

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
Wednesday, August 27, 2014

Reported by:

BRITTANY SILVA
CSR No. 13940

Job No. :
25320AH

1 BOARD OF ADMINISTRATION

2 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

3 STATE OF CALIFORNIA

4 HOWARD W. COHEN, ADMINISTRATIVE LAW JUDGE

5
6
7 In the Matter of the Calculation of) CASE NO. 2012-0671
Final Compensation of:)
8) OAH NO. 2013080917
BRUCE MALKENHORST, SR.,)
9)
Respondent,)
10)
and)
11)
CITY OF VERNON,)
12)
Respondent.)
13 _____)

14
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 Wednesday, August 27, 2014, heard before

19 HOWARD W. COHEN, Administrative Law Judge,

20 reported by BRITTANY SILVA, CSR No. 13940,

21 a Certified Shorthand Reporter in and for

22 the State of California.
23
24
25

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

18

19 Also present: Steve Stueber

19

20

21

22

23

24

25

I N D E X

DEPARTMENT'S Witnesses:	Direct	Cross	Redirect	Recross
Tomi Jimenez	7	93	103	
Carla Feldman	130			
Marla Aspinwall	150			

E X H I B I T S

DEPARTMENT'S:	Marked for Identification	Received in Evidence
44 (Unidentified)	57	55
45 (Unidentified)	57	56
46 (Unidentified)	57	58
47 (Unidentified)	58	58
48 (Unidentified)	59	59
61 (Unidentified)	60	60
62 (Unidentified)	61	61
69 (Unidentified)	62	62
70 (Unidentified)	62	63
71 (Unidentified)	63	65
71-18 (Unidentified)		95
85 (Unidentified)	65	66
86 (Unidentified)		66
RESPONDENT'S:		
A (Unidentified)	68	68
B (Unidentified)	69	
C (Unidentified)	73	

E X H I B I T S (Continued)

	RESPONDENT'S:	Marked for Identification	Received in Evidence
1			
2			
3	D (Unidentified)	74	
4	E (Unidentified)	77	
5	F (Unidentified)	78	
6	G (Unidentified)	78	
7	A-PP (Unidentified)	81	81
8	SS (Unidentified)	82	83
9	TT (Unidentified)	83	83
10	UU (Unidentified)	84	84
11	VV (Unidentified)	84	85
12	WW (Unidentified)	46	47
13	XX (Unidentified)	43	43
14	YY (Unidentified)	44	52
15	ZZ (Unidentified)	104	105
16	AAA (Unidentified)	47	52
17	BBB (Unidentified)	49	52
18	CCC (Unidentified)	53	54
19	GGG-III (Unidentified)	81	81
20	KKK (Unidentified)	86	87
21	MMM (Unidentified)	87	
22	MMM (page 20)		89
23	HHHHH (Unidentified)	90	91
24	MMMMM (page 2)		41
25			

1 Los Angeles, California, Wednesday, August 27, 2014

2 9:00 a.m.

3

4

5 THE COURT: This is the third day of hearing in the
6 Matter of the Calculation of Final Compensation of Bruce
7 Malkenhorst, Senior, Respondent. City of Vernon, also
8 Respondent. OAH Case No. 2013080917. Today is August 27th,
9 2014, 9:00 a.m. Mr. Jensen?

10 MR. JENSEN: Yes, your Honor. A housekeeping issue.
11 Yesterday we marked for identification an exhibit that was
12 given the exhibit determination of 00000, and it was not 00
13 -- I'm sorry. This is why I don't like letters. May I
14 correct that?

15 THE COURT: Please.

16 MR. JENSEN: It's 00000 and it was previously
17 disclosed to counsel as Exhibit ZZ, and I believe it's
18 identical. A two-page -- an e-mail dated May 7th, 2012 that
19 had attached to it three suggested corrections to Bruce
20 Malkenhorst's account, and it was written from Lolita Lueras
21 to Jerri Romeo with cc'd to Terrance Rodgers. Tomi Jimenez,
22 and Angelina Ray. So I just wanted the record to reflect
23 that that was previously disclosed to counsel and it's
24 Exhibit ZZ in the record.

25 THE COURT: Okay. Thank you very much.

1 MR. LEVIN: Your Honor, there was one other
2 housekeeping item. Your Honor had asked for bench briefs not
3 to exceed to three pages. I know both Mr. Jensen and I have
4 copies of the court's bench briefs in front of us.

5 THE COURT: Oh, okay. Why don't you submit those
6 right now. You may approach.

7 MR. LEVIN: Thank you.

8 MR. JENSEN: Thank you, your Honor.

9 MR. LEVIN: One copy, your Honor.

10 THE COURT: Yes. That's fine. Thank you.

11 MR. JENSEN: And your Honor, I did instruct my
12 assistant to send one by e-mail as well. It's identical.

13 THE COURT: Thank you.

14 MR. JENSEN: Thank you, your Honor.

15 THE COURT: All right. Ms. Jimenez is on the stand.
16 You are still under oath. Do you understand that?

17 THE WITNESS: I do.

18 THE COURT: Thank you very much. You may continue
19 cross-examination.

20 MR. JENSEN: Thank you, your Honor.

21

22 CROSS-EXAMINATION

23 BY MR. JENSEN:

24 Q Can Ms. Jimenez -- I want to turn your attention to
25 our discussion at the end of the day yesterday with respect

1 to the Exhibit MMMMM. Do you have that in front of you?

2 A I do.

3 Q And do you recall yesterday your testimony regarding
4 your selection of Mr. Malkenhorst's last salary based in a
5 position of City clerk?

6 A I do.

7 Q Can you restate that for us?

8 A Sure. So we had used Mr. Malkenhorst's pay rate.
9 Let me find the resolution.

10 Q I believe you're referring to the City charter at
11 the end of the day yesterday.

12 A Right. The City charter clearly identifies the City
13 administrator, the City clerk, and the City treasurer, I
14 believe, that the City of Vernon have.

15 Q And can I just turn your attention to that same
16 charter document which I believe is in -- why don't we turn
17 to Exhibit 9, which is ordinance 883. Is this the document
18 you're referring to?

19 A No. I was referring to the City ordinance where it
20 lists those positions.

21 Q And where did you find that? Which document was
22 that in?

23 A It was in the City charter.

24 Q And is that Exhibit 29 you're referring to?

25 A Yes.

1 Q So can you direct us to what you relied on?

2 A So on page -- on Exhibit 29-18, it lists that there
3 is a City administrator position. Further back on Exhibit
4 29-22, it lists that there's a City clerk position and a City
5 treasurer position. So from the charter, it's clear that
6 they're different positions and for Mr. Malkenhorst, what we
7 had determined was that he served in the City clerk capacity
8 from -- it was deputy City clerk starting in '75. He moved
9 into the City clerk position in 1977 and held that throughout
10 his career. When he retired, the only full-time pay rate we
11 had for the position for that length of time was the City
12 clerk pay rate in the 2005 salary schedule.

13 Q So are you aware of any authority that requires the
14 City clerk position to stand alone?

15 A Not unless it is noted in the City's documents.

16 Q So are you familiar with the government code
17 sections regarding City clerks?

18 A No.

19 Q Are you familiar that the government code sections
20 regarding the City clerk allow the City clerk to have
21 additional duties?

22 A I have not read that code.

23 Q Would it surprise you if the City clerk may have
24 additional duties?

25 A No.

1 Q And would CalPERS prevent the City clerk from having
2 additional duties?

3 A Additional duties under the City clerk position,
4 no.

5 MR. JENSEN: And your Honor, I would just like to
6 approach the witness with a copy and I'll show it to counsel
7 here. It's government code 40812. It is a general law
8 provision that is marked additional duties of the City clerk.
9 This is just a print out of Westlaw. It's not -- your Honor,
10 may I --

11 THE COURT: You may.

12 MR. JENSEN: Would you like to see it this?

13 THE COURT: Yes, please. Thank you.

14 MR. JENSEN: Okay, and your Honor, may I show it --
15 may I approach?

16 THE COURT: Yes, you may.

17 BY MR. JENSEN:

18 Q Did you consult with this section when you were
19 considering his City clerk position?

20 A No. I have not read this section.

21 MR. JENSEN: May I approach, Your Honor?

22 THE COURT: Yes.

23 MR. JENSEN: Thank you.

24 BY MR. JENSEN:

25 Q So you chose -- so you did rely on Exhibit 29

1 though?

