that the  
25 compensation for this position is included. It's not the



1 same as the other resolution that we read when he was  
2 initially being appointed to the executive director of Light  
3 & Power. It said no compensation, but this one says it's  
4 included. So there's something in there, and it doesn't  
5 specify the amount and it's vague.

6 Q How do you know -- where does it -- you just said --  
7 you testified that for about an hour that there needs to be  
8 some kind of document that says --

9 MR. LEVIN: Your Honor --

10 THE COURT: Hold on a moment. I'll entertain  
11 objections when Mr. Jensen finishes his question. The  
12 witness will refrain from answering it until we resolve all  
13 of it.

14 MR. LEVIN: Your Honor, I was going to object that  
15 the witness was cut off and wasn't allow to finish.

16 THE COURT: Everybody is going to be allowed to  
17 finish what they're saying, and Mr. Jensen, why don't you  
18 state your question again.

19 BY MR. JENSEN:

20 Q Is there any document that indicates from -- at any  
21 time up to this point, that there is compensation paid for  
22 the CEO of Light & Power?

23 A Yes.

24 Q And what is that document?

25 A It's Exhibit 20.

1 Q And what does it say?

2 A It says that the "City administrator/City clerk  
3 shall serve as the chief executive officer in the Light &  
4 Power department and the compensation for said position is  
5 included in the compensation established for the position in  
6 the City administrator/City clerk department, schedule  
7 seven."

8 Q And you previously testified that there had to be  
9 some document or resolution that indicated that he was paid  
10 or allocated some funds for that position; is that correct?

11 A That is correct, and that's this -- that's this  
12 resolution and not the other ones.

13 Q Not the other ones?

14 A And not the other ones.

15 Q What is the amount of this payment?

16 A I don't know. The resolution -- at least this  
17 resolution, this document doesn't specify, but it does make  
18 clear that there is compensation for that position and it's  
19 included -- at least a portion of it is included in the City  
20 administrator/City clerk department. That's just looking at  
21 this and again it goes back to -- to what I would do is then  
22 I would question it to find out what that amount was and  
23 whether the City administrator and in the City clerk  
24 department's rate that is shown on schedule seven, whether it  
25 was modified to increase that amount. I would ask to see

1 what that was.

2 Q And what documents would you look for or ask for?

3 A If I was looking for it, I'd ask City -- I would  
4 talk to people in the City administrator office if they knew  
5 of any contract or any resolution that would indicate that.

6 Q And again, in your experience, were you paid for  
7 additional duties taken on?

8 A No.

9 MR. LEVIN: Asked and answered.

10 THE COURT: Sustained.

11 BY MR. JENSEN:

12 Q So if there's compensation of zero, is that still  
13 compensation because especially if a person is required to  
14 perform all of the duties -- let me ask you, are you required  
15 to perform the duties that the City counsel places in your  
16 charge?

17 A Yes.

18 Q So are you required to perform them whether you're  
19 compensated or not?

20 A If it's part of my job description and my duty,  
21 yes.

22 Q And so if they say you're being paid in your job,  
23 does that mean you're being paid a separate amount for each  
24 duty that you're being -- that you're undertaking?

25 A Can you restate your question?

1 Q When you cash your check every two weeks --

2 A Uh-huh?

3 Q -- you are being compensated; is that correct?

4 A That is correct.

5 Q Are you being compensated separately for each duty  
6 or responsibility that you're undertaking?

7 A Not me. If you're referring to me, no, I'm not.

8 Q Well, just in general of anybody?

9 A But again, that determination would be on me. Yes.  
10 Counsel could decide, you know, Joaquin, we're going to give  
11 you more responsibilities and I could very easily say we need  
12 to relook at how much I'm being paid. It's still my choice  
13 to say well, then I'm leaving. This is too much  
14 responsibility for me to get paid this much, and I could  
15 leave or we could renegotiate my contract or my monthly  
16 amount .

17 Q If --

18 A But if you're asking me, that's what I would do.  
19 Me. If you're using me as an example. Depending on the  
20 quantity and the amount and the complexity of the  
21 responsibility, then yes. Always -- the pay rate is always  
22 going to play a factor. It's not just blindly accepted.

23 Q So if you ask for a raise after being given extra  
24 duties and responsibilities --

25 A Uh-huh.

1 Q -- is that raise allocated to just those new  
2 responsibilities, or is it part of you just performing your  
3 job there?

4 A It's a result of those added responsibilities that  
5 I'm seeking that raise if that's the example you're using.  
6 If the purpose of me asking for a raise is because I was  
7 given additional responsibilities than it's obvious that I'm  
8 looking to be paid for that added responsibility.

9 Q Let's revisit this Exhibit III then if you don't  
10 mind.

11 THE COURT: Five Is.

12 BY MR. JENSEN:

13 Q Five Is. Sorry. The City Counsel gives you an  
14 extra 20 percent duties like that, but instead of  
15 compensating you \$1,000, they give you a \$100. Can you do  
16 the math on there?

17 A \$100 extra?

18 Q \$100 extra.

19 A I'm not understanding.

20 Q I mean, you have a job; right? You're deputy  
21 treasurer. You get \$5,000 a month, and they say, Joaquin,  
22 listen, you know, we need you to do this extra 20 percent of  
23 the work in personnel. Let's make it more reasonable. Let's  
24 give you a \$200 increase. So now you're making \$5,200. Can  
25 you do the math up there?

1 A \$5,200?

2 Q \$5,200. Actually, why don't you --

3 MR. JENSEN: Your Honor, may I approach?

4 THE COURT: Yes.

5 MR. JENSEN: I'm just going to move it to JJJ. Do  
6 you mind if I do another exhibit? I like exhibits.

7 THE COURT: As long as you get the right number of  
8 Js.

9 BY MR. JENSEN:

10 Q So if you can five Js on the next sheet, and if you  
11 can copy over this -- I have some tape. Can I tape it to the  
12 wall, and then five Js -- so this same example except with  
13 the raise of \$500.

14 A You said the position of --

15 Q So it's just the same -- same scenario except you  
16 asked for -- so you asked for a raise for \$1,000 and they  
17 say, Joaquin, you're a great guy. We'll give you \$200. So  
18 just do the same thing. The raise comes effective, say, July  
19 1st, new fiscal year. No, no. The first one is \$5,000.  
20 Okay, and that's the fiscal year -- just the same -- I'm  
21 sorry. May I approach just here? We're just copying this  
22 down. Okay? Same issue here, and then on this, instead of  
23 it being 5,000, it's 5,200. So this -- this is different,  
24 same departments, you know, you allocate the same thing. So  
25 now you got \$5,200. Does anyone know how to calculate -- do

1 you want to borrow my calculator here? You can -- oh, jeez.  
2 Does anyone have a calculator he can borrow? I can do it on  
3 my computer. We're looking at -- oh, he's got one. 80  
4 percent of 5,200. Okay. So can you explain that? You asked  
5 for -- you know, so you asked for a raise in --

6 A I just want to make sure I understand your question.  
7 So your question was am I getting additional pay for the  
8 additional responsibilities, and the answer would be yes. I  
9 got \$200 more. Now, I didn't get the 1,000 I wanted. I got  
10 \$200. So if you're asking me did I get additional  
11 compensation for these responsibilities, for this position,  
12 then yes.

13 Q But -- but --

14 A How it's recorded here, the allocation --

15 Q Uh-huh. It's not accurate? Not worth relying on?

16 A Well, this is what management determined, but if  
17 your question was am I getting paid additional compensation  
18 with this responsibility, then yes. How it's accounted for  
19 is a separate thing regardless of how it's accounted, I'm  
20 getting \$200 more for this.

21 Q But -- but what you mentioned is all of the raise  
22 would have be associated with performing the additional  
23 duties? That's what you mentioned?

24 A Yeah because the raise is -- the \$200 is for this.

25 Q Okay.

1 A It's for the personnel.

2 Q I appreciate you going through these numbers. They  
3 are helpful to me. Can I ask you to review Exhibit 20 there.  
4 Again, if you could look at page 41.

5 A Okay.

6 Q And there's a bottom paragraph here. It says "the  
7 City administrator/City clerk is hereby appointed to serve as  
8 the purchasing agent" --

9 THE COURT: Slow down please while you read  
10 out loud.

11 BY MR. JENSEN:

12 Q "To serve as the purchasing agent in addition to his  
13 other duties and appointments." Do you see that?

14 A Yes.

15 Q So I want to turn your attention back to page 38 of  
16 that same exhibit, and can I do this on the board, one more  
17 exhibit? If we can do KKK?

18 MR. JENSEN: May I approach, your Honor?

19 THE COURT: Yes. Five Ks.

20 By MR. JENSEN:

21 Q And if you can actually look at -- so maybe on the  
22 bottom half of the sheet you can write the pay rate of  
23 Mr. Malkenhorst. On the bottom part can you write  
24 it -- yeah. Okay, and what was his pay rate, and do you  
25 recall what department the purchasing agent is in?



1 A I don't know.

2 Q Do you see a purchasing agent on this page 37 and  
3 38?

4 A No. That would be under the purchasing department.  
5 A different schedule -

6 Q Is there a different -- is there a purchasing  
7 department scheduled? Actually, I can -- I can help you.  
8 Let's move back to the place I asked you to tag.

9 A Okay.

10 Q Okay. Do you see that on Exhibit 19? Can you write  
11 what Mr. Malkenhorst's salary at the top there on page 19 at  
12 the top of Exhibit KKKKK?

