

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:)
) OAH NO. 2013080917
BRUCE MALKENHORST, SR.,)
)
 Respondent,)
)
 and)
)
CITY OF VERNON,)
)
 Respondent.)
_____)

TRANSCRIPT OF PROCEEDINGS
Los Angeles, California
Tuesday, August 26, 2014

Reported by:
BRITTANY SILVA
CSR No. 13940
Job No. :
2519OAH

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3 STATE OF CALIFORNIA

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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 Tuesday, August 26, 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
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25

1 APPEARANCES:

2

3 For the DEPARTMENT: STEPTOE & JOHNSON LLP
4 BY: JASON LEVIN
5 633 West Fifth Street
6 Suite 700
7 Los Angeles, California
8 90071

6

7 BY: RENEE SALAZAR
8 Lincoln Plaza North
9 400 Q Street, LPN 3340
10 P.O. Box 942707
11 Sacramento, California
12 94229

10

11 For the RESPONDENT LAW OFFICES OF
12 BRUCE MALKENHORST: JOHN MICHAEL JENSEN
13 BY: JOHN MICHAEL JENSEN
14 11500 West Olympic Boulevard
15 Suite 550
16 Los Angeles, California
17 90064

14

15 For the RESPONDENT BY: JOUNG H. YIM
16 CITY OF VERNON: 6033 West Century Boulevard
17 Fifth Floor
18 Los Angeles, California
19 90045

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19 Also present: Steve Stueber

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I N D E X

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DEPARTMENT'S Witness:	Direct	Cross	Redirect	Recross
Tomi Jimenez	6	58		

E X H I B I T S

DEPARTMENT'S:	Marked for Identification	Received in Evidence
79 (Unidentified)		26
86 (Unidentified)	96	
89 (Unidentified)	13	52
RESPONDENT'S:		
QQ (Unidentified)	84	86
FFFFF (Unidentified)	74	75
LLLLL (Unidentified)		141
MMMMM (Unidentified)		151
NNNNN (Unidentified)		155
OOOOO (Unidentified)		156
PPPPP (Unidentified)		156

1 Los Angeles, California, Tuesday, August 26, 2014

2 9:00 a.m.

3

4

5 THE COURT: Let's go on the record. This is the
6 second day of the CalPERS, City of Vernon, and Malkenhorst
7 hearing. OAH No. 2013080917. It's August 26, 2014. 9:00
8 a.m., and we're continuing with the direct examination of
9 Tomi Jimenez. Ms. Jimenez, you understand you're still under
10 oath?

11 THE WITNESS: Yes, I do.

12 THE COURT: Thank you.

13 MR. LEVIN: May I continue, your Honor?

14 THE COURT: You may.

15 MR. JENSEN: Your Honor, just a preliminary matter?

16 THE COURT: Go ahead.

17 MR. JENSEN: That we were supposed to provide notice
18 of the witnesses that we're calling tomorrow by 10:00 a.m.?

19 THE COURT: Yes.

20 MR. JENSEN: And I'd just like to do it on the
21 record just so that if that's okay?

22 THE COURT: It's not necessary, but it's okay.

23 MR. JENSEN: Thank you, your Honor. We're going to
24 be calling Carla Feldman and Marla Aspinwall for tomorrow
25 afternoon. Thank you, your Honor.

1 THE COURT: Thank you.

2

3 DIRECT EXAMINATION

4 BY MR. LEVIN:

5 Q Good morning, Ms. Jimenez.

6 A Good morning.

7 Q Could you please turn to Exhibit 79? When did you
8 write Exhibit 79?

9 MR. JENSEN: Objection. Lacks foundation.

10 THE COURT: Sustained.

11 BY MR. LEVIN:

12 Q Did you write Exhibit 79?

13 A Yes, I did.

14 Q When did you write it?

15 A Towards the last part of 2010, early 2011.

16 Q When did you begin your analysis of

17 Mr. Malkenhorst's final compensation?

18 A I became aware when the audit was taking place which
19 I believe was in 2011 through 2012.

20 Q When you were analyzing Mr. Malkenhorst's final
21 compensation, did you have in mind the policies and other
22 statements that are expressed in Exhibit 79?

23 A Yes. This is -- the concepts in here were not new.
24 So it was fresh in my mind, but it was also the practice of
25 the unit since I arrived there.

1 MR. JENSEN: Objection. Motion to strike as
2 nonresponsive to the question.

3 THE COURT: Overruled.

4 BY MR. LEVIN:

5 Q In Exhibit 79, why did you include a reference or
6 references to transparency?

7 A So the main goal of a publicly available pay
8 schedule is transparency. CalPERS takes this very seriously.
9 It's not in the compensation review unit, but through my
10 experience in the actuarial office, with my dealings with the
11 audit's office, and in comp review. That is one of the
12 driving forces of CalPERS in order to make it public. So
13 people can weigh in on their public servant's compensation.

14 Q How does CalPERS policy of transparency apply to the
15 record keeping requirements of contracting agencies?

16 MR. JENSEN: Objection, your Honor. Lacks
17 foundation.

18 THE COURT: Sustained.

19 BY MR. LEVIN:

20 Q Does CalPERS have a policy or practice concerning a
21 contracting agency's record keeping?

22 MR. JENSEN: Objection. Leading.

23 THE COURT: Overruled.

24 THE WITNESS: When agencies contract with CalPERS,
25 there are certain requirements listed in the contract itself.

1 The agencies are held to those requirements and part of it is
2 to maintain records, to provide records, which is also a
3 requirement of the law and the PERL. Any time there is a
4 question, we go to the employer to provide the records and
5 use a PERL section to do so. So it's just -- it's the
6 standard requirement that the employers, of course, are
7 reporting to us. They need to substantiate that
8 documentation of various types.

9 MR. JENSEN: Your Honor, move to strike. We have
10 requested all of these policies and procedures that she's
11 talking about now, and they haven't been provided to us. She
12 just mentioned policies and procedures that they're using or
13 they are requiring their employers to use. We have
14 subpoenaed them, and we have done a public records act and we
15 have got nothing. So I move to strike that, and if she's
16 talking about it, she has to give us some idea of what she's
17 talking about.

18 THE COURT: Let me ask the witness, are you
19 referring to any written policies or procedures of CalPERS
20 other than the contracts they enter into, the individual
21 contracts they enter into with various agencies.

22 THE WITNESS: No. The contract and the PERL.

23 THE COURT: Those are the only two things you're
24 referring to?

25 THE WITNESS: Yes.

1 THE COURT: There is no written policy or written
2 procedure of CalPERS that you're referring to in your
3 answer?

4 THE WITNESS: No, I am not.

5 THE COURT: Okay. Overruled.

6 BY MR. LEVIN:

7 Q What does the PERL say about a contracting agency's
8 need to provide information to CalPERS? You can refer to the
9 PERL if you'd like.

10 MR. JENSEN: And it's vague as to time as well.

11 THE COURT: Let's clarify that, Mr. Levin.

12 BY MR. LEVIN:

13 Q What is the current version of the PERL say about a
14 contracting agency's obligation to provide information to
15 CalPERS?

16 A Under section 20128, which was enacted in 1977, so
17 it's in the PERL since that date. It states "not
18 withstanding any other provision of law, the board may
19 require a member or beneficiary to provide information it
20 deems necessary to determine the system's liability with
21 respect to and an individual's entitlement to benefits
22 prescribed by this part."

23 Q How does CalPERS policy of transparency apply to
24 members -- when CalPERS believes are working multiple
25 positions?

1 MR. JENSEN: Objection, your Honor. Misstates the
2 evidence and calls for speculation as well and lacks
3 foundation.

4 THE COURT: I don't think it was a restatement of
5 any evidence. Overruled. You may answer.

6 THE WITNESS: Will you repeat it, please?

7 BY MR. LEVIN:

8 Q Sure. Is there an intersection between CalPERS
9 policy on transparency and how it addresses members who have
10 multiple positions?

11 MR. JENSEN: Objection. Vague as to "CalPERS policy
12 on transparency."

13 THE COURT: Overruled.

14 THE WITNESS: So transparency is -- we live that at
15 CalPERS. It filters into everything we do. So not only are
16 we wanting agencies to be transparent for us so that we can
17 have the information we need to provide a benefit, but we
18 also need them to provide it to the public. So when a member
19 is working multiple part-time positions, the public really
20 needs to know how many hours are you working in each position
21 because that all factors into their benefit allowance that
22 they're going to be receiving at their time of retirement.
23 So if you have a member in multiple part-time positions, and
24 it's not clear and concise and open and transparent, then a
25 member is unable to tell what that benefit is going to be

1 calculated on.

2 MR. JENSEN: Your Honor, I just need to clarify, I
3 request your information. Is the section that she's quoting
4 from 20128 is the board may require a member or beneficiary
5 to provide information? It says nothing about contracting
6 agencies or employers, and she's discussing these as applying
7 them to the employers and your Honor, I -- it's --

8 THE COURT: Mr. Jensen, at this point, I don't need
9 argument on that, and I'm sure when you cross-examine this
10 witness you'll have every opportunity to explore that with
11 the witness. Do you have an objection?

12 MR. JENSEN: Yes. Your Honor, I think she's giving
13 a legal interpretation of a statute, and she's giving a
14 false -- a wrong legal interpretation.

15 THE COURT: Again, you'll have your chance,
16 Mr. Jensen.

17 MR. JENSEN: Thank you, your Honor.

18 BY MR. LEVIN:

19 Q Ms. Jimenez, is there -- does CalPERS have the
20 concern that individuals with multiple positions may not be
21 describing to the public the additional pay they are
22 receiving for taking on additional positions?

23 MR. JENSEN: And your Honor, I just object to this
24 whole line of questioning about her representing anything
25 CalPERS in general's policy about her percipient --

1 THE COURT: So do I. Let's stick to this case.

2 MR. LEVIN: Yes.

3 BY MR. LEVIN:

4 Q Ms. Jimenez, do you personally have a concern with
5 members who have multiple positions being paid for taking on
6 multiple positions without there being a publicly available
7 pay schedule?

8 A Yes. The --

9 Q Please explain.

10 A The biggest concern with multiple part-time
11 positions is that agencies will often incorrectly add
12 positions together instead of reporting them separately. So
13 for instance, if you have two positions, one earning a pay
14 rate of 5,000 a month and one earning a pay rate of \$2,500 a
15 month, those should be -- when they come into the system,
16 should be reported as two separate lines. When you go to
17 retire, the system will say -- there will be lines. The line
18 will have 5,000 and let's say they worked for simplicity 50
19 percent in each job. So you'll have 5,000 and then the
20 earnings for that would be for 2,500. That's one line. The
21 second line would read 2,500 for the pay rate and 1,250 for
22 the earnings. So when you run that through the benefit
23 calculations, they have a weighted average to the pay rates.

24 Q Can you demonstrate that on a piece of paper using
25 the example that you just described?

1 A Sure. Can I draw it out and then explain it?

2 Q Please do.

3 A Okay.

4 MR. LEVIN: Your Honor, may I have this
5 demonstrative marked for identification only as Exhibit 89?

6 THE COURT: Yes.

7 (Department's Exhibit 89 was marked for
8 identification by the Court.)

9 BY MR. LEVIN:

10 Q Can you please write in the upper right hand corner
11 89, please?

12 A Okay. So if a member has two positions with the
13 5,000 and 2,500 pay rates and they're working 50 percent in
14 each position, how they should report it to CalPERS is that
15 they'll report a pay rate of 5,000. Earnings of 2,500 and
16 they earn half a month of service credit. This is if they
17 report monthly. In the second position when someone has
18 2,500 pay rate, \$1,250 in earnings and a half month of
19 service credit. So they will repeatedly report this way for
20 both positions, and then when it comes to calculate their
21 benefit, these have a weighted average.

22 They don't add them together because that would then
23 increase the compensation that's one of the three legs of the
24 stool and incorrectly inflate their benefit. So what they
25 would do is -- they would get one year of service credit and

1 their earnings would be full time which gives them their
2 service credit, but their weighted average wouldn't be added.
3 It would be smaller. So their pay rate would be 3,750 with
4 one year of service credit, and this is what would be used to
5 calculate their benefit.

6 Q With reference to Exhibit 89, for the pay rate, it
7 would be 50 percent of the 5,000 and 50 percent of the 2,500
8 because that was the percentage of the hours in that
9 position?

10 A Yes. So if they're earning -- so this is monthly.
11 So if they're earning \$5,000 a month and they work half time,
12 then their earnings by direct correlation would be half of
13 that.

14 Q And if there was one position at 50 percent and two
15 positions at 25 percent at the time, you would take the
16 percentage of time and multiple it by the pay rate for that
17 position and then add them all up?

18 A Yeah. It is -- it's up to the agency to actually
19 report. So when they report, that's a required field that
20 they fill out. The earnings which they calculate by how many
21 hours they work in each position.

22 Q What does CalPERS do in a situation of a member with
23 multiple positions, but only one pay rate is reported?

24 A It's incorrectly reported. We wouldn't be able to
25 correctly calculate the benefit.

1 Q You can have a seat. Thank you. In your
2 experience, have there been situations where individuals with
3 multiple positions will only -- the employers will only
4 report a single pay rate for both positions?

5 A For multiple -- I want to make sure it's multiple
6 part-time positions, but yes. In multiple part-time
7 positions, we have seen agencies report it all lumped
8 together, and when it comes to our unit, we would review it
9 and it would be a denial or determination that they would
10 need to fix their pay rate and report correctly.

11 Q And when you were doing your final compensation
12 analysis for Mr. Malkenhorst, did you see evidence of his pay
13 rate for multiple positions being lumped together?

14 A Yes. When we were looking at his career as a whole
15 in all the resolutions, we could see that they were adding
16 positions. I think at one point, there was eight or nine
17 positions. So what we were looking at was well, is he
18 receiving additional pay for these positions, are they
19 part-time positions, and when we looked, they're clearly
20 positions. They're labeled positions. He signs his name of
21 different titles.

22 They were clearly different positions, and when we
23 looked as his pay over a 25-year span when we were looking at
24 what to use, trying to figure out how we could determine what
25 was going on, we did some quick eyeball analysis of a 25-year

1 span from '79 to when he retired in 2004. We kind of looked
2 at the department heads because that's who he would be
3 grouped with in the group or class issues and everyone else's
4 pay went up roughly three to four times, and his was close to
5 nine times. So while we wouldn't tell them what they can
6 pay, it seemed a clear indicator that over time, there were
7 very clear differences between what everyone else was doing
8 in one position, and his increase that included multiple
9 positions.

10 Q Let's walk through an example. Could you turn to
11 Exhibit 14, please. Do you recognize Exhibit 14?

12 A I do.

13 Q And what's Exhibit 14?

14 A Exhibit 14 is a resolution that's stating that
15 they're reorganizing the electrical department and
16 establishing the position of chief executive officer and
17 operations manager.

18 Q Is Exhibit 14 a resolution from the City of
19 Vernon?

20 A It is.

21 Q Did you reply upon Exhibit 14 in performing your
22 final compensation analysis for Mr. Malkenhorst?

23 A I did.

24 Q Is there anything within Exhibit 14 that caught your
25 eye in connection with the multiple positions that you have

1 been addressing?

2 A A couple of different things. The biggest thing
3 that drew my attention to it was that it actually had
4 --although not -- not the most complete duty statement, but
5 it did have -- Exhibit A has a list of duties.

6 Q Are you looking at Exhibit 14-4?

7 A 14-4, yeah. So that's a component of a position.
8 There's duties for that position. The other part was that in
9 the body of the resolution itself on page 1, it's clearly
10 talking about a need for a new position. It's talking about
11 due to the increase in work or increase in the wholesale
12 market that they're having to reorganize and put together
13 something. It seemed like it was a very big deal which
14 created a position.

15 Q In your experience, are members sometimes given
16 titles or positions that don't require them to do any actual
17 work ex officio-type titles?

18 A Sometimes. It's rare, but I have seen it.

19 Q Is a pay schedule -- a publicly available pay
20 schedule needed for a position for which no work is actually
21 being done?

22 A No. If it's not -- well, if it's a position and it
23 has duties, it should be on the pay schedule.

24 Q Does that opinion hold for what's reflected in
25 Exhibit 14, the appointment of Mr. Malkenhorst to position in

1 the electrical department?

2 A Yes. This position should have be placed on the
3 publicly available pay schedule.

4 Q Could you please turn to Exhibit 13.

5 A Okay.

6 Q Particularly Exhibit 13-22.

7 A Okay.

8 Q At the time -- back up for a second. Withdraw that
9 question.

10 This is a resolution from the City of Vernon;
11 correct?

12 A Yes.

13 Q It was effective July 1st, 1980?

14 A 1980, yes.

15 Q Did you review and rely upon this resolution in your
16 analysis of Mr. Malkenhorst's final compensation?

17 A I did.

18 Q Going back to page 22 of the exhibit, do you see
19 that this is a page of a salary schedule; correct?

20 A It is.

21 Q At the top there's an entry for City administrator
22 slash City clerk?

23 A Yes.

24 Q What position did Mr. Malkenhorst hold with the City
25 of Vernon at the time of this resolution or do you know?

1 A I'm not sure.

2 Q Did he hold the position of City administrator/City
3 clerk?

4 MR. JENSEN: Objection. Calls for speculation. She
5 just said she didn't know. I don't know what --

6 THE WITNESS: May I clarify?

7 THE COURT: You may clarify.

8 THE WITNESS: He was City administrator/City clerk.
9 I'm not sure at this exact moment if he was holding any other
10 positions.

11 BY MR. LEVIN:

12 Q Could you write on Exhibit 89 the reported rate of
13 pay, the salary for the City administrator/City clerk that's
14 reflected in Exhibit 13? If you could just write it on
15 Exhibit 89.

16 A So I just want to be clear. The salary schedule has
17 ranges. So could I just use the top range?

18 Q Please do. The step one.

19 A Just do another example down here?

20 Q Yes, please. If you could indicate by that salary
21 that the effective date of the resolution, July 1st, 1989.
22 Now, if you could briefly take a seat, turning back to
23 Exhibit 14, what was the date -- the effective date of the
24 resolution by which Mr. Malkenhorst became the CEO of the
25 electrical department?

1 A May 5th, 1981.

2 Q If you could write that date underneath.

3 A Okay.

4 Q If you could please take a look at Exhibit 17. Is
5 this a resolution of the City of Vernon?

6 A It is.

7 Q Did you review and rely upon this resolution in
8 conducting your final compensation analysis for
9 Mr. Malkenhorst?

10 A I did.

11 THE COURT: We're on exhibit?

12 MR. LEVIN: We're on Exhibit 17. I'm going to
13 direct the witness to -- would you please turn to page 36,
14 Exhibit 17-36.

15 THE WITNESS: Okay.

16 BY MR. LEVIN:

17 Q Do you see a salary scale provided here for the City
18 administrator/City clerk?

19 A I do.

20 Q Could you please on Exhibit 89 write the date of the
21 resolution -- the effective date of the resolution and the
22 new salary rate for the City administrator/City clerk.

23 A Okay.

24 Q Ms. Jimenez, is the analysis of these three exhibits
25 that we're now under taking as Exhibit 89, is that something

1 that you did as part of your final comp review for Mr.
2 Malkenhorst?

3 A It is.

4 Q And what did these three exhibits and these three
5 facts demonstrate to you?

6 A So what it appears happened was that he was given an
7 additional position. Shortly thereafter, his compensation
8 increased by quite a bit.

9 Q And what was the quite a bit?

10 A I think it was 37.1 percent.

11 Q So the two-year period encompassing a year before
12 and a year after Mr. Malkenhorst became CEO of the Light &
13 Power department, the pay rate for City administrator/City
14 clerk increased by 37.1 percent; is that correct?

15 A That's correct.

16 Q During the entire period of time that
17 Mr. Malkenhorst worked at the City of Vernon, did you ever
18 see a publicly available pay schedule for the position of CEO
19 of the Light & Power department?

20 A While he worked there, no.

21 Q After Mr. Malkenhorst left the City of Vernon, was
22 there a publicly available pay schedule added for the
23 position of CEO of Light & Power?

24 A Yes. I believe so.

25 MR. LEVIN: Give me one second and see if we can

1 find that. Sorry for the delay, your Honor. I'll have it in
2 just a moment.

3 THE COURT: That's all right.

4 BY MR. LEVIN:

5 Q Could you please turn to Exhibit 75.

6 A Okay.

7 Q Is this a resolution of the City of Vernon?

8 A Yes, it is.

9 Q Is this resolution something that you reviewed and
10 relied upon in making your final comp determination for
11 Mr. Malkenhorst?

12 A Yes, it is.

13 Q What was the effective date of this resolution?

14 A June 30th, 2014.

15 Q I'm sorry. 2014 did you say?

16 A June 29th, 2005.

17 Q And what was the effective date of Mr. Malkenhorst's
18 retirement from the City of Vernon?

19 A May of 2005 -- April of 2005.

20 Q Look at page Exhibit 75 at the very top, the first
21 page, there's an introduction there. Is it correct that this
22 resolution intended to fix compensation for City of Vernon
23 employees as of July 1st, 2005?

24 A Yes.

25 Q And Mr. Malkenhorst had retired as of July 1st,

1 2005; correct?

2 A Correct.

3 Q In fact, that was the effective date of his
4 retirement?

5 A I believe so.

6 Q So please turn to page -- Exhibit 75-11.

7 A Okay.

8 Q There's an entry -- this is a salary schedule;
9 correct?

10 A That's correct.

11 Q And there's an entry here for the acting director of
12 Light & Power; correct?

13 A Correct.

14 Q Is this the first time that you had seen any
15 publicly available pay schedule for the position of director
16 or acting director of Light & Power?

17 A Yes it is.

18 Q Was there anything important to you about the
19 designated monthly salary for the acting director of the
20 Light & Power position?

21 A Well, the fact that it had a salary for a position
22 was what was concerning.

23 Q What was the --

24 A It was obviously the position that was going to be
25 earning quite a bit of money. Therefore, it was obviously a

1 position that had multiple duties required. So that's what
2 we drew from this.

3 Q In Exhibit 79, that's the 570.5 material that you
4 wrote, you refer to consistency. What did you mean by
5 "consistency"?

6 A Well, consistency is something we look for for both
7 internally for employers as well as across to employers. So
8 for consistency in this particular circumstance regarding
9 Mr. Malkenhorst, it seemed very inconsistent that there
10 was -- Mr. Malkenhorst had multiple positions that were all
11 rolled up together. However, as soon as he retired, we could
12 see positions being now added onto the salary schedule that
13 were full time, multiple positions that he had held are now
14 being held by various members, indicating that the treatment
15 was inconsistent.