2 A Just to point out that it is a position of the City.

3 Q And let me just turn your attention to page 18 of
4 Exhibit 29. Did you consider his position as City
5 administrator?

6 A Yes, we did.

7 Q And did you -- how did you -- what use did you make
8 of his position of City administrator?

9 A In regards to the City charter?

10 Q In regards to your calculation of his compensation
11 in which office you chose to give him the salary for?

12 A It was based that there was not a full-time pay rate
13 for the City administrator position.

14 Q Was there a full-time pay rate for the City clerk
15 position?

16 A There was in the July 1st, 2005 salary schedule.

17 Q And you're sure of that?

18 A Let me check.

19 Q Yes, please, and which document are you referring
20 to?

21 A I'll have to look.

22 Q Can you direct our attention to where you're
23 looking?

24 THE COURT: Allow her to find it.

25 THE WITNESS: It's Exhibit 75-22.

1 BY MR. JENSEN:

2 Q Okay.

3 A There's a full-time pay rate listed for the acting
4 City clerk.

5 Q But you said City clerk?

6 A Yes.

7 Q Is acting City clerk a City clerk?

8 A In this case, I believe it was.

9 Q What about a City administrator/City clerk?

10 A I don't see that on the schedule.

11 Q Do you see City administrator on the schedule?

12 A I don't see it.

13 Q Wasn't your previous testimony that this was the
14 time period when they quote "unwound" his position?

15 A That's correct.

16 Q And what positions do you think they unwound?

17 A Well, we can see a couple positions here that he had
18 held, the acting City treasurer.

19 Q So let's just break it down. So you say he held the
20 position of acting City administrator or -- I'm sorry. You
21 said he held the position of acting City clerk. Is that what
22 you said?

23 A No. I don't believe I said that Mr. Malkenhorst
24 held that position.

25 Q What position did Mr. Malkenhorst hold?

1 A City clerk.

2 Q And is that the same to you, acting City clerk
3 versus City --

4 A It can be.

5 Q It can be, and so can City administrator/City
6 clerk?

7 A I don't understand your question.

8 Q You said acting City clerk would be the same as City
9 clerk?

10 A Yes.

11 Q So can City administrator/City clerk be the same
12 position?

13 A As acting City clerk?

14 Q As City clerk.

15 A I would have to get more documentation from the City
16 to compare the duties.

17 Q Okay. Let's go through the rest of them. So you
18 said that in the unwinding it, there was an acting City clerk
19 position?

20 A Yes.

21 Q What other positions?

22 A There was an acting City treasurer.

23 Q An acting City treasurer. Was there Malkenhorst
24 ever acting City treasurer?

25 A He was City treasurer.

1 Q And did he ever hold that position, that title?

2 A The City treasurer?

3 Q Well, we'll get back to that. What was the next one
4 did you say that unwound, and are you referring to a document
5 about which positions he held?

6 A Yes.

7 Q And which document is it that you're referring to?

8 A I believe it was the second page on MMMMM. The
9 acting director of Light & Power.

10 Q And did he ever serve as the acting director of
11 Light & Power?

12 A He was the director of Light & Power, and there's
13 not a salary schedule for the redevelopment agency in here.
14 So I don't know if those were listed from memory and the same
15 with the industrial development authority.

16 Q So you said that you unwound positions?

17 A I did not unwind positions.

18 Q What was your analysis with respect to the document
19 in Exhibit 75 about Mr. Malkenhorst's position?

20 A After Mr. Malkenhorst left, they started adding
21 full-time pay rates for positions that he held.

22 Q And were all of the positions that you assert that
23 he held -- were those positions listed in document 75?

24 A Not in document 75.

25 Q And so what is the basis of your saying that those

1 positions were quote "unwound"?

2 A That you can see that positions, multiple positions,
3 that he held are now being reported as full-time positions on
4 the next salary schedule.

5 Q And so is that the basis of your unwinding that
6 there are three positions that were acting positions
7 established after he retired?

8 A Can you restate your question?

9 Q What is the -- can you be more clear about what
10 you're unwinding in his positions if after he retired there
11 is no City administrator on the pay rate -- on the pay
12 schedule in Exhibit 75, and you have documented or you have
13 described three positions; acting City clerk, acting City
14 treasurer, and acting director of Light & Power. So are
15 those the three positions that you believe he held?

16 A No. I believe he held more positions.

17 Q And so what -- you just said -- so did some of his
18 positions disappear?

19 A That would be a question for the City.

20 THE COURT: Sorry. I couldn't hear you. Please
21 don't speak over the witness. Can you --

22 THE WITNESS: In the later years, those positions
23 are posted on the publicly available pay schedule.

24 BY MR. JENSEN:

25 Q And did you track each position over time to see

1 whether there was different names attached to them?

2 A Throughout the resolutions?

3 Q You said after he retired, there was different jobs
4 and different positions. Did you take that into your
5 analysis?

6 A We did. After he retired, we could see that over
7 time they started separating out all of his different
8 positions and reported them on pay schedules as full-time
9 positions.

10 Q And do you have any reason to associate why right
11 after he retired there was only three positions that you
12 could associate with his -- with what you consider to be his
13 one position?

14 A No. I don't consider him to have one position, but
15 when we had asked the agency for more information on what was
16 going on this was what we were getting.

17 Q And were aware of whether any of those positions
18 were ever filled?

19 A I am not aware. I --

20 Q Did you ask Vernon whether those positions were ever
21 filled?

22 A I don't remember if we asked them that specific
23 question. That wasn't relevant to the pay schedule.

24 Q Whether the positions were filled or not wasn't
25 relevant?

1 A Well, if the pay schedule, if there was -- in 2005,
2 if there wasn't an acting City clerk hired the day after
3 Mr. Malkenhorst left, doesn't mean they weren't in the
4 recruitment process or reorganizing or things like that. It
5 just shows that there were multiple positions that after he
6 left, are now being reported by the City with a full-time pay
7 rate for different positions.

8 Q But you have just mentioned that he never served in
9 any of these acting positions in any case?

10 A Mr. Malkenhorst?

11 Q Yes.

12 A No. It was not acting.

13 Q So you don't even know if they're the same position;
14 is that correct?

15 A That would be a question of the City if the duties
16 were perfectly aligned.

17 Q But isn't your analysis in this whole case that he
18 held multiple positions and that each should have a duty
19 statement?

20 A Yes.

21 Q And yet you didn't look into that?

22 A We looked at the position itself. So when we asked
23 for duties and hours, I don't believe we received anything.

24 Q So when you say you looked at the position itself,
25 you mean you looked at the titles?

1 A We looked at the titles. The position that the
2 public would view, and a member of the public in a reasonable
3 capacity would view an acting City manager the same as a City
4 manager for a time period.

5 Q And what's your evidence of that?

6 A That would be a reasonable interpretation. I'm a
7 member of the public and that's a reasonable
8 interpretation.

9 Q So it's your interpretation?

10 A As a member of the public, it's a reasonable
11 interpretation.

12 Q And so in other words, there's no difference to
13 agency determination whatever reasonable member of the public
14 would look at these pay schedules and determine is the
15 correct determination?

16 A No. That's not what I said.

17 Q You're talking about a reasonable member of the
18 public looking at these pay schedules and determining the
19 jobs; is that correct?

20 A Can you restate your question?

21 Q You just mentioned a reasonable person's standard
22 with respect to the names on these pay schedules?

23 A Yes.

24 Q Tell me what your -- what was your opinion of that
25 reasonable person interpretation, the words on the pay

1 schedule?

2 A Okay. Through the course of work and when members
3 review the pay schedules, it is not unreasonable for the
4 acting City clerk to be the same as the City clerk job duties
5 while they are filling the position. Often times an agency
6 will put in acting positions until they can fill that
7 position three, four months later and then they are switch it
8 back over to City clerk or City treasurer.

9 MR. JENSEN: Your Honor, motion to strike as
10 nonresponsive.

11 THE COURT: Overruled.

12 BY MR. JENSEN:

13 Q What I'm trying to get at is what you just said is
14 what a reasonable person would understand from a job title,
15 and you just said it's any member of the public; is that
16 correct?