13 A Mr. Malkenhorst or the position?

14 Q Let me just point out -- if you can -- is this  
15 Mr. Malkenhorst's salary?

16 A Yes.

17 Q Okay, and do you see a purchasing agent?

18 A Yes.

19 Q Okay. So can you write those two up there? Can you  
20 write the time period of that too, what the date is right  
21 above it? Okay, and on the next page, can you write the date  
22 of that as well? I mean not the next page, the -- on the  
23 bottom half we were using on Exhibit 20. Let me just grab  
24 that other page for you.

25 MR. LEVIN: Your Honor, I object to this line of

1 questioning. It's irrelevant. It's beyond the scope of  
2 direct examination, and I know that the rules of evidence are  
3 very broad here and of course on his own case in chief, maybe  
4 Mr. Malkenhorst wants to bring back this witness, but I want  
5 to make those objections for the record because I feel we're  
6 going to get in a situation here where we're counting hours  
7 against CalPERS.

8 MR. JENSEN: Your Honor, I'm moving as fast as I  
9 can.

10 THE COURT: We're going to be finishing with this  
11 witness at 3:15 today as I said. Nothing is counting against  
12 CalPERS. The objection is overruled. You may continue.

13 MR. JENSEN: So -- I'm sorry.

14 THE COURT: Go ahead.

15 BY MR. JENSEN:

16 Q So Mr. Leon, can you add up those two under the  
17 first in this column here? Just add up those. Okay, and can  
18 you just draw a line here and designate this as a separate --  
19 and what was the -- what pay period is that 7333 associated  
20 with?

21 A I can help you out. It's June 28, 1984. It's on --  
22 it's on exhibit page 8, June 28th, 1984.

23 THE COURT: On which page?

24 MR. JENSEN: Page 9 of Exhibit 20.

25 ///

1 BY MR. JENSEN:

2 Q So, Mr. Leon, I'm going to sort of hurry here. So  
3 when Mr. Malkenhorst assumed the purchasing agent duties that  
4 were salaried at \$2,700, and the next year his raise was  
5 \$200?

6 A Say that again.

7 Q Okay. In 7/1/'83, he was the City  
8 administrator/City clerk being paying \$7,105, and then as of  
9 June 28th, 1984, his salary was 7,300 and he had assumed the  
10 duties of the purchasing agent that were otherwise costed at  
11 2,746?

12 A Uh-huh.

13 Q So what is a typical yearly increase in a salary?

14 A For his position, I wouldn't know. It's whatever  
15 they negotiate, whatever Mr. Malkenhorst would negotiate with  
16 City counsel.

17 Q Is \$200 a large raise?

18 A No.

19 Q Was it back then?

20 A No.

21 Q Okay. So we're going to go through these. Can I  
22 turn your attention to Exhibit 22, on page 20 of Exhibit 22.  
23 Do you see that same language about included in the -- in the  
24 salary?

25 A Yes.

1 Q And I just want to turn your attention to Exhibit  
2 24, page 23. Do you see it at the top of that page?

3 A Yes.

4 Q And you see it says "except where the City attorney  
5 and City clerk" and then it adds another title?

6 A Yes.

7 Q Are those exempt positions?

8 A Yes.

9 Q I want to turn your attention to an Exhibit 26, page  
10 17 on section 19.

11 THE COURT: I'm sorry, Counsel. Which exhibit?

12 MR. JENSEN: We're at Exhibit 26, page 17.

13 THE COURT: Thank you.

14 BY MR. JENSEN:

15 Q Do you see that, Mr. Leon?

16 A What section?

17 Q Section 19. It says "compensations included in the  
18 following positions." Do you see that?

19 A Yes.

20 Q So I want to turn your attention to page 25 of that  
21 resolution and that uses the same language, "- except the  
22 City administrator/City clerk." Do you see that?

23 A Yes.

24 Q So does that mean it's still an exempt position?

25 A I'm sorry. Which section again?

1 Q We're looking at 26, page 25, section C.

2 A Yes.

3 Q So it's the only exempt position at that time?

4 A Yes.

5 Q And I want to turn your attention to Exhibit 27,  
6 page three. Actually, let me skip to the next one because I  
7 think that will -- so looking at Exhibit 28, are you at 28?

8 A Yes.

9 Q I want to look at page two of that.

10 A Okay.

11 Q And so in the second paragraph it says, "The City  
12 clerk/City administrator shall serve as chief executive  
13 officer." Do you see that, and then it combines the title  
14 --actually, that's that second part is not relevant. Do you  
15 see also served as chief executive officer? That's the  
16 second paragraph down.

17 A I'm sorry. Second paragraph on page two?

18 Q On page two of 28. Yeah. It says, "Whereas  
19 established the City administrator/City clerk shall also  
20 serve as the chief executive officer of Light & Power." Is  
21 there any compensation associated with that that you know of?

22 A Any compensation involved?

23 Q Any compensation that you know of that specifically  
24 reflects to the CEO position?

25 A No.

1 Q Okay. So I'm going to turn your attention to page  
2 22 and second C. It says "All personnel except the City  
3 administrator." Does that mean it's still an exempt  
4 position?

5 A Yes.

6 Q Now I want to turn your attention to page 24 of  
7 Exhibit 28, and subparagraph 13. It says "the hours of work  
8 to be as necessary," and did you read that paragraph at any  
9 point?

10 A I can't recall.

11 Q So what is your understanding of one of the -- the  
12 City administrator/City clerk's position, his hours of work  
13 would be as necessary?

14 A You are required to work as many hours as  
15 necessary.

16 Q So no set amount of hours per week?

17 A That's correct.

18 Q That's correct?

19 A Yes.

20 Q I want to turn your attention to the next exhibit  
21 book which is starting 30 with CalPERS exhibits, and I  
22 actually want to turn your attention to 31.

23 THE COURT: Exhibit 31?

24 MR. JENSEN: Exhibit 31, page two.

25 THE WITNESS: Page two?

1 BY MR. JENSEN:

2 Q Page two. There's a section three which says "Bruce  
3 Malkenhorst is hereby appointed as executive director and  
4 secretary of the agency." Do you see that?

5 A Yes.

6 Q And now I'm going to point your attention to section  
7 five. "The City of Vernon shall be reimbursed for the  
8 services of Bruce Malkenhorst and all other City's." So did  
9 the redevelopment agency ever pay Mr. Malkenhorst directly?

10 A I would not know.

11 Q So when an entity is reimbursing another entity for  
12 costs, what does that mean to you?

13 A That could refer to cost allocation. Whatever  
14 earnings are attributed to the redevelopment agency, goes  
15 back to the previous question I tried to explain is that yes,  
16 the general fund -- funds pays for all of this, but the  
17 accounting is to recognize the receivable from the Light &  
18 Power department or any fund that they paid for. And in this  
19 instance, any cost that are attributed to Mr. Malkenhorst for  
20 the redevelopment could be captured by the general fund as a  
21 receivable from the redevelopment fund.

22 Q So that's the reason that they were accounted in the  
23 department?

24 A Yes. That's another reason.

25 Q Does the source of funds of Mr. Malkenhorst -- the

1 prior source of funds that it was originally in the RDA and  
2 then transferred to the general fund, does that mean it  
3 maintains it's identity as the RDA funds once it's  
4 transferred to the general fund?

5 A Can you repeat that again?

6 Q Once the RDA funds are transferred to the general  
7 fund. do they remain RDA funds?

8 A No.

9 Q What are they once they're in the general funds?

10 A General funds.

11 Q And so Mr. Malkenhorst was paid for from the general  
12 fund?

13 A Yes.

14 Q Was he paid from the RDA directly?

15 A No.

16 Q And so when you look at this section when it says  
17 "reimbursed," that mean that the reason these costs were  
18 accounted for is that they wanted the RDA to pay the money to  
19 the general fund?

20 A That's correct.

21 Q Thank you.

22 MR. JENSEN: Is 31 in evidence? I think it is.

23 THE COURT: I think so too.

24 BY MR. JENSEN:

25 Q I just want to turn your attention to 32, section



1 three on page two. Exhibit 32. It says "the authority  
2 hereby designates the City clerk to be secretary of the  
3 authority and treasurer of the authority." Do you see that  
4 language?

5 A Yes.

6 Q Do you see any compensation associated with those  
7 positions?

8 A No.

9 Q And I just want to -- on Exhibit 33 on page 21,  
10 section 21, sub C.

11 THE COURT: Exhibit 23?

12 MR. JENSEN: 33, 33.

13 BY MR. JENSEN:

14 Q Do you see that?

15 A Yes.

16 Q It says -- again it says, "all personnel except the  
17 City administrator/City clerk." Is it still an exempt  
18 position at this time?

19 A Yes.

20 Q And I want to turn your attention to page 24 of  
21 Exhibit 33, subsection 12 at the top of the page. Do you see  
22 where it says "the hours of work as necessary"?

23 A What page?

24 Q Page 23 of Exhibit 33.

25 A Yes.

1 Q And you see it says the hours at work to be as  
2 necessary?

3 A Yes.

4 Q Does that mean that he to work any number of -- any  
5 particular hours in a work period?

6 A It could be any number of hours.

7 Q So basically it's reaffirming his exempt position;  
8 is that correct?

9 A Yes.

10 Q Now moving forward, trying to get through all of  
11 this. I want to turn your attention to Exhibit 37 -- on page  
12 21 of Exhibit 37 and it says "subsection A."