16 Q Turning back to Exhibit 75. Please turn to Exhibit
17 75-22.

18 A Okay.

19 Q At the time of his retirement, Mr. Malkenhorst was
20 the City clerk; correct?

21 A Correct.

22 Q And had you seen for Mr. Malkenhorst a separate pay
23 schedule for just City clerk, or was it always City
24 administrator/City clerk?

25 A I believe early on in his career, he was solely the

1 City clerk.

2 Q And then did it change to something else?

3 A It did. Then it was combined with City
4 administrator. It was City administrator slash the clerk.

5 Q And then those positions -- did they appear unwound
6 to you when you saw Exhibit 75?

7 A It did. It's clearly now listed as a separate
8 position on the salary schedule.

9 Q At the time of Mr. Malkenhorst's retirement, was he
10 also acting as the City treasurer?

11 A Yes, he was.

12 Q And had you seen, before Exhibit 75, any publicly
13 available pay schedule for City treasurer?

14 A No, I had not.

15 Q And did you see a separate pay schedule for the City
16 of treasurer position in Exhibit 75, 75-22?

17 A Yes. Roughly halfway down there is the position
18 listed with a monthly salary.

19 Q And was the amount of that monthly salary for the
20 City treasurer or the acting City treasurer position of
21 importance to you?

22 A Only in the fact that it just leads itself to that
23 of a full-time position that would require a full-time
24 person.

25 MR. LEVIN: Your Honor, I move to admit Exhibit 79

1 into evidence.

2 THE COURT: Any objection?

3 MR. JENSEN: I think it's irrelevant to this because
4 it's -- we're not -- I don't believe he's applying this
5 section to Mr. Malkenhorst's suspension, and it is a piece of
6 legislative history which is not relevant to the situation of
7 Mr. Malkenhorst's pension or the publicly -- or the policies
8 and procedures that were in existence when -- when his --

9 THE COURT: I understand, and you made that
10 objection yesterday and I understand that and it's on the
11 record. I assume you're offering this for a more limited
12 purpose.

13 MR. LEVIN: Yes, your Honor.

14 THE COURT: Would you state that purpose?

15 MR. LEVIN: Yes. The limited purpose of Exhibit 79
16 is to reflect Ms. Jimenez's thinking and analysis of
17 Mr. Malkenhorst's final compensation and the policies that
18 she applied in that analysis.

19 THE COURT: Are you saying that you believe this
20 document will to some degree corroborate what the witness has
21 testified about her approach to transparency?

22 MR. LEVIN: That's correct.

23 THE COURT: All right. I'm going to admit it for
24 that purpose.

25 (Department's Exhibit 79 was received in

1 evidence by the Court.)

2 BY MR. LEVIN:

3 Q Ms. Jimenez, the City of Vernon has a contract with
4 CalPERS; correct?

5 A Correct.

6 Q Are you generally familiar with CalPERS audit
7 policies of contracting agencies?

8 A Somewhat.

9 Q Generally speaking, what is -- what does CalPERS do
10 when it's auditing agencies? What does it audit?

11 A So the audit function of CalPERS was put into place,
12 I believe, in the late 1990s, and what it does is it goes out
13 and they have ideas on which types of agencies, they have
14 different components, and they schedule a series of audits
15 every year. The purpose is to make sure that the agencies
16 are in compliance not just with compensation, but for all
17 types of health testing, compensation, how they're reporting
18 payroll, a lot of different laws that are put into place that
19 agencies may not be aware of or follow. The audit purpose is
20 to go out there and help them and make sure everything is in
21 compliance. The audit reports are then made public as all
22 audit reports are. Also giving the constituencies and the
23 members of the community a chance to weigh in.

24 Q What is your role, if any, in final comp in
25 connection with the audit process?

1 A So when the auditors go out and say they find
2 something that's out of compliance, they write the report.
3 The agency has an opportunity to comment on the draft
4 reports, and then once the final report is issued, taken into
5 account the agency's response, it is sent to the various
6 program areas to resolve with the agencies. So for example,
7 if an audit -- if one of the audit findings was that
8 compensation was reported incorrectly, the final report would
9 be sent to us. We would then reach out to the employer to
10 make sure that the payroll is fixed or they -- sometimes it's
11 a documentation error. So we work with the employer to make
12 sure we bring them into compliance.

13 Q How did the issue with Mr. Malkenhorst's final
14 compensation come to your attention?

15 A It was during the audit process and it was early on
16 in the audit process, not when the final came out because the
17 auditors just couldn't figure it out. They couldn't -- they
18 again were trying to figure out which -- how many hours were
19 associated with each position. I know they asked multiple
20 times and just couldn't quite fit it together. So they
21 brought us in to kind of collaborate to see if we could come
22 to a conclusion on what was being reported and if it was
23 correct.

24 Q Could you turn to Exhibit 82, please.

25 A Okay.

1 Q Is this a document you've seen before?

2 A Yes, it is.

3 Q Is this a document that you reviewed and relied upon
4 in conducting your final compensation analysis for
5 Mr. Malkenhorst?

6 A Yes, it is.

7 Q What did you understand Exhibit 82 to be?

8 A Exhibit 82 was put together by Mr. Leon listing each
9 of the positions that members held for their agency.

10 Q And why was Exhibit 82 relevant to your task in
11 connection with Mr. Malkenhorst?

12 A It was evidence that he was working in multiple
13 positions.

14 Q Did you attempt to confirm whether Mr. Malkenhorst
15 had in fact been working in multiple positions?

16 A We did. We asked repeatedly. We reviewed the
17 resolutions which clearly laid it out, but then we would
18 always follow up and ask through the audit process. You
19 know, is there anything else you can give us? Is there any
20 documents that would list out how much he's working in each
21 one. So we could pull it a part. So he's eligible for his
22 entitled pension.

23 Q Did you go through the City of Vernon resolutions
24 themselves to identify positions of Mr. Malkenhorst at the
25 City of Vernon?

1 A I did.

2 Q Could you turn to Exhibit 8, please.

3 A 8?

4 Q Yes. Have you seen Exhibit 8 before?

5 A Yes, I have.

6 THE COURT: I beg your pardon?

7 THE WITNESS: Yes, I have.

8 BY MR. LEVIN:

9 Q And what is Exhibit 8?

10 A Exhibit 8 is the minutes from a city council meeting
11 held on July 24th, 1978.

12 Q And was this one of the City of Vernon records that
13 you relied upon in your final compensation analysis for
14 Mr. Malkenhorst?

15 A Yes.

16 Q Could you turn to Exhibit 8-2, please. There's a
17 reference to Mr. Malkenhorst in the third paragraph. Could
18 you please tell me if that was -- that paragraph contains
19 information that was relevant to you in determining whether
20 Mr. Malkenhorst held multiple positions?

21 A It is. It clearly states that he is also going to
22 be the City treasurer.

23 Q So did you assume that this information is correct,
24 that Mr. Malkenhorst did in fact hold the position of
25 treasurer at the City of Vernon?

1 A I did.

2 Q Let's turn to Exhibit 11, please.

3 A Okay.

4 Q This is a City of Vernon resolution; correct?

5 A Correct.

6 Q Did you rely upon Exhibit 11 in the course of your
7 analysis of Mr. Malkenhorst's final compensation?

8 A I did.

9 Q Please turn to Exhibit 11-5.

10 A Okay.

11 Q Did you see information on this page that was
12 relevant to your analysis of multiple positions or any of the
13 positions held by Mr. Malkenhorst?

14 A Well, it shows that he is performing the duty or the
15 positions of the City administrator/City clerk.

16 Q That's not Mr. Malkenhorst --

17 A This particular resolution.

18 Q And this resolution was made when?

19 A It's effective March 1st, 1979.

20 Q So turn to Exhibit 9, please. This is City
21 ordinance number 883; correct?

22 A Correct.

23 Q Is this a document that you reviewed and relied upon
24 in the course of your analysis of the Mr. Malkenhorst's final
25 compensation?

1 A Yes, it is.

2 Q Please turn to page four, Exhibit 9-4. Look at the
3 very bottom of the page under personnel director and
4 continuing onto the next page.

5 A Okay.

6 Q Did this information in Exhibit 9 assist your
7 analysis of the multiple positions issued for
8 Mr. Malkenhorst?

9 A Yes, it did. It shows that he is also in the
10 position of personnel director.

11 Q This ordinance was effective as of what date? I
12 think if you look at page 15.

13 A I think August 2nd, 1978.

14 Q Can you turn to Exhibit 31, please.

15 A Okay.

16 Q This is a resolution of the City of Vernon;
17 correct?

18 A It states up top it's a resolution of the board of
19 directors of the redevelopment agency of the City of
20 Vernon.

21 Q Thank you. Was this a document that you reviewed
22 and relied upon in the course of your analysis of
23 Mr. Malkenhorst's final compensation?

24 A Yes, it was.

25 Q Did you see any information in this resolution

1 relevant to your attempt to determine whether Mr. Malkenhorst
2 held multiple positions at the City of Vernon?

3 A Yes.

4 Q And what information?

5 A On Exhibit 31-2, section three states that "Bruce
6 Malkenhorst is hereby appointed as the executive director and
7 secretary of the agency and is directed to employ staff and
8 to rent facilities." So --

9 Q What did you understand the reference to "agency" to
10 mean?

11 A To the redevelopment agency.

12 Q Could you please turn to Exhibit 37.

13 A Okay.

14 Q Is this a resolution of the City of Vernon?

15 A Yes, it is.

16 Q And it was effective as of July 1st, 1991 -- or I'm
17 sorry. It was adopted on June 20th, 1991?

18 A Yes.

19 Q Is this a resolution something that you reviewed and
20 relied upon in your attempt to determine Mr. Malkenhorst's
21 final compensation?

22 A Yes, it is.

23 Q Was there information within this resolution that
24 assisted you in determining whether Mr. Malkenhorst held
25 multiple positions for the City of Vernon? And if I may,

1 I'll refer you to page -- Exhibit 37-30.

2 A On the top third of the page it states that "The
3 City administrator and City clerk shall serve as the chief
4 executive officer in the gas municipal utilities district."
5 Showing again he has now accumulated another position.

6 Q Did you presume true all the appointments --
7 withdraw that.

8 Based upon all of the City of Vernon resolutions and
9 ordinances and minutes that you saw appointing
10 Mr. Malkenhorst or the City administrator/City clerk to
11 certain positions, did you assume true that that in fact
12 happened?

13 A I did. We rely on what the agency gives us to
14 support anything that they have done. So there's -- unless
15 proven otherwise, we would assume that all documents given to
16 us are true and accurate.

17 Q Do you think that there's anything inherently wrong
18 or illegal with a member holding multiple positions?

19 MR. JENSEN: Objection. to this -- it's
20 speculation.

21 THE COURT: Sustained.

22 MR. LEVIN: I'll rephrase. I'll find a way to
23 rephrase.

24 THE COURT: Okay, and I'd appreciate if you're going
25 to go into that direction, you make sure that's within this

1 witness's job duties.

2 MR. LEVIN: Well, she was going to say no.

3 THE COURT: I don't care. I don't have any answer
4 on the record. I'm just directing you where to go.

5 MR. JENSEN: But it is interesting that he knows
6 what the witness's answer is before he asks --

7 THE COURT: Thank you, Mr. Jensen. Let's go.

8 BY MR. LEVIN:

9 Q I'll move to another topic. What is your view as to
10 the need to have a publicly available pay schedule -- for the
11 City of Vernon to have a publicly available pay schedule for
12 each of the positions to which Mr. Malkenhorst was
13 assigned?

14 A The biggest reason is so that the public can look at
15 each of the positions and know what, in this case,
16 Mr. Malkenhorst was earning for each of those positions.

17 Q Upon learning that a member holds multiple
18 positions, is it your practice to do a weighted payroll
19 analysis of the type that you've done on Exhibit 89?

20 A Yes. This is done at the time the benefit is
21 calculated.

22 Q To do that type of analysis do you need to know what
23 full time means for that employee?

24 A Yes.

25 Q And why is that?

1 A Full time would tell us what the hourly rate would
2 be. So if they report a monthly amount, we would know what
3 full time is for that position so that when they report, then
4 we know how many hours were in that position. So when it
5 comes down to the weighted average, we have an accurate
6 description.

7 Q Could you turn to Exhibit 65, please. Is this a
8 resolution to the City of Vernon that you reviewed and relied
9 upon in your final comp analysis for Mr. Malkenhorst?

10 A Yes, it is.

11 Q This resolution was adopted on June 30th, 2004?

12 A Yes, it was.

13 Q Could you please turn to Exhibit 65-56.

14 A Okay.

15 Q Did the -- did this resolution and other materials
16 that you received from the City of Vernon indicate to you
17 what full time was for Mr. Malkenhorst?

18 A Yes. In this particular schedule under section two,
19 it states that. 40 hours a week. It also goes on to say
20 that they report -- which they report biweekly would be 80
21 hours. So their full time would be 80 hours a week.

22 MR. JENSEN: Your Honor, can I just clarify
23 because --

24 THE COURT: Yes.

25 MR. JENSEN: So the witness is referring to section

1 two on -- exhibit 65 page?

2 THE COURT: Page 56.

3 MR. JENSEN: 56. Okay.

4 THE COURT: That's correct.

5 MR. JENSEN: Thank you, your Honor.

6 THE WITNESS: Another -- another piece that I used
7 to determine that his full-time pay rate was 40 hours was
8 because that's how the agency reported him.

9 BY MR. LEVIN:

10 Q Could you please turn to Exhibit 65-25.

11 THE COURT: Which page?

12 MR. LEVIN: 65-25.

13 THE COURT: Thank you very much.

14 THE WITNESS: Okay.

15 BY MR. LEVIN:

16 Q Is there further information within this resolution
17 that helped you to determine the normal length of
18 Mr. Malkenhorst's work week?

19 A Under section 14 it says "all employees of the City
20 of Vernon shall be considered 40 hours a week personnel."

21 Q Do you know whether CalPERS has -- withdraw that
22 question.

23 If -- I'd like to ask you a hypothetical question.
24 I'd like you to assume that there is a worker who is
25 designated full time at 40 hours a week, and you find out

1 that that worker in fact works 60 hours a week. Is that of
2 concern to you when you've attempted to determine that
3 member's final compensation?

4 A It would definitely raise a flag to be looked at. I
5 have actually seen this where instead of paying them
6 overtime, what they will do is they will increase their pay
7 knowing that it would take them additional time to do it. In
8 other words, kind of circumventing the overtime law and
9 building it into their pay rate. So if their work week is 40
10 hours a week and that's stated by the agency and on the
11 publicly available pay schedule, it says that they have
12 earned \$4,000, if they're routinely and consistently working
13 60 hours a week, we would reach out to the agency to question
14 that.

15 Q What if the hypothetical employee worked 60 hours a
16 week and there was overtime reported for that employee by the
17 employer to CalPERS. Would that be an issue for CalPERS?

18 A Overtime is not a reportable item. It would all --
19 it would need to be backed out. You're only allowed to be
20 reported to CalPERS for pay that was earned during your
21 normal work week.

22 Q Would final comp -- would you in final comp have a
23 problem with an individual whose full time work week is
24 stated to be 60 hours? Is that an issue?

25 A No. Not necessarily.

1 Q Would you have a problem with a full-time employee
2 whose standard work week is stated to be 60 hours a week and
3 they only work 40 hours a week?

4 A Well, the agency designates that position -- the
5 full time pay rate for that position to be for 60 hours and
6 they worked 40 hours, now they're working part time. So they
7 would need to report it with a full time pay rate for the 60
8 hours and a part time earnings for the 40 hours they
9 worked.

10 Q What's CalPERS concern in trying to make a
11 correlation between the stated number of hours in a normal
12 work week and the amount of hours an employee does in fact
13 work?

14 MR. JENSEN: Objection, your Honor. Again, he's
15 talking about CalPERS' concerns.

16 THE COURT: Once again, narrow the focus to this
17 case.

18 MR. LEVIN: Yes, your Honor.

19 THE COURT: Thank you.

20 BY MR. LEVIN:

21 Q Ms. Jimenez, what is your concern determining the
22 final compensation of a retiree when you see a disconnect --
23 a difference between the number of hours that a member is
24 working and the number of hours declared by the employer to
25 be full time?

1 A Well, any amount that's paid for hours outside their
2 normal work week would be considered overtime for CalPERS
3 purposes and it wouldn't be reportable.

4 Q Do you believe that the issue of transparency is
5 implicated by a difference between the number of hours that
6 an employee works and the number of hours stated to be full
7 time?

8 MR. JENSEN: Objection, your Honor. That's a
9 leading question.

10 THE COURT: Overruled. You may answer.

11 THE WITNESS: Well, the whole point of a publicly
12 available pay schedule is so that you know what your public
13 servants are making. You know what's going to be included in
14 their benefit calculation. So if a reasonable person, right,
15 and that's what we would go by is a reasonable person test is
16 going to open up the publicly available pay schedule and
17 assume that a City administrator or any position full time,
18 he's working full time for this amount, and in this case it's
19 clear that 40 hours was full time.

20 So the assumption that the public would make based
21 on the documents put out by the agency would be that they're
22 working 40 hours and earning this much for it. If they're
23 working more and earning more, then that's something that the
24 agency would have to correct and put out there and be very
25 transparent. So that people could weigh in on it. If you're

1 only working 10 hours in a job that's earning a high amount
2 and the rest of your time is worked in a job or jobs that
3 earn a lower amount, then it needs to be prorated. You're
4 not working enough in that position to get that full-time pay
5 rate.

6 BY MR. LEVIN:

7 Q Let's turn to Exhibit 65-73.

8 MR. JENSEN: 55?

9 THE COURT: Same exhibit, page 73?

10 MR. LEVIN: Yes.

11 THE WITNESS: Okay.

12 BY MR. LEVIN:

13 Q Do you see here a monthly salary listed for the City
14 administrator/City clerk?

15 A Yes, I do.

16 Q What is your interpretation of how many hours of
17 work that monthly salary represents?

18 A Based on the previous page, that would be for 40
19 hours.

20 Q Is it 40 hours in the City administrator/City clerk
21 position only?

22 A Yes.

23 Q If Mr. Malkenhorst were spending any number of hours
24 in other positions, would you expect there to have been a
25 publicly available pay schedule for those positions?

1 A Of course.

2 Q Could you please turn to Exhibit 67.

3 A Okay.

4 MR. JENSEN: And your Honor, I just want to reassert
5 my objections to 67 and 68.

6 THE COURT: Yes. Of course, and those are going to
7 subject to a very short briefing due tomorrow.

8 MR. JENSEN: Yes, your Honor.

9 THE COURT: Is that still convenient for counsel?

10 MR. JENSEN: Yes, your Honor.

11 MR. LEVIN: Your Honor, should we bring our brief?

12 THE COURT: That would be fine.

13 BY MR. LEVIN:

14 Q Ms. Jimenez, do you recognize these as City of
15 Vernon ADP payroll records?

16 MR. JENSEN: Objection, your Honor. Lacks
17 foundation.

18 THE COURT: Sustained. Let's lay a foundation for
19 this.

20 BY MR. LEVIN:

21 Q Do you know what Exhibit 77 is? Have you seen it
22 before?

23 A Yes, I have.

24 Q Did you review and rely upon them your determination
25 of Mr. Malkenhorst's final compensation?

1 A Yes, I did.

2 Q And what did you understand Exhibit 77 to
3 represent?

4 A These were the summary payroll reports. The ADP
5 payroll registers which show that Mr. Malkenhorst was being
6 reported over multiple departments.

7 Q Did you assume that the information relative to
8 Mr. Malkenhorst that's in Exhibit 77 was accurate?

9 A I did.

10 Q Can you please turn to Exhibit 68. What's in
11 Exhibit 68?

12 A Exhibit 68 is a different time period of an ADP
13 payroll register.

14 Q These register pay reports for the City of Vernon?

15 A City of Vernon.

16 Q Did you review and rely upon the contents of these
17 payroll records in your attempt to determine Mr.
18 Malkenhorst's final compensation?

19 A I did.

20 Q Did you assume that the information provided in
21 these payroll records was accurate?

22 A I did.

23 Q In other instances involving other members, have you
24 relied upon information provided in the payroll records?

25 MR. JENSEN: Objection, your Honor. It's irrelevant

1 and --

2 THE COURT: I'll allow it for -- we'll see how brief
3 this foray can be.

4 THE WITNESS: Yes. I relied on these types of
5 documents before.

6 BY MR. LEVIN:

7 Q For what purpose?

8 A To determine part-time positions. To determine
9 overtime. Both ways.

10 Q Are you aware of any other records provided by the
11 City of Vernon that relate to the number of hours
12 Mr. Malkenhorst was working in any of his positions?

13 A No. This was -- this was all we had to go on.

14 Q Let's turn back to Exhibit 67 and look at the first
15 page, please.

16 A Okay.

17 Q Do you see an entry here for Bruce Malkenhorst?

18 A I do.

19 Q Did you assume that referred to Bruce Malkenhorst,
20 Senior?

21 A I did.

22 Q You understand that his son at one time worked at
23 the City of Vernon?

24 A I do, yes.

25 Q And how did you interpret the entries here for

1 Mr. Malkenhorst?

2 A We received this first and because we could see that
3 there was different departments, we had asked the City to
4 provide a key or some sort of ledger that would tell us which
5 department was -- you know, what the title of it was.

6 Q Is that Exhibit 81?

7 A Yes. This is what was provided.

8 Q So you relied on Exhibit 81 in the course of
9 Mr. Malkenhorst's final compensation?

10 A I did.

11 Q So please continue on how you interpreted the first
12 page of Exhibit 67.

13 A So because these hours added up to 80, this is what
14 was reported. So we relied that during this time period, for
15 example, the first line of the period ending 4/17/2004 that
16 Mr. Malkenhorst worked 16 hours for that department or the
17 positions under that department, and so it went down the
18 line. There's 4, 12, 4, 4.

19 Q And all the hours in -- for Mr. Malkenhorst for each
20 time period were 80 hours?

21 A Yes.

22 Q Was that consistent with your expectation?

23 A Yes.

24 Q Did the payroll records indicate anything to you
25 about the amount of time that Mr. Malkenhorst was spending in

1 positions other than City administrator/City clerk?

2 A Well, we relied on this. There wasn't anything else
3 to tell us, but it did show that there was time being spent
4 across multiple areas not just the City administrator/City
5 clerk position.