17 A It's a reasonable -- it's one reasonable
18 interpretation.

19 Q But it's not a CalPERS official determination. It's
20 a member of the public?

21 A No. Our interpretation for CalPERS was that the
22 acting City clerk was the same as the City clerk.

23 MR. JENSEN: I want to move on, your Honor, because
24 I'm trying to get through these documents.

25 THE COURT: Okay.

1 BY MR. JENSEN:

2 Q So let's move -- actually, let's quickly address
3 this exhibit, the chart on Exhibit MMM?

4 THE COURT: 5Ms.

5 MR. JENSEN: Yes, your Honor. I'm sorry.

6 THE COURT: That's okay.

7 MR. JENSEN: I'm going to count them out next time.

8 THE COURT: You can just say how many there are.

9 MR. JENSEN: Oh, is that okay if I just say 5Ms?

10 THE COURT: That will be fine.

11 BY MR. JENSEN:

12 Q Ms. Jimenez, do you have this chart in 5Ms in front
13 of you?

14 A I do.

15 Q Now, the dates in the first column, is that your
16 understanding of the date that position was established?
17 Instead of position, say, duties and responsibilities of that
18 position.

19 A From reading this chart, it looks like the date
20 that's listed there is when this position was given to
21 Mr. Malkenhorst.

22 Q Okay, and did you participate in making this chart
23 at all?

24 A I did not make this chart.

25 Q Did you -- you referred to this chart though?

1 A Yes. I've seen it, and I have referred to it.

2 Q And you think it's -- it's accurate?

3 A Without going back to the resolutions right now
4 which I can do, I wouldn't -- I mean, I relied on it, but I'd
5 have to go back through the resolutions to make sure.

6 Q But you relied on it sufficiently even in this
7 testimony here to be able to understand that -- that it's
8 reliable information?

9 A Sure.

10 Q And what is your understanding of, let's say, the
11 chief executive officer of the electric department when it
12 was established on May 5th, 1981?

13 A So from reading this chart, it appears that
14 Mr. Malkenhorst was put into the position of chief executive
15 officer of the electrical department on May 5th, 1981.

16 Q And when we reviewed the resolution yesterday, it
17 said -- do you recall it said no compensation associated with
18 this position?

19 A I don't recall, but I can look again.

20 Q Okay.

21 A Do you have the resolution -- the exhibit number?

22 Q I believe it is 14. It's the second page of 14 and
23 it's in the top paragraph.

24 A Okay. I've read it.

25 Q And do you take this to be an accurate statement?

1 A I take it to be accurate that he is now appointed to
2 the position of chief executive officer of the electrical
3 department.

4 Q And what do you believe the compensation is for that
5 additional duty?

6 A I think, again, looking over his career and over
7 time that he was compensated for these positions.

8 Q And what is the basis of that -- of that belief that
9 he was compensated for something -- for this position?

10 A Sure. Again, stating that over the period of time
11 his increases are much larger than his group or class who
12 didn't receive additional positions, and as soon as he left,
13 the employers started to kind of break apart some of those
14 positions and over time there were numerous positions placed
15 on the pay schedules.

16 Q And just quickly before we get too far afield on
17 this. Do you have Exhibit 29 still in front of you which is
18 the City charter?

19 A Yes.

20 Q I would just like to point your attention to
21 section -- actually, page 20 of Exhibit 29.

22 A Okay.

23 Q And in the charter in that section with duties of
24 the City administrator, section four. Do you see that?

25 A I do.

1 Q The last sentence of that it says "the specific
2 duties of the City administrator may be specified by
3 ordinance, resolution, or order of the City counsel." Do you
4 see that?

5 A I do see that.

6 Q And do you think that the ordinance or resolution
7 that the City counsel established where they appointed
8 Mr. Malkenhorst -- actually, they appointed the City
9 administrator to have the additional duties of the electrical
10 department. Do you think that's proper under this document?

11 MR. LEVIN: Objection. Assumes facts not in
12 evidence.

13 THE COURT: Would you restate your question?

14 MR. JENSEN: Yes.

15 BY MR. JENSEN:

16 Q So do you have -- have you read this -- you've read
17 this 29 -- this Exhibit 29?

18 A Yes.

19 Q And is it your position that the City counsel cannot
20 appoint the City administrator to the Light & Power
21 department to perform those duties within the City
22 administrator position?

23 A Sure. Going back to Exhibit 14, however, it says
24 that it's an actual position. Creates the position of chief
25 executive officer and appoints the City administrator, Bruce

1 V. Malkenhorst, to serve as the chief executive officer.

2 It's clear that they're actually putting Mr. Malkenhorst into
3 a separate position, not adding duties to this position.

4 Q So let's just turn -- let me turn your attention to
5 the next page of Exhibit 29. Do you see section seven?

6 A Yes.

7 Q It says "other positions"?

8 A Yes.

9 Q Can you read that to the Court, please?

10 A "The City counsel may appoint the City administrator
11 to any other office in the City and direct the City
12 administrator to carry out the duties of that office or any
13 other position of employment with the City in addition to his
14 or her duties as City administrator."

15 Q And did you -- does that change your opinion in any
16 way?

17 A No.

18 Q So the City charter allows the counsel to appoint
19 the City administrator to perform other positions. Is that
20 your understanding?

21 A That is my understanding.

22 Q And you have said that the executive director of
23 Light & Power is a position?

24 A That is correct.

25 Q And the charter says that the City counsel can

1 appoint the City administrator to perform the duties of those
2 other positions; is that correct?

3 A So they can appoint him to -- yes. It does say
4 that.

5 Q And so does that change your opinion in any way?

6 A No.

7 Q And why not?

8 A Because it's not that Mr. Malkenhorst cannot do
9 other positions or hold other positions, but for CalPERS
10 purposes, those positions have to be listed on a publicly
11 available pay schedule for transparency and consistency and
12 reported to CalPERS as multiple pay rates.

13 Q But we went over this yesterday that the pay
14 schedule was established for compensation earnable?

15 A The pay schedule is a very clear statute that needs
16 -- for the City to list every position and the compensation
17 paid for that. If they wanted to list that Mr. Malkenhorst
18 was not being paid for that position, they still need to put
19 it on there with zero, and they need to keep track of his
20 hours because CalPERS is still responsible for giving him a
21 pension, and we need to have the reported items reported
22 correctly.

23 Q But if there was no compensation to report, then
24 what should CalPERS report it? What should have Vernon
25 reported?

1 A Over time it's clear that he was being paid
2 additional for all of these additional duties as they were
3 separated out after he left.

4 Q That's your opinion; right?

5 A That's CalPERS' opinion.

6 Q CalPERS opinion? Everyone in CalPERS thinks that?

7 A That's CalPERS' final determination.

8 Q But what about Ms. Montez? Does she have that
9 opinion?

10 MR. LEVIN: Objection. Speculation.

11 THE COURT: Sustained.

12 BY MR. JENSEN:

13 Q Actually, did Ms. Montez say to you that these
14 positions had been all rolled into one?

15 MR. LEVIN: Hearsay.

16 THE COURT: Overruled.

17 THE WITNESS: Yes. We --

18 BY MR. JENSEN:

19 Q Just answer the question. Did Ms. Montez say that
20 all of these positions had been rolled into one in the late
21 '70s or '80s?

22 A That was her understanding.

23 Q And who is Ms. Montez?

24 A Ms. Montez was my boss at the time.

25 Q She was your boss at the time?

1 A Uh-huh.

2 Q Did she say that Bruce Malkenhorst's compensation
3 was adopted and publicly available resolutions?

4 A I don't recall if she said that.

5 MR. JENSEN: Your Honor, I'd like to mark this for
6 identification to refresh the witness's recollection.

7 THE COURT: Okay. What are you marking?

8 MR. JENSEN: I'll mark it -- what are we at now? We
9 were on P. So that's 5Rs.

10 THE COURT: One moment. This will be 5Qs. Exhibit
11 QQQQQ.

12 MR. JENSEN: 5Qs, and for the purposes of
13 identification, I'm marking a one-page e-mail from Marion
14 Montez to Donna Lum, Karen DeFrank, and Tomi Jimenez on April
15 30th, 2012 as Exhibit QQQ, and it's marked in pen in the
16 upper right hand corner and I'm showing it to counsel.