13 A Yes.

14 Q It says "all employees other than 24-hour shift fire  
15 departments and the City clerk/City administrator shall be  
16 paid on an hourly basis"?

17 A That's correct.

18 Q And so he is excluded from any hourly calculations;  
19 is that correct?

20 A Yes.

21 Q Okay, and I just want to turn your attention to page  
22 44 of Exhibit 37. Oh, actually, before we move -- let's look  
23 at -- let's look back on page 21 of Exhibit 37 on the bottom  
24 of subsection C. I don't know if you're there.

25 A Yes.

1 Q It says, "City attorney and members of the counsel  
2 shall be paid biweekly pursuant to section four of schedule  
3 I." Do you see that language?

4 A Yes.

5 Q And now if I can turn your attention to section four  
6 of schedule I, which is on page 44. Do you see that?

7 A Yes.

8 Q And it says, "The formula provided for herein shall  
9 be used to convert the monthly pay rates for the City  
10 attorney and councilmen to biweekly amounts without  
11 considering the amount of hours worked by said officers"?

12 A That's correct.

13 Q What does that mean?

14 A That they're paid salary, on a biweekly basis  
15 without consideration of how many hours of work.

16 Q Okay. So are you aware whether that language is  
17 continued in all of the subsequent pay resolutions?

18 A I'm familiar with that language, yes.

19 Q You are familiar with that? With those different  
20 things where it says "the hours to be worked as necessary"?  
21 Are you familiar with that?

22 A Yes, but I believe the City administrator has been  
23 dropped.

24 Q Through which period?

25 A I don't know when.

1 Q Let's move all the way up to 2004, and see if it is  
2 through there. If it is up to 2004, would it be consistent  
3 through this period of starting in 1991 through 2004? If  
4 it's in both of those resolutions, would it be consistent  
5 throughout?

6 A I can't testify to that.

7 MR. JENSEN: Your Honor, do you want me to walk  
8 through all of them or --

9 THE COURT: You said the language continues to be  
10 included in later resolutions; is that correct?

11 THE WITNESS: That I've read, yes. Once I've been  
12 on board in 2006. I remember reading that similar language  
13 from 2006 through, I want to say, the present, but I think  
14 he's asking from here to --

15 MR. JENSEN: Let me just move to that resolution  
16 that's in 2003, and see if I can jog his memory.

17 MR. YIM: Your Honor, that may -- I think the  
18 documents speak for themselves. I mean, I think every  
19 question and answer so far has just been a reflection of what  
20 the document states from what the document states. So I  
21 don't know why we're continuing this for the record.

22 MR. JENSEN: I think it's what their case is. I  
23 think this is their case. So -- but anyway -- I'm sorry.

24 THE COURT: But Mr. Jensen, let me consider that  
25 objection. You have been for the last considerable period of

1 time having the witness simply confirm that the documents say  
2 what they say.

3 MR. JENSEN: I understand.

4 THE COURT: And I think in the interest of time,  
5 perhaps we could dispense with that.

6 MR. JENSEN: Okay. I agree.

7 BY MR. JENSEN:

8 Q So let me ask -- draw your attention to Exhibit 63  
9 and this is for July, 2003 and on page 71 of Exhibit 63,  
10 there's a -- a -- well, tell me what that is.

11 A It's a scheduled listing of all the monthly rates  
12 for all the positions under the City administrator/City clerk  
13 department.

14 Q And so what is your understanding of -- of this  
15 document in Exhibit 71 -- I mean in page 71 of Exhibit 63.  
16 What is -- in this there was no allocation of any cost over  
17 any other department; is that correct?

18 A That's correct.

19 Q So how would this -- according to this sheet,  
20 how -- what is this pay rate?

21 A For the City administrator position? For this --  
22 according to this --

23 Q For Mr. Malkenhorst, what would his pay rate be on  
24 this?

25 A For what position? City administrator?

1 Q He only -- what was his position?

2 A I don't know what positions he held for the period  
3 that we're looking at. He had multiple -- I would then need  
4 to look at each schedule to see if there's a pay rate listed.

5 Q Well, let's look through it and see if there is.  
6 Right here. Let's see if there's a pay rate for any other  
7 thing. You testified that he held multiple positions, and I  
8 think it's document 72. So starting from page 58 through the  
9 rest of the document, let's see if there's any pay rates for  
10 those positions that you said that he held. So according to  
11 Exhibit 82, there are a number of different positions. You  
12 said City clerk, director of finance. Do you see that in  
13 here? What department would that be in, by the way?

14 A Finance.

15 Q And what page is finance on? So there is no finance  
16 department on here; is that correct?

17 A It may be in the treasury.

18 Q Well, the assistant finance director is under the  
19 City administrator department.

20 A I would need to really look at this.

21 Q Take your time and look at it. I got -- you know.

22 THE COURT: Mr. Jensen?

23 MR. JENSEN: Yes.

24 THE COURT: Which line on exhibit -- on exhibit 82  
25 page 1 are you looking at?

1           MR. JENSEN: There is -- he has basically, 1, 2, 3,  
2 4, 5, 6, 7, 8, 9, 10, 11. Only one of those positions shows  
3 up in a pay schedule, and that's the City administrator/City  
4 clerk.

5           THE COURT: Okay. Now you've been talking about  
6 which position particularly?

7           MR. JENSEN: The first one that he mentioned on here  
8 is City clerk, director of finance.

9           THE COURT: I see.

10          MR. JENSEN: Okay, and that's not on any of these  
11 sheets, and I would just like him to look at it. City  
12 treasurer is not on any of these sheets. He currently holds  
13 the position of City administrator/City clerk. That is on  
14 this sheet at this step, 37274.

15 BY MR. JENSEN:

16          Q     Mr, Leon, stop me if I'm wrong. Okay? Go ahead.

17          A     I would need to see if this is the only resolution  
18 that exists for that fiscal year because they do amend salary  
19 resolutions, and you might have six or seven changes. So I  
20 can't --

21          Q     Okay. Well, --

22          A     -- fully say that this one resolution represents the  
23 entire salary schedule for this fiscal year in question.

24          Q     Let's try to get through as many of these titles as  
25 we can. There is chief executive officer of the electric

1 department which is not under the electric department.  
2 Executive director of redevelopment agency which we have  
3 already established doesn't get paid for. Secretary of the  
4 redevelopment which we have already established doesn't get  
5 pay for. Executive director of the industrial development  
6 authority which is not on here. Secretary of the industrial  
7 development agency which is not on here. Treasurer of the  
8 industrial development agency which is not on here.  
9 Executive director of the Vernon historical preservation  
10 society which is not on here. Executive director of Vernon  
11 natural gas financing authority which is not on here unless  
12 you can find it. So there's only one position that he holds  
13 on this that I can find, unless you can find something  
14 different.

15 MR. LEVIN: Objection to the form of the question.

16 BY MR. JENSEN:

17 Q Can you find any other title on this sheet that is a  
18 position that Mr. Malkenhorst holds that's paid.

19 A I listed the resolution numbers right next to the  
20 position that's appointed. The column labeled "appointed,"  
21 and if you see for every position that he held, I listed the  
22 resolution number that appoints him .

23 Q And I just also want to point your -- you had a  
24 column for compensated?

25 A Yes.



1 Q And it's blank?

2 A That's correct. I wasn't -- for that same reason  
3 that one paragraph specifies whether he's being compensated,  
4 I couldn't point to --

5 Q Is there any indication that he's being  
6 compensated?

7 MR. LEVIN: Asked and answered.

8 THE COURT: Overruled.

9 BY MR. JENSEN:

10 Q Is there -- Excuse me. Is there any indication he's  
11 being compensated for any of these other positions?

12 A I didn't see it.

13 Q So there was no document you found that showed that  
14 he was -- no document, resolution, contract, minutes,  
15 personnel action record, that showed he was compensated for  
16 any of these other positions?

17 A Not sure how to --

18 Q Tell it like it is.

19 A Well, I didn't see it.

20 Q I just want to the last year which is 2004 which  
21 would be, I think, 65. So if you can briefly look at 65 and  
22 see if there's any titles on 65. So let's do the same  
23 exercise. So if you can see anything on 65. His pay rate is  
24 listed on page 73 of Exhibit 65 for the City  
25 administrator/City clerk position.

1 THE COURT: Is there a question pending, Mr. Jensen?

2 BY MR. JENSEN:

3 Q Yes. Were you able -- looking at Exhibit 65, were  
4 you able to find any of these other positions that had a  
5 compensated dollar amount that you designated that  
6 Mr. Malkenhorst held, and you designated those positions --  
7 same positions that were in Exhibit 82 since the other year  
8 in 2004?

9 A I didn't.

10 Q So you --

11 A I did not.

12 THE COURT: One at a time, please.

13 THE WITNESS: I did not identify it, not because I  
14 just couldn't find it, but just the resources that I had to  
15 be able to compile all this information was not available.  
16 So by me saying I didn't see it, I don't want to give the  
17 impression that it does not exist. There were a lot of  
18 resolutions I was not able to read in complete detail to be  
19 able to fully determine that. That's the reason why I left  
20 it blank, rather than yes or no.

21 BY MR. JENSEN:

22 Q Did you supply those resolutions to Mr. Wall?

23 A I supplied a lot of them, yes.

24 Q And would there -- if there was pay associated with  
25 its positions, what form would it take in your experience?

1 A If it was paid?

2 Q Would it have to have been in a resolution --

3 A Yes.

4 Q -- or an ordinance or some official document?

5 A It would be in a resolution, and it would be stated  
6 as that the compensation for the chief executive of Light &  
7 Power is included in the compensation for the City  
8 administrator and City -- City clerk. I don't recall reading  
9 that paragraph, but if I had read it, I would have put "yes"  
10 to it.