6 Q Looking at Exhibit 81, did you see an entry there
7 for a department -- for the Light & Power department, with
8 the electric department?

9 A Yes. 9,000. L & P administration.

10 Q Did you see a reference to Mr. Malkenhorst working
11 in department 9,000 in the ADP payroll records?

12 A Yes, I did.

13 Q Did you reach any conclusions about the amount of
14 time that Mr. Malkenhorst was spending in the Light & Power
15 department in 2004 and 2005, the time period referenced by
16 Exhibits 67 and 68?

17 A Sure. Based on these documents, we concluded that
18 for each pay period, he had listed the amount of hours he
19 worked for that department under code 9,000.

20 Q Was it important to you to compare the hours
21 Mr. Malkenhorst was working in one position with the number
22 of hours he was working in another position?

23 A Well, I'm trying to determine what pay rate and --
24 you know, for all the different positions, it would have been
25 important if we could have gotten that pay rate for each of

1 the additional positions to then apply to the amount of hours
2 that were listed here.

3 Q In the absence of pay rate information for positions
4 other than City administrator/City clerk, did your final
5 compensation analysis consider or base your calculation of
6 the number of hours referenced in Exhibit 67 and 68?

7 A No. The amount of hours were really useless without
8 the pay schedule.

9 Q At the time that you first began looking into
10 Mr. Malkenhorst's final comp, he had been retired; correct?

11 A Yes.

12 Q There had been established by CalPERS a pay rate for
13 him already?

14 A Yes.

15 Q Do you recall how that existing pay rate had been
16 established for Mr. Malkenhorst?

17 MR. JENSEN: Objection. Lacks foundation.

18 THE COURT: Let's lay a foundation.

19 BY MR. LEVIN:

20 Q Do you know how that pay rate for Mr. Malkenhorst
21 had been established?

22 A I don't understand the question.

23 Q Mr. Malkenhorst retired in 2005; correct?

24 A Correct.

25 Q And there was eventually a pay rate that was decided

1 for him that was used to generate a retirement benefit for
2 him?

3 A Correct.

4 Q Do you know how that pay rate was generated for
5 Mr. Malkenhorst back at the time of his retirement? Do you
6 know what numbers were used?

7 A Sure. So you're talking about how the benefit was
8 calculated. So that the compensation that was used was what
9 the agency reported. How that pay rate was generated on
10 their side, I can't answer to that, but was used in their
11 calculation was what was reported.

12 Q So turn to Exhibit 65, please. Was this the last
13 City of Vernon resolution with pay schedules for the City
14 administrator/City clerk that you relied upon prior to
15 Mr. Malkenhorst's retirement?

16 A Yes.

17 Q If you turn to page 65-73.

18 A Okay.

19 Q See a monthly salary of \$35,302 listed?

20 A Yes. For the City administrator slash City clerk
21 position.

22 Q Based upon all the information that you have
23 reviewed concerning Mr. Malkenhorst, prior to your
24 involvement in the final comp unit, was the monthly salary
25 stated there \$35,302 used to calculate Mr. Malkenhorst's

1 retirement benefit?

2 A I believe so.

3 Q How did you -- describe the process in which you
4 attempted to determine whether in fact the number of \$35,302
5 could properly be used to calculate Mr. Malkenhorst's
6 retirement benefit.

7 A So once I became aware that he was working in
8 multiple positions, this pay rate almost immediately became
9 unreasonable and not a reportable pay rate for full time for
10 Mr. Malkenhorst. If he had -- we had repeatedly asked for
11 how many hours he had worked in this position so that we
12 could kind of pull apart that everything that had been lumped
13 in. They were unable to give us that. So it was clear that
14 he was not working -- based on all the documents that the
15 agency gave us, he was not working full time in this City
16 administrator slash City clerk earning 35,000. So we really
17 needed to know what else he was doing, and what the pay rate
18 for that was so we could put it into the system correctly so
19 that we could calculate his benefit correctly.

20 Q What did you do once you determined that there were
21 not publicly available pay schedules for positions other than
22 the City administrator/City clerk?

23 A What did I do in what way?

24 Q What did you do in attempt to set Mr. Malkenhorst's
25 final compensation?

1 A So in our -- in our area, we're tasked with making
2 sure everything is compliant, but at the same time, we have
3 our member's best interest in mind. So we were looking for
4 something we could put him on with. So there's often times
5 where we cannot tell what a member is being paid that is in
6 compliance. So we often -- we struggle. We want to get the
7 member on a role. If they haven't retired or correct their
8 benefit -- to correct it if they have already been placed in
9 receiving a benefit. So we were looking for something that
10 we could use that we knew was compliant, and so that's the
11 process that we began trying to figure out what we could put
12 him on that we knew was in compliance with the law.

13 Q Was there a reason that you didn't simply assume
14 that the monthly salary that Mr. Malkenhorst was receiving
15 for City administrator/City clerk -- that the same rate of
16 pay wasn't applicable to his position in Light & Power and
17 personnel and treasury and his other positions?

18 A Well, the reason why we didn't assume that is
19 because we try not to do that. It is in the law that they
20 need to put in a pay rate for each position, and to assume
21 that the City treasurer was going to earn the same amount
22 that the City administrator would or the -- you know, that
23 each of those positions were being paid at the same amount
24 was not reasonable nor was is it in support of that the
25 agency had come forward with as far as documentation. And if

1 that was the case, then they still could have listed those
2 positions with that full time pay rate.

3 Q Given the absence of publicly available pay
4 schedules for Mr. Malkenhorst's position apart from City
5 administrator/City clerk, describe the process that you
6 eventually adopted for setting Mr. Malkenhorst's pay rate and
7 ultimately, his final compensation?

8 A So when we were going through looking for any
9 position that he had held just one position that I could
10 attribute to a full time pay rate, we were able to see that
11 at one point he worked just solely as the City clerk. So we
12 had used a full time pay rate for the City clerk position
13 that was adopted right after he left thinking if we could
14 bring that forward, at least give the member something he was
15 entitled to that was compliant.

16 Q Turn to Exhibit 75, please. Is this the resolution
17 that you were referring to, the one that was past effective
18 after Mr. Malkenhorst's retirement?

19 A Yes, it is.

20 Q Please turn to page 22, Exhibit 75-22.

21 A Yes.

22 Q Is there information on this schedule that you used
23 in arriving at a pay rate for Mr. Malkenhorst?

24 A Yes. It was the acting City clerk monthly salary of
25 7,875.

1 Q I'd like to change the subject now to something that
2 you mentioned yesterday.

3 THE COURT: Before we do that, let's take a
4 15-minute break.

5 (Recess)

6 THE COURT: Let's go back on the record. You may
7 continue.

8 MR. LEVIN: Thank you, your Honor. We move to have
9 Exhibit 89 entered into evidence.

10 MR. JENSEN: And your Honor, with respect to "89"
11 that it's a demonstrative exhibit with respect to a
12 hypothetical, I believe. Otherwise, it seems irrelevant to
13 this situation, but --

14 THE COURT: I'm going to admit it, and I'll give it
15 the weight I deem it deserves.

16 (Department's Exhibit 89 was received in
17 evidence by the Court.)

18 MR. LEVIN: May I proceed, your Honor?

19 THE COURT: You may.

20 BY MR. LEVIN:

21 Q Ms. Jimenez, in determining Ms. Malkenhorst's final
22 compensation, you mentioned there were two elements you
23 looked at, a pay rate and special compensation?

24 A Correct.

25 Q We have talked about pay rates. So I want to now

1 move to special compensation. What is special
2 compensation?

3 A Special compensation is the other component of comp
4 earnable, and it is paid for things like longevity or some
5 safety, get uniform allowance. I just want to put on the
6 record, I am talking for classic members because there is a
7 difference, but in this case, Mr. Malkenhorst is a classic
8 member. So we would rely on California Code of Regulations
9 571. There's a list of items that are reportable to CalPERS
10 for inclusion of -- in their benefits, and there's also a
11 list. I believe there's nine criteria that need to be met in
12 order for it to be reported.

13 Q Is special compensation defined by the PERL?

14 A It is.

15 Q What section defines it? You don't need to read the
16 definition into the record. Just identify the statute,
17 please.

18 A Okay. 20636C1.

19 Q With respect to Mr. Malkenhorst, did you consider an
20 item of special compensation for him?

21 A Yes. Mr. Malkenhorst had longevity pay reported.

22 Q Is -- was there any question in your mind that
23 longevity pay generally is a permitted item of special
24 compensation?

25 A It is one of the items that can be reported, yes.

1 Q What was the issue for you with respect to
2 Mr. Malkenhorst's longevity pay?

3 A In looking through the documents, Mr. Malkenhorst
4 received a longevity payment that was only available to him
5 which the PERL prohibits because that would put him in a
6 group or class of one.

7 Q Explain the group or class of one restriction on
8 compensation. What are you referring to?

9 A In 20636E2, it goes into, say, you know, limits,
10 increases due to compensation, but there's also a component
11 back in --

12 THE COURT: Did you just refer to 20636?

13 THE WITNESS: 20636E2.

14 THE COURT: Thank you.

15 THE WITNESS: Where it is for -- so in 20636C2, it
16 says that "special compensation shall be limited to that
17 which is received by a member pursuant to a labor policy or
18 agreement," and then it goes on to say "to similarly situated
19 members of a group or class of employment." So because he
20 was entitled to receive something that one else was, we had
21 to move him into the next available group or class which was
22 20 percent instead of 25.

23 BY MR. LEVIN:

24 Q Could you please turn to Exhibit 65-19 and 65-20.

25 THE COURT: I'm sorry, counsel. The exhibit again?

1 MR. LEVIN: 65-19 and 65-20.

2 THE COURT: Thank you.

3 THE WITNESS: Okay.

4 BY MR. LEVIN:

5 Q These are pages from City of Vernon resolution
6 adopted June 30th, 2004; correct?

7 A Correct.

8 Q Is there information on pages 19 and 20 that you
9 review and relied upon in determining Mr. Malkenhorst's
10 special compensation or the amount of that special
11 compensation?

12 A Yes. On 65-20 in section G, it says that the City
13 administrator will receive 25 percent for 25 years of
14 service, but if you go back to the rest of the department,
15 they only get 25 percent after 30 years of service. So it's
16 inconsistent. It's not available to the group or class.

17 Q What percentage of longevity pay did employees or
18 department heads other than Mr. Malkenhorst get at 25
19 years?

20 A They received 20 percent after 20 years.

21 Q Is that --

22 A That's in section D.

23 Q And that's on page 65-19?

24 A 65-19.

25 Q Explain how the longevity pay works. How are these

1 percentages used by CalPERS in determining final
2 compensation?

3 A So final comp is based on the two components. So we
4 would take the allowable pay rate and we would -- on the
5 highest twelve month available, and during that same period
6 we would take any special comp and it would be prorated out,
7 added together, and used to calculate the benefit.

8 Q Longevity pay, is that a multiplier on top of the
9 pay rate? So if you have a pay and then 25 percent
10 longevity, you take the pay and multiply it by 1.25?

11 A That's one way. That's the way the City does it.
12 There's two different types of longevity pay. One is a
13 standard amount where you get \$200 for every two years of
14 service. In this case, it's based on a percentage of pay
15 rate. So in this case, it would be 20 percent of what the
16 allowed pay rate should be.

17 Q When Mr. Malkenhorst retired in 2005, did you --
18 withdraw that question.

19 Are you familiar with the process by which
20 Mr. Malkenhorst's longevity pay was determined by CalPERS for
21 purposes of his final compensation?

22 A I'm familiar of what was used. I'm not entirely
23 familiar on why it was allowed, but I am familiar that the 25
24 percent was used.

25 Q When Mr. Malkenhorst retired in 2005, he was given a

1 25 percent longevity pay?

2 A Yes.

3 Q And that longevity pay existed up until you did your
4 final comp review; correct?

5 A Correct.

6 Q And explain how it is that you decided that,
7 although Mr. Malkenhorst had been receiving a 25 percent
8 longevity pay, that it should be a different number?

9 A Well, when looking at him as a whole, it did -- we
10 looked at everything. It wasn't just the pay rate, and when
11 we noticed that according to this resolution, he was being
12 paid something that wasn't available to his group or class,
13 the law dictated that we reduce him.

14 Q With respect to Mr. Malkenhorst's final
15 compensation, you talked about your analysis that led to a
16 change in Mr. Malkenhorst's pay rate; correct?

17 A Correct.

18 Q And you talked about your analysis that led to a
19 change in Mr. Malkenhorst's special compensation for
20 longevity pay; correct?

21 A Correct.

22 Q In the course of your final compensation analysis
23 for Mr. Malkenhorst, did you -- did you change anything
24 else?

25 A No, no.

1 Q Did you then use the final compensation that you
2 determined together with the formula specified for
3 Mr. Malkenhorst, the retirement formula to generate a new
4 retirement benefit for him?

5 A Yes. Once we calculate the final compensation, then
6 we send it to our benefits department who calculates the
7 benefit and then corrects the warrants, the checks.

8 Q Thank you, Ms. Jimenez.

9 MR. LEVIN: I have no further questions at this
10 time, your Honor.

11 THE COURT: Okay. Cross-examination.

12 MR. JENSEN: Thank you, your Honor.

13

14 CROSS-EXAMINATION

15 BY MR. JENSEN:

16 Q Good morning Ms. Jimenez.

17 A Good morning.

18 Q Can you briefly restate your educational background.

19 A Sure. My education?

20 Q Yeah.

21 A I have a bachelor's in accounting.

22 Q Okay, and are you a CPA?

23 A I am not.

24 Q And what was your first -- what was your work
25 history?

1 A Out of college, I worked for a municipal auditing
2 firm where we would audit city records, balance sheets, all
3 of those things, the supporting documents, payroll, and after
4 that, I worked for the Franchise Tax Board.

5 Q Okay. Let me stop you there for a second. So you
6 have some experience looking at accounting for cities?

7 A I do.

8 Q And have you ever heard of overhead being spread
9 across different areas in a city?

10 A Yes.

11 Q And is that a common practice?

12 A Yes.

13 Q And can you describe how that works?

14 A Overhead -- well, simply --

15 Q Are salaries sometimes included in overhead?

16 A Typically, it's not salaries.

17 Q In some cases, is it salaries?

18 A I can't remember if I've seen that.

19 Q So in your experience, what was overhead for a
20 municipality?

21 A Things like supplies, electricity, utilities, things
22 like that is typically what is spread over departments.

23 Q And were you familiar with the process of the way
24 the overhead was spread across different departments?

25 A For those type of utility-type things, yeah.

1 Basically it was cost accounting.

2 Q Cost accounting? So they would -- and what is your
3 understanding cost accounting?

4 A Where you allocate the costs based on the usage.

5 Q And is it -- in your understanding, is it adopted in
6 the budgeting process?

7 A Sometimes.

8 Q And is it that those costs are allocated over
9 different departments?

10 A Sometimes.

11 Q And are those -- is the city counsel or -- make
12 those allocations when they adopt a budget?

13 A If they were in the budget, yes.

14 Q So it's part of the budgeting process typically?

15 A Could be.

16 Q Could be, and that would be acceptable municipal
17 practice?

18 A For overhead, yes.

19 Q And is that actually a required practice in
20 accounting?

21 A I don't know.

22 Q You don't know, and what was your area of speciality
23 in municipal accounting?

24 A I didn't have a speciality.

25 Q And what size were the cities that you were

1 overseeing?

2 A They varied from cities to small cities to counties
3 to redevelopment agencies. It's varied.

4 Q And so sometimes you were -- the redevelopment
5 agency itself was a client of yours?

6 A Yes.

7 Q And so you're familiar in -- so are you familiar
8 with a redevelopment agency's activities?

9 A What do you mean by "activities"?

10 Q Are you familiar with the interaction between the
11 redevelopment agency and municipality?

12 A Somewhat.

13 Q Did you do any of that accounting where you saw
14 those two agencies cross account in any way?

15 A I think most of the ones I saw were separate.

16 Q Separate, stand alone?

17 A Yes.

18 Q And so when those were separate agencies, did they
19 have their own separate staff?

20 A Sometimes.

21 Q And what about those that did not have their own
22 separate staff?

23 A What about them?

24 Q How did they get staff?

25 A I don't remember.

1 Q Do you ever remember someone in that area where
2 there was no separate staff or redevelopment government
3 officials serving in an ex officio capacity in the
4 redevelopment agency?

5 A Not that I can remember.

6 Q So were there people -- were there RDA,
7 redevelopment agencies, that there was no compensation paid
8 to people that served on those agencies?

9 A Not that I can remember.

10 Q What about when there was no staff to them?

11 A I don't know what you mean by "no staff."

12 Q You indicated that some of the RDAs had no staff.

13 A No. I don't think I said that.

14 Q So you just mentioned that you did some auditing for
15 redevelopment agencies?

16 A Sure.

17 Q How many redevelopment agencies do you recall?

18 A I don't remember.

19 Q You don't remember?

20 A I don't remember the number.

21 Q So did any of this experience, previous accounting
22 experience, inform your knowledge of -- in this compensation
23 review unit?

24 A Very minimally.

25 Q Minimally, but you did use that?

1 A Sure. It's a part of my background.

2 Q So it's one of the duties or responsibilities that
3 you're bringing to your compensation review unit job?

4 A I don't understand the question.

5 Q Are you using your prior experience in auditing RDAs
6 when you're now in compensation review?

7 A No. I don't think so.

8 Q You just testified it was part of your experience.

9 A But I don't use it as part of my duties or
10 responsibilities. Maybe clarify the question.

11 Q When you're going and looking at these agencies, do
12 you draw in your prior experience as a municipal accounting
13 person?

14 A I see. So if it's relevant, yes.

15 Q Okay. So in those areas when you were working in
16 compensation review, you're using your knowledge or prior
17 experience, one of the duties is to use that experience to go
18 and review these documents in compensation review?

19 A I would say it aids me, yes.

20 Q It aids you. Do you ever list that as part of your
21 job duties?

22 A No, because again it's not a duty to use that.

23 Q What -- what would you consider it to be?

24 A It's just prior knowledge.

25 Q Prior knowledge. So it's not, like, a title?

1 A No. I'm sorry. I'm confused on what you're
2 asking.

3 Q I'm just trying to figure out what you do in your
4 various jobs. so we'll go through it.

5 A Okay.

6 Q How long did you work in municipal accounting?

7 A Around three years.

8 Q And what was your primary -- what do would you do --
9 did you any auditing in municipalities?

10 A Yes.

11 Q So you were an auditor?

12 A I was an auditor.

13 Q Okay. What was your duties as an auditor of
14 municipalities in your prior position?

15 A It varied from auditing engagement to auditing
16 engagement, but it was to go out and make sure that their
17 financial statements were in accordance with GASB,
18 Governmental Accounting Standards Board.

19 Q So you're familiar with those GASB accounting
20 requirements?

21 A Not anymore.

22 Q Oh, so have they changed?

23 A I don't know.

24 Q You don't know?

25 A I don't know.

1 Q And is there any certification or any, like,
2 continuing education for an accountant?

3 A No because I'm not a CPA.

4 Q Okay. So you're basically -- you're accounting
5 knowledge is whatever you received when you were -- when you
6 had a BA in accounting?

7 A BS, yes.

8 Q BS. I'm sorry. Okay, and so when you were
9 auditing, was there different responsibilities or duties that
10 you had as auditor?

11 A Yes.

12 Q And list some of those if you would.

13 A It was to -- for example, we could look at the
14 balance statement and trace back the cash balances back to
15 bank accounts to make sure that the money that the agencies
16 were listing on their balance sheet was actually in the
17 City's funds, and we would do grants. Make sure that the
18 grants that were funded actually did had all the paperwork,
19 that they were properly filed, and that it was properly
20 accounted for. Things like that. Just insuring that the
21 balance sheet and the other agency's documents and their
22 annual reports were in line with the law.

23 Q And when you were doing this grant certification,
24 did you ever have to -- or grant an audit, did you have to
25 ever write something for the funding source, some kind of

1 document?

2 A No, I didn't write anything as far as -- what do you
3 mean?

4 Q So you mentioned grant supervision. At the end of
5 that supervision of grant monies, did you have to write a
6 report for the granting agency?

7 A No. Things like that would be written in the audit
8 report. So if there was an issue with it, then it would be
9 listed in the audit report that was given to the agency by
10 our firm.

11 Q Okay. So you never were having to write, like,
12 opinion letters for the grant or agency?

13 A No.

14 Q And approximately how much were you paid as a
15 municipal auditor?

16 A 30,000 a year.

17 Q And that was a private employment, not public?

18 A Yes.

19 Q And what was your next position?

20 A My next position was Franchise Tax Board.

21 Q And when was that?

22 A I started there in '99, I believe.

23 Q And I'm sorry. When did you graduate college?

24 A '97.

25 Q '90, and what was your first position at the

1 Franchise Tax Board?

2 A I was a tax auditor.

3 Q Tax auditor, and is that a civil service position?

4 A It is.

5 Q And is that listed as -- is there a step
6 classification or a civil service position for that?

7 A Yes.

8 Q And to you recall what that was?

9 A I don't.

10 Q And do you remember on the civil service -- whether
11 they listed all of your -- on the pay scale for the Franchise
12 Tax Board, did it list all of your job duties and
13 responsibilities?

14 A Well, on the DPA, the Department of Personnel
15 Administration website, my duty statement was listed. All
16 duties statements for --

17 Q I understand, but did the Franchise Tax Board list
18 itself?

19 A List it where?

20 Q List it on its pay schedule?

21 A No.

22 Q And do you remember what the pay was at the
23 Franchise Tax Board?

24 A I don't.

25 Q And how long were you there?

1 A In that position or at Franchise Tax Board?

2 Q In that position.

3 A Two years.

4 Q So 2001?

5 A Yes.

6 Q And what do you do as a tax auditor?

7 A As my specific duties, I was in the residency unit.
8 So we insured that people who said that they did not live in
9 California, whether that was true or not and if they owed
10 California taxes.

11 Q And how would you go about that job?

12 A I would request documents. The tax returns come in,
13 and you trace back all the items, the addresses. They're
14 very involved. There would be investigations sent. There
15 would be records, go to the assessor's office to see if they
16 actually lived there, review of their utility bills, review
17 of all the different components to see where someone actually
18 resides.