17 THE COURT: Lets make the record clear. It's 5Qs.

18 MR. JENSEN: I'm sorry. It's 5Qs.

19 THE COURT: Thank you.

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

21 THE COURT: Please do. Thank you.

22 BY MR. JENSEN:

23 Q They have to check it and if it's okay then -- and
24 before I give it to her, I just want to ask her a question.

25 THE COURT: And before you do, I'm going to ask

1 counsel a question.

2 MR. JENSEN: Yes.

3 THE COURT: Have you had a chance to review this?

4 MR. LEVIN: Yes, your Honor. Thank you.

5 THE COURT: You're welcome. You may use this to
6 refresh the witness's recollection.

7 MR. JENSEN: Actually, can I ask the question first?

8 THE COURT: Okay.

9 BY MR. JENSEN:

10 Q Were you aware of newspaper inquires?

11 THE COURT: I beg your pardon?

12 BY MR. JENSEN:

13 Q Were you aware of newspaper inquires into
14 Mr. Malkenhorst's pension?

15 A At what time?

16 Q I would say prior to April 30th, 2012?

17 A I was aware that there was media attention from
18 Mr. Malkenhorst.

19 Q And what was CalPERS' concern when the media was
20 calling?

21 A On what point?

22 Q What was -- were you asked any questions with
23 respect to responding to the newspaper or forwarding
24 e-mails?

25 A I could have been.

1 Q And do you recall what those inquires were?

2 A I don't recall.

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

4 THE COURT: Yes.

5 BY MR. JENSEN:

6 Q And I'm handing the witness the exhibit that's
7 marked for identification as 5Qs, and tell us when you've had
8 a chance to read this.

9 A Okay.

10 Q Do you recognize this e-mail?

11 A I recognize it as an e-mail, an official e-mail.

12 Q Did you receive this?

13 A It shows that I did.

14 Q Do you recall receiving it?

15 A I don't recall this specific e-mail.

16 Q Do you recall that Ms. Montez -- who is Ms. Montez?

17 A She was my boss at the time.

18 Q And where -- do you know what her position is now?

19 A She's retired.

20 Q So when did she retire?

21 A She retired in December of last year.

22 Q So was she your boss throughout the period until her
23 retirement?

24 A Yes.

25 Q And did she directly oversee you?

1 A Yes.

2 Q And who oversees you -- who's your supervisor now?

3 A Renee Ostrander.

4 Q And who is Donna Lum -- Donna Lum?

5 A Donna Lum is our executive officer, our deputy
6 executive officer of our customer services.

7 Q So is she the supervisor of Ms. Montez?

8 A Not directly.

9 Q Is she -- is there a layer of administration between
10 her?

11 A Yes.

12 Q So she's two layers higher than Ms. Montez?

13 A Yes.

14 Q And what about Ms. DeFrank?

15 A She was the division chief at the time.

16 Q And where would that fall in the hierarchy?

17 A She would report to Donna Lum.

18 Q So Marion Montez was -- I'm going to make some
19 gestures here. Was it the highest supervisory level in
20 CalPERS, and then there was another layer beneath her; is
21 that correct? Can you describe the hierarchy of the people
22 involved in this e-mail?

23 A Sure. At this time in April of 2012, I believe it
24 was Donna Lum was our deputy executive officer. Karen
25 DeFrank was our division chief. Renee Ostrander was our

1 assistant division chief. Marion Montez was the staff
2 services manager three, and I was the staff services manager
3 two.

4 Q Okay. So I just want to direct your attention to
5 the bottom of this e-mail where it says, "I need a quick
6 outline laid out in simple phrases as to why we cannot reduce
7 Malkenhorst's Senior's allowance. We're trying to respond to
8 Qs that we expect from the LA times. I need this before 9:00
9 p.m. tonight."

10 MR. LEVIN: Your Honor, object to the question. I
11 don't believe that's the proper use of a document to refresh
12 a witness's recollection.

13 THE COURT: Sustained.

14 BY MR. JENSEN:

15 Q Were you aware of any newspaper inquires at this
16 time?

17 A I was aware it was receiving media attention.

18 Q And were you aware at this time that as of April
19 30th, 2012 Marion Montez had said -- had stated positively
20 that the relative positions were rolled into one position
21 effective in the late 1970s?

22 A I see that, and I see that she also stated that we
23 haven't completed our analysis.

24 Q My question to you is, are you aware that she stated
25 positively that the relevant positions were rolled into one

1 effective in the late 1970s?

2 A I must have been aware among the e-mail that states
3 this. I don't remember it off of -- out of memory receiving
4 it and responding to it.

5 Q And do you recall her positively stating the last
6 high pay increase was 16.14 percent in 1992?

7 A I see that in the e-mail.

8 Q Do you recall that fact being established?

9 A I see that it matches the chart that was put
10 together.

11 THE COURT: Where are you looking?

12 THE WITNESS: The second page of 5M.

13 THE COURT: Thank you.

14 BY MR. JENSEN:

15 Q And so was this chart pre-existing in your
16 understanding on April 30th, 2012?

17 A It doesn't have a date on it.

18 Q But you just referred to this chart as being -- as
19 being referenced to 16.14 percent as a -- as a percentage of
20 increase?

21 A But I don't know that Marion relied on this chart to
22 state this.

23 Q But -- so what is your understanding of that
24 reference in 5M of 16.14?

25 A I was checking that the amounts matched the dates,

1 that the chart does match her e-mail, but I don't know if she
2 relied on it.

3 Q How else would she -- is there any source of
4 information that CalPERS uses other than this chart to find
5 that percentage increase?

6 A Sure. She could have looked at the resolutions and
7 did her calculation.

8 Q And I just want to turn your attention to that
9 because it says that those aren't single pay -- you cannot
10 determine that from the review of the resolution, could you,
11 with reference to this chart because there's two different
12 dates? This is -- with reference to that 16.14, how many pay
13 pay periods or how many resolutions would that involve?

14 A I wouldn't know without looking through them.

15 Q Well, you just referred to the chart 16.14 percent;
16 is that correct?

17 A That is correct.

18 Q And referring to the column C, there's two different
19 pay periods that are aggregated into that 16.14; is that
20 correct?

21 A That's correct.

22 Q So by looking at the resolution, the single
23 resolution, you couldn't come to the 16.14 percentage
24 increase, could you?

25 A She could have looked at her payroll reporting as

1 well.

2 THE COURT: And before you go on with your next
3 question, Counsel, where on the chart do you see 16.14?

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

5 THE COURT: Please.

6 MR. JENSEN: And just for these purposes for the
7 purposes of the record, there is a 16.14 percent here that
8 aggregates 7/92 third quarter, and 11/92 third pay period,
9 and that's the 16.14.

10 BY MR. JENSEN:

11 Q Is that the one you're referring to as well?

12 A Yes.

13 Q So is there any other documents that you have not
14 provided to us that reference 16.14 percent?

15 A No. His transcripts are in here which could
16 calculate the 16.14.

17 Q So let's move on quickly through QQQ, and on April
18 30th, 2012 at 8:00 p.m. at night, there's a reference that
19 says Bruce Malkenhorst, Senior's compensation, does this
20 refresh your recollection that as of April 30th, CalPERS'
21 position was that Bruce Malkenhorst, Senior's compensation
22 was adopted and publicly approved resolutions?

23 A It's still saying that she's needing to confirm
24 facts.

25 Q And what facts did she need to confirm?

1 A That they were held in open meetings.

2 Q And did you confirm those to be open meetings?

3 A I don't remember. I believe they were.

4 Q You believe they were. Have you challenged whether
5 the meetings were open?

6 A I believe we were noticed that they were in an open
7 session, and there were meeting minutes.

8 Q And as of April 30th, 2012, the position of CalPERS
9 in the second paragraph says "There was no evidence that
10 showed he was paid a combined salary for different
11 positions."

12 MR. LEVIN: Objection to the form of the question.
13 It's improper.

14 BY MR. JENSEN:

15 Q Is that your recollection? Let me finish the
16 question.

17 MR. LEVIN: I'm just objecting to the reading of
18 the --

19 THE COURT: Why don't you rephrase your question.

20 BY MR. JENSEN:

21 Q So does it refresh your recollection that as of
22 April 30th, 2012, CalPERS' position was that there was no
23 evidence that showed he was paid a combined salary for the
24 different positions?