11 Q So when you marked "no" in all of these positions  
12 other than the City clerk/City administrator, that means you  
13 found no evidence that he was being compensated in --

14 A During my search. That's correct.

15 MR. JENSEN: 3:15, your Honor? I reserve recross.  
16 I tried to go as fast as I can, and I appreciate your  
17 indulgence. There is more, obviously, but --

18 THE COURT: Let's take a 15-minute break. Off the  
19 record.

20 (Recess)

21 THE COURT: Let's go back on the record.

22 Mr. Jensen, while we were just off, you mentioned that you  
23 wanted to move Exhibits JJJJJ and KKKKK into the record; is  
24 that correct?

25 MR. JENSEN: Yes, your Honor, and again, these are

1 demonstrative exhibits by Mr. Leon regarding interpretations  
2 and calculations about the three different scenarios.

3 MR. LEVIN: Objection. Relevance.

4 THE COURT: I'm going to admit them.

5 (Respondent's Exhibits JJJJJ and KKKKK were  
6 received in evidence by the Court.)

7 MR. JENSEN: Thank you.

8 THE COURT: Another issue?

9 MR. YIM: Your Honor, the other issue is that I  
10 spoke to counsel in the break and I wanted to ask the witness  
11 questions. It's less than three minutes. In my estimation,  
12 it will be two minutes at the most to clarify a couple issues  
13 from the questioning earlier, if I may.

14 THE COURT: Okay. Mr. Yim, go ahead.

15 MR. YIM: Thank you, your Honor.

16

17 REDIRECT EXAMINATION

18 BY MR. YIM:

19 Q Mr. Leon, can you please turn to Exhibit 67 in the  
20 Volume 1 of the volumes in front of you?

21 A Okay.

22 Q And it will be the first page of that exhibit, and  
23 do you see the section where -- under hours or certain hours  
24 allocated for Mr. Bruce Malkenhorst?

25 A Yes.

1 Q And do you know how those hours were allocated? How  
2 it got there?

3 A This would be determined by the department head.

4 Q And who was the department head for each of these  
5 departments at this time?

6 MR. JENSEN: Lack of foundation.

7 MR. YIM: If you know?

8 THE COURT: Go ahead.

9 BY MR. YIM:

10 Q Do you know who the department head was for each of  
11 these identified departments in -- on this first page of  
12 Exhibit 67?

13 MR. JENSEN: Objection. Vague as to time.

14 THE COURT: Overruled. At the time of the figures  
15 reflected in this chart; correct?

16 MR. YIM: That's correct, your Honor.

17 THE WITNESS: That would be Mr. Bruce Malkenhorst.

18 MR. JENSEN: And your Honor, can I just address  
19 that?

20 THE COURT: You may.

21

22 RECROSS-EXAMINATION

23 BY MR. JENSEN:

24 Q What is your evidence that there's such a thing as a  
25 department head?

1 A We just went over that list.

2 Q The salary schedule?

3 A Yes. That's my schedule. The schedule that I  
4 prepared. I listed every position and the resolution that  
5 they were appointed in.

6 Q Let me just refer you to Exhibit 65, I believe, and  
7 you mentioned that the salary schedules were broken down by  
8 department?

9 A Yes.

10 Q I just want to turn your attention to -- to Exhibit  
11 65, page 73. There's the City administrator/City clerk  
12 department. Do you see that?

13 A Page 73?

14 Q Yes.

15 A Yes.

16 Q Okay, and you were just referring to the ADP  
17 schedule -- the ADP contested reports?

18 A Yes.

19 Q And what -- what number is the City clerk/City  
20 administrator department?

21 A 2002.

22 Q 2002.

23 THE COURT: Where are you looking?

24 THE WITNESS: On Exhibit 67, page one.

25 ///

1 BY MR. JENSEN:

2 Q And on Exhibit 67 page one, tell me where 2002 shows  
3 up.

4 A It's the first line.

5 Q I see 1002.

6 A I'm Sorry. 1002. That's what I meant. Excuse me.

7 Q So you said there's -- and then what is department  
8 103?

9 A City clerk.

10 Q And what department -- so City administrator and  
11 City clerk are different departments?

12 A Yes.

13 Q And so what is the -- what is the -- where's the  
14 City clerk department on Exhibit 65? Is it the same as the  
15 City administrator department on page 73?

16 A Well, they're not listed separately, but our  
17 accounting system does have them separately.

18 Q Okay. So the department is City clerk/City  
19 administrator; is that correct?

20 A No. It's two separate departments.

21 Q With reference to this salary schedule, 65 -- on  
22 page 65, 73, how many departments is it?

23 A There's two. The salary schedule does not represent  
24 the way the City is structured or the accounting system.

25 Q So as a department head, there's a different

1 department head for the accounting version of the  
2 department?

3 A Yes.

4 Q So now I'm confused. So there's a head of a  
5 department that is an accounting function who is head of that  
6 department?

7 A That's correct. Yes. The finance director.

8 Q No, no, no. Let me -- I didn't explain that very  
9 well.

10 MR. JENSEN: Do you mind if I do another chart?

11 THE COURT: Do we need another chart?

12 BY MR. JENSEN:

13 Q I don't -- I see one department here, and I don't  
14 know how you -- for salary purposes, there's one department;  
15 is that correct?

16 A For salary purposes?

17 Q On this schedule Exhibit 65-73, what is -- what do  
18 you see --

19 A There's two departments being represented here, City  
20 administrator slash City clerk department. The way it's  
21 written here -- it's possible that the reason why they did it  
22 this way was just to save space, or just because of the  
23 amount of authority that was in place, but if you look at our  
24 salary schedules now, they're separate. These are two  
25 separate departments.



1 Q Okay. So do you have any information about what the  
2 salary -- how the departments were structured in 2004?

3 A How the departments?

4 Q Yes.

5 A They were separate. The City clerk was separate  
6 from to the City administrator.

7 Q Let's go revisit this in a second. Let's go back  
8 on -- on Exhibit 67. Let's go down -- what is department  
9 104 -- 1004? There's a department 1004?

10 A That's finance.

11 Q Okay. So where is the finance department in Exhibit  
12 65-65?

13 A I would need time to -- again, I need time to look  
14 at this resolution, everything, and any resolution in  
15 effect --

16 Q Well, just in the pay schedule here. This is by  
17 department; is that correct?

18 A Yes, but what your asking is totally different from  
19 what my schedule really represents. My schedule represents  
20 appointments. Whether they were compensated or whether it  
21 was a salary schedule for responding to that appointment is  
22 totally different. There is a salary resolution -- excuse  
23 me. There is a resolution appointing him to this position.  
24 That's what --

25 Q What -- what the testimony that was just elicited

1 from you was that Mr. Malkenhorst was the department head --

2 A Yes.

3 Q -- of various departments and that as the head of  
4 each of those departments he allocated costs over different  
5 departments. Okay?

6 THE COURT: Is that correct?

7 THE WITNESS: That's correct.

8 BY MR. JENSEN:

9 Q All right. Where is the finance department in the  
10 salary schedule?

11 A The salary schedule doesn't do that. The salary  
12 schedule only lists the compensation for those positions that  
13 are listed there.

14 Q Is there --

15 A It's not going to give you the break down by  
16 department. Unless other documentation is out there. Maybe  
17 the budget -- the budget would probably show that. That  
18 would be a totally separate document .

19 Q So but when you say Mr. Malkenhorst was the head of  
20 the finance department, --

21 A Yes.

22 Q -- what do you mean?

23 A He was the director of Light & Power. It says he's  
24 the chief executive director. When you look at -- when you  
25 look at the resolution that says he is the City treasurer,

1 the City treasurer is the executive director for the treasury  
2 department. When we look at City clerk, he is the department  
3 head for the City clerk.

4 Q So just to clarify, you're talking about cost  
5 accounting the accounts?

6 A I'm talking about positions held and  
7 responsibilities held.

8 Q But --

9 A That's what the resolutions state that he is being  
10 appointed to a position of responsibility of an executive,  
11 whether the salary resolutions support that? I'm not  
12 testifying to that. I'm testifying that I identified these  
13 resolutions appointing Mr. Malkenhorst to these positions,  
14 these executive positions. How the salary resolution was  
15 structured to reflect that, I -- that's not --

16 Q The implication is that Mr. Malkenhorst agreed to  
17 separate his compensation over various departments and -- and  
18 for something other than just cost accounting across  
19 departments. Is there any evidence to support that?

20 A I was asked who would have -- who would have been  
21 responsible to allocate these costs and I said the department  
22 head. Every department head is for responsible for  
23 allocating and it's a question that I addressed with you  
24 also, who would it be and I said it's the department head  
25 that determines that during the budget process.

1 Q But we haven't even -- there's no evidence that  
2 there's actually even separate departments of this other than  
3 some accounting idea without being -- you're talking about an  
4 accounting concept; is that correct? Was there a separate  
5 department, physical location, of the finance department at  
6 the City of Vernon?