19 Q So it's basically an auditing position as well?

20 A It's an auditing position.

21 Q So even if the residency unit that's -- so that's
22 under tax auditor as well?

23 A It's a tax auditor.

24 Q Okay, and what was the next position you were at the
25 Franchise Tax Board?

1 A Associate tax auditor.

2 Q Was that in the residency position as well?

3 A Yes.

4 Q And are these mostly about high network
5 individuals?

6 A Yes.

7 Q And they were -- in this case, they're saying that
8 they don't live in California, but they spend a lot of time
9 in California?

10 A Yes.

11 Q And did you -- was it kind of an intriguing
12 position?

13 A It was -- sure. It was interesting.

14 Q And are these high profile cases too?

15 A Yes. Some yes, some no.

16 Q And these were tax evaders basically?

17 A Some yes, some no.

18 Q And what was your next position at the tax board?

19 A After that, I came to CalPERS.

20 Q Oh, you came to CalPERS?

21 A Uh-huh.

22 Q And what year was that?

23 A In 2002.

24 Q Okay. So you were associate tax auditor at
25 Franchise Tax Board and then in 2002, you moved to CalPERS,

1 and what was your first position at CalPERS?

2 A I was an actuarial assistant.

3 Q And what are the qualifications necessary for being
4 an actuarial assistant?

5 A I would have to go back and look at the duty
6 statement. You would have to have a degree in a related
7 field.

8 Q So an accounting degree is sufficient?

9 A An accounting degree is sufficient, yes.

10 Q And then what did you do -- what was the name of
11 your position exactly?

12 A An actuarial assistant.

13 Q That's the civil service -- is it a civil service
14 position?

15 A Yes, it is.

16 Q So it's an actuarial assistant level one or
17 something?

18 A Just actuarial assistant.

19 Q And what were the duties and responsibilities of an
20 actuarial assistant?

21 A Every year all CalPERS agencies have to have an
22 actuarial evaluation. So we would help the actuaries
23 determine if all the data that was reported to CalPERS was
24 accurate and was feeding into our system in help with the
25 calculations to come up with an employer rate which is what

1 the employers pay based on their payroll times their employer
2 rate. It's how they make their contributions to the
3 system.

4 Q So is part of the -- how often does CalPERS look at
5 each agency to determine that actuarial rate?

6 A Every year.

7 Q So every year. So what is the process by which
8 CalPERS -- what do they do when they look at the employer's
9 reporting?

10 A In the actuarial office?

11 Q Yes.

12 A They look at the data that's extracted. They have
13 to bring in the financial system as well.

14 Q I'm sorry. It's interesting to me. So if you could
15 be a little more specific at what data you're looking at and
16 what's extracted.

17 A Sure. We look at all the provisions. So each
18 agency has in their contract or contract amendments, they
19 will have numerous provisions. So we have to cost all that
20 out.

21 Q So what information do you use to cost that out?

22 A Well, they run through hundreds of what's called
23 decrement tables.

24 THE COURT: I'm sorry? What?

25 THE WITNESS: Decrement tables. So the decrement

1 tables will tell you what every individual's probability is
2 to retire, disability, die, work until different age levels.
3 So there's hundreds of decrement tables.

4 BY MR. JENSEN:

5 Q So let me just ask you, so like, in this case,
6 Vernon yearly reports have, what, 500 employees or something
7 like that?

8 A I don't know off the top of my head.

9 Q Some amount of employees and so there's a data base
10 that has -- does it include the pay rate of those
11 individuals?

12 A Yes.

13 Q And does it include the years of service of those
14 individuals?

15 A Yes.

16 Q And it includes their age?

17 A Yes.

18 Q And does it include any other material?

19 A Their pay rate and special comp.

20 Q Pay rate and special comp. Okay.

21 A It has their status, whether their active, inactive,
22 separated, retired. If they're retired, it has their benefit
23 amount.

24 Q And so in this case, for all of these years, is it
25 to your knowledge that Mr. Malkenhorst's compensation was

1 reported to CalPERS at the rate that is in the publicly -- in
2 that pay schedule?

3 A Yes. I believe it was.

4 Q Okay. Just to make sure, I want to just present the
5 witness with just an exhibit. Can you look at exhibit binder
6 18 for a moment and this would be triple F.

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

9 THE COURT: You may.

10 MR. JENSEN: Ms. Jimenez, may I approach you?

11 THE WITNESS: Sure.

12 MR. JENSEN: And mine has markings on it. You have
13 to ignore these.

14 MR. LEVIN: One second, please.

15 MR. JENSEN: Sure.

16 THE COURT: Yes.

17 MR. JENSEN: And I'll just show this to -- this is
18 not -- it's just what's highlighted. It's his name. So..

19 THE COURT: It is in the exhibit book 18?

20 MR. JENSEN: Yeah. 18 and it's 5Fs.

21 THE COURT: 5Fs. The last exhibit in the binder.

22 MR. JENSEN: Do you guys got it?

23 MR. LEVIN: Yep.

24 THE COURT: Do you wish me to mark this?

25 MR. JENSEN: Yes. If you could mark it as 5F?

1 THE COURT: The document behind tab FFFFFF in the
2 respondent Malkenhorst's binder, titled in the Matter of the
3 Calculation of Final Compensation of Bruce Malkenhorst. 20
4 pages is marked for identification as Exhibit 5Fs.

5 (Respondent's Exhibit FFFFFF was marked for
6 identification by the Court.)

7 MR. JENSEN: Thank you, your Honor.

8 THE COURT: Thank you.

9 BY MR. JENSEN:

10 Q Ms. Jimenez, can you talk a moment to look at this.

11 A Sure.

12 Q Do you recognize what these documents are?

13 A Somewhat.

14 Q And tell me what you mean "somewhat."

15 A These look like they are records from our old
16 system, from before I came to CalPERS.

17 Q Have you ever seen documents like these at
18 CalPERS?

19 A Very similar.

20 Q And do you have any reason to believe that -- well,
21 would this be the document form that Vernon reported during
22 this period?

23 A It looks like it was.

24 MR. JENSEN: Okay. Your Honor, I just want to offer
25 FFF into evidence. It's a 20 page document, and she's had

1 she has authenticated --

2 THE COURT: You've moved it. Any objection?

3 MR. LEVIN: No objection.

4 THE COURT: Okay. Exhibit FFFFFF is admitted.

5 (Respondent's Exhibit FFFFFF was received in
6 evidence by the Court.)

7 BY MR. JENSEN:

8 Q So is this the format that Vernon would report --
9 these -- this information to CalPERS then?

10 A Well, this is something that's pulled out of our
11 system. This isn't what the City of Vernon reports.

12 Q So is this the form in which CalPERS maintains
13 information about employees of the City of Vernon?

14 A Again, it's similar enough, but this isn't exactly
15 what I've seen.

16 Q What is your understanding of what this is?

17 A Of what this is? It's -- up here it states that
18 it's payroll listing for public employee's retirement
19 systems. So it looks like it's a summary of the -- of the
20 payroll.

21 Q And do you see the date -- where it says the date
22 printed?

23 A Yes.

24 Q 1986?

25 A Yes.

1 Q Were you working in CalPERS in 1986?

2 A No.

3 Q And let me just turn you to the last date on here in
4 1990 -- page FFFFF20 and if we would go to page -- it would
5 go to the time period of 1995. Do you see that?

6 A On the date printed '95, yes.

7 Q And were you working at CalPERS in 1995?

8 A No.

9 Q Have you seen documents that report the way the
10 information is stored in CalPERS' computers for the period in
11 1995?

12 A Probably. I've looked at old records. So I'm sure,
13 and this is very similar to what I've seen.

14 Q So okay. So let me turn your attention to -- is
15 this the information -- to your knowledge, the way the
16 information that is stored in CalPERS' computers for that
17 period?

18 A Ask it again.

19 Q Is this the format in which information is stored in
20 CalPERS' computers for that period, to the best of your
21 knowledge?

22 A Well, this isn't how it's stored in the system.
23 This is a report that was run based on information in the
24 system.

25 Q So is this a report of the information that was

1 stored in CalPERS' system to the best of your knowledge?

2 A To the best of my knowledge, yes.

3 Q And how is the information put into this format?

4 MR. LEVIN: Objection. Vague as to time.

5 BY MR. JENSEN:

6 Q Does CalPERS decide -- does CalPERS establish
7 variables such as the column names that the employer supplies
8 the information for?

9 A Are you asking -- can you repeat what you're asking?

10 Q Does CalPERS provide or request information in --
11 for these specific variables that are in the top of the
12 column names, such as coverage group, pay rate?

13 A Some of them, yes.

14 Q Which ones does CalPERS not request?

15 A They do not request -- they don't request the
16 contributions quite like this. So --

17 Q So which part of are you referring to?

18 MR. JENSEN: Your Honor, may I approach?

19 THE COURT: You may.

20 MR. JENSEN: May I approach?

21 THE WITNESS: Sure.

22 THE COURT: And I'll try to tell the reporter
23 what --

24 THE WITNESS: On the member paid and employer paid
25 contribution amounts, these come in a little bit different to

1 the best of my knowledge, but when an employer submits
2 payroll, they do have to put in the name. We don't use could
3 coverage group anymore, but coverage group for the period
4 that they're saying the pay rate, the earnings, the work
5 schedule code, and I'm not familiar with what exactly the
6 unit code is.

7 BY MR. JENSEN:

8 Q Actually, the work schedule code is -- is important.
9 So what is your understanding of what the work schedule code
10 is?

11 A The work schedule code is something that the
12 employer in the old system used to enter to denote what their
13 normal work schedule was.

14 Q And what are the different possibilities for the
15 work schedule codes?

16 A It could be monthly. It could be hourly. It could
17 be daily. Some schedules report daily.

18 Q I'm just going to diverge for a second here and just
19 follow up on that contribution code issue. Can an employer
20 in this period have different codes for different employees?
21 Can some be paid monthly and some be paid hourly?

22 A Yes.

23 Q And with respect to Vernon's payroll reporting, were
24 you aware of whether Vernon could report paid monthly or
25 hourly on its ADP system?

1 A I don't know.

2 Q Were you in the room yesterday when Mr. Leon was
3 testifying?

4 A Yes, I was.

5 Q Did you hear Mr. Leon say that they stopped using
6 ADP because it made them report everything hourly?

7 A Yes.

8 Q Do you recall him saying that?

9 A I do recall him saying that.

10 Q And would that have any impact on you as far as
11 Bruce Malkenhorst's pay rate and his distribution if they
12 couldn't report it monthly?

13 A No, because the way that ADP works and how they pay
14 their employees is separate than how they enter in data for
15 CalPERS purposes into our system directly through -- I forgot
16 what the interfacing was, but they're separate. So even if
17 they had only been able to do it one way for something,
18 CalPERS would still require them to report in accordance with
19 our law for our purposes.

20 Q So in other words, whatever they report for ADP.
21 doesn't bind you guys?

22 A No. It's a substantiating document. We would still
23 rely on what was reported to start our determination.

24 Q And we'll get back to that in a minute. Let me go
25 through the rest of your employment. Sorry. Is that one in?

1 5Fs?

2 THE COURT: 5Fs, yes, it is.

3 BY MR. JENSEN:

4 Q We'll get back to that. As an actuarial assistant,
5 you received information in this type of form or this type of
6 information?

7 A No. In the actuarial office, we didn't use these.

8 Q Did you use pay rate?

9 A Yes. Extracted into the actuarial system.

10 Q Was the member names associated with that?

11 A Yes.

12 Q And so it was -- which variables of that information
13 was included?

14 A Most of it was the contributions weren't, but most
15 of the other information was incorporated in one way or
16 another.

17 Q And were you -- when you were in the actuarial
18 office, did you ever work in the City of Vernon?

19 A Not that I remember.

20 Q And you say that every year CalPERS received
21 reported compensation for all of the employees of Vernon?

22 A Yes. We received what was reported.

23 Q And did you and -- you performed an annual actuarial
24 analysis of Vernon?

25 A Yes. The office did.

1 Q Okay, and are you aware at the time of
2 Mr. Malkenhorst's retirement the actuarial status of the
3 Vernon account?

4 A Which part?

5 Q Well, let me give you a little background. Are you
6 aware of the current actual funding status of Vernon?

7 A No.

8 Q And do you understand what I mean by "actual
9 funding"?

10 A Sure.

11 Q And maybe -- what's your understanding of the term
12 "unfunded liability"?

13 A So unfunded liability is when data that's extracted
14 from the system and run through all the decrement tables give
15 you actual experience. That actual experience costs
16 according to the rates, things like that, and then they
17 compare it to what what was projected in the previous
18 actuarial evaluation. So when you have a difference then it
19 could be unfunded. There's things such as superfunded.

20 So --

21 Q Isn't one of the concerns of CalPERS to make sure
22 that liabilities are funded?

23 A That's one concern, yes. Of course.

24 Q And isn't one of the issues about pension spiking
25 because it creates an unfunded liability?

1 A That's one. That's one reason.

2 Q And what is pension spiking?

3 A Well, pension spiking means different things to
4 different people. So are you asking for my personal --

5 Q Yes. What is your personal idea of what pension
6 spiking is?

7 A Sure. It seems when in any manner someone receives
8 a benefit above what their entitled to. It would be pension
9 spiking. I don't necessarily associate it with intent or
10 malice. It's just when you're receiving a benefit above what
11 the law allows you, your pension is spiked.

12 Q So when you did your actuarial evaluations, did you
13 make sure that you were correctly charging the agencies the
14 amount of money that was pursuant to the Public Employees'
15 Retirement Law?

16 A No. There's a big difference there.

17 Q So it's just numbers in the actuarial department?

18 A Mostly, yes. They don't get into compliance with
19 what's reported.

20 Q And do you think, in your opinion, that it would
21 make a difference -- well, about Vernon's paying
22 Mr. Malkenhorst that pension if they fully funded their
23 actuarial cost including the higher pension?

24 A Well, there's two components there. For example, an
25 employer can report car allowance which is clearly not

1 acceptable to the law, but actuarial office is going to then
2 charge the actual rate times the amount that was reported
3 which is clearly not in compliance. So they are 100 percent
4 funded, let's say, because they have applied that rate to the
5 car allowance, but when it came down to it, car allowance is
6 not included in the PERL. It's out of compliance. We would
7 make the employer back that out.

8 THE COURT: Excuse me. When you say "we would,"
9 that's not the actuarial department?

10 THE WITNESS: No. That would be the compensation
11 review unit.

12 BY MR. JENSEN:

13 Q So I just want to turn your attention to Exhibit QQ
14 in Exhibit book 2.

15 MR. JENSEN: Can I help you out, your Honor?

16 THE COURT: That's all right. I'm just taking a
17 little walk.

18 MR. JENSEN: Yes.

19 THE COURT: Exhibit book 2?

20 MR. JENSEN: Yes. Exhibit book two, and it's
21 Exhibit QQ.

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

23 MR. JENSEN: Yes, your Honor, if I may.

24 THE COURT: All right. The document behind tab QQ,
25 this is respondent Malkenhorst Exhibit book 2, a one page

1 document is marked for identification as Exhibit QQ.

2 (Respondent's Exhibit QQ was marked for
3 identification by the Court.)

4 BY MR. JENSEN:

5 Q And Ms. Jimenez, do you recognize this document?

6 A Not this one in particular, but the type of
7 document, yes.

8 Q And what is this type of document?

9 A This is showing the employer contribution rate
10 history for the City of Vernon for their miscellaneous plan.

11 Q And have you -- did you of look at Vernon's
12 actuarial report?

13 A I don't believe so.

14 MR. JENSEN: And, your Honor, I'd like to offer QQ
15 into evidence.

16 THE COURT: Any objection?

17 MR. LEVIN: Yes, your Honor. It lacks foundation
18 and relevance.

19 THE COURT: Sustained at this time.

20 MR. JENSEN: May I make an offer of --

21 THE COURT: Please.

22 MR. JENSEN: Every year up until this point, CalPERS
23 received reports of Mr. Malkenhorst's higher compensation.
24 They made an annual actuarial evaluation of it based on his
25 higher compensation. They received more than enough funds to

1 fully fund his pension at the time of his retirement. It was
2 superfunded based on receiving contributions for his higher
3 pension and for paying that pension for the rest of his life
4 and these amounts are for -- at the time of his retirement,
5 and so with respect to many issues, including Ms. Jimenez's
6 idea of it being unreasonable amounts. Mathematically, it
7 was fully funded, and so I think it's a -- based on CalPERS
8 own evaluations at that time. So I think it's relevant and I
9 think it's important. I think this witness has testified
10 that she has knowledge of this format and knowledge of not
11 this particular document, but this is a government document.
12 So --

13 THE COURT: Ms. Jimenez, can you determine that this
14 document was generated by CalPERS, this particular document?

15 THE WITNESS: It looks to be.

16 THE COURT: And what is the source of information
17 included in the reports that look like this?

18 THE WITNESS: Well, the reports are typically 75
19 pages of having information that builds up to the rates. So
20 it would include all types of information including what was
21 reported.

22 THE COURT: By the agency?

23 THE WITNESS: By the agency.

24 MR. JENSEN: And your Honor, also what was the
25 actuarial office in which she worked used the numbers that

1 were reported by the agency, accepted them, provided a
2 funding contribution rate to Vernon which Vernon fully funded
3 as of these times.

4 THE COURT: All right. I'm going to admit it.

5 (Respondent's Exhibit QQ was received in
6 evidence by the Court.)

7 MR. JENSEN: Thank you, your Honor.

8 BY MR. JENSEN:

9 Q How long, Ms. Jimenez, were you in the -- as an
10 actuarial assistant of CalPERS?

11 A A few years. Let's see, I moved into a senior
12 actuarial assistant a few years later, and then a supervising
13 actuarial assistant a few years after that. I'm not sure
14 what the dates are.

15 Q And what was the difference as you moved from
16 actuarial assistant to senior actuarial assistant?

17 A It's roughly 5 percent.

18 Q 5 percent increase in pay?

19 A Yeah.

20 Q And were there additional duties associated with
21 that?

22 A Yeah. The duty statement laid out what was expected
23 of me to do that job.

24 Q And were those duty statements placed in the CalPERS
25 publicly available pay schedule?

1 A In the pay schedule, no.

2 Q The duties were not in the pay schedule?

3 A Sure. Can I clarify something that you said?

4 CalPERS doesn't have a pay schedule. We're all paid through
5 the state. So it's not CalPERS' pay schedule. It's the
6 state's pay schedule.

7 Q Well, on the state's pay schedule, do they include
8 all of the duties?

9 A No. It's in a separate document.

10 Q And as actuarial assistant, what were -- I mean as
11 senior actuarial assistant, what were some of the things that
12 you did?

13 A It was the more complex cases, less supervision,
14 same type of work except for you were working more closely
15 with the actuaries. It's less data checking, more analytical

16 Q And are these hourly positions?

17 A No. The state pays monthly.

18 Q Monthly, and so is there a number of hours that you
19 worked?

20 A Yes. 40 hours is full time.

21 Q And did you ever work more than full time?

22 A Not without receiving overtime in those positions.

23 Q In those positions. And I'm sorry. The time
24 period, senior actuarial assistant was until when?

25 A Until January -- I don't know where those dates

1 cut.

2 Q Approximately 2003 or --

3 A I became a supervisor in '7 -- in 2007. So split
4 those in half. Roughly a couple years in each position.

5 Q So you became a -- what was your position when you
6 became a supervisor?

7 A Supervising actuarial assistant.

8 Q And that's a managerial position?

9 A It is.

10 Q And is that considered to be an exempt position?

11 A It is.

12 Q What's your understanding of a managerial
13 position?

14 A In what way?

15 Q What does a manager do?

16 A Supervise. In this particular position, I would
17 supervisor the actuarial assistants, make sure work was done
18 timely, do staff reports, report up to senior managers,
19 disciplinary action, things like that.

20 Q A number of different responsibilities?

21 A A number of duties listed out in my duty statement,
22 yes.

23 Q And did you ever perform any specific positions in
24 in an ex officio manner?

25 A No.

1 Q Did you ever testify in court?

2 A No.

3 Q Did you go out into the agencies and make
4 presentations to the agencies?

5 A No.

6 Q Do you think what they call, I think, entrance
7 audits?

8 THE COURT: What kind of duties?

9 MR. JENSEN: I think it's called entrance audits.

10 THE WITNESS: I'm not sure what that is.

11 BY MR. JENSEN:

12 Q When you get an audit are you -- what is it called
13 when a CalPERS person goes to start auditing an agency?

14 A Oh, like, in the audits office, no. I wasn't -- I
15 didn't do any of those.

16 Q What is it called?

17 A I believe it's called an entrance.

18 Q And so how many -- how were you paid as senior
19 actuarial assistant?

20 A Monthly.

21 Q And did it depend on how many hours you worked?

22 A No.

23 Q And when you were -- how long were you working as
24 supervising actuarial assistant?

25 A Through January of 2010.

1 Q January, 2010?

2 A Uh-huh.

3 Q And were you ever tasked by your superiors for doing
4 additional responsibilities?

5 A Well, the way the state's exempt is laid out is that
6 you are tasked with working an average of 40 hours a week,
7 and so if there were additional things that came up, I could
8 possibly stay late one night and come in late the next
9 morning.

10 Q But were you ever tasked with additional
11 responsibilities?

12 A Nothing outside my duty statement, no.

13 Q And does CalPERS have very ridged duty statements?

14 A Fairly comprehensive.

15 Q And so you were never asked to do anything outside
16 of your duty statement?

17 A Not that I can remember.

18 Q Was your duty statement ever revised while you were
19 working there?

20 A No.

21 Q So you did from the beginning of 2007 to 2010 the
22 same job under the same duty statement?

23 A Yes.

24 Q And were you paid the same amount?

25 A Except for my annual increases.

1 Q And in January in 2010, what was the position you
2 took?

3 A I took the staff services manager 2 position over
4 compensation review.

5 THE COURT: Would you repeat that title?

6 THE WITNESS: Sure. Staff services manager 2.

7 THE COURT: Thank you.

8 BY MR. JENSEN:

9 Q And was that concerned to be considered to be a
10 promotion?

11 A It was lateral.

12 Q Lateral, and was it the same pay?

13 A Yes.

14 Q And what were the duty statements in that
15 position?

16 A What kind of duties did it include?

17 Q What kind of duties?

18 A Manage staff, disciplinary action, provide reports,
19 pull statistics, review, make final determinations. Part of
20 my job was to make the final determination and sign the
21 letters that went out to employers and to members, work with
22 the agencies to help them come into compliance, answer
23 questions that came through where the agencies had called and
24 asked questions, work with other managers to provide -- get
25 together to share concerns across program areas, things like

1 that. Hiring. I can't remember anything else off the top of
2 my head.