25 A I believe at this time, we did not have enough

1 information as we still don't today to determine what each
2 position held, what the duties for each position were, and
3 what the full-time pay rate was. This was not a stated
4 position. It was not our final decision. This was just
5 Marion offering information to her boss, but it's clear that
6 this is not our final determination.

7 Q And does it refresh your recollection that as of
8 April 30th, 2012, CalPERS found that he was paid one sum for
9 many duties?

10 A That's what is typed here. I don't remember that
11 being our position.

12 Q You don't remember that? Does it refresh your
13 recollection that Mr. Bruce Malkenhorst's -- that CalPERS had
14 taken the position that -- strike that.

15 Does it refresh your recollection that on April
16 30th, 2012, if it was CalPERS' position that Mr. Malkenhorst
17 in receiving the single amount for many, many years and that
18 the raises didn't incur of anticipation of retirement?

19 A And again, this is not CalPERS' position. This is
20 Marion providing information. This was before we had went
21 through all of the documents. This is before we tried to
22 piece together what we could use based on the lack of
23 information.

24 Q And are you aware of any review process by CalPERS
25 in 2005 and 2006?

1 A Yes.

2 Q And what is your recollection of that review process
3 of 2005, 2006 regarding these issues that you're now
4 contesting?

5 A I was -- I wasn't there. I wouldn't have anything
6 to recall about the process that was in place at that time.

7 Q What was your understanding of what happened?

8 A That he was -- I know in 2005 he was placed on roll
9 with all the positions rolled into one.

10 THE COURT. He was what?

11 THE WITNESS: He was placed onto roll which is when
12 he received their benefit calculation.

13 BY MR. JENSEN:

14 Q And so what information have you learned that has
15 changed CalPERS' position after April 30th, 2012?

16 A Again, that it's clear that he was holding multiple
17 positions. Those positions vary from duties to duties and
18 that without further information, it is just -- it's
19 impossible to determine which pay rate had which hours
20 associated to it, and without that information, the benefit
21 that it was calculated initially was incorrect.

22 Q You said it was "impossible to determine"?

23 A It is impossible to determine which pay rate had
24 which amount of hours associated to it.

25 Q Didn't CalPERS already determine the pension

1 benefit?

2 A I don't believe the multiple positions was
3 addressed.

4 Q You don't believe the multiple positions were
5 addressed?

6 A I don't recall. I wasn't involved in that.

7 Q But in this e-mail, was the multiple positions --
8 was it CalPERS' position at that time that the multiple
9 positions -- the quote "multiple positions" that there was no
10 evidence that he was paid a combined salary for different
11 positions?

12 A Again, this is not CalPERS' position. This is
13 Marion providing information.

14 Q And what information do you have that's different
15 than this?

16 A Further analysis, looking at the resolutions,
17 looking at him over his career.

18 Q And what -- what specific information do you have
19 that changes this decision -- this prior understanding?

20 MR. LEVIN: Objection. Misstates evidence.

21 THE COURT: Overruled.

22 THE WITNESS: Repeat your question.

23 THE COURT: I am going to ask you, Mr. Jensen --

24 MR. JENSEN: Yes.

25 THE COURT: -- to extinguish because you've been

1 talking about two things, between the prior understanding of
2 2005 and Ms. Montez's understanding as reflected in this
3 e-mail.

4 MR. JENSEN: Yeah. I'm just rushing, your Honor.

5 THE COURT: Yes, but let's make it clear.

6 BY MR. JENSEN:

7 Q Okay. Okay. As of 2012 when you received this,
8 what new information did you receive after 2012 that changes
9 these prior understandings as Ms. Montez had?

10 A Well, I don't know what she based her -- I honestly
11 don't know what she based her information on, what she had
12 reviewed at that time, what she was looking at. I see that
13 she responded what appears to be from memory, late at night.
14 So I don't know what she was relying on to make these
15 assertions. We have the evidence. It is clear that he has
16 multiple positions. What she was relying on, I can't speak
17 to.

18 Q Well, it says in here in resolutions. Did you rely
19 on resolutions?

20 A I did.

21 Q And do you have any reason to believe that she
22 didn't have information or resolutions that you had?

23 A I don't know. I can't speak to what she knew.

24 Q So other than resolutions, what information did you
25 rely on that would have changed this position?

1 A We relied on the PERL. We relied on the average
2 increases over time of the group or class. Most things that
3 are in these binders.

4 Q But you just testified that you relied on this
5 document; is that correct?

6 A For what?

7 Q Have you relied on this document at all? This is
8 document MMMMM, 5Ms?

9 A As a reference, yes, but the resolutions are what we
10 have rolled into that. That is just a summary of what is in
11 the resolutions.

12 Q But when Ms. Montez refers to this 16.14 increase,
13 do you have any reason to believe that she wasn't relying on
14 this chart?

15 A I don't know what she was relying on.

16 Q Is there any other chart that you have that you
17 haven't provided us?

18 A There is -- there is Mr. Malkenhorst's
19 transcripts.

20 Q And what are the -- are the transcripts those
21 documents that we showed you in binder 18? Are those the
22 documents?

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

25 THE COURT: You may.

1 BY MR. JENSEN:

2 Q It's 5Fs. Are these the transcripts?

3 A No.

4 Q And did you provide the transcripts to us?

5 A I believe we did.

6 Q And what form did the transcripts take?

7 A They --

8 MR. JENSEN: And, your Honor. I'll just withdraw
9 the question.

10 THE COURT: Okay.

11 MR. JENSEN: If we can just move on. So is MMMM --
12 5Ms in evidence of substantive -- for an impeachment?

13 THE COURT: One moment.

14 MR. LEVIN: I believe it was in for impeachment
15 only.

16 THE COURT: It was in only for impeachment.

17 MR. JENSEN: And your Honor, I think we moved it in
18 for substance as well. Well, now I move it into -- at least
19 the second page of MMMM is the document that she relied on in
20 this --

21 THE COURT: One moment. Any objection?

22 MR. LEVIN: No objection to the second page of 5Ms
23 being admitted.

24 THE COURT: Page two of Exhibit 5Ms is admitted.

25 (Respondent's Exhibit MMMMM, page 2, was

1 received in evidence by the Court.)

2 MR. JENSEN: And is NNNNN in evidence as
3 impeachment?

4 THE COURT: Yes.

5 MR. JENSEN: And then what I'd like to do is -- we
6 have previously disclosed -- what was previously identified
7 as 50s and it was ZZ. So I'd like to ask the witness to look
8 at Exhibit ZZ. Can I move -- let me just move QQQ again as a
9 document that refreshed her recollection of the facts that
10 existed -- position that existed by CalPERS prior to April
11 30th, 2012 and her understanding of that position.

12 MR. LEVIN: Objection, your Honor. Evidence used to
13 refresh your recollection is not admissible.

14 THE COURT: I agree, and also I believe that it was
15 used to refresh her recollection as to Ms. Montez's opinions
16 and not any prior position taken officially by CalPERS. So
17 the motion is denied.

18 MR. JENSEN: Okay. So then let's actually -- before
19 we move onto ZZZ, let's move to that 2005 process, and then
20 we'll get back to ZZZ.

21 BY MR. JENSEN:

22 Q So can I turn your attention to double X and
23 actually, I believe --

24 THE COURT: Shall I mark that?

25 MR. JENSEN: Yes. If I can mark that, please.

1 THE COURT: Okay.

2 BY MR. JENSEN:

3 Q Have you seen this document before?

4 THE COURT: One moment. The document behind double
5 X in respondent's binder two is marked for identification as
6 Exhibit XX. Go ahead.

7 (Respondent's Exhibit XX was marked for
8 identification by the Court.)

9 BY MR. JENSEN:

10 Q Have you seen this document before?

11 A I have seen this document before.

12 Q And what is your understanding of this document?

13 A It looks like -- excuse me. It looks like it is
14 Mr. Malkenhorst's notice of appeal.

15 Q Did you rely on this document or consult this
16 document at all in your interpretation of Mr. Malkenhorst's
17 pension?