7 A There is a different -- yeah.

8 Q At that time, was there an office with staff and a  
9 person sitting in it?

10 A From what I understand, yes.

11 Q Where's the salary listed for that position?

12 MR. LEVIN: Asked and answered.

13 THE COURT: Sustained.

14 BY MR. JENSEN:

15 Q So let's go through those other departments. What  
16 is 1015?

17 A That's treasury.

18 Q And so is there a separate treasury department?

19 A Yes.

20 Q And it's an actual location?

21 A Yes. It's quite unusual, but yes. We have -- the  
22 treasury department is the main department, and then years  
23 later the City created a finance department, but these two  
24 are under finance.

25 Q And so what is 1018?

1 A Personnel.

2 Q Personnel, and you previously testified that he was  
3 performing those duties within his job as City  
4 administrator?

5 Q I confirmed what the resolution stated, that he was  
6 appointed, and he was given such responsibilities. You were  
7 asking me to confirm what the resolutions stated.

8 Q And is there a department head of personnel?

9 A Yes.

10 Q And he was the department head of personnel?

11 A Yes.

12 Q And what is 1022?

13 A Redevelopment. As an abbreviation, we called it  
14 RDA.

15 Q And previously, you testified that there was no  
16 compensation paid to him for the redevelopment agency?

17 A I confirmed what the resolutions stated, the one  
18 presented before me.

19 Q Okay, and so is there a separate department for  
20 redevelopment?

21 A Same staff, but yes.

22 Q And would he be the department head of that?

23 A Yes.

24 Q And what about 5600?

25 A That's gas -- the gas department.

1 Q And was there a separate gas department?

2 A Yes.

3 Q And what about 9000? Was the --

4 A The electric.

5 Q So let's -- can you do me a favor? Do you have a  
6 calculator? Can you just add up those hours in that column,  
7 and tell me how many that add up too?

8 THE COURT: Which hours and which column?

9 MR. JENSEN: I'm sorry. So in Bruce Malkenhorst,  
10 it's 16, 4, 12, 4, 4, 16 --

11 THE COURT: Wait a minute. The record won't be  
12 clear. Refer to the exhibit and page number.

13 MR. JENSEN: Yes. Referring to the exhibit on page  
14 67.

15 THE COURT: Exhibit 67?

16 MR. JENSEN: Exhibit 67, page one.

17 BY MR. JENSEN:

18 Q If you can add up those?

19 A It's 80 hours.

20 Q And then if you can quickly just do the math so that  
21 we can determine the percentage allocated to each of those  
22 departments.

23 A Okay.

24 Q And what is the percentage for department 1002?

25 A 20.

1 Q And 1003?  
2 A 5.  
3 Q 1004?  
4 A 15.  
5 Q 1015? 1015?  
6 A 5.  
7 Q And 1018?  
8 A 5.  
9 Q 1022?  
10 A 20.  
11 Q And 5600?  
12 A 10.  
13 Q And 9000?  
14 A 20.  
15 Q And now, if I can just turn your attention to the  
16 next page. Exhibit 67-2. Are you familiar with why there's  
17 those hours in the columns that it -- it says hours, not  
18 regular, it says hours?  
19 A Yes.  
20 Q And what would that reason be?  
21 A Your question again?  
22 Q What is the reason that -- that numbers are put  
23 under the column that says hours?  
24 A Why?  
25 Q Why?

1           A     Because that's the way you have to pay someone.  
2     That's the way the payroll with ADP is structured.  You can't  
3     -- from my understanding, pay somebody a salary amount.  
4     Everything was structured on an hourly basis.

5           Q     And if you add up all of these hours for this  
6     period, how many hours do you get?

7           A     For that period?

8           Q     Including the ones under both of those columns on  
9     67-2, and I'm speaking of the column on the first top of the  
10    page.

11          A     The hours; right?

12          Q     Yeah, and then percentage-wise.  Do you -- on that  
13    first department, do you get 16 hours and then 4, 12, 4, 4,  
14    16, 8, 16?

15          A     On page one, yes.

16          Q     What about on page two?

17          A     14, 3 and a half, 10.

18          Q     What about adding the two hours in that second  
19    column?

20                MR. JENSEN:  Your Honor, may I approach the witness?

21                THE COURT:  Yes.

22                BY MR. JENSEN:

23           Q     I'm just going to expedite this.  Would it be  
24    appropriate to add these two numbers together to get the  
25    hours in that period allocated to that department?



1 A Yes.

2 Q So if you can just add these up very quickly, and  
3 then tell the court if those are the same number of hours in  
4 that period as the prior period.

5 A Yes.

6 Q And is it the same percentage allocation?

7 A Yes.

8 Q And let's move to the fourth page there of 67. Are  
9 those the same number of hours for that department?

10 A Yes.

11 Q And are the same percentages allocated for that  
12 department?

13 A Yes.

14 Q And I believe the next Exhibit 67-5 is over two  
15 different fiscal years, is that correct, or was there some  
16 adjustment to it?

17 A Yes.

18 Q So let's just move forward for the purposes of  
19 expediting this.

20 THE COURT: Oh, you're going to wrap this up now,  
21 Mr. Jensen.

22 MR. JENSEN: Yeah. I just -- just -- I mean, I'm  
23 just trying to follow up on him opening this thing up.

24 BY MR. JENSEN:

25 Q In a new fiscal year, do they sometimes change the

1 allocation of the hours?

2 A Yes.

3 Q Okay. I want to turn your attention to Exhibit  
4 67-6.

5 A Okay.

6 Q And what's the total number of hours allocated in  
7 that -- what's the total amount of hours in that period?

8 A 80.

9 Q And is this a different fiscal year than the prior  
10 fiscal year?

11 A Yes.

12 Q And so what is the percentage allocated to each  
13 department in this new fiscal year?

14 A Five percent for the first seven, and then 65 for  
15 the last department being Light & Power.

16 Q And just for the quick review of the subsequent  
17 documents, does that same percentage change in the new fiscal  
18 year of 65 with Light & Power, and five percent for the  
19 others remain consistent over that next period -- that next  
20 part of the fiscal year?

21 MR. YIM: Your Honor, just the same objection. The  
22 record speaks for itself. The document speaks for itself.

23 THE COURT: Sustained.

24 BY MR. JENSEN:

25 Q And so let me ask you a question, that's a pretty

1 significant change of in allocation from one fiscal year to  
2 the next. Is that a result of just different -- or do you  
3 have any knowledge of why those percentage allocations would  
4 change from when one fiscal year to another?

5 A These particular ones, no.

6 THE COURT: Anything further?

7 MR. JENSEN: What do you think -- no further  
8 questions.

9 THE COURT: Thank you.

10 MR. LEVIN: Subject to recall, your Honor, on  
11 foundational issues for Exhibit 67 and 68, I have nothing  
12 further of this witness.

13 THE COURT: Thank you, you may step down.

14 MR. JENSEN: And your Honor, I'd like to just  
15 subject to recall as well because I didn't get a chance to --

16 THE COURT: If there's time, it's a possibility.  
17 Where did you come here from?

18 THE WITNESS: City of Downey.

19 THE COURT: Okay. We'll see how much time is left  
20 at the end of the hearing, if any.

21 MR. JENSEN: Thank you, your Honor.

22 THE COURT: Next witness.

23 MR. LEVIN: Thank you, your Honor. CalPERS calls  
24 Tomi Jimenez to the stand.

25 THE COURT: Please raise your right hand.

1 TOMI JIMENEZ,  
2 called as a witness, and having been first duly sworn by the  
3 Court, was examined and testified as follows:

4 THE WITNESS: Yes.

5 THE COURT: Thank you. Speak up so the court  
6 reporter can hear you, and state and spell your full name.

7 THE WITNESS: Tomi, T-o-m-i. J-i-m-e-n-e-z.

8 THE COURT: Thank you very much. Go ahead.

9

10 DIRECT EXAMINATION

11 BY MR. LEVIN:

12 Q Good afternoon, Ms. Jimenez.

13 A Good afternoon.

14 Q Please tell the court how you are currently  
15 employed.

16 A I am currently employed at CalPERS. I'm the  
17 assistant division chief in the customer account services  
18 division over compensation review and payroll reporting  
19 sections.

20 Q The customer account services division, is that  
21 sometimes called CASD?

22 A Yes.

23 Q How long have you worked at CalPERS?

24 A 13 years.

25 Q When you first began at CalPERS, what position did

1 you hold?

2 A When I started with CalPERS, I was in the actuarial  
3 office, and I worked there for seven years.

4 Q Did you, before working at CalPERS, have experience,  
5 training, and education in the accounting field?

6 A Yes. My degree is in accounting. After college I  
7 was a municipal auditor with multiple firms for approximately  
8 four years. I then transferred to the franchise tax board  
9 when I was an auditor of residency cases, and I moved to  
10 CalPERS then in 2002.

11 Q For how long did you remain in the accounting  
12 department at CalPERS?

13 A Not the accounting department, but the actuarial  
14 department.

15 Q Sorry. The actuarial department. For how long were  
16 you in that department?

17 A Seven years.

18 Q That brings us to what year?

19 A 2010.

20 Q Then in 2010, what was the next position you held at  
21 CalPERS?

22 A I was the section manager over the compensation  
23 review unit.

24 Q For how long did you remain the section manager?

25 A Four years.

1 Q Until recently, 2014?

2 A Yes.

3 Q That's when you got your new position?

4 A Correct.

5 Q You mentioned compensation review. Briefly describe  
6 the role of CalPERS compensation review department?

7 A The compensation review units are responsible for  
8 taking a look at all members as they retire to make sure that  
9 they are having pay rate and special comp reported in  
10 compliance with the law. When agencies contract with  
11 CalPERS, they're bound to agree to these types of audits for  
12 transparency and consistency purposes and also just to make  
13 sure that we are in line with all CalPERS rules, not just  
14 compensation.