3 Q And so some of the duties and responsibilities you
4 had were similar to the ones that you had as supervising
5 actuarial assistant?

6 A Well, all managers have the basically -- some of the
7 same duties as far as how to manage.

8 Q And when did you first come upon -- when did you
9 first here Bruce Malkenhorst's name?

10 A I don't remember the exact time, but it was during
11 the beginning phases of the audit.

12 Q And can you give me an approximate time?

13 A I think it was in -- it must have been in mid
14 2011.

15 Q And how was it brought to your attention?

16 A When the auditors were out in the field doing their
17 audit work, they were struggling to make sense of the
18 agency's documents, and so they had asked us, which they have
19 done routinely for us to kind of help to see if we had seen
20 something like this before, if we had any recommendations on
21 other documents to ask for.

22 Q So you're essentially -- now you are working with
23 the audit department?

24 A No. I wouldn't say that. Working with them and
25 doing the audit? No. They had asked some advice, yes.

1 Q What was the nature of their advice?

2 A They had just asked if we had ever seen this type of
3 thing before. They couldn't get a handle on getting
4 documents to substantiate it and because we see 1,000s of
5 cases in our units. Sometimes if you ask for a specific
6 document, the agency will say we don't have that, but if you
7 ask more general questions -- so our advice was, you know,
8 ask is there anything that you can provide us to show the
9 hours versus can you give us a timesheet.

10 Q So let me just ask you, are you aware of document
11 retention policies?

12 A For CalPERS?

13 Q Yes, for CalPERS.

14 A Yes.

15 Q What is the CalPERS document retention policy?

16 A E-mails are kept for 60 days, letters, anything tax
17 related is kept for 7 years, letters are scanned and imaged
18 and kept in the member's files. They're not deleted, any
19 correspondents. I can't remember every component.

20 Q What about your work product or your timesheets?
21 What's the document retention on that?

22 A I don't know. That would be a question for HR.

23 Q So you don't -- you wouldn't know?

24 A I wouldn't know that piece.

25 Q So what would be the farthest back in 2007 that you

1 would think that CalPERS would have documents? I mean in
2 2011, how far back would you think that CalPERS would have
3 documents?

4 A I don't know.

5 Q You just mentioned 7 years would be the longest for
6 tax purposes?

7 A For tax purposes.

8 Q And then letters from the member would be kept, but
9 e-mails would be deleted in 30 days?

10 A I believe it's 60.

11 Q 60 days?

12 A Yeah.

13 Q So when the audit department is coming to you in
14 2011 asking about information, did you take into account
15 document retention policies?

16 A Can you reask the question?

17 Q When the audit department is coming to you in
18 2011 --

19 A Okay.

20 Q -- and saying they can't find documents at Vernon --

21 A Uh-huh.

22 Q -- did it occur to you that there might be documents
23 that were submit to document retention policies?

24 A Oh, sure, and I think that was an issue that the
25 agency rate -- we repeatedly asked and they repeatedly told

1 us this is what we have to give you.

2 Q And why would that not be --

3 THE COURT: Excuse me, counsel. I'm not sure that
4 the witness understood your question. Would you distinguish
5 your question between CalPERS document retention and Vernon's
6 document retention?

7 BY MR. JENSEN:

8 Q Yeah. Would you have any reason to believe that
9 Vernon would have any documents that -- are you aware of
10 Vernon's document retention policy?

11 A I am not.

12 Q And did Vernon communicate to you anything about a
13 document retention policy?

14 A Not to me personally, no.

15 Q Are you -- do you have any understanding of Vernon's
16 document retention policy?

17 A I don't.

18 Q You just mentioned something about Vernon saying to
19 you that they raised questions about document retention; is
20 that correct?

21 A Not in retention per say, but we have given you all
22 we have.

23 Q Okay. So in their audit response to you, they
24 didn't say anything about document retention policy?

25 A If you have the audit report, I can look.

1 Q I'll get to that. Maybe it's a good time to look at
2 it right now. It's in CalPERS binder.

3 MR. JENSEN: And, your Honor, I am moving as fast as
4 I can. So --

5 THE COURT: That's fine. Let's go off the record
6 briefly while you look for that.

7 (Recess)

8 THE COURT: Let's go back on the record. Are you
9 directing us to Exhibit 86?

10 MR. JENSEN: Yes, your Honor.

11 THE COURT: And do you wish to have that marked?

12 MR. JENSEN: Yes. If I could mark that, and it's in
13 CalPERS binders 86 and it is the audit of CalPERS and the
14 response from the agency.

15 THE COURT: All right. Well, the documents behind
16 tab 86 in the CalPERS notebook as described in CalPERS
17 exhibit list is marked for identification as Exhibit 86.

18 (Department's Exhibit 86 was marked for
19 identification by the Court.)

20 BY MR. JENSEN:

21 Q And Ms. Jimenez, do you recognize this document?

22 A Yes, I do.

23 Q And what is it?

24 A This is the final audit report for the public agency
25 for the City of Vernon.

1 Q And I would just like to turn your attention to the
2 appendix G. It's paginated as page 86 of exhibit -- page 76
3 of Exhibit 86. That's the beginning of the agency's response
4 to the audit, and in particular I want to turn your attention
5 to page 83. Have you read this?

6 A Yes. A while ago.

7 Q Do you want to take a moment and just read 83 --
8 actually 83, 84, and to the top of 85. I believe this is the
9 spot. So let me read it too, and let me know when you've
10 read it.

11 A How far?

12 Q If you can just stop at the top of page 85 and I
13 would actually would like to -- the documentation issue is on
14 the top of page 78. So if you would look at that. So just
15 those -- first just start with those two paragraphs on page
16 78.

17 THE COURT: Beginning with the draft report?

18 MR. JENSEN: Yes, your Honor. Just let me know when
19 you've reached -- before section B.

20 THE WITNESS: Okay.

21 BY MR. JENSEN:

22 Q In Vernon's response to the audit, they say they
23 provided 22,000 pages of documents?

24 MR. LEVIN: Objection. Hearsay.

25 THE COURT: You're referring to what this letter

1 says?

2 MR. JENSEN: I'm just reading what the letter says.

3 THE COURT: Finish your question.

4 BY MR. JENSEN:

5 Q We're -- in the compensation review unit, did you
6 receive or have access to the documents, the 22,000
7 documents, that Vernon supplied?

8 A We did.

9 Q And did you review those 22,000 pages?

10 A We did.

11 Q And by meaning "we," who do you mean?

12 A My unit.

13 Q And who is in your unit?

14 A Let's see. The two people that worked on it were
15 myself and Lolita Lueras.

16 THE COURT: Would you spell that, please.

17 THE WITNESS: L-o-l-i-t-a. L-u-e-r-a-s.

18 BY MR. JENSEN:

19 Q So you -- how much of the review of 22,000 documents
20 did you do?

21 A I looked at everything that was provided.

22 Q You looked at each of the 22,000 pages?

23 A Yes. We both did.

24 Q Are you aware of how many pages were supplied to
25 Mr. Malkenhorst's counsel?

1 A Can I clarify something I just said? I looked at
2 all the documents that we were provided. I didn't count
3 them. So I don't want to go on record that I looked at
4 22,000. I do not know.

5 Q Was there someone who took out some of the documents
6 that had been supplied by Vernon before you received them
7 that you're aware of?

8 A Not that I'm aware of.

9 Q And was there an on-site auditor as well?

10 A When we were reviewing the documents?

11 Q No, no. In your knowledge and review of this case,
12 was there an on-site auditor as well? A CalPERS on-site
13 auditor.

14 A I'm sorry?

15 Q Did CalPERS send an auditor to the City of Vernon?

16 A Yes.

17 Q Who was that?

18 A Chris wall.

19 Q And did you interact with Chris Wall?

20 A Yes.

21 Q And did Chris Wall supply information to you?

22 A He provided the paperwork and audit reports.

23 Q Did Mr. Wall provide you everything that was
24 provided to him by Vernon?

25 A I don't know.

1 Q And who else in your office reviewed the situation
2 with Mr. Malkenhorst?

3 A My boss, Marion Montez.

4 Q Anyone else?

5 A In my office, no.

6 Q Nobody else?

7 A No.

8 THE COURT: We're going to break for lunch. We'll
9 be back at 1:30.

10 (Lunch recess)

11 THE COURT: All right. You may continue.

12 BY MR. JENSEN:

13 Q Thank you, Ms. Jimenez, and now after lunch we're
14 going to go back to Exhibit 86, page 78, and just as a recap
15 before the break, you testified that you reviewed a
16 substantial number of documents that Vernon identified as
17 22,000 documents; is that correct?

18 MR. LEVIN: Objection to the use of hearsay in the
19 question. Lacks foundation.

20 THE COURT: Overruled.

21 THE WITNESS: Correct.

22 BY MR. JENSEN:

23 Q And how long did it take you to review those?

24 A Weeks.

25 Q So it took a significant amount of time?

1 A Yes.

2 Q And did you develop some sort of organizational
3 system?

4 A No.

5 Q Did you tag the documents in any way?

6 A We pulled out -- most documents were irrelevant to
7 this particular case. So we pulled out documents that were
8 relevant, such as the resolutions and things like that.

9 Q And tell us which documents you found relevant, and
10 if you can identify them with as much specificity as you can.

11 A We looked -- the resolutions.

12 Q And these would be the resolutions of the City of
13 Vernon?

14 A The City of Vernon resolutions.

15 Q For what period of time?

16 A I will look at them.

17 Q I might be able to shortcut this. Are all the
18 documents that you found relevant in the exhibit folders that
19 were offered by or were provided us by your counsel?

20 A I would assume so, but I haven't --

21 THE COURT: Let me ask the witness to look at volume
22 1 of CalPERS exhibit binders. At the beginning of that
23 binder, there's an exhibit list and that may help you.

24 MR. JENSEN: And just to refresh -- if you can
25 identify as we go through, just as this list if you can,

1 which documents you found relevant, and if you could specify
2 what your concept of relevance was for that document.

3 MR. LEVIN: Your Honor, I'd like to state an
4 objection and ask for clarification as to what the witness is
5 being asked to do. Is it to go through and comment on each
6 exhibit, many of which I believe are not responsive to
7 counsel's question? Counsel is asking about her review of
8 records. Your Honor referred her to the exhibit list which
9 is -- I'm not sure what she's being asked.

10 THE COURT: Okay, and now I'm not either. Why don't
11 you clarify for us?

12 MR. JENSEN: What I want Ms. Jimenez to tell me is
13 which documents she found relevant for her review of this
14 case and --

15 THE COURT: She has identified that she found
16 relevant the City of Vernon's resolutions. Are you asking
17 her to identify which specific resolutions?

18 MR. JENSEN: That's what I -- that's what I just
19 asked her to do.

20 THE COURT: Okay.

21 MR. JENSEN: And then you referred her to this list.

22 THE COURT: To show her where those resolutions are
23 that have been introduced by the -- by CalPERS and its
24 exhibits.

25 MR. JENSEN: I'm just trying to shortcut going

1 through every single one of them if that's possible.

2 THE COURT: And how do you want to do that?

3 MR. JENSEN: That's what we just -- I just asked her
4 to identify from this exhibit list is if that's a good source
5 of information for the witness.

6 THE COURT: All right.

7 MR. JENSEN: If not, we'll go through just because
8 it is important what she based her decision on.

9 THE COURT: All right. Can you tell from the index
10 which resolutions you reviewed?

11 BY MR. JENSEN:

12 Q You know what, it might actually -- let's -- let's
13 do this in a different order. Can you give us the general
14 nature of the documents, and then I'll go back and do the
15 specific ones. So can you tell us -- you mentioned
16 resolutions of the City of Vernon?

17 A Yes.

18 Q Any other category of documents that you found
19 relevant?

20 A The minutes. Some of the minutes.

21 Q Minutes. Any other --

22 A I think there was an ordinance.

23 Q Okay.

24 A The ADP payroll records.

25 Q Okay?

1 A Mr. Leon's breakdown.

2 Q And would that be the quote "breakdown" that I
3 believe is in Exhibit 82?

4 A Yes.

5 Q Any other documents or categories of documents that
6 you thought were relevant in this case?

7 A Without going back through them, I would be hesitant
8 to say there wasn't any other document. I can go through the
9 exhibit binders.

10 Q Well, I'm going to ask you again later, but if you
11 happen to recall any other category of documents that you
12 referred to in your consideration of this Matter.

13 A There was the audit report.

14 Q And by the "audit report," do you mean CalPERS'
15 audit report?

16 A Yes. The final audit report that was sent to us.

17 Q Okay. Anything else?

18 A I believe there were some -- either e-mails or
19 letters. I had to clarify asking additional information, and
20 the City had responded.

21 Q So would these be e-mails or letters from CalPERS to
22 Vernon in an official capacity?

23 A I believe so.

24 Q Any other thing -- any other category of documents
25 other than resolutions of the City of Vernon, minutes of the

1 City of Vernon, ordinances of the City of Vernon, ADP
2 reports, Mr. Leon's breakdown in Exhibit 82, and the CalPERS
3 audit report, and the correspondents between CalPERS and
4 Vernon that you took into consideration in forming your
5 opinion?

6 A Not that is coming to me at the top of my head.

7 Q So let's turn back to the audit report that's in
8 Exhibit 86 page 78. So after you received a bunch of
9 documents, you determined some relevant and you reviewed
10 those; is that correct?

11 A Yes.

12 Q Did you review this letter from the City of Vernon
13 as part of your consideration of this Matter?

14 A The January 31st, 2012, letter?

15 Q From the City of Vernon's attorneys to CalPERS.

16 A Yes. I have read that.

17 Q Okay, and just focus on this page 78 of Exhibit 86.
18 The City is representing here in the third paragraph down it
19 says "We recognize it might be difficult for OAS to digest
20 and interpret all of the documents it received."

21 MR. LEVIN: Objection. Hearsay.

22 THE COURT: There's no question yet.

23 BY MR. JENSEN:

24 Q Did you find it difficult to digest and interpret
25 the documents received from the City?

1 A There were quite a few. It did take a long time.
2 We were able to get through them and interpret most, if not
3 all, and try to come to a determination. However, it was
4 still vague as to some of the things that were being
5 reported.

6 Q And then in the second to last sentence here it
7 says, "The City at all times was willing and able to provide
8 with additional assistance, yet OAS never sought further
9 assistance from the City. Do you see that?"

10 A I do see that.

11 Q Did you ever seek further clarification from the
12 City?

13 A We continued to ask them for additional
14 documentation on the hours for each position and were
15 numerous times short, even after the audit. We were told
16 that they had provided us what they have.

17 Q And I just want to address -- let's turn to page 81
18 of Exhibit 86, and in that, although it refers to many
19 different places, it says the City failed -- OAS which is --
20 is OAS, the office of audit services?

21 A Yes.

22 Q And that's the CalPERS department?

23 A Yes.

24 Q It says they failed to provide -- the OAS alleged
25 Vernon failed to provide documentation to support pay rates.

1 Is that your position today?

2 THE COURT: Where are you looking at, Counsel?

3 MR. JENSEN: Oh, I'm sorry. On page 81 of Exhibit
4 86, the first paragraph. It begins "The OAS also alleges
5 that the City failed to provide documentation to support pay
6 rates and earnings reported to CalPERS for employees working
7 in multiple positions."

8 BY MR. JENSEN:

9 Q Do you see that?

10 A Yes.

11 Q Is that your position today?

12 MR. YIM: Your Honor, I would object on the basis
13 that it's vague and ambiguous. We're talking here -- and
14 this letter references multiple positions for several
15 different employees and who are we referring to, and in this
16 case here, the only relevant employee would be
17 Mr. Malkenhorst, Senior. So I object on those grounds.

18 THE COURT: Okay. Sustained.

19 BY MR. JENSEN:

20 Q Is it your position today that the City has failed
21 to provide documentation to support pay rates and earnings
22 reported to CalPERS for Mr. Malkenhorst? And I'm going to
23 put working in multiple positions in quotes because that's
24 the term used here and that's not any admission that there
25 was working in multiple positions.

1 A I have yet to receive the amount of hours that
2 Mr. Malkenhorst worked in each position.

3 Q So let me turn your attention to page 83 of Exhibit
4 86, and I directed your attention to this once before, before
5 the break and I just want to quickly go through this. Is it
6 your allegation or the -- is it your belief that, referring
7 to the first sentence, for the individuals that worked
8 simultaneously in multiple positions, the City failed to
9 provide documentation to substantiate the amount of hours
10 worked per position and reportable pay rates for each
11 position?

12 MR. YIM: Objection.

13 THE COURT: And I'm going to remind counsel to slow
14 down when you read, please. Do you have an objection,
15 counsel?

16 MR. YIM: Yes, your Honor.

17 THE COURT: Go ahead.

18 MR. YIM: And it's the same objection. This is
19 again in reference to multiple employees, not just
20 Mr. Malkenhorst. So I would object on the basis that it's
21 vague and ambiguous, overbroad, and irrelevant.

22 THE COURT: Okay. Sustained, and let's try to limit
23 the questioning to the Malkenhorst matter.

24 MR. JENSEN: Again, I was just reading the language.

25 THE COURT: I understand that.

1 BY MR. JENSEN:

2 Q Ms. Jimenez, is it your contention that for
3 Mr. Malkenhorst, who the City failed to provide documentation
4 to substantiate the number of hours worked for the position
5 and reportable pay rates for each position?

6 A Outside of the ADP reports? The agency has not
7 given us a breakdown of hours worked in each position.

8 Q And do you -- was it your understanding of the
9 testimony yesterday that the City represents that the ADP
10 reports are represented of hours worked in multiple
11 positions?

12 A Say it again.

13 Q You were sitting here yesterday when Mr. Leon was in
14 here?

15 A Yes.

16 Q Did Mr. Leon say that the ADP reports were evidence
17 of Mr. Malkenhorst working in different positions?

18 A No. He did not say that.

19 Q What is your understanding of what he did say?

20 A He was saying that they were allocated to different
21 departments. I don't believe he used the words "different
22 positions," but he did say that they were allocated to
23 different departments.

24 Q Has Vernon ever said that Mr. Malkenhorst working --
25 that the allocation of those costs was about him working in

1 different positions?

2 MR. LEVIN: Objection. Hearsay.

3 THE COURT: Have they told you? Is that what you're
4 asking?

5 MR. JENSEN: Yes.

6 THE COURT: You may answer.

7 THE WITNESS: Ask me again.

8 BY MR. JENSEN:

9 Q Has -- has -- either from the testimony yesterday or
10 at any time, has Vernon said to you that the hours listed in
11 those ADP payroll reports are associated with hours in
12 multiple positions?

13 A Not directly.

14 Q How have they articulated it then?

15 A Based on the documents themselves, and the agency
16 not providing any alternate or additional documentation, than
17 that is what we have to go on knowing that CalPERS relies on
18 the agency to give us accurate, complete information, and if
19 they gave us that, than that's what we have to go on.

20 Q Did they give that to you?

21 A It came through in the process.

22 Q Did Vernon ever represent that to you as hours
23 worked in multiple positions?

24 A No.

25 Q So who told you that it was hours worked in multiple

1 positions?

2 A If you look at the documents, it's clear that
3 there's hours associated to different departments.

4 Q And what does that mean?

5 A What exhibit number is it?

6 Q I'm just asking you, what does -- what does
7 percentage of time allocated across different departments
8 mean?

9 A Well, according to those records, if a member has
10 listed an amount of hours and they are multiplying it by
11 their pay rate, their hourly pay rate, it is clear that they
12 mean to separate them into different departments. If the
13 member is working in a position under each department, then
14 it would be a reasonable interpretation to mean that those
15 hours were associated with those positions.

16 Q Whose reasonable interpretation?

17 A CalPERS.

18 Q Who in CalPERS?

19 A Mine.

20 Q Yours. Only yours?

21 A CalPERS in general, the office of audit services.

22 Q Who else?

23 A The office of audit services. Legal counsel was
24 involved.

25 Q Has anyone else testified here about it?

1 A From CalPERS? No.

2 Q What did Mr. Leon testify -- Mr. Leon. Sorry.

3 MR. LEVIN: Objection. Overbroad.

4 BY MR. JENSEN:

5 Q What did Mr. Leon testify regarding what those ADP
6 reports meant?

7 MR. LEVIN: Objection. The record of his testimony
8 speaks for itself.

9 THE COURT: Sustained.

10 BY MR. JENSEN:

11 Q Okay. So there was -- there was no document
12 provided by Vernon which associates hours with any position
13 other than City administrator/City clerk?

14 A The ADP payroll records associate hours with
15 different departments which are over different positions.

16 Q So where do you get this understanding that if it's
17 spread over different departments it has to be multiple
18 positions?

19 A Based on the thousands of other cases I have
20 reviewed. That's not uncommon to see hours associated by
21 different departments. It's rare that there are multiple
22 positions, but when there are, this is the type of documents
23 that we use to substantiate those needs.

24 Q Can you point me to some rule or regulation that
25 supports your interpretation?

1 A Of which piece?

2 Q That if there's costs allocated over different
3 departments it means multiple positions?

4 A No.

5 Q So there is no rule?

6 A There is no CalPERS rule.

7 Q Is there any other rule?

8 A I don't know.

9 Q You were an accountant for municipalities?

10 A Yes.

11 Q Was there any rule in the accounting profession
12 about it?

13 A I don't remember.

14 Q Is there any rule in the Public Employees'
15 Retirement Law about it?

16 A No.

17 Q Is there any regulation about it?

18 A Are we still talking about the ADP reports?

19 Q I'm talking about if there's costs allocated over
20 different departments it means multiple positions?

21 A No. There's no rule.

22 Q There's no authority for it?

23 MR. LEVIN: Objection. Argumentative.

24 THE COURT: Sustained.

25 ///

1 BY MR. JENSEN:

2 Q Let's move onto the next -- this page, 83 of Exhibit
3 86. Page 83 of Exhibit 86. When Vernon says "This statement
4 is not supported by the facts and the information provided,"
5 what was your interpretation of what Vernon was saying to
6 you?

7 THE COURT: Which paragraph are you looking at?

8 MR. JENSEN: I'm sorry. Let me put it in context.

9 BY MR. JENSEN:

10 Q In Vernon's rebuttal letter through the audit, it
11 says OAS -- well, with respect to Mr. Malkenhorst, CalPERS
12 has alleged that the City has -- excuse me. "The City has
13 failed to provide documentation to substantiate the number of
14 hours worked for a position and reportable pay rates for each
15 position," and then the next sentence is Vernon says "the
16 statement is not supported by the facts and the information
17 provided." Do you have any understanding of what Vernon
18 might mean by that?