18 A I did read it.

19 Q I'd like to offer Exhibit XX into evidence.

20 THE COURT: Any objection?

21 MR. LEVIN: No objection.

22 THE COURT: Exhibit XX is admitted.

23 (Respondent's Exhibit XX was received in
24 evidence by the Court.)

25 ///

1 BY MR. JENSEN:

2 Q I'd like to turn your attention to YY.

3 THE COURT: Would you like that marked?

4 MR. JENSEN: Yes, please.

5 THE COURT: All right. The document behind tab YY
6 in binder number two is marked for identification as Exhibit
7 YY.

8 (Respondent's Exhibit YY was marked for
9 identification by the Court.)

10 BY MR. JENSEN:

11 Q Have you seen this document before?

12 A I believe I have, yes.

13 Q And what is your understanding of this document?

14 A It looks like it is a letter from the compensation
15 review unit to Marla Aspinwall regarding Mr. Malkenhorst.

16 Q Can I turn your attention to that bottom paragraph?
17 Can you quickly review that?

18 A Okay.

19 Q And what is your understanding of CalPERS' reference
20 to these job position titles?

21 MR. LEVIN: Objection. Lacks foundation. Personal
22 knowledge.

23 THE COURT: Sustained. Lay a foundation, please.

24 BY MR. JENSEN:

25 Q Did you review this document?

1 A I must have.

2 Q And did you look at any documents where CalPERS
3 considered that Mr. Malkenhorst served as City administrator
4 slash City clerk, City treasurer, director of finance and
5 personnel, purchasing agent, director of Light & Power, and
6 executive director of the redevelopment agency?

7 A I see that that's listed here, yes.

8 Q When you arrived in the compensation review unit,
9 were there documents in the file or -- were there documents
10 in the file or a location associated with Mr. Malkenhorst
11 that had addressed these issues of multiple positions
12 before?

13 A It would appear that there would be. This is where
14 something like this would have been kept.

15 Q Did you review his file?

16 A Not until it came to my attention.

17 Q Well, when it came to your attention, did you review
18 his file?

19 A Yes, I did.

20 Q And was there information in there about CalPERS'
21 investigation into him holding multiple positions?

22 A Yes. It appears that there is.

23 Q And --

24 A Based on that letter.

25 Q Based on that letter? There's no other letters that

1 you've seen? No other documents that you've seen?

2 A I would imagine that there are. I don't remember
3 every piece of information I've reviewed.

4 Q Let me just turn your attention to -- what about --
5 can I ask you to turn to WW?

6 MR. JENSEN: And can we mark this for the record,
7 please?

8 THE COURT: Okay. The document behind tab WW is
9 marked as Exhibit WW.

10 (Respondent's Exhibit WW was marked for
11 identification by the Court.)

12 BY MR. JENSEN:

13 Q Do you recognize this document?

14 A I do.

15 Q And what is this document?

16 A This is a document that employees of CalPERS can
17 write notes on member's accounts.

18 Q And did you review this document in your
19 consideration of this Matter?

20 A I'm sure I read this.

21 Q And was this a document that was regularly kept in
22 CalPERS business practices?

23 A Yes.

24 MR. JENSEN: Your Honor, I'd like to offer WW into
25 evidence.

1 THE COURT: Any objection?

2 MR. LEVIN: No, your Honor.

3 THE COURT: Exhibit WW is admitted.

4 (Respondent's Exhibit WW was received in
5 evidence by the Court.)

6 BY MR. JENSEN:

7 Q And then I'd like to turn your attention to Exhibit
8 AAA.

9 MR. JENSEN: If I can ask your Honor to mark it for
10 identification?

11 THE COURT: All right. The document behind tab AAA
12 is marked for identification as Exhibit AAA.

13 (Respondent's Exhibit AAA was marked for
14 identification by the Court.)

15 BY MR. JENSEN:

16 Q Do you recognize that -- have you seen that document
17 before?

18 A I believe I've seen this before.

19 Q And what is your understanding of that document?

20 A It looks like it is an appeal from Marla Aspinwall
21 to the compensation review unit.

22 Q And do you see in that third paragraph down it
23 says -- you next state that "the duties of City treasurer,
24 director of finance, personnel, purchasing agent, executive
25 director of Light and Power, and executive director of the

1 redevelopment agency are considered overtime."

2 A I see that.

3 Q And at that time to your knowledge, did CalPERS
4 investigate that claim?

5 A I don't know.

6 Q You don't know? So there's nothing in the record to
7 your knowledge that CalPERS investigated this claim?

8 A I can speak to what we would do now, and that
9 typically when we get --

10 MR. JENSEN: Your Honor --

11 THE COURT: Just restrict your answer to the
12 question. Thank you.

13 BY MR. JENSEN:

14 Q And so did you review this letter in your -- in your
15 interpretation of this Matter in 2012?

16 A I'm sure I did.

17 Q And I just want to turn your attention to Exhibit A
18 at the back of that letter, which is AAA number 6.

19 THE COURT: Page 6?

20 MR. JENSEN: Yeah. Page 6. Actually top of 6 and
21 into 7.

22 THE COURT. Thank you.

23 BY MR. JENSEN:

24 Q Do you recognize that?

25 A It looks like one of the City of Vernon's

1 resolutions.

2 Q And do you see that the pages attached to the
3 resolution refer to page 23 where it says "compensation of
4 certain positions, City administrator/City clerk department."
5 Do you see that?

6 THE COURT: That's at the bottom of page 7 of the
7 exhibit?

8 MR. JENSEN: Yes, your Honor.

9 THE COURT: Thank you.

10 THE WITNESS: I see that.

11 BY MR. JENSEN:

12 Q And can you read it for the Court the part that you
13 see?

14 A "The compensation for the following positions are
15 included in the compensation established for said position in
16 the City administrator slash City clerk department, schedule
17 two Exhibit B." Continue?

18 Q And did you review that same resolution in your
19 determination?

20 A I would imagine I did, yes.

21 Q And let me just turn your attention to Exhibit BBB.
22 May I mark it for identification?

23 THE COURT: The document behind tab BBB is marked as
24 Exhibit BBB.

25 (Respondent's Exhibit BBB was marked for

1 identification by the Court.)

2 BY MR. JENSEN:

3 Q Did you read Exhibit BBB in your determination of
4 this Matter?

5 A Yes.

6 Q And what was your understanding of the resolution --
7 let me just -- let me just read the sentence to you and tell
8 me what you understood. In the second paragraph it says,
9 "CalPERS has determined that setting different levels of pay
10 rate or special compensation by date of hired may be
11 allowed." And this is -- do you consider when CalPERS makes
12 a determination about pay rate that -- that they have
13 considered the matter submitted to them for that?

14 MR. LEVIN: Objection. Vague.

15 THE COURT: Sustained.

16 BY MR. JENSEN:

17 Q What do you understand by CalPERS saying "CalPERS
18 has determined that setting different levels of pay rate or
19 special compensation by date of hired may be allowed"?

20 A So on different levels of pay rate and special comp
21 based on date hired --

22 Q Uh-huh.

23 A -- was put into place -- so, for example, cities
24 will pay longevity to all of their employees who are hired on
25 or before January 1st, 2010. So that group or class now has

1 the ability to receive longevity. Anyone hired after that
2 date, the City doesn't pay them. So again, it goes to the
3 group or class. It can't establish a group of one because
4 then it would be in conflict with another provision, but
5 things like that are determined on date of hire.

6 Q So let me ask you to refer to this sentence. It
7 says, "In addition, any ruling of the board on compensation
8 as pay rate or special compensation is conditioned on the
9 facts as presented." Do you see that?

10 A I do not.

11 Q Okay. It's the second to last paragraph -- I mean,
12 it's the second to last sentence in the third paragraph down.

13 A Okay. I see that paragraph.

14 Q And has -- are you aware of any facts that changed
15 in Mr. Malkenhorst's retirement after -- in Mr. Malkenhorst's
16 employment after he retired?