15 Q Let me unwind that a little bit. You mentioned pay  
16 rate. What do you mean by "pay rate"?

17 MR. JENSEN: Objection, your Honor. He's trying to  
18 elicit an interpretation of the statutory matter through the  
19 witness. It's a request for a legal opinion.

20 THE COURT: I'm going to allow it.

21 THE WITNESS: In order for compensation to be  
22 compliant and to be included in any benefit calculation, it  
23 has to meet the definition of compensation earnable.  
24 Compensation earnable is made up of two components, pay rate  
25 and special comp. So pay rate is a CalPERS term that is your

1 normal monthly rate of pay as its listed in the PERL, in the  
2 public employer retirement law. The pay rate is then  
3 verified for multiple audit points to insure compliance.

4 BY MR. LEVIN:

5 Q You mentioned the PERL. Is that a body of law  
6 you're familiar with?

7 A Yes, it is.

8 Q And how did you become familiar with this body of  
9 law?

10 A I became aware of it when I started with CalPERS in  
11 the actuarial office. However, moving over into the section  
12 manager in compensation review, it's our daily Bible, for  
13 say, on what was recordable compensation.

14 Q How do individuals like yourself in the final comp  
15 department use the PERL? Give an example.

16 MR. JENSEN: Objection. He's asking her to apply  
17 the law to -- which is in the realm of the court's expertise.  
18 We went through these challenging -- these expert -- these  
19 CalPERS witnesses for trying to give expert opinion, or  
20 opinion about the law, and if they want to recite to what  
21 policies or practices or procedures that they used, that's  
22 appropriate, but to give an interpretation of the statute is  
23 not appropriate.

24 THE COURT: Although, as we discussed, I'm going to  
25 allow them to give their interpretation -- the interpretation

1 they used when they applied what they thought the PERL law  
2 required in calculating respondent's final compensation.  
3 Whether that is an accurate reflection of the law is another  
4 question, but I'm going to find out what she did.

5 THE WITNESS: Will you repeat the question?

6 BY MR. LEVIN:

7 Q Sure. Can you describe generally how, for example,  
8 you might use the PERL in carrying out your day-to-day  
9 obligations in the final comp department?

10 MR. JENSEN: Objection. Calls for speculation.

11 THE COURT: Sustained. Let's stick to what she has  
12 done here.

13 MR. LEVIN: Fine, your Honor.

14 BY MR. LEVIN:

15 Q I did want to tell the court I wanted to provide  
16 foundation for the fact that this is something that she does  
17 do daily and that she doesn't just do it Malkenhorst. That's  
18 why I wanted to bring the court up to speed on the fact that  
19 this is routine for her unit.

20 MR. JENSEN: Your Honor, strike that as the attorney  
21 testifying.

22 THE COURT: I think it was responsive to my  
23 question. On the other hand she says it's her daily Bible.  
24 I assume that she uses it daily.

25 MR. LEVIN: Yes, your Honor. I'll move on.



1 BY MR. LEVIN:

2 Q In the final comp unit, is CalPERS called onto make  
3 the determination of a retiree's final compensation?

4 MR. JENSEN: Objection. CalPERS is called? It's  
5 vague and ambiguous.

6 THE COURT: Overruled.

7 THE WITNESS: Yes.

8 BY MR. LEVIN:

9 Q What is final compensation mean to somebody in your  
10 unit? What does it mean to you?

11 A Final compensation is the amount of compensation  
12 that is used to calculate the benefit that is a member is to  
13 receive. So the way that a benefit is calculated is based on  
14 three components. It's based on your final compensation  
15 amount. It's based on your years of service, and it's based  
16 on your formula that your agency has contracted for, and we  
17 refer to it three legged stool and each of those make up then  
18 the final benefit amount that's paid out.

19 Q Is the assistant chief of the final compensation  
20 unit, do you have delegated powers from the board of  
21 administration for CalPERS to make final decisions on a  
22 retiree's final compensation?

23 A Yes, I do.

24 Q Did you have that delegated power with respect to  
25 Mr. Malkenhorst?

1           A     Yes, I did.

2           Q     I'd like to ask some clarifying questions about the  
3 three legged stool. One of the legs is service credit; is  
4 that correct?

5           A     Correct.

6           Q     With respect to Mr. Malkenhorst, are you aware of  
7 any determination that CalPERS made or that you participated  
8 in in connection with his service credit?

9           A     No. His service credit was not in question.

10          Q     Just as a general background, at CalPERS you became  
11 familiar in an effort to determine Mr. Malkenhorst's  
12 retirement benefit; correct?

13          A     Yes.

14          Q     With respect to your three legged stool, what are  
15 the issues in which you participated personally?

16          A     We reviewed what was recorded but the City of Vernon  
17 for Mr. Malkenhorst. We reviewed backup documentation. We  
18 reviewed the audit report that came out. We asked for  
19 additional information from the City substantiating  
20 documents, minutes, things like that, and then tried to apply  
21 what we learned from the documentation to what was reported  
22 to make sure that it was compliant with the PERL.

23          Q     With respect to the three legged stool you  
24 described, briefly state what the three legs are again,  
25 please.

1           A     Final compensation, service credit, years of  
2     service, and the benefit package that the agency is  
3     contracted for.

4           Q     With respect to Mr. Malkenhorst, was there any  
5     dispute that you were aware of over his contracted benefit?

6           A     No. The contracted benefit is through the employer.  
7     So there wasn't a question with the formula or that he was a  
8     member. There weren't questions on things like that which  
9     would be contractual.

10          Q     Did you or CalPERS do anything to settle or were you  
11     aware of any dispute in connection with the amount of service  
12     credit Mr. Malkenhorst accumulated?

13          A     The question that came up regarding the service  
14     credit wasn't so much in total that we did all agree that he  
15     was working full time. However, after looking at the  
16     substantiating documents, it appears that he was in multiple  
17     part-time positions and service credit is based on your  
18     earnings and your pay rate for each position that you hold.

19          Q     I'm going to see if we can break this down into  
20     various categories. Let's start with the final compensation  
21     category. That was an issue that you looked at with respect  
22     to Mr. Malkenhorst, what should his final compensation be?

23          A     Yes.

24          Q     To determine Mr. Malkenhorst's final compensation,  
25     you mentioned you needed information on pay rate; correct?

1           A     Yes.

2                   THE COURT:   Go ahead.

3   BY MR. LEVIN:

4           Q     And you need information about special compensation;  
5   correct?

6                   MR. JENSEN:   Objection, your Honor.   Leading  
7   questions.

8                   THE COURT:   I believe the witness did testify to  
9   those.   Overruled.

10  BY MR. LEVIN:

11          Q     So let's first of all talk about pay rate.   Is pay  
12   rate the same thing as -- withdraw that question.

13                   Is a member's pay rate the same thing as a member's  
14   salary?

15                   MR. JENSEN:   Objection.   Leading.

16                   THE COURT:   Overruled.

17                   THE WITNESS:   It can be, but often cases that come  
18   to our area, there is typically -- it could be found a  
19   difference.

20  BY MR. LEVIN:

21          Q     Describe the types of differences between salary and  
22   pay rate that you've seen in the past.

23          A     Salary is basically the compensation package that an  
24   employer pays their employee.   It could include things such  
25   as car allowance.   It could include overtime.   It could

1 include a temporary upgrade, as a type of special comp item.  
2 However, pay rate is -- pay rate for CalPERS purposes is what  
3 is used to calculate the benefit. So it must be compliant  
4 with all the different components of the law.

5 Q Have you heard the term "persible" before?

6 A Yes.

7 Q What is persible?

8 A Persible is a slang word, for a lack of a better  
9 term, that it will be used to calculate your benefits. So if  
10 something is persible, it's typically considered comp  
11 earnable or persible compensation. Those are all terms that  
12 people use.

13 Q Is there a definition for pay rate on which you  
14 relied and CalPERS relies in conducting a review of a  
15 member's final compensation?

16 MR. JENSEN: Objection, your Honor. Leading.

17 THE COURT: Overruled.

18 THE WITNESS: CalPERS relies on the definition  
19 that's laid out in the PERL. It has a very clear meaning in  
20 the PERL. It has specific components of it. There's a  
21 regulation that has additional criteria that must be met in  
22 order for something that is reported to be considered a  
23 compliant pay rate.

24 BY MR. LEVIN:

25 Q Generally, what are the components of pay rate that

1 the final comp unit looks for?

2 A So off the top of my head, it must be -- it must be  
3 paid for -- your normal work must be paid to similarly  
4 situated members. It also in the regulation must be  
5 contained on a publicly available pay schedule, which in the  
6 regulation lists out what's needed there.

7 Q Is there a difference in the final comp unit between  
8 between pay that's for overtime versus pay -- withdraw that  
9 question.

10 In the final comp unit, does CalPERS treat  
11 differently pay for normal time work and pay for overtime?

12 MR. JENSEN: Objection, your Honor. Leading.

13 THE COURT: Overruled.

14 THE WITNESS: Yes. Pay rate can only encompass pay  
15 that's reported for work done during normal work hours. So  
16 anything above that would not be considered comp earnable,  
17 either through pay rate or special comp.