19 A Well, I could go on to read the next sentence.

20 Q If that would be helpful to you.

21 A So the next sentence is pointing to look at appendix
22 C.

23 Q I don't think appendix C was included in this -- in
24 the CalPERS documents. Any other -- okay. This audit
25 response goes on to say "The schedule listed each position

1 identified whether it received compensation and noted the
2 authoritative documents to support it." Is that consistent
3 with your recollection of what Vernon was saying in the
4 audit?

5 MR. YIM: Objection. Again, this is in reference to
6 potentially multiple, several employees, not particularly
7 Mr. Malkenhorst. It's just too vague and ambiguous.

8 THE COURT: I'm going to ask the witness that
9 questions pertaining to this document are going to be limited
10 to Mr. Malkenhorst. Do you understand that?

11 THE WITNESS: I do.

12 THE COURT: I'll recognize the standing objection by
13 the City of Vernon to anything beyond that scope.

14 MR. YIM: Thank you, your Honor.

15 MR. JENSEN: And I'll try to narrow it, your Honor.

16 BY MR. JENSEN:

17 Q So with respect to Mr. Malkenhorst, is it your
18 understanding that the City believed that it had provided
19 schedules listed -- position in whether there was
20 compensation and then provided authority for that pay rate?

21 A I think they provided information. However, it
22 doesn't make it a reportable item.

23 Q But Vernon was representing to you that that they
24 thought that they had authority for what they were doing with
25 respect to paying Mr. Malkenhorst a single pay for what they

1 determined multiple positions?

2 A They provided the resolutions to support what they
3 were reporting.

4 Q Let me just go to the next sentence here. It says
5 that -- with respect to Mr. Malkenhorst, is it your position
6 that the City paid individuals multiple -- paid
7 Mr. Malkenhorst holding multiple positions and I'll just make
8 it -- I'm using the language "multiple positions" because
9 it's in this document, your Honor. Just to clarify that --
10 one position, but the City paid individuals holding multiple
11 positions for each of their positions. That's what the City
12 is articulating is erroneous and that's a very poor question.
13 So --

14 THE COURT: Do you want to withdraw that question?

15 MR. JENSEN: Yes. May I withdraw that question?

16 THE COURT: You may.

17 BY MR. JENSEN:

18 Q Is it your position that the City paid Malkenhorst
19 a -- for each of the positions that he was designated?

20 A I think it varies. There's different language used
21 in different resolutions. I'm not -- to be honest, I'm not
22 sure what they thought they were paying him for each of those
23 positions.

24 Q Let's move down to this next -- this paragraph and
25 then -- being in the context of Mr. Malkenhorst, it says "the

1 documents were provided to substantiate the fact that
2 employees with multiple positions would only be compensated
3 for their primary position." Do you see that?

4 A Which paragraph are you on?

5 Q It is the paragraph that begins "OAS also
6 erroneously asserts that the City paid individuals holding
7 multiple positions for each of their positions," and it's the
8 third sentence there.

9 MR. JENSEN: Your Honor, may I approach?

10 THE COURT: Please.

11 THE WITNESS: I see it. Thank you.

12 BY MR. JENSEN:

13 Q Okay. So the City -- do you understand that the
14 City represented to you that they provided documents to
15 substantiate the fact that the employees with multiple
16 positions would only be compensated for their primary
17 position?

18 A I see that they wrote that, yes.

19 Q Do you believe that -- do you believe that
20 sentence?

21 MR. LEVIN: Objection. Vague.

22 THE COURT: Are you asking whether -- are you asking
23 whether she believes whether Vernon provided documents or
24 whether -- you understand the ambiguity?

25 MR. JENSEN: Yes, I do.

1 BY MR. JENSEN:

2 Q So do you believe that Vernon intended to compensate
3 individuals that held multiple positions only for their
4 primary position?

5 A For salary purposes, the resolutions vary on which
6 ones are going to be compensated or not. So for salary
7 purposes, I did see resolutions where they had said this same
8 language, yes.

9 Q Do you believe that Vernon intended to pay
10 Mr. Malkenhorst only one salary for the primary position?

11 A Reading over the resolutions, I do see that they say
12 that. That they're intending to pay him the one salary.
13 However, when they start adding additional positions, now
14 there's a conflict between salary and compensation
15 earnable.

16 THE COURT: And what?

17 THE WITNESS: Compensation earnable.

18 THE COURT: Thank you.

19 THE WITNESS: Sorry.

20 BY MR. JENSEN:

21 Q Does Vernon's intent to pay for only one position
22 matter?

23 A In which way?

24 Q For the purposes of your calculation.

25 A No matter City of Vernon's intention, the salary

1 still has to meet CalPERS' law in order to be used in his
2 benefit.

3 Q Earlier you testified that you didn't care how much
4 or -- that PERL's law doesn't care how much they compensate
5 an individual for a position; is that correct?

6 A That is correct.

7 Q And earlier you testified that the employer
8 establishes the full-time position; is that correct?

9 A That -- the full-time work schedule for each
10 position. That is correct.

11 Q So if an employer can determine the full-time work
12 schedule and the pay for that schedule, then the employer can
13 determine the pay for purposes of CalPERS; is that correct?

14 A Only if it's compliant with all laws.

15 Q In this case, is it your understanding that the pay
16 schedules reflect a single position of City
17 administrator/City clerk and a single pay rate; is that
18 correct?

19 A The salary schedule has its written has one salary
20 for that position.

21 Q And so how -- so did you accept that one salary for
22 that one position?

23 A That would be the full-time salary if
24 Mr. Malkenhorst was working full time in that position and no
25 other positions.

1 Q But this document here says that Mr. Malkenhorst was
2 compensated -- it was Vernon's intent to compensate
3 Mr. Malkenhorst only one compensation for the primary
4 position. Is that your understanding of what they are
5 representing?

6 A I think that's what this letter says.

7 Q Do you have some reason to disbelieve this letter?

8 A I believe through the resolutions it's clear that
9 they are giving him multiple positions, and when an employee
10 works multiple positions, the employer is to report them as
11 separate, multiple part-time positions.

12 Q But in this letter, it says they only compensated
13 him for his primary position. Is that your understanding?

14 A That's what they're -- that's what they're saying,
15 yes.

16 Q And do the documents support that?

17 A I don't believe -- I believe that they show a
18 different story.

19 Q Well, we'll go through what your belief of this.

20 MR. JENSEN: I do want to just represent to the
21 court that Mr. Yim is the law firm that wrote this letter on
22 behalf of Vernon, and he's present in the courtroom here.
23 So, you know, I don't want to put him in any difficult
24 position here if she is speaking of something about accusing
25 them of not representing the truth in this audit letter. So

1 just making that point.

2 THE COURT: I don't think that's a -- that we need
3 to concern ourselves with that. I'm sure Mr. Yim will be
4 able to deal with anything that comes up.

5 BY MR. JENSEN:

6 Q So let's just move on to that next sentence in this.
7 It says, "In addition to the City's March 14th, 2011
8 schedule, several of the resolutions appointing an
9 employee to -- well, this is actually after his retirement.
10 So I'll withdraw that question.

11 The next sentence after that is "The City recognizes
12 some of its employees wear multiple hats, and are nominally
13 granted more than one title." Does that idea of a nominal
14 grant of more than one title make any difference to you?

15 A If it was nominal, it wouldn't be a position. He's
16 receiving positions attached to his position. He's not
17 receiving a nominal -- you know, we're going to change your
18 duties statement, and you're going to now, you know, preside
19 over three meetings a month instead of two.

20 Q And let me just ask, where is your legal support or
21 authority for that position?

22 A That he's receiving additional positions?

23 Q No no, no. That there's some difference between a
24 nominal job title and a job title that has duties.

25 A Ask the question again.

1 Q Is there any PERL's law about whether there can be a
2 nominal position or whether job duties are required in it?

3 A Well, each position, I would assume from experience,
4 that each position has job duties.

5 Q Do you have any legal authority for that assumption
6 that each title has to have job duties?

7 A Well -- we do look at that to make sure that they're
8 not working out of class. Agencies typically provide us duty
9 statements in order to back up their positions.

10 Q Do you have any legal authority for your assertion
11 that -- that if a job or a title has duties to it, it has to
12 be a real job or paid job?

13 A Every position -- according to the publicly
14 available pay schedule, every position the City uses has to
15 be on a pay schedule.

16 Q Even if there's no pay?

17 A If there's a position with no pay, then they can
18 list that if that is their desire to do so. Although it's
19 another way for the public to get involved.

20 Q But it's a pay schedule?

21 A It is a pay schedule, but it's every position that
22 the City uses.

23 Q Every position that the City uses?

24 A Yes.

25 Q Has ever used?

1 A During the time period that the salary schedule is
2 in effect.

3 Q And so it's sort of this nomenclature idea?

4 MR. LEVIN: Objection. Vague.

5 THE COURT: Sustained.

6 BY MR. JENSEN:

7 Q So you're looking at -- so you're looking,
8 basically, at job titles?

9 A Position titles.

10 Q So you're -- and what's your authority for looking
11 at position titles?

12 A In the regulation, it -- that's the component of the
13 publicly available pay schedule.

14 Q Can you show me which regulation says "position
15 title"?

16 A Regulation 570.5 --

17 Q Is this -- is this the regulation that was in effect
18 at the time Mr. Malkenhorst was working in 2004, 2005?

19 A It's a clarification of what was in place.

20 Q No, no. Is this the regulation that was in effect
21 in 2004, 2005 --

22 (Interruption in the proceedings)

23 MR. JENSEN: Sorry, your Honor.

24 BY MR. JENSEN:

25 A No. This regulation was put into the PERL in

1 2011.

2 Q Okay. So can you point to any regulation in effect
3 during the time period of these -- of Mr. Malkenhorst's
4 employment that these pay schedules were done that required
5 the listing of nominal job titles or -- job titles?

6 A There isn't any regulation that talks about job
7 titles.

8 Q Was there ever a regulation that talked about job
9 titles?

10 A Job titles, no.

11 Q So there's no authority for requiring a job title on
12 a publicly available pay schedule?

13 A Well, 570.5 states that they have to identify the
14 position title for every employee position.

15 Q And was that the regulation that was in effect at
16 the time?

17 A Again, it was a clarification. There was no
18 regulation. It was all in statute.

19 Q Was the statute ever required -- I'm sorry.
20 Required position titles to be listed?

21 A That was the component -- the statute says that
22 there needs to be a publicly available pay schedule which
23 needs to list -- there's not -- it's not -- not everything
24 that is required --

25 Q Can you just -- I'm sorry. Can I approach so you

1 can point to me where it says job title in there?

2 MR. LEVIN: May the the witness be permitted to
3 finish her response?

4 THE COURT: Yes, please.

5 MR. JENSEN: Sorry.

6 THE WITNESS: In the statute it states and has
7 always stated that there needs to be a publicly available pay
8 schedule and that pay schedule, in order to be effective and
9 transparent across the board, has always needed job positions
10 and amounts on those hour schedule. The reason for the
11 regulation was to clarify into -- into law what has been
12 expected since the compensation review unit and even
13 beforehand had expected of a publicly available pay
14 schedule.

15 MR. JENSEN: And your Honor, motion to strike as
16 being nonresponsive to the question posed.

17 THE COURT: Denied.

18 MR. JENSEN: May I approach the witness so you can
19 point to me where it says "job title" in the regulation.

20 THE COURT: You may approach.

21 MR. JENSEN: Can the witness -- can you point to me
22 where it says "job title" in the regulation?

23 THE WITNESS: It doesn't say job title. It says
24 position title.

25 MR. JENSEN: Show me what you're referring to,

1 please. May I approach, your Honor?

2 THE COURT: You may.

3 MR. JENSEN: May I approach?

4 THE WITNESS: Yes.

5 BY MR. JENSEN:

6 Q And doesn't that say for the purpose of defining
7 compensation earnable?

8 A Yes. In subsection 8, it starts with for purposes
9 of determining the compensation earnable.

10 Q So would there be a compensation earnable for a job
11 title that has no compensation?

12 A We have seen where employers do under report.

13 Q No, no, no. If there's no compensation --

14 A Uh-huh.

15 Q -- can there be a compensation earnable?

16 A If there's no compensation on the pay schedule?

17 Q If there's no compensation for the job?

18 MR. LEVIN: Your Honor, there's been repeated
19 cutting off of the witness. I think she was trying to
20 answer.

21 THE COURT: No. I think she's doing okay. You may
22 ask your question.

23 BY MR. JENSEN:

24 Q So if there's no compensation, can there be
25 compensation earnable?

1 A If there's truly no compensation for a position,
2 then no. It would not be considered compensation earnable.

3 Q Okay. Earlier today, you referred to -- we went
4 over the documents about where Mr. Malkenhorst was appointed
5 to the director of electric power. Do you recall how much
6 compensation he was to receive for that?

7 A What was stated in the resolution said zero.

8 Q Do you have some reason to believe that's not
9 true?

10 A I do.

11 Q Okay. Tell us.

12 A Okay. So looking at Mr. Malkenhorst over the
13 25-year period. Again, his increases more than tripled
14 almost every other position in the entire agency. These
15 positions came on roughly, you know, every so often and while
16 compensation increases weren't tied directly at the same
17 time, you can see a year later there's a big increase. After
18 he sees another position, again, it's not tied exactly to the
19 same time, but over his career, you can clearly see he's been
20 compensated at an increased amount over anyone else in the
21 agency. It goes to transparency and consistency among the
22 employer. There's group or class issues there, and I do
23 believe that the resolutions tell a story that although it
24 says zero, he was being compensated as a way circumvent the
25 overtime.

1 Q So you don't believe what Vernon said in these
2 resolutions?

3 A I believe the resolutions are misleading.

4 Q And what's your basis for that, your legal basis for
5 that?

6 A Again, looking over --

7 Q Looking --

8 A Looking over his 25-year career, applying the laws
9 of the group or class, the average increase laws, the pay
10 rate should be paid to similarly situated members. All of
11 the law that is in the PERL was applied to his
12 compensation.

13 Q What law in the PERL allows you to look over
14 someone's 30-year career and -- what statutes are you looking
15 at?

16 A Our basic ones are 20636.

17 Q What specific section allows you to look over an
18 entire career and decide that it's not an appropriate ending
19 salary?

20 A In order to provide an accurate and true benefit to
21 a member, we are -- that is part of my job personally, and my
22 unit's job to look at the compensation reported to make sure
23 that it is compliant. We're not limited to just his final
24 comp period. We may look over all compensation reported.
25 Otherwise it would be open to manipulation for everyone to

1 give large increases right before the final comp period which
2 is again, as we have talked about earlier is some people's
3 definition of spiking.

4 Q Oh, that's interesting. So isn't there provisions
5 in the PERL for that particularly -- isn't there statutory
6 provisions that limit your look-back period?

7 A No.

8 Q There's not?

9 A Our look-back period, no.

10 Q What is that? 206?

11 A E2.

12 Q What about the two years look-back period prior to
13 the final compensation period?

14 A Sure. That's when we can limit him to the average
15 increase .

16 Q Uh-huh.

17 A is for those --

18 Q Explain to the court.

19 A Okay. So when a member retires, we look for his
20 highest --

21 Q I'm sorry. Can you actually look at the -- state
22 the authority that you're talking about for the additional
23 two year look-back period after the final compensation
24 period?

25 A May I explain and read the statute?

1 Q Yeah.

2 A Okay. So when a member retires, we look at his --
3 we troll his or her entire career to look for the highest
4 compensation amount. We want to put the member on with the
5 highest amount possible as long as its compliant. We don't
6 just look at the last three years. We don't just look at the
7 last three years plus a two year -- what you're calling a
8 look-back, and I think what you're thinking about is E2, and
9 this is where we specifically -- if everything else is
10 compliant, it says, "increases and comp earnable granted to
11 an employee who is not in a group or class should be limited
12 during the final compensation period applicable to the
13 employees" --

14 THE COURT: Slow down when you read, please for the
15 court reporter.

16 THE WITNESS: "As well as the two years immediately
17 proceeding the final compensation period to the average
18 increase in compensation earnable during the same period
19 reported by the employer for all employees who are in the
20 same membership classification." It doesn't mean we don't
21 look at the entire career. It just means that's the period
22 where we would reduce to the average increase, and as I was
23 saying before, if you don't look at the entire career,
24 there's often times where members have increased dramatically
25 above their group or class right before their final

1 compensation period and it always raises issues, and we work
2 with the employer.

3 BY MR. JENSEN:

4 Q So you do believe that's specific authority for
5 looking at compensation over, in this case, it would be the
6 final three years; is that correct?

7 A State your question again.

8 Q Is the section you just cited that would allow
9 CalPERS statutory authority to review compensation in the
10 last -- one year final compensation period and two years
11 prior to that; is that correct?

12 A No. We review --

13 Q No. That statute authority that --

14 THE COURT: Hold on a moment. Now you have to allow
15 the witness to answer.

16 THE WITNESS: We review the entire career. What
17 you're saying is you can't review it, and that's inaccurate.
18 We can review anything that's reported to CalPERS, and as a
19 matter of fact, we actually review active members on an
20 ongoing basis as well just to make sure that everything is
21 compliant. This is not saying what you're saying it says.

22 BY MR. JENSEN:

23 Q Okay. A member can designate a final year
24 compensation at any time in his career; is that correct?

25 A That is correct.

1 Q And under that section, they may also at that point
2 they designate a one year compensation any time during their
3 year and then it allows a two-year look-back from that point
4 that the member designates as their final compensation year;
5 is that correct?

6 A I don't understand what you mean by look-back.

7 Q Okay. The two years prior to the final compensation
8 period, and this year, it's a one year final compensation
9 year period?

10 A Okay.

11 Q It statutorily authorizes a two-year period of
12 review of increases in the final compensation whenever that
13 final comp period occurs in a person's employment. Is that
14 your understanding of it?

15 A No.

16 Q Where is there authority that allows you to
17 challenge any period of employment in a CalPERS covered
18 job?

19 MR. LEVIN: Objection. Vague.

20 THE COURT: Do you understand the question?

21 THE WITNESS: I don't.

22 BY MR. JENSEN:

23 Q Is there -- can you point to some statutory
24 authority which allows you to review the whole member's work
25 history in order to change his pension benefit?

1 A Do you want in general, or do you want me to find
2 the statute?

3 Q I would like you to provide some authority for
4 your --

5 A Okay. It may take a few minutes.

6 THE COURT: Go ahead.

7 MR. JENSEN: Are we on the record?

8 THE COURT: We are.

9 MR. JENSEN: I'll let the record reflect that the
10 witness is looking through the CalPERS statute book.

11 THE COURT: We can go off.

12 (Recess)

13 THE COURT: Has the witness found an answer to the
14 question?

15 THE WITNESS: Unfortunately, I wasn't able to find
16 the section I was looking for. So I can't speak to the exact
17 language that was in the PERL that gives me specific
18 authority. However, it doesn't tell me that I can't look --
19 what you're reading is what we can limit as far as one
20 component. So there's a difference there.

21 MR. JENSEN: And your Honor, I just want -- and I
22 discussed this with counsel is during the break while I was
23 here, the witness, Ms. Jimenez, was discussing the authority
24 for this with counsel, and the counsel was directing her to
25 specific sections prior to her coming back on.

1 THE COURT: And I care about that why?

2 MR. JENSEN: I just wanted to clarify that.

3 THE COURT: That's not helpful. Let's move on.

4 BY MR. JENSEN:

5 Q Okay. So you were not able to find the specific
6 authority?

7 A No.

8 Q Let's move into this letter. Again, page 83 of
9 Exhibit 86, and we're back down to the third paragraph. It
10 says "on page 6 of the draft report, the office of audit
11 services." That's that paragraph there. Now, you mentioned
12 earlier today something about excessive salary increases when
13 you were doing your calculation on the board; is that
14 correct?

15 A On the hypothetical?

16 Q No. Actually, with reference to those two numbers
17 there.

18 A Oh, that it was much larger than the rest of the
19 agency.

20 Q Much larger than the rest of the percentage
21 increases were much larger than the rest of the agency?

22 A Yes.

23 Q And did you run those numbers, or did you just do
24 the numbers associated with Mr. Malkenhorst?

25 A During the review of the case, we reviewed some of

1 the other department heads and it was roughly, they would
2 maybe double.

3 Q But do you have that documentation here about the
4 percentage increases?

5 A No.

6 Q So let me just --

7 MR. JENSEN: Your Honor, may I approach and ask the
8 witness to review something?

9 THE COURT: You may.

10 BY MR. JENSEN:

11 Q And Ms. Jimenez, I'm going to step behind you and
12 turn that over, and then I'm going to ask you, are you
13 familiar with the term "cost of living"?

14 A Yes.

15 Q And are cost of living increases typically
16 considered to be -- when salary increases rise consistent
17 with the cost of living, is that considered to be
18 appropriate?

19 A Appropriate in what way?

20 Q Would that be an excessive salary increase if it was
21 rising consistently with the cost of living?

22 A I wouldn't weigh in --

23 THE COURT: I'm sorry. We can't hear you.

24 THE WITNESS: I wouldn't weight in on appropriate
25 increases compared to COLA. I would have an opinion and the

1 PERL would have an opinion on increases compared to his group
2 or class.

3 BY MR. JENSEN:

4 Q So excessive is only with relation to group or
5 class?

6 A For my purposes, yes.

7 Q And have you testified earlier today that you
8 thought Mr. Malkenhorst might not be in a group or class?

9 A For his longevity, he was clearly being treated
10 differently.

11 Q So is there different groups or classes for
12 different things?

13 A There can be.

14 Q So with respect to these pay increases -- I wrote --

15 MR. JENSEN: Your Honor, with your permission I'd
16 like to mark this exhibit as LLLLL, 5Ls, and mark it on the
17 top right hand corner and I'll circle it.

18 THE COURT: All right.

19 MR. JENSEN: And I've written three dates 1980,
20 1981, 1982, and I'll write 1983.

21 BY MR. JENSEN:

22 Q Ms. Jimenez, I'm handing you a green pen and with
23 reference to these numbers here that you've written down, are
24 you familiar what this pay rate -- when this occurred?

25 THE COURT: Would you identify for the record what

1 you're looking at?

2 MR. JENSEN: Yes. There's a pay rate on Exhibit 89
3 that has been indicated by Ms. Jimenez as 4,547, and then I
4 believe it means effective July 1st, 1980.