17 A Restate your question.

18 Q Did any facts change in Mr. Malkenhorst's employment
19 history after he retired?

20 A Not that I'm aware of.

21 MR. JENSEN: So your Honor, I just want to go
22 through -- is that -- did we admit that? Is double X --

23 THE COURT: Double X is admitted.

24 MR. JENSEN: Is double Y admitted?

25 THE COURT: It was not moved.

1 MR. JENSEN: I'd like to move double Y into
2 evidence.

3 THE COURT: Any objection?

4 MR. LEVIN: No objection.

5 MR. JENSEN: I'd like to move --

6 THE COURT: One moment. Allow me to rule. Exhibit
7 double Y is admitted.

8 (Respondent's Exhibit YY was received in
9 evidence by the Court.)

10 MR. JENSEN: I'd like to move triple A into
11 evidence.

12 THE COURT: Any objection?

13 MR. LEVIN: No objection.

14 THE COURT: Exhibit triple A is admitted.

15 (Respondent's Exhibit AAA is received in
16 evidence by the Court.)

17 MR. JENSEN: I'd like to move triple B into
18 evidence.

19 THE COURT: Any objection?

20 MR. LEVIN: No objection.

21 THE COURT: Exhibit BBB is admitted.

22 (Respondent's Exhibit BBB is received in
23 evidence by the Court.)

24 MR. JENSEN: Sorry. Rushing for time.

25 ///

1 BY MR. JENSEN:

2 Q Ms. Jimenez, may I turn your attention to CCC --
3 Exhibit CCC and mark it for identification?

4 THE COURT: Exhibit CCC is marked.

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

7 BY MR. JENSEN:

8 Q Have you looked at the documents behind tab CCC
9 before?

10 A I see that. Yes. I have seen these.

11 Q And do you recall reviewing these documents in your
12 determination?

13 A I do.

14 Q And did this document have any meaning to you in
15 your determination of his pension?

16 A In what way?

17 Q Well, did you put any emphasis or did you give any
18 importance to this document?

19 A I did take it into consideration.

20 Q And how did you do so?

21 A Well, I looked -- again, I looked at all of the
22 documents and it looks like it was sent to Mr. Malkenhorst
23 telling him that there was a change in his retirement
24 allowance.

25 Q And what was the change?

1 A The change in pay rate and a change in final
2 compensation.

3 Q And what was the -- what was the -- was it an
4 increase in his compensation?

5 A Yes.

6 Q Was there an amount of retroactive monies paid to
7 him?

8 A It looks like it, yes.

9 Q And what was the date of this letter?

10 A November 30th, 2006.

11 MR. JENSEN: Your Honor, I'd like to move CCC into
12 evidence.

13 THE COURT: Any objection?

14 MR. JENSEN: No objection.

15 THE COURT: Exhibit CCC is admitted.

16 (Respondent's Exhibit CCC was received in
17 evidence by the Court.)

18 BY MR. JENSEN:

19 Q So Ms. Jimenez, does CalPERS have policies and
20 procedures for -- actually, you know what?

21 MR. JENSEN: Can we do a little exhibit clean up
22 right now, your Honor?

23 THE COURT: Okay.

24 MR. JENSEN: Just to make sure that they're all in.

25 With your permission, Ms. Jimenez, I'd just like to make sure

1 that we have in the record the exhibits that you utilized in
2 your determination. So I'm going to go -- starting from
3 Exhibit 1 in CalPERS binder -- actually I think it's starting
4 from Exhibit 7. 7 through 63. Okay. Sorry. Exhibit --

5 BY MR. JENSEN:

6 Q Starting with Exhibit 44, do you recognize Exhibit
7 44?

8 A Yes. It looks like it's a letter.

9 Q And is this a document of CalPERS?

10 A Yes, it is.

11 MR. JENSEN: Your Honor, I'd like to move 44 into
12 evidence.

13 THE COURT: Any objection?

14 MR. LEVIN: Yes. CalPERS objects. Exhibit 44 was
15 not on the respondent's exhibit list.

16 MR. JENSEN: I didn't know that we were going to
17 mutually be exclusive considering that --

18 THE COURT: Your not. The objection is overruled.
19 Exhibit 44 is admitted.

20 (Department's Exhibit 44 was received in
21 evidence by the Court.)

22 MR. JENSEN: Thank you, your Honor. Just a little
23 background, we tried to coordinate exhibits so that --

24 THE COURT: I appreciate that. Let's move on.

25 ///

1 BY MR. JENSEN:

2 Q Can I turn to Exhibit 45, please. Do you recognize
3 this document?

4 A It's a CalPERS letter.

5 MR. JENSEN: Your Honor, I'd like to move 45 into
6 evidence.

7 THE COURT: Let's lay a little bit more foundation
8 than that.

9 MR. JENSEN: Okay. Sorry.

10 BY MR. JENSEN:

11 Q Did you review this document in your
12 determination?

13 A I must have.

14 MR. JENSEN: Your Honor, I'd like to move it into
15 evidence, please.

16 THE COURT: Any objection?

17 MR. LEVIN: No objection.

18 THE COURT: Exhibit 45 is admitted.

19 (Department's Exhibit 45 was received in
20 evidence by the Court.)

21 BY MR. JENSEN:

22 Q I'll turn your attention to 46. May I mark for
23 identification as Exhibit 46, please.

24 THE COURT: As well as 44 and 45?

25 MR. JENSEN: Yes.

1 THE COURT: They are all considered marked.

2 (Department's Exhibits 44, 45, and 46 were
3 marked for identification by the Court.)

4 MR. JENSEN: Thank you, your Honor.

5 BY MR. JENSEN:

6 Q Do you recognize Exhibit 45?

7 A It looks like it's a letter of the City of Vernon
8 with a resolution attached.

9 Q It is a 44-page document -- 45-page document. Can
10 you quickly refer to that document and its attachments? Do
11 you --

12 MR. JENSEN: May I approach your Honor?

13 THE COURT: You may.

14 BY MR. JENSEN:

15 Q Do you have 45 pages after that? Ms. Jimenez, may I
16 approach?

17 A Yes.

18 Q so the last page would be Exhibit 45. I believe so.
19 Is that correct, 45?

20 A Yes, yes.

21 Q Did you review this document as part of your review
22 of Mr. Malkenhorst's pension Matter?

23 A I must have.

24 MR. JENSEN: Your Honor, I'd like to offer -- I
25 offer 46 into evidence.

1 THE COURT: Any objection?

2 MR. LEVIN: No objection.

3 THE COURT: Exhibit 46 is admitted.

4 (Department's Exhibit 46 was received in
5 evidence by the Court.)

6 MR. JENSEN: Your Honor, I'd like to mark for
7 identification documents behind tab 47.

8 THE COURT: All right. They are marked as Exhibit
9 47.

10 BY MR. JENSEN:

11 Q Can I ask the witness to turn to page 47.

12 Do you recognize this document?

13 A I do. It's a CalPERS letter.

14 Q Did you review this document as part of your
15 determination in this Matter?

16 A I must have.

17 MR. JENSEN: Your Honor, I'd like to move document
18 behind Exhibit 40 -- documents in Exhibit 47 into evidence.

19 THE COURT: Any objection?

20 MR. LEVIN: No objection.

21 THE COURT: Exhibit 47 is admitted.

22 (Department's Exhibit 47 was marked for
23 identification by the Court and received in
24 evidence.)

25 MR. JENSEN: Thank you.

1 BY MR. JENSEN:

2 Q Your Honor, I'd like to mark for identification the
3 one-page letter behind Exhibit tab 48.

4 THE COURT: Okay. That's marked as Exhibit 48.

5 (Department's Exhibit 48 was marked for
6 identification by the Court.)

7 BY MR. JENSEN:

8 Q May I ask the witness to turn to page -- the
9 document behind tab 48?

10 A Okay.

11 Q Do you recognize this document?

12 A I do. It's a CalPERS letter.

13 Q Did you review this letter in the context of this
14 review of this pension?

15 A I did.

16 MR. JENSEN: Your Honor, I'd like to move 48 into
17 evidence.

18 THE COURT: Any objection?

19 MR. LEVIN: No objection.

20 THE COURT: Exhibit 48 is admitted.

21 (Department's Exhibit 48 was received in
22 evidence by the Court.)