18 BY MR. LEVIN:

19 Q What source of information does CalPERS use to  
20 determine a member's normal work hours?

21 A There's a few -- there's a couple different ways.  
22 One is that -- the immediate one is that when an agency  
23 reports payroll, they note in the system in order to get the  
24 compensation posted, they note what the normal work schedule  
25 is. So for CalPERS purposes, anything between 36 and 60, can

1 be considered a normal work week, and it's notated in the  
2 system when they put in their pay rate and earnings. Another  
3 way is to ask a lot of times they will be -- the City will  
4 have documents saying what their normal work week is. I know  
5 for safety, a typical work week is much different than  
6 miscellaneous, and so it's usually laid out in bargaining  
7 unit agreements or things like that.

8 Q You mentioned "publicly available pay schedules."  
9 To CalPERS final comp unit, what is the difference between a  
10 pay schedule, as that term might be interpreted by a lay  
11 person and a publicly available pay schedule?

12 A A publicly available pay schedule has different  
13 components. One of them is that it has to be adopted in a  
14 public session. It has to be -- meet certain criteria. The  
15 main one is that it has to be -- list every position that the  
16 agency uses. It also has to be kept for a retention period.  
17 It needs to list out what the pay rate is for each position  
18 and how often it's paid so they could have monthly or they  
19 could have biweekly, as long as consistent and transparent to  
20 the public of what each position is making. There's -- is  
21 there a PERL I could --

22 MS. SALAZAR: Your Honor, may I?

23 THE COURT: Are you trying to test the witness's  
24 memory on what the provisions of the PERL are?

25 MR. LEVIN: I'm not, your Honor. Your Honor, we had

1 submitted in our trial brief the actual statutes and to the  
2 extent that Ms. Jimenez would like to refer to the court and  
3 the record, the specific language, I think it would be  
4 appropriate since it guides her analysis and that analysis of  
5 the final comp unit.

6 MR. JENSEN: And, your Honor, I just want to make  
7 this observation that we did do an SDT, subpoena duces tecum,  
8 on the CalPERS for all the documents that they used in their  
9 interpretation of this Matter or involved in processing this,  
10 and we received no documents from them.

11 THE COURT: I understand that you did request  
12 policies and procedures. That is not what you're referring  
13 to, is it, Mr. Levin?

14 MR. LEVIN: Your Honor, we're referring to the PERL  
15 which is the government code.

16 THE COURT: I understand.

17 MR. JENSEN: And --

18 THE COURT: You understood that the CalPERS uses the  
19 government code in determining --

20 MR. JENSEN: I also understood that there might be  
21 some interpretation.

22 THE COURT: Certainly, and we haven't gotten to  
23 that. I told you at the beginning of this morning I would  
24 revisit that in case the witness testifies that she did use  
25 such documentation, but I'm not going to prohibit her from



1 taking a look at the statute itself.

2 MR. JENSEN: And I just want to renew that issue.

3 THE COURT: Well, let's wait on that. It may become  
4 pertinent. We'll see.

5 MR. LEVIN: Your Honor, may I approach?

6 THE COURT: Yes, you may.

7 MR. LEVIN: Thank you.

8 THE COURT: Because I want to say right now that if  
9 your witness testifies to using written policies and  
10 procedures that were not produced in the course of preparing  
11 for this hearing today, I'm going to order you to do so.

12 MR. LEVIN: Your Honor --

13 THE COURT: And we're not there yet. I'm not  
14 issuing any order. Okay? We'll see what happens.

15 MR. LEVIN: It will not be a problem, your Honor.  
16 Everything has been produced.

17 BY MR. LEVIN:

18 Q Ms. Jimenez, can you identify the provision of the  
19 PERL that the final comp unit relies upon for determining  
20 what a pay rate is?

21 A It's 20630 and 20636.

22 THE COURT: I'm sorry. Would you repeat that?

23 THE WITNESS: Sure. 20630 and 20636. Do you want  
24 all of the sections we use?

25 ///

1 BY MR. LEVIN:

2 Q Not at this moment, Ms. Jimenez.

3 A Okay.

4 Q Is there a definition of pay rate that's provided in  
5 the PERL?

6 A Yes.

7 Q And where is that located at?

8 A It's section 20636B1.

9 Q Could you please tell the court and read from the  
10 PERL what the definition of "pay rate" is?

11 A "Pay rate means the normal monthly rate of pay or  
12 base pay of the member paid in cash to similarly situated  
13 members of the same group or class of employment for services  
14 rendered on a full-time basis during normal working hours  
15 pursuant to publicly available pay schedules. Pay rate for a  
16 member who is not in a group or class means the monthly rate  
17 or pay or base pay of the member paid in cash and pursuant to  
18 publicly available pay schedules for services rendered on a  
19 full-time basis during normal working hours subject to the  
20 limitation of paragraph two of subdivision E."

21 Q What is your understanding of the reference to  
22 "group or class"? What does that refer to?

23 A So group or class is -- for purposes of how we use  
24 it in our section, is that a member can't can get an increase  
25 above their group or class. That's to be included in

1 compensation and when it was written in 1994 after SB53, it  
2 was a curb spiking. It's a way for -- if you have 10  
3 department heads, one can't get a 20 percent increase while  
4 the rest got 2 percent. It was a provision they put in to  
5 kind of keep things equal and consistent for a public  
6 servant.

7 MR. JENSEN: Objection, your Honor. Move to strike.  
8 She's giving basically -- she's talking about SB53 and  
9 legislative history without producing the documents, and  
10 clearly, these are written documents somewhere and she hasn't  
11 gotten the legislative history about SB53 memorized and --

12 THE COURT: Thank you, Mr. Jensen, and, in fact,  
13 Mr. Levin did not call for legislative intent or legislative  
14 history. So the motion to strike is granted after she  
15 testified that a member can't get an increase above their  
16 group or class. Everything else is stricken.

17 MR. JENSEN: Thank you, your Honor.

18 BY MR. LEVIN:

19 Q Now, in the case of Mr. Malkenhorst, was an analysis  
20 done by the final comp unit to determine whether he was in a  
21 group or class?

22 A Yes.

23 Q Was it he in a group or class?

24 A It was very hard to determine. In the end, we found  
25 that he was not in a group or class. He wasn't comparable to

1 anyone because we couldn't tell exactly what he was doing and  
2 where his positions fell.

3 Q For purposes of 20636B1, there is a provision there  
4 for individuals who are not part of a group or class; is that  
5 correct?

6 A Correct.

7 Q And what are the elements of that definition of pay  
8 rate that were important to you in trying to determine  
9 Mr. Malkenhorst's final compensation?

10 A The provision in B1 that specifically speaks to  
11 members who are not in a group or class, states that they are  
12 limited under 20636E2. So 206 -- 20636E2 is the subsection  
13 that limits the increase to the next available group or  
14 class.

15 Q Are you aware of a reason that CalPERS requires pay  
16 schedules to be publicly available?

17 A The biggest component for a publicly available pay  
18 schedule is that CalPERS does not dictate to employers what  
19 they can pay their members. We rely on the constituents to  
20 do that. Our job is to be transparent in the benefits that  
21 are paid. So we put it on the employers to put on publicly  
22 available pay schedules. So that their citizenship,  
23 constituency, people of their districts can weigh in on their  
24 compensation. Is it all goes back to transparency. It all  
25 goes back to consistency on different levels. So that a

1 member of the public can go to an agency, ask for the  
2 publicly available pay schedule and know what their public  
3 servants are making.

4 Q Does CalPERS, specifically the final compensation  
5 unit, dictate to contracting agencies what they can or not  
6 pay to their employees?

7 A CalPERS does not do that.

8 Q Does CalPERS tell any of its contracting agencies  
9 about compliance with the FLSA, overtime rules, or exemption  
10 rules?

11 A CalPERS -- we do have some FLSA cases that come  
12 through in the compensation unit. There's -- they are  
13 difficult cases in that the CalPERS law and FLSA laws don't  
14 match up. So CalPERS law does trump FLSA law, and so there's  
15 always -- those are always difficult cases.

16 Q Describe --

17 MR. JENSEN: Objection. Motion to strike. She's  
18 giving a legal opinion as well about the conflict between  
19 FLSA and CalPERS law, and I don't think it was --

20 THE COURT: Sustained and the question was whether  
21 CalPERS advises agencies regarding compliance with FLSA. So  
22 you can restrict your answer to that.

23 THE WITNESS: Okay. When we have cases that have an  
24 FLSA component, we do work with the employers.

25 ///

1 BY MR. LEVIN:

2 Q Has CalPERS in the past encountered a situation with  
3 a contracting agency where CalPERS has told a contracting  
4 agency how it should apply the FLSA?

5 MR. JENSEN: Objection as to time and relevance.

6 THE COURT: Let's try to focus on this case,  
7 Mr. Levin.

8 MR. LEVIN: Yes, your Honor.

9 BY MR. LEVIN:

10 Q CalPERS has a definition of overtime; correct?

11 A Correct.

12 Q That definition is in the PERL?

13 A It is.

14 Q Can you find that definition of overtime,  
15 please?

16 A It's under section 20635.

17 Q Can you read it, please, into the record?

18 A "When the compensation of a member is a factor in  
19 any computation to be made under this part, there shall  
20 should be excluded from those computations any compensation  
21 based on overtime put in by a member whose service retirement  
22 allowance is a fixed percentage of final compensation for  
23 each year of accredited services. For the purposes of this  
24 parch overtime is the aggregate services performed by an  
25 employee as a member for all employers and in all categories

1 of employment in excess of the hours of work considered  
2 normal for employees on a full-time basis for which monetary  
3 compensation is paid. If a member concurrently renders  
4 service in two or more positions, one or more of which is  
5 full time service in the part time-positions shall constitute  
6 overtime. If two or more positions are permanent and full  
7 time, the position with the highest pay rate or base pay  
8 shall be reported to the system. This provision shall apply  
9 only to services rendered on or after July 1st, 1994."