5 BY MR. JENSEN:

6 Q Is that consistent with what you wrote up there?

7 A Yes.

8 Q Can you write that under this number where it says
9 1980.

10 A Under or --

11 Q Consistent with what's next to it. Actually it
12 might be best if you did it over here. I'm sorry if my
13 handwriting is not as good as yours. Okay, and was there
14 another salary that you identified?

15 A It's the 7/1/1982 salary.

16 Q And where would it be appropriate to put that on
17 this chart?

18 A Next to 1982.

19 Q Okay. Are you familiar with the inflation rate in
20 the consumer price index in the 1980s?

21 A No.

22 MR. JENSEN: Your Honor, I'd like to make an offer
23 of proof, request for judicial notice or official notice of
24 the rate of inflation in 1979, 1980, 1981, 1982.

25 THE COURT: You may submit something authoritative,

1 and I'll consider the request.

2 MR. JENSEN: Can I have for purposes of the
3 calculations here?

4 THE COURT: I will not accept that those are the
5 authoritative figures, but you may suggest figures for her to
6 use.

7 MR. JENSEN: And if subsequently, they're in that
8 ballpark --

9 THE COURT: I'll consider them.

10 MR. JENSEN: Okay. Great, and what I'm doing here
11 is I am looking at documents which are labeled historical
12 inflation rates for specific years.

13 THE COURT: As measured by the consumer price index?

14 MR. JENSEN: As measured by the consumer price index
15 published monthly by the bureau of labor statistics, and I
16 just want to -- your Honor, may I approach?

17 THE COURT: You may.

18 MR. JENSEN: So this is what I'm using. I can't
19 vouch for its perfection, but I just want to show you that
20 that's the basis of it.

21 THE COURT: You'll submit something to me in
22 writing?

23 MR. JENSEN: I will, your Honor.

24 THE COURT: Thank you.

25 ///

1 BY MR. JENSEN:

2 Q And according to this, the inflation rate in 1980
3 was 14.4 percent. Can you write 14.4 percent there?

4 A Here?

5 Q Actually, it would be beneath the number 4,500 and
6 sorry. I'm getting old. Inflation rate for 1981 is 10
7 percent. So just with respect to the inflation rate on that
8 salary -- do you have a calculator handy?

9 A I do.

10 Q If you can multiple that number by the inflation
11 rate, and then for the period of 1981 -- actually, let me
12 give you a different color so that it's -- it's not a --
13 let's do it with yellow -- with a highlighter. So just for
14 purposes of the calculation, the number that she's
15 calculating is going to be in a highlighter just to
16 differentiate it between the actual pay rates, and that's not
17 going to going to work. I've got an orange one here. Will
18 that be easier? It's almost out. There's the Sharpie blue
19 right there. I have a whole bunch of pens just not when I
20 need them. Okay. Can you multiple that by the next
21 inflation rate? And was this your understanding about
22 Mr. Malkenhorst's actual pay rate was in 1982? Can you write
23 that on the --

24 A Sure.

25 Q Use this green pen. No. If you can just write

1 actually the number is fine.

2 A We use -- not his pay rate. We use what was on the
3 pay schedule. I just want to be clear.

4 Q Okay, and then can you denote what his increase
5 would be over his inflation adjusted salary? Can you do that
6 in blue if you could? Well, no. Actually, if you could do
7 the gross amount --

8 A Oh, the difference.

9 Q The difference. Approximately \$500 or the
10 percentage is fine too. So let the record reflect that using
11 the inflation numbers provided in the CPI, the inflation --
12 the increase over the inflation adjusted salary would be
13 \$513. Do you understand that methodology?

14 A I understand what you are doing here, yes.

15 Q And do you find any defects in that methodology?

16 A The defect in that -- the CPI isn't as important as
17 what is happening with his group or class.

18 Q And was he in a group or class at that time?

19 A No. So he would be delegated to the next group or
20 class.

21 Q Well, into your -- in your arguments, he's not in a
22 group or class; is that correct?

23 A That is correct.

24 Q Okay. So let's go back to Exhibit 86, page 83.

25 MR. JENSEN: Your Honor, I'm sorry. I'd like to

1 admit into the record LLLLL into the record, please.

2 THE COURT: Any objection?

3 MR. LEVIN: Subject to objection on the request for
4 judicial notice and the data that's reflected. No. Absent
5 of that, but no.

6 THE COURT: Okay. As a hypothetical -- with
7 hypothetical CPIs, I'm going to admit it. If you want to
8 substantiate that those are accurate CPIs, you may request
9 official notice of some authoritative publication of the
10 bureau of labor statistics.

11 (Respondent's Exhibit LLLLL was received in
12 evidence by the Court.)

13 MR. JENSEN: Yes, your Honor, and I don't have a way
14 of printing that out right now. So --

15 THE COURT: It doesn't have to be today.

16 MR. JENSEN: Okay. Thank you, your Honor.

17 BY MR. JENSEN:

18 Q So, Ms. Jimenez, if we could return to Exhibit 86,
19 page 83.

20 A Okay.

21 Q And in the last paragraph it says furthermore --
22 well, anyway, are you familiar with that section?

23 A Okay. I've read it.

24 Q Okay. Is it your position that the City did not
25 or -- did you not accept the substantial information from

1 Mr. Malkenhorst that the City did not compensate theses
2 employees for their added resolutions as indicated in the
3 City resolutions?

4 THE COURT: I'm sorry. I think you need to break
5 that question down a bit. There were at least three
6 negatives in there.

7 MR. JENSEN: I'm sorry. I am trying to read.

8 BY MR. JENSEN:

9 Q Did you accept as substantial information the City
10 resolutions that clearly stated the City would not compensate
11 Mr. Malkenhorst for the additional positions?

12 A We received the resolutions. The information in
13 them is -- wasn't used.

14 Q So you did not accept the substantial information of
15 those resolutions?

16 A No.

17 Q And what reason did you not accept -- what was your
18 authority for not accepting those?

19 A Again, looking at the resolutions, it is clear that
20 he is working in multiple positions.

21 Q What is your authority? What makes it clear to
22 you?

23 A The resolutions state that he is.

24 Q But it says they would not compensate him. What
25 make it's clear to you that he was compensated in those

1 positions?

2 A Again, over the period of time that we looked at, he
3 was receiving numerous increases above the group or class.
4 They were receiving much smaller increases over time. While
5 they're not tied specifically to the exact date that he's
6 receiving these additional positions, they are positions.
7 They should be listed on the publicly available pay schedule
8 and as soon as he left, these positions are now being paid at
9 quite a bit.

10 Q So was this -- did any other CalPERS employees
11 review besides you and Ms. Montez, the situation?

12 MR. LEVIN: Objection. Vague.

13 MR. JENSEN: Within the office of compensation
14 review.

15 MR. LEVIN: Vague as to the situation. I'm not
16 certain what's being asked.

17 THE COURT: Thank you.

18 BY MR. JENSEN:

19 Q Did anyone else in the compensation review unit
20 review the additional positions acquired and the timing of
21 the pay rates?

22 A Yes.

23 Q Who else reviewed them?

24 A My boss, Marion Montez.

25 Q Anybody else?

1 A In the compensation review unit, no.

2 Q Does Terrance Rodgers work in the compensation
3 review unit?

4 A Yes, he does.

5 MR. JENSEN: Your Honor, just for purposes of
6 clarifying the witness's memory that is -- challenging her
7 credibility, I guess. Your Honor, I have just shown counsel
8 a copy of a document from Ms. Rodgers that was cc'd to
9 Ms. Jimenez on May 14th within the compensation review unit.

10 THE COURT: What was the date?

11 MR. JENSEN: May 14th, 2012. With your permission,
12 I'd like to mark it in the upper right hand corner as MMMMM.

13 THE COURT: You may.

14 MR. JENSEN: It's a two-page exhibit. Actually
15 three-page exhibit. Bates stamped CalPERS PRA1270, 2,855
16 through 2,857, and I only have one copy of it, unfortunately.
17 Your Honor, I have another apparently.

18 THE COURT: All right.

19 MR. JENSEN: I'm going to show it to the witness.

20 THE COURT: Give it to me first, please.

21 MR. JENSEN: May I approach?

22 THE COURT: You may. Thank you.

23 MR. JENSEN: I have another copy here.

24 THE COURT: Okay.

25 MR. JENSEN: I only have two though. May I give it

1 to the witness?

2 THE COURT: You may.

3 BY MR. JENSEN:

4 Q Ms. Jimenez, I'm going to present you with this
5 exhibit.

6 A Okay.

7 Q Do you recognize this document?

8 A It looks like an e-mail from Terrance to one of our
9 attorneys.

10 Q Was it cc'd to you?

11 A It was.

12 Q Did you receive it?

13 A I must have.

14 Q Do you recognize the document attached to it?

15 A Vaguely, yes.

16 Q Vaguely?

17 A It looks like one of the exhibits.

18 Q You don't recognize the document?

19 A I do. It does look familiar.

20 Q What is it?

21 A It looks like it's listing all the different
22 positions that Mr. Malkenhorst received and the -- this has
23 the pay period, it has the pay rates, the percentage of
24 change, and the annual percentage of change.

25 MR. JENSEN: Your Honor, I gave her my copy. So can

1 I look over her shoulder?

2 THE COURT: You may use this copy.

3 MR. JENSEN: Thank you. May I approach?

4 THE COURT: Of course.

5 MR. JENSEN: Your Honor, I'd like to admit an offer
6 of proof. Admitting into the record MMMM -- MMMMM.

7 THE COURT: Any objection?

8 MR. LEVIN: Yes, your Honor. On several grounds.
9 First of all, I don't have a copy. I haven't seen it.
10 Particularly it is not an exhibit that was previously
11 identified as part of counsel's case. It's not impeachment
12 evidence. So there's no reason why it shouldn't have been
13 listed, but I would like to take a look at it to see if
14 there's any additional grounds for objection. No other
15 objections other than those stated.

16 THE COURT: May I see the document, Mr. Jensen?

17 MR. JENSEN: Yes. May I approach?

18 THE COURT: Of course.

19 MR. JENSEN: And your Honor, apparently this is an
20 explanation of it. So let me show it to counsel too, and
21 again, there were hundreds of thousands of documents
22 provided. So -- Your Honor, may I approach with this --
23 I'll offer this as -- with your permission to mark in the
24 upper right hand corner 5Ns, NNNNN. May I approach?

25 THE COURT: Yes.

1 MR. JENSEN: And let me just make sure -- yeah.

2 THE COURT: All right. Before we get to NNNNN --

3 MR. JENSEN: And there's one other one apparently
4 here.

5 THE COURT: Well, before we get to any of those,
6 please address Mr. Levin's objection to the MMMMM exhibit
7 that it was not previously identified and it is not
8 impeachment evidence.

9 MR. JENSEN: Well, it is impeachment evidence and
10 it's credibility evidence. She testified that she did not
11 discuss this Matter with Terrance Rodgers at all. She
12 testified twice to that and it was just her and Ms. Lueras
13 who were discussing this, and they made those determinations
14 and it is important in particular that she's testifying to
15 these salary histories and to the uniformity of opinion here
16 and that's she's not -- she directly contradicted that she
17 showed that there was another individual involved who
18 contested this, and I think that is direct impeachment and it
19 credibility evidence.

20 She is under penalty of perjury, and I have asked
21 her at least twice, maybe three times about whether
22 Mr. Rodgers was involved and she testified no one else in the
23 department and I asked her specifically did she involve
24 Terrance Rodgers and she said no, and so I think that's
25 credibility and I think that's impeachment and it's directly

1 relevant to the idea of whether there is legal support for
2 her position as well, and these documents were provided under
3 public records act. I had no intention of bringing them
4 forward if she had testified truthfully and correctly and
5 these are not themselves material policies of CalPERS and yet
6 they do reflect on the witness's testimony significantly
7 reflecting the witness's testimony today and reflect on
8 her -- on the credibility that you can give her and these are
9 not minor matters.

10 These are very significant divisions within this
11 compensation review unit, and it's important to have truthful
12 testimony about who's involved, what they're considering,
13 what the policies and procedures are, and what they're using
14 as background. I have asked CalPERS again and again and
15 again for the policies and procedures that they relied on
16 in -- you know, in SDT. They didn't provide the SDT. This
17 would be material that I would expect to be provided under
18 subpoena duces tecum that they would have relied on this
19 information in forming -- in forming their opinion of this
20 Matter.

21 THE COURT: As I look at M M M M M, I don't see any
22 statement of policy. Let me have Mr. Levin address --

23 MR. JENSEN: Actually, your Honor --

24 THE COURT: Let me have Mr. Levin address what
25 you've just said.

1 MR. LEVIN: Your Honor, I did not hear Ms. Jimenez
2 testify in the way Mr. Jensen just described. I don't
3 believe she ever testified that Mr. Rodgers had no role and
4 to the extent that she had personal knowledge of only her
5 role or the role of her boss if she testified to that, you
6 know, I mean -- if Mr. Rodgers had a role exemplified by
7 documents that CalPERS provided, that's certainly something
8 that counsel has had in his possession for many, many months.
9 It should have been one of his exhibits, but I think to claim
10 that this is somehow impeachment based off of testimony she
11 didn't make, based on whether she recalled that somebody had
12 a role, is not an issue of credibility or impeachment that
13 would otherwise forgive producing and having a document
14 admitted when it hadn't been produced and identified before
15 the hearing.

16 MR. JENSEN: And your Honor, I just request that the
17 reporter to read back the testimony if necessary, but it's
18 not -- it's not a minor issue. We didn't intentionally hide
19 the ball on this. It wouldn't be relevant unless the witness
20 was testify -- if the witness was testifying truthfully, it
21 wouldn't be relevant. The issue is about the uniformity of
22 the legal application, whether there was policies and
23 procedures that in effect that they were all following. It's
24 all related to the same issue that CalPERS keeps skirting,
25 and we have -- I think ad nauseam requested some written

1 policies and procedures.

2 THE COURT: This witness testified that she used
3 none. The document you have just showed her in an attempt to
4 impeach her doesn't reflect any, and until there is a real
5 reference by anyone here to a policy or procedure that
6 CalPERS used that's in writing, I have nothing to entertain
7 with respect to your motion.

8 MR. JENSEN: But -- okay. Sorry.

9 THE COURT: Now, Mr. Jensen, I'm looking at my notes
10 of her testimony, she said her boss, Marion Montez, reviewed
11 the case and nobody else did. She never mentioned -- I don't
12 have a record of her mentioning Mr. Rodgers not reviewing it.

13 MR. JENSEN: Can I ask the reporter to read back?

14 THE COURT: You may and we'll come back in 15
15 minutes.

16 MR. JENSEN: So should I ask the reporter to look
17 through her records?

18 THE COURT: Yes, please.

19 MR. JENSEN: Madam reporter, may you please look at
20 the questioning that I had regarding Ms. Jimenez as whether
21 -- as whether she showed any documents or had any
22 communication with Terrance Rodgers.

23 THE COURT: Thank you. With that, we're off the
24 record.

25 (Recess)

1 THE COURT: All right. I'm going to admit MMMMM.

2 (Respondent's Exhibit MMMMM was received in
3 evidence by the Court.)

4 MR. JENSEN: Thank you.

5 THE COURT: Now, what is NNNNN?

6 MR. JENSEN: You know what, you have the only copy
7 you have. So may I approach?

8 THE COURT: You may.

9 MR. JENSEN: Thank you, your Honor, and there's
10 two -- just so you know, there's two other documents here.
11 I'm going to show them to counsel. Let me -- can I mark them
12 for identification first?

13 THE COURT: Yes.

14 MR. JENSEN: As OOOOO and that would be a two-page
15 document, an e-mail that is from Lolita Lueras to somebody
16 Romeo -- Terrance Rodgers, Tomi Jimenez, and Angelina Ray.
17 I'm going to mark it as OOOOO in the upper right hand corner.
18 I put a box around it. It's a two-page e-mail Bates
19 stamped -- excuse me. CalPERS PRA 127093 and 94.

20 THE COURT: How many of these documents are you
21 using now

22 MR. JENSEN: And then there's one more. May I mark
23 it for identification as --

24 THE COURT: Yes, and again, you only have one copy
25 of each of them?

1 MR. JENSEN: I just have one -- I have two actually,
2 your Honor. These are e-mails that are cc'd to Terrance
3 Rodgers and others from Ms. Jimenez in the loop of the
4 e-mails. They're all about the same time. They were
5 separately provided, but they're all involved in the same
6 situation.

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

8 THE COURT: You may.

9 MR. JENSEN: Can I mark it for identification?

10 THE COURT: You may, yes.

11 MR. JENSEN: 5Ps.

12 THE COURT: Yes.

13 MR. LEVIN: None of these e-mail were on the exhibit
14 list and I would say -- I would submit that none of these
15 have anything to do with the witness's credibility. When it
16 comes to having new evidence in to attack somebody's
17 credibility, usually it's a sworn statement under oath, or
18 it's a past felony conviction. To the extent that there is
19 any credibility issue at all, first of all, I don't see the
20 testimony concerning Mr. Rodgers only had to concern whether
21 he was involved with the multiple positions. So, you know, I
22 don't look at the -- I don't see that they have anything to
23 do with multiple positions. So I state my objection on that
24 ground.

25 THE COURT: Please show those all to Mr. Levin.

1 MR. JENSEN: Yeah. I think -- I don't know which
2 one is which.

3 THE COURT: You haven't marked them?

4 MR. JENSEN: These are duplicates. So those are
5 marked. So when I see those, I'll mark these as duplicates.

6 THE COURT: In the degree to which to impeach this
7 witness and the importance of the subject matter of the
8 impeachment is subject to my evaluation when I review the
9 evidence. I'm going to admit them or at least may admit it.
10 I have admitted MMMMM. I haven't seen any of the others yet,
11 but when I see them, I will admit them for impeachment.
12 Again, whatever weight and value they are given, I will
13 determine as I review all the evidence including this
14 witness's testimony.

15 MR. LEVIN: Your Honor, for clarification, are the
16 document -- at least the document 5Ms being admitted solely
17 for purposes of impeachment or credibility?

18 THE COURT: That's what it was offered for.

19 MR. LEVIN: Thank you for that clarification, your
20 Honor.

21 MR. JENSEN: And your Honor, I am going to approach
22 with -- I'm going to approach. There's five documents --
23 five pages in the three exhibits and I am going to provide
24 the same to the witness, Ms. Jimenez. These are the first --
25 NNNNN is a two-page document. OOOOO is a two-page document,

1 and P P P P P is a one-page document.

2 THE COURT: It's going to be rather difficult to
3 question the witness about this with counsel for the other
4 two parties not having any copies.

5 MR. JENSEN: And your Honor, I apologize. I didn't
6 intend to admit these.

7 THE COURT: Let's go off the record briefly.

8 (Recess)

9 THE COURT: Do you wish to show the witness a copy
10 of what has been now marked as N N N N N?

11 MR. JENSEN: Yes. May I approach?

12 THE COURT: You may.

13 BY MR. JENSEN:

14 Q Ms. Jimenez, do you recognize this document? Do you
15 have a copy?

16 A Yeah.

17 Q Do you recognize that document?

18 A It looks like it's a copy of an e-mail.

19 Q And does your name appear in this e-mail?

20 A Yes, it does.

21 Q And can you identify any people who work in the
22 compensation review unit that were recipients of this
23 e-mail?

24 A Terrance Rodgers and Lolita Lueras and Angelina Ray.

25 MR. JENSEN: Angelina Ray, and your Honor, I'd like

1 to offer NNNNN into evidence.

2 THE COURT: For the same purposes?

3 MR. JENSEN: At this point, for the same purposes.

4 THE COURT: Any objection?

5 MR. LEVIN: Yes, your Honor, same objection
6 previously stated.

7 THE COURT: It's admitted for the purposes of
8 impeachment.

9 (Respondent's Exhibit NNNNN was received in
10 evidence by the Court.)

11 BY MR. JENSEN:

12 Q And may I turn your attention to Exhibit 00000.

13 A Okay.

14 Q Do you recognize this document?

15 A Again, it looks like an e-mail.

16 Q And is that your e-mail address on it?

17 A Yes. I'm cc'd.

18 Q And is there any other persons that work in the
19 compensation review unit who are recipients in this e-mail?

20 A Terrance Rodgers and Angelina Ray.

21 MR. JENSEN: Your Honor, I'd like to move 00000
22 into evidence.

23 THE COURT: Same objection?

24 MR. LEVIN: Same objection, your Honor.

25 THE COURT: Same ruling. It is admitted for

1 purposes of impeachment.

2 (Respondent's Exhibit 00000 was received in
3 evidence by the Court.)

4 BY MR. JENSEN:

5 Q Can I turn your attention to P P P P P?

6 A Okay.

7 Q Do you recognize this document?

8 A It looks like an e-mail.

9 Q And is your name in this document?

10 A Yes. I'm cc'd.

11 Q And is anyone else who works in the compensation
12 review unit listed as a recipient of this e-mail?

13 A Marion Montez and Terrance Rodgers.

14 MR. JENSEN: Your Honor, I'd like to offer this
15 exhibit.

16 THE COURT: Same objection?

17 MR. LEVIN: Yes, your Honor.

18 THE COURT: Same ruling again for purposes of
19 impeachment.

20 (Respondent's Exhibit P P P P P was received in
21 evidence by the Court.)

22 BY MR. JENSEN:

23 Q Now, Ms. Montez, were there other people in the
24 compensation review unit who disagreed with your
25 interpretation of the evidence?

1 MR. LEVIN: Objection. Vague.

2 THE COURT: Sustained.

3 BY MR. JENSEN:

4 Q Is there any other people in the compensation review
5 unit who disagreed with your interpretation of the PERL with
6 respect to whether Mr. Malkenhorst was paid only in the
7 position of City administrator/City clerk?

8 A No one who reviewed the case was in disagreement.

9 Q And what is your definition of "reviewed the
10 case"?

11 A So Mr. Malkenhorst's case was assigned to Lolita.
12 She's normally an analyst who reports directly to Terrance
13 Rodgers. He's her direct manager. However, because the case
14 was taking so much time, we pulled her out and she worked
15 directly for me during that time. However, Terrance was
16 still responsible for reviewing her work product and for
17 answering questions, if she had general questions. So it's
18 not surprising that he would be on e-mails because he would
19 have to review her work. Similarly, Angelina Ray was the
20 manager over the audits unit in my section, and so she would
21 then also be cc'd on certain e-mails to check the progress of
22 the audit.

23 MR. JENSEN: And your Honor, now I would like to
24 admit this for the substance of the document because
25 Mr. Rodgers is reviewing the chart and making an opinion in

1 reviewing the chart in his e-mail. May I just question the
2 witness about the document itself?