10 Q When CalPERS is making a determination as to whether  
11 a member has or hasn't worked overtime, do they rely on 20635  
12 of the PERL?

13 MR. JENSEN: Objection, your Honor. It's a leading  
14 question, and it is not specific to her experiences generally  
15 to CalPERS.

16 THE COURT: Yes. Let's limit it to at least the  
17 witness's experiences and to the extent you can to this case.  
18 It would be helpful.

19 MR. LEVIN: Yes, your Honor.

20 BY MR. LEVIN:

21 Q In your experience, Ms. Jimenez, have you had cases  
22 where you have tried to determine a member's final  
23 compensation in -- when there's a complication of potential  
24 overtime?

25 MR. JENSEN: Objection, your Honor. Leading.

1 THE COURT: Overruled.

2 THE WITNESS: Yes.

3 BY MR. LEVIN:

4 Q And in that situation, did you rely upon the PERL's  
5 definition of overtime?

6 MR. JENSEN: Objection. Leading.

7 THE COURT: I'll allow it.

8 THE WITNESS: Yes.

9 BY MR. LEVIN:

10 Q Have you ever relied upon the FLSA's definition of  
11 overtime in making a final compensation determination?

12 MR. JENSEN: Objection. Irrelevant and leading.

13 THE COURT: Relevance?

14 MR. LEVIN: Your Honor, the relevance is the FLSA is  
15 irrelevant. It has absolutely nothing to do with what  
16 CalPERS does. She has never used it. CalPERS doesn't use  
17 it. It's entirely different statutory scheme, and that needs  
18 to be made clear on the record since we were talking about  
19 FLSA all morning.

20 THE COURT: I'll allow the question.

21 THE WITNESS: Can you restate it?

22 BY MR. LEVIN:

23 Q In your experience in determining final compensation  
24 of members, have you ever relied upon the FLSA's definition  
25 of overtime?



1           A     I haven't relied on their definition in making a  
2     determination.

3           Q     Are you aware of any CalPERS policy or procedure  
4     that directs final compensation unit or others within CalPERS  
5     to base final compensation issues based upon the FLSA?

6           A     No.

7           Q     I'd like to mark for identification Exhibit 79.

8           THE COURT:   Okay.  The document behind tab 79 is  
9     marked for identification as Exhibit 79.

10                   (Department's Exhibit 79 was marked for  
11     identification by the Court.)

12    BY MR. LEVIN:

13           Q     Ms. Jimenez, do you recognize Exhibit 79?

14           A     I do.

15           Q     What is it?

16           A     This is the notice of proposed regulatory action for  
17     regulation 570.5 which clarified what a publicly available  
18     pay schedule was.

19           THE COURT:   I'm sorry.  Clarified?

20           THE WITNESS:  What a publicly available pay schedule  
21     was.

22    BY MR. LEVIN:

23           Q     When did you first see Exhibit 79?

24           A     Back when we were moving the regulation forward in  
25     2011, I believe, around the beginning of 2011 is when we

1 started this.

2 Q Describe any role that you played in connection with  
3 the creation of Exhibit 79.

4 A Sure. I worked with our legal office and the  
5 division chief to write the regulation to get it  
6 implemented.

7 Q Why was this regulation being created? What was the  
8 problem that CalPERS identified that it believed -- that you  
9 believed needed rectifying the regulation?

10 MR. JENSEN: Objection, your Honor, as to what her  
11 personal input into a regulation that's publicly adopted.  
12 Typically, an individual legislator or -- his idea of what is  
13 ultimately adopted is not determinative of the meaning of the  
14 regulation --

15 THE COURT: Sustained.

16 MR. JENSEN: Sorry.

17 MR. LEVIN: Your Honor, if I may address that point?

18 THE COURT: Go ahead.

19 MR. LEVIN: The issue is not that the witness's  
20 opinions are determinative, but they form the basis for her  
21 actions and interpretation and analysis of Mr. Malkenhorst.  
22 She will testify as to the policies and considerations behind  
23 the regulation, and not attempt to interpret it or do  
24 anything beyond that.

25 THE COURT: Are you going to question the witness as

1 to whether she applied this regulation in making her  
2 determination regarding Mr. Malkenhorst?

3 MR. LEVIN: No. Just the policies.

4 MR. JENSEN: And your Honor, I just want to point  
5 this out for the record that they're talking about a proposed  
6 regulation in 2011.

7 THE COURT: Yes.

8 MR. JENSEN; And they're proposing it retroactively  
9 to his situation in 2006.

10 MR. LEVIN: Your Honor, if I can address that point?  
11 The regulation itself says it was clarifying and that it was  
12 clarifying the law, not creating new law, which effects  
13 retroactivity, but in any event, CalPERS is not making the  
14 claim that there was a violation of this regulation. The  
15 regulation is simply to have the witness describe the  
16 policies that were in place that are behind its  
17 interpretation of Mr. Malkenhorst's case. If you let the  
18 witness answer the question as to what the policies are, and  
19 then perhaps there's a further objection to a description of  
20 those policies, we can address it at that time.

21 MR. JENSEN: And your Honor, I'd object to this. If  
22 they're not going to apply it, what difference do the  
23 policies make?

24 THE COURT: I have that question too.

25 MR. LEVIN: Well, because Mr. Malkenhorst has been

1 clamming for written statements of policies that CalPERS  
2 follows. So we have a written statement of policy. It's  
3 been produced, and so for now to prevent this witness to say  
4 that she can't testify with the written document, doesn't  
5 seem to me make sense.

6 THE COURT: All right, and you're saying that  
7 contained in this notice of proposed regulatory action in  
8 Exhibit 79 is a written statement of CalPERS policy?

9 MR. LEVIN: That's exactly right. It would be  
10 section one -- that the witness will talk about section  
11 one.

12 MR. JENSEN: And your Honor, I just want to point  
13 out again that by its very nature, they're trying to  
14 retroactively apply a policy that didn't exist previously.  
15 So --

16 THE COURT: One moment.

17 MR. JENSEN: I'm sorry.

18 THE COURT: Mr. Levin, I'm looking at section one on  
19 page one of Exhibit 79 and I don't see a statement of policy  
20 in there.

21 MR. LEVIN: Your Honor, may I have the witness  
22 identify them or should I?

23 THE COURT: Why don't you have the witness identify  
24 a policy that she and the people in her unit relied on in  
25 determining final compensation at the time respondent

1 Malkenhorst's final compensation was determined.

2 BY MR. LEVIN:

3 Q Ms. Jimenez, can you please identify, to begin with,  
4 a policy that effected or influenced CalPERS analysis of  
5 Mr. Malkenhorst's final compensation?

6 A So the policy that we relied on for Mr. Malkenhorst  
7 was -- what was included in the law, both in the regulation  
8 here and in the statute, but I think that section six gives  
9 more of what we had looked at in order to bring this  
10 forward.

11 THE COURT: Okay. One moment, please. I'm not  
12 seeing it, Mr. Levin. I would like to know where the  
13 statement of the policy that -- as it existed at the time the  
14 determination was made for respondent Mr. Malkenhorst appears  
15 in section one, section six, or any other section of this  
16 document.

17 MR. LEVIN: Your Honor, I will identify it for you.  
18 First of all, in section one, insure consistency, having the  
19 witness talk about what insuring consistence means.

20 THE COURT: One moment. One moment. This document  
21 did not exist at the time the determination was made;  
22 correct?

23 MR. LEVIN: That's correct.

24 THE COURT: Okay. We're referring to a policy that  
25 was in existence at the time the determination was made or

1 the redetermination?

2 MR. LEVIN: That's right. That is the policy. The  
3 policy of consistency and transparency, they existed. This  
4 is just a document that reflects them. So the witness is  
5 going to testify about those policies and that they existed  
6 at the time that Mr. Malkenhorst was working at the City of  
7 Vernon and much before then. This document exists because we  
8 were asked to provide some written documentation of existence  
9 of those policies. So if the question is, were those  
10 policies of consistency and transparency in writing at the  
11 time Mr. Malkenhorst was working, I don't know that those  
12 policies were in writing at the time, but they were certainly  
13 applied by CalPERS.

14 THE COURT: I'll certainly allow you to ask that  
15 question. I'm not sure why the notice of proposed regulatory  
16 action is relevant, and I'll leave you to think about that  
17 over night as we adjourn for the day. I'll see you all at  
18 9:00 in the morning.

19 MR. JENSEN: And your Honor, can I just preserve my  
20 objection to it?

21 THE COURT: You may.

22 MR. JENSEN: I just object to it because in  
23 addition, this document clearly says makes specific  
24 requirements, in addition to all the other objections. Okay?  
25 So it's not just a restatement of policy. It's really an

1 affirmative change of the statement.

2 THE COURT: Well, I don't think Mr. Levin was saying  
3 this entire document constitutes the policy that existed at  
4 the time the determination was made, but it has some  
5 reference to that policy. Let's continue this discussion in  
6 the morning. Thank you all.

7 (Hearing adjourned at 4:30 p.m.)

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