3 THE COURT: Any objection?

4 MR. LEVIN: Yes. Objection based on the absence of
5 these exhibits from Mr. Malkenhorst's pre-hearing
6 disclosures.

7 MR. JENSEN: And your Honor, again, this is sort of
8 an additional substantive and credibility issue when she says
9 that he did not review the case when it is clear that he
10 reviewed this spreadsheet, and the spreadsheet is part of the
11 case and it is probably one of the essential parts of the
12 case and he's rendering an opinion on it and I think just by
13 her testimony alone saying he didn't review the case. This
14 is clearly an essential part of it.

15 THE COURT: I'd like you to explore a little further
16 what she meant by no one who reviewed the case disagreed with
17 her views.

18 BY MR. JENSEN:

19 Q And Ms. Jimenez, tell me what you mean by "reviewed
20 the case."

21 A So reviewing the case, again, was taking weeks of
22 all of our time. It included looking over the resolutions,
23 the ordinances, the audit report response. It's not --
24 reviewing one document is not reviewing the case. It's
25 reviewing one document.

1 Q And so why was Mr. Rodgers asked -- why was he
2 presented with this document then and asked to render an
3 opinion on it?

4 A In MMMMM?

5 Q Yes.

6 A I don't know why he's rendering an opinion on it.

7 Q Can you review the document and see?

8 A I see he is rendering an opinion, but what is your
9 question? As to why he was, that I'm not sure.

10 MR. JENSEN: Your Honor, she's opened up this whole
11 issue for me to go into the substance of this document and
12 it's -- it is --

13 THE COURT: You're saying she opened up by saying
14 she doesn't know who asked him to render an opinion.

15 MR. JENSEN: No. She's opening it up by saying this
16 is -- first of all, that her review of the case is a general
17 issue. Somebody -- he was clearly asked to render an opinion
18 about it, and as you look through the other documents as
19 well, there is a -- a significant dissension in this matter
20 and --

21 THE COURT: What is the relevance of that to CalPERS
22 final determination?

23 MR. JENSEN: I think the relevance of it is that
24 there are no standard procedures that they are operating, and
25 this is one individual's position that is countered by many

1 other opinions in the same department and it's relevant
2 because I think that they are soliciting opinions because
3 they're unsure and if we go through these documents, you will
4 see that --

5 THE COURT: But ultimately, they made a decision and
6 issued it; correct?

7 MR. JENSEN: But the decision is -- is -- I think --

8 THE COURT: You disagree with the decision on
9 substantive grounds, but the fact that there was internal
10 disagreement or dispute or debate or discussion, how does
11 that further your position in this case? I'm trying to avoid
12 going off on a tangent here. I understand that you're saying
13 and we haven't gotten to them yet, that these documents will
14 show that there were discussions about how to address this
15 issue. Ultimately, CalPERS made a decision and issued it,
16 and I want to know how this is going to get us farther down
17 the road in this case.

18 MR. JENSEN: And there is one sort of over arching
19 consideration is that if there's ambiguity in the statutes,
20 they have to be interpreted into my client's favor and these
21 documents speak about -- these are illustrations of
22 ambiguity. They're illustrations of people interpreting
23 ambiguity against my client when it's not the rules of
24 statutory construction, and to be able to say that these
25 points aren't ambiguous when people in the same unit are

1 interpreting differently is -- shows, highlights the
2 ambiguity and then it will also highlight where -- what were
3 the points and decisions that were decided to be made. It
4 shows the fallacy of the final decision. It also shows the
5 fallacy of the defects in the process itself, but if nothing
6 else, to highlight the ambiguity that isn't addressed by any
7 written procedure. I think that these should be admitted,
8 and especially because this witness has basically testified
9 that there isn't a great deal of ambiguity.

10 MR. LEVIN: May I respond, your Honor?

11 THE COURT: Please.

12 MR. LEVIN: I believe that the statement of what
13 Ms. Jimenez -- ambiguity is wrong. I don't believe that
14 there is a statement that there was no ambiguity. Putting
15 that aside, I think there's two different issues. One is,
16 can Mr. Malkenhorst address these documents with the witness,
17 and I don't think there's been any objection to that.
18 There's a different issue about their admissibility, and I
19 think those two issues should be separated.

20 In terms of the admissibility of these documents
21 which weren't listed. I don't even think the foundation for
22 their relevance has been described. I heard Mr. Malkenhorst
23 proffer. If there is even a glimmer of relevance that your
24 Honor, perceives I would suggest that a better foundation be
25 laid with this witness.

1 THE COURT: All right. I'm going to take the motion
2 to admit these under submission. To admit for substantiative
3 purposes, other than impeachment purposes, and I will allow
4 you Mr. Jensen to question the witness about these.

5 MR. JENSEN: Thank you very much.

6 BY MR. JENSEN:

7 Q So Ms. Jimenez, if you just look at Exhibit MMMMM.
8 When Mr. Rodgers said that -- when he says, "In reading this
9 chart, it seems to me that the determination is that Senior,"
10 and I believe he is referring to Malkenhorst, "was only in
11 the position of City administrator/City clerk." Now, how do
12 you respond to that position by Mr. Rodgers?

13 MR. LEVIN: Objection. Vague.

14 THE COURT: Sustained.

15 BY MR. JENSEN:

16 Q Why do you think Mr. Rodgers' opinion that the
17 determination of Senior was only in the position of City
18 administrator; is incorrect?

19 A Reading this chart without any of the background
20 resolutions, I don't know what he knew when he wrote this
21 letter. My knowledge of his involvement was that he was
22 directly managing Lolita. However, he was not involved when
23 we were reviewing all of the documents. He wasn't involved
24 in going through all the details and all the responses. So
25 I'm not sure what all he's basing his opinion on. If it's

1 just on this chart, he could be looking back to what he --
2 what position he was in at that date.

3 Q And I just want to direct your attention to the
4 second sentence in his e-mail. It says "As the chart
5 progresses, it appears no compensation is related when
6 additional positions are added," and there's paren, column C
7 and D, "whereas a position change provides the compensation."
8 Now, with reference to column C and D in the accompanying
9 two-page spreadsheet, I believe he's referring to pay period
10 and pay rate. Is that your understanding?

11 A That would be the third and the fourth column.

12 Q Would that be C and D?

13 A They're not labeled. I could assume so.

14 Q In your reading of this chart, what is -- in your
15 reading of the chart -- or -- is he indicating -- well --

16 MR. JENSEN: So, your Honor, may I approach the
17 witness?

18 THE COURT: You may.

19 BY MR. JENSEN:

20 Q Ms. Jimenez, may I just approach just because it's
21 easier to point at these things, and I'll just try to specify
22 them for the record. So in this column here which would be
23 the third column, it says "pay period"?

24 A Yes.

25 Q And in the fourth column it says "pay rate"?

1 A Correct.

2 Q And pay period is the period where -- where there
3 was a pay increase. Is that your understanding?

4 A It looks like every line has a pay increase. Every
5 line listed has a pay increase with the pay period. So that
6 would be my assumption.

7 Q So let me just direct you to the first column that
8 says "date" on it, and let's just move, like, a third of the
9 way down where it says, "5/5/1981," and then it says "chief
10 executive office of the electric department"?

11 A Yes.

12 Q And then in the C column, there's no pay period in
13 May of 1981 where there's an increase in pay; is that
14 correct?

15 A That is what the chart says.

16 Q So do you know whether there was a pay increase in
17 May 5th, 1981 for Mr. Malkenhorst?

18 Q According to this chart, it doesn't appear so?

19 Q Now, let me move down to December 13th, 1988. Do
20 you see that?

21 A I do.

22 Q Half way through the page?

23 A I do.

24 Q And there's two additional -- additional
25 responsibilities that are labeled positions. One says

1 "executive director of the redevelopment agency"?

2 A Yes.

3 Q And agency is spelled wrong, and the next says

4 "secretary of the redevelopment agency"?

5 A Yes.

6 Q And do you see any pay period or pay rate related to
7 those positions?

8 A Related to those positions?

9 Q Yes. Related to that time period of December 13th,
10 1988.

11 A Not on that date, no.

12 Q Do you see when the next next pay increase would
13 be?

14 A It would be on July of '89.

15 Q And there's that reference. It says "7-89-4." What
16 is that, the fourth pay period in July or --

17 A If you report biweekly, you have a three or a four
18 or a five, and it denotes if it's the first pay period of the
19 month, the second pay period of the month, and sometimes
20 there's a third pay period in the month.

21 Q But that pay period increase is not concurrent with
22 the December 13th, 1988 date; is that correct?

23 A It is not on the same month, no.

24 Q Is it in the same -- in the same period in a couple
25 of months?

1 A A few months, yes.

2 Q How many months?

3 A It looks like six and a half.

4 Q December 13th to July '89?

5 A If it was July 1st, it would be six and a half
6 months.

7 Q So that would be the earliest time, six and a half
8 months later that there would be a pay increase for that
9 position?

10 A Correct.

11 Q And would you consider six and a half months to be
12 concurrent?

13 A It could be, yes. It could be attached to it.

14 Q How so how? How could it be attached to it?

15 A Again, looking over his career and the increases
16 going back and relevant to the other members of the agency, I
17 feel like they were attached to those additional positions.

18 Q We'll get to the percentage increases in a moment,
19 but I just want to move your attention now to December 7th,
20 1993. There was three additional what are added as
21 positions; executive director of the industrial development,
22 secretary, and treasurer of those. Do you see that?

23 A I do.

24 Q And do you see the date that those positions were
25 assumed?

1 A December of 1993.

2 Q December 7th of 1993?

3 A December 7th.

4 Q And is there a pay increase in that month?

5 A No.

6 Q And when is the next pay increase for

7 Mr. Malkenhorst?

8 A July of 1994.

9 Q And is there any intervening pay increases?

10 A Not according to this chart.

11 Q And so how many months afterwards is there a pay
12 increase?

13 A Around six and a half.

14 Q And let me just move down here to executive director
15 of the Vernon historical preservation society.

16 A Okay.

17 Q That's labeled on here as being on December 17,
18 2003; is that correct?

19 A Yes.

20 Q And although there is a pay indicated in the chart,
21 it's associated with July of 2003; is that correct?

22 A That's correct.

23 Q And so is July -- do you consider July to be
24 concurrent with December?

25 A No. Again, it's about six and a half months

1 later.

2 Q Now, let me just turn your attention to the
3 percentage of change that is in the third column there.

4 A Okay.

5 Q And although there were some large increases in
6 1977, do you see from 1988 onward any significant
7 increases?

8 A I see from '88 on -- let's see. There's an annual
9 percentage of 11, 16, 10, 16. There's another 9 and 8 and
10 the rest are less than 8.

11 Q And so if his final compensation period is one year,
12 do you know what year Mr. Malkenhorst retired?

13 A In 2005.

14 Q And do you see what the pay increases for
15 Mr. Malkenhorst were in his final compensation period?

16 A Say it again, please.

17 Q Do you know what Mr. Malkenhorst's pay increases
18 were within the one year of his final compensation period?

19 A That's not on this chart.

20 Q Do you know what Mr. Malkenhorst -- maybe look on
21 the next page or --

22 A No.

23 Q With respect to the final three years or the one
24 last -- strike that.

25 With respect to the one year final comp and the two

1 years prior to that, what were the pay increases in that
2 period?

3 A Those amounts aren't listed on this chart so I'll
4 have to look --

5 Q Let me just ask you, were they greater than the
6 percentage increases for other people at the City of
7 Vernon?

8 A I'm not sure at this time.

9 MR. JENSEN: Okay. So let's -- your Honor, have I
10 offered MMMMM into evidence?

11 THE COURT: Yes, it is.

12 BY MR. JENSEN:

13 Q Okay. I'd like to turn your attention to the next
14 document which is NNNNN. Do you recognize this document?

15 A It looks like an e-mail from Terrance.

16 Q And who was it sent to?

17 A It was sent to myself, Marion, Teresa, Lolita and
18 Angelina.

19 Q Are you familiar with this document?

20 A Vaguely it's an e-mail from Terrance to all of us.

21 Q And do you recall requesting Mr. Rodgers to provide
22 an explanation and another option to determine the
23 compensation for Mr. Malkenhorst, Senior?

24 A Throughout this case, I never asked Terrance
25 directly to provide me information. I would have requested

1 Lolita and she may have worked with Terrance to get me what I
2 needed.

3 Q Is this document from Mr. Rodgers?

4 A It is.

5 Q And is it says "per Tomi's request"?

6 A That's right, but the request was most likely to
7 Lolita.

8 Q But he's sending the e-mail to you?

9 A That's true.

10 Q So did you request Lolita to request Terrance to
11 provide an opinion?

12 A No.

13 Q So how do you -- how do you -- how do you make sense
14 of his response that it's a substantive response to you per
15 your request?

16 MR. LEVIN: Objection. Speculation.

17 THE COURT: Sustained.

18 BY MR. JENSEN:

19 Q Did you read this document?

20 A At the time I received it, I would imagine I did. I
21 could read it right now.

22 Q Do you -- have you had the chance to read it right
23 now?

24 A No, I haven't.

25 Q Can I ask you to take an opportunity to read it,

1 please.

2 MR. JENSEN: And your Honor, if I may use the board
3 again to have her explain the different options?

4 THE COURT: Is this document insufficient?

5 MR. JENSEN: No. It probably isn't.

6 THE WITNESS: Okay.

7 BY MR. JENSEN:

8 Q What is your understanding of this -- of this
9 document?

10 A It looks like Terrance is offering different options
11 for what we could use for Mr. Malkenhorst's final
12 compensation.

13 Q Does it surprise you?

14 A No, it doesn't surprise me.

15 Q So there are three or different options that would
16 be compliant with the PERL?

17 A Compliant, no, but again, we were lacking so much
18 information. It was -- we went down a lot of paths trying to
19 figure out what we could give Mr. Malkenhorst the best
20 benefit that was compliant. That involves delving into
21 different options.

22 Q So you would provide a benefit to him that's not
23 compliant with the PERL?

24 A No, we would not. We wanted to provide a benefit
25 that was compliant. So I asked Lolita -- I'm assuming it's

1 going from just based on this document is that I probably
2 asked Lolita, let's see if there's anything. Based on her
3 review of all of the documents what she thought would be
4 acceptable.

5 Q Is she an analyst in the compensation review unit?

6 A She's an analyst.

7 Q Is she a competent person?

8 A She's competent.

9 Q Do you trust her judgment?

10 A I do trust her judgment.

11 Q Does she make final determinations?

12 A She does not.

13 Q And does she make suggestions to you about what are
14 proper interpretations of the PERL?

15 A She looks for -- well, she can apply what was
16 reported based on the documents and see what she thinks based
17 on the documents is compliant.

18 Q And what about Mr. Rodgers? Is he a competent
19 individual?

20 A Yes.

21 Q And does he make final determinations?

22 A No.

23 Q And does he have experience in applying the PERL?

24 A In reference to his duties, yes.

25 Q How long has he worked in the compensation review

1 unit?

2 A He worked there for a year and a half, maybe two
3 years.

4 Q And was that prior to you coming?

5 A No.

6 Q So you worked concurrently with him?

7 A Yes.

8 Q And how long did Lolita work in the compensation
9 review unit?

10 A Lolita has been in the review unit roughly five
11 years.

12 Q And how long have you been in the compensation
13 review unit?

14 A I've been in the compensation review unit four
15 years.

16 Q So Lolita has been in the compensation review unit
17 longer than you; is that correct?

18 A That's correct.

19 Q And so let's look at these different
20 interpretations. The first one is accept pay rate as
21 reported, but reduce longevity to 20 percent as provided to
22 the group or class for a total F/C amount of 42,362.40, and
23 it says number one in attached. Do you see that?

24 A I do.

25 Q And F/C, does that mean final compensation?

1 A Yes.

2 Q And so what would be -- what would Mr. Malkenhorst's
3 pension be based on this option number one as proposed?

4 A What would his pension amount be, or his final comp
5 amount?

6 Q I guess his final comp amount.

7 A It looks like she wrote here it would be 42,362.40.

8 Q And how much of a reduction would that be from what
9 he's receiving now?

10 A Well, again not from what he's receiving, but from
11 the determination that he was on -- ask your question
12 again.

13 Q How much of a reduction would this be
14 approximately?

15 A Well, if we accepted the pay rate as reported, there
16 would be zero reduction in his pay rate, and if his longevity
17 was reduced from 25 to 20, it would be 5 percent.

18 Q Now, you mentioned earlier today that you were
19 trying to do the best you can for the member?

20 A As long as it was compliant.

21 Q And is Mr. Rodgers here giving you options that he
22 believes are compliant with the PERL?

23 MR. LEVIN: Objection. Speculation.

24 THE COURT: Sustained.

25 ///

1 BY MR. JENSEN:

2 Q What did you think Mr. Rodgers was suggesting to you
3 with option number one?

4 A I think he was offering options that we could look
5 further into.

6 Q Did you look further into it?

7 A We did.

8 Q And now look at option number two. Use 4797 pay
9 rate and 20 percent longevity for a total of F/C amount of
10 5,756.40. This was the last verified full-time pay rate and
11 allowed special compensation, paren, E/G plotkin with CSBA
12 and slash number two in attached. What's your understanding
13 of that?

14 A Again, it looks like they were taking into
15 consideration that there were multiple positions. So they
16 were trying to find the last time that he, in particular, was
17 listed on a salary schedule that was for a full-time pay
18 rate. So the 4,797 -- the 4,797, if you look on this chart,
19 looks like it's the last time that he had a full-time pay
20 rate listed on a publicly available pay schedule for one
21 position.

22 THE COURT: Which document are you looking at?

23 THE WITNESS: It was the second page of MMMMM.

24 THE COURT: Thank you.

25 ///

1 BY MR. JENSEN:

2 Q So what you're doing is going back to December of
3 1980?

4 MR. LEVIN: Objection. Misstates her testimony.

5 BY MR. JENSEN:

6 Q It actually -- with reference to the document she
7 just referred to, does that reflect the time period of the
8 base salary that you were referring to?

9 A Yes. This amount here the 4,797, which was the last
10 time we could confirm a pay rate for a full-time position and
11 yes. It was in December of 1980.

12 Q And so what would be the full-time position that you
13 were saying that he held at that time?

14 A I think they are stating that it was in the other
15 e-mail that -- in the first page of MMMMM, he's stating that
16 it was the position of City administrator slash City clerk.

17 Q And what -- and what Mr. -- so at that point in
18 1980, he was -- do you accept that he was only in the
19 position of City administrator/City clerk?

20 A I'm still unclear even back then what position he
21 was doing and for what amount of time.

22 Q And why -- why are you unclear about that?

23 A I think that after all the research was done, it was
24 clear that the one time we could find one position that had a
25 full-time pay rate was for City clerk only, and that's why we

1 used that.

2 Q And so what you're basically saying, if I'm to
3 clarify, is that you believe that in 1980, he held a single
4 position of City administrator/City clerk that's listed in
5 this spreadsheet; is that correct?

6 A It is listed here in the spreadsheet.

7 Q As City administrator/City clerk?

8 A That's how it's listed.

9 Q And you believe, according to this, that that was
10 the last time he held a single position; is that correct?

11 MR. LEVIN: Objection. Vague as to "according to
12 this."

13 THE COURT: Overruled.

14 THE WITNESS: No. The last position that we saw
15 that was one position -- because again, we couldn't tear
16 apart all of these positions and parade them out to calculate
17 an appropriate benefit. The last time was the City clerk
18 position, the solely City clerk position.

19 BY MR. JENSEN:

20 Q And where on this chart is the City clerk
21 position?

22 A I don't see it on this chart.

23 Q Is it any where?

24 A I would have to look through the exhibits.

25 Q In any of the documents here, have -- even in the

1 very beginning resolution -- let me just point your attention
2 to Exhibit 7 in 1977 in the middle of the page or the bottom
3 of the page.

4 MR. LEVIN: Your Honor, is there a question pending?

5 MR. JENSEN: Yes. I will as soon as she gets there.

6 THE COURT: He has directed the witness to a page
7 and then I'm sure he will ask a question.

8 MR. LEVIN: Okay.

9 BY MR. JENSEN:

10 Q And on the last paragraph on that page, do you see
11 the title of what Mr. Malkenhorst is in 1977? Can I clarify
12 for you? It says deputy City clerk, deputy director of
13 finance Malkenhorst?

14 A Yes. I see where it says that.

15 Q So where did you find that he was ever City clerk?

16 A I may have misspoke on the position. Can I take a
17 few minutes to look?

18 MR. JENSEN: It's 4:25, your Honor.

19 THE COURT: It's up to you.

20 MR. JENSEN: Yeah. I'd like you to look and
21 identify where you believe that he had a position that you
22 denominate as, quote, just City clerk.

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

24 (Recess)

25 THE COURT: Did you find the document?

1 THE WITNESS: I found what we relied upon, yes.

2 BY MR. JENSEN:

3 Q And can you clarify for me what it is?

4 A Sure. In the lack of substantiation that we had, we
5 were forced to find something that we could use, and again,
6 the process took weeks. However, what we relied upon was
7 that prior to any of the additional positions being added in,
8 he was signing documents as City clerk. City clerk is the
9 position that is set forth in the charter, and so that is
10 what we used. We didn't feel like it was appropriate to give
11 him the 1980 salary for City clerk, but as soon as he
12 retired, the first ordinance afterwards broke out six or
13 seven of his positions and the City clerk was one of the ones
14 that came forward and so we used that salary, that
15 compensation.

16 THE COURT: And which document are you looking at?

17 THE WITNESS: I was looking at --

18 THE COURT: What exhibit number?

19 THE WITNESS: I was looking through 29.

20 BY MR. JENSEN:

21 Q What specific section of 29?

22 A That he signed the City charter as the City clerk.

23 Q Hold on a second. 29 is here.

24 A 29-33.

25 Q Okay. Here it is. Okay. So 29 -- so 32 -- 29-32?

1 THE COURT: One moment.

2 THE WITNESS: 33.

3 THE COURT: Exhibit 29, page 33; is that correct?

4 THE WITNESS: Yes.

5 THE COURT: Okay. With that, we are --

6 MR. JENSEN: Your Honor, just one quick follow up,
7 or I'll just do it in the morning?

8 THE COURT: We are going to adjourn for the day. We
9 will reconvene at 9:00 o'clock tomorrow morning. Thank you
10 all very much.

11 (Hearing adjourned at 4:30 p.m.)

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