23 MR. JENSEN: Thank you, your Honor.

24 BY MR. JENSEN:

25 Q I'd like to direct the witness's attention to the

1 next binder and the documents behind Exhibit tab 61. May I
2 mark for identification --

3 THE COURT: One moment. Let me catch up to you.

4 MR. JENSEN: Oh, sorry.

5 THE COURT: Go ahead, Mr. Jensen.

6 MR. JENSEN: Yes, your Honor. May I mark for
7 identification the documents behind Exhibit tab 61?

8 THE COURT: Yes. They're marked as Exhibit 61.

9 (Department's Exhibit 61 was marked for
10 identification by the Court.)

11 BY MR. JENSEN:

12 Q Can I ask the witness to look at this document?

13 A Okay.

14 Q It's a one-page fax. Do you recognize this
15 document?

16 A It looks like a CalPERS fax.

17 Q Did you review it in context to this Matter?

18 A Yes.

19 MR. JENSEN: Your Honor, I'd like to move into
20 evidence Exhibit 61.

21 THE COURT: Any objection?

22 MR. LEVIN: No objection.

23 THE COURT: Exhibit 61 is admitted.

24 (Department's Exhibit 61 was received in
25 evidence by the Court.)

1 MR. JENSEN: Your Honor, I'd like to mark for
2 identification the documents behind tab 62.

3 THE COURT: They're marked as Exhibit 62.

4 (Department's Exhibit 62 was marked for
5 identification by the Court.)

6 MR. JENSEN: Thank you, your Honor.

7 BY MR. JENSEN:

8 Q May I turn the witness's attention to the documents
9 behind tab Exhibit 62?

10 A Okay.

11 Q Do you recognize this document?

12 A It looks like a letter or a fax from Vernon to
13 CalPERS.

14 Q Did you review this document in the context of this
15 determination?

16 A I must have.

17 MR. JENSEN: Your Honor, I'd like to move the
18 document behind Exhibit 62 into evidence?

19 THE COURT: Any objection?

20 MR. LEVIN: No objection.

21 THE COURT: It's admitted as Exhibit 62.

22 (Department's Exhibit 62 was received in
23 evidence by the Court.)

24 MR. JENSEN: I'd like to turn to the exhibits behind
25 tab 69 which I believe is in the next binder. I'd like to

1 mark the documents behind Exhibit tab 69 as Exhibit 69.

2 THE COURT: They are marked as Exhibit 69.

3 (Department's Exhibit 69 was marked for
4 identification by the Court.)

5 BY MR. JENSEN:

6 Q May I turn the witness's attention to the documents
7 behind tab 69. Do you recognize this document?

8 A It's a CalPERS fax.

9 Q Did you review this document as part of this
10 Matter?

11 A I did.

12 MR. JENSEN: Your Honor, I'd like to move the
13 documents behind tab 69 into evidence.

14 THE COURT: Any objection?

15 MR. JENSEN: No objection.

16 THE COURT: Exhibit 69 is admitted.

17 (Department's Exhibit 69 was received in
18 evidence by the Court.)

19 MR. JENSEN: Thank you, your Honor. I'd like to
20 turn your attention to the documents behind Exhibit tab 70
21 and have them marked for identification.

22 THE COURT: They're marked as Exhibit 70.

23 (Department's Exhibit 70 was marked for
24 identification by the Court.)

25 ///

1 BY MR. JENSEN:

2 Q And can I turn the witness's attention to the
3 documents behind Exhibit tab 70?

4 A Okay.

5 Q Do you recognize this document?

6 A It's a CalPERS fax.

7 Q Did you utilize or review this document as part of
8 your determination in this Matter?

9 A I reviewed it, yes.

10 MR. JENSEN: Your Honor, I'd like to move the
11 documents behind Exhibit tab 70 into evidence.

12 THE COURT: Any objection?

13 MR. LEVIN: No objection.

14 THE COURT: Exhibit 70 is admitted.

15 (Department's Exhibit 70 was received in
16 evidence by the Court.)

17 MR. JENSEN: I'd like to turn the witness's
18 attention to the document -- actually, I'd like to mark for
19 identification the documents behind Exhibit tab 71 with
20 the -- with the exclusion of the last document.

21 THE COURT: Give me page numbers, please.

22 MR. JENSEN: So Exhibit 71, 1 through 17, not 18.

23 THE COURT: I'm going to mark the entire exhibit.
24 You don't have to move 18.

25 (Department's Exhibit 71 was marked for

1 identification by the Court.)

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

3 BY MR. JENSEN:

4 Q So with respect to this document, I'd like to refer
5 your attention to 1 through 17 of this document.

6 A Okay.

7 Q Did you review page 1 through 17 as part of this
8 Matter?

9 A I did.

10 MR. JENSEN: I'd like to move the documents behind
11 71, pages 1 through 17 into evidence.

12 THE COURT: Any objection?

13 MR. LEVIN: Yes, your Honor. We object to splitting
14 the document apart. We have no objection to the admission of
15 the entire exhibit.

16 THE COURT: What's your objection based on?

17 MR. LEVIN: That it's an entire document that's
18 together. I mean, I don't know the basis of taking a single,
19 integrated document and dividing it in for admission.

20 THE COURT: He may move in what he chooses. If you
21 have a legal objection, state it now. Otherwise, I'm going
22 to admit it.

23 MR. LEVIN: Nothing further to add, your Honor.

24 THE COURT: Okay. Exhibit 71, pages 1 through 17
25 are admitted.

1 (Department's Exhibit 71 was received in
2 evidence by the Court.)

3 MR. JENSEN: Your Honor, I'd like to mark for
4 identification the documents behind -- oh, I'm sorry. Mark
5 for identification the documents behind Exhibit tab 85.

6 THE COURT: All right. The documents behind tab 85
7 are marked for identification as Exhibit 85.

8 (Department's Exhibit 85 was marked for
9 identification by the Court.)

10 BY MR. JENSEN:

11 Q And can I turn the witness's attention to the
12 documents behind Exhibit tab 85?

13 A Okay.

14 Q Did you review this document in the course of this
15 Matter?

16 A I believe so.

17 Q What is your understanding of this document?

18 A It's very similar to the document in the second page
19 of 5M.

20 Q Is it your understanding this was produced by
21 CalPERS?

22 A Yes.

23 MR. JENSEN: Your Honor, I'd like to move the
24 document behind Exhibit tab 85 into evidence.

25 THE COURT: Any objection?

1 MR. LEVIN: No objection.

2 THE COURT: Exhibit 85 is admitted.

3 (Department's Exhibit 85 was received in
4 evidence by the Court.)

5 MR. JENSEN: Your Honor, I'd like to move for --
6 to mark for identification the pages behind Exhibit tab 86.

7 THE COURT: 86 has already been marked.

8 MR. JENSEN: Has it been admitted?

9 THE COURT: One moment.

10 MR. JENSEN: Sorry.

11 THE COURT: I don't believe so.

12 MR. JENSEN: Your Honor --

13 BY MR. JENSEN:

14 Q Ms. Jimenez, do you recognize the document behind
15 Exhibit tab 86?

16 A I do. It's the audit report.

17 Q Did you use this as the basis of part of your
18 determination?

19 A I did.

20 MR. JENSEN: Your Honor, I'd like to move the
21 document 86 as a 99-page document into evidence.

22 THE COURT: Any objection?

23 MR. LEVIN: No objection.

24 THE COURT: Exhibit 86 is admitted.

25 (Department's Exhibit 86 was received in

1 evidence by the Court.)

2 MR. JENSEN: Okay. So your Honor, some of these
3 exhibits are more important than others. I just want to get
4 the important ones in.

5 THE COURT: We have half an hour reserved for
6 CalPERS cross -- redirect rather, and we have a 15-minute
7 break --

8 MR. JENSEN: Okay.

9 THE COURT: And I'm going to take that now.

10 MR. JENSEN: Okay. Thank you, your Honor.

11 THE COURT: Thank you.

12 MR. JENSEN: And just for purposes -- this shouldn't
13 take me more than 15 minutes or so.

14 THE COURT: That's fine. We'll be back in 10 of.

15 (Recess)

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

17 MR. JENSEN: Your Honor, may I ask the witness to
18 pick up the binder of exhibits -- actually, may I approach?

19 THE COURT: You may.

20 MR. JENSEN: The first set of exhibits that are our
21 exhibits and they are in the binders on the floor. So
22 Ms. Jimenez, we're going to go through a set of -- oh,
23 they're up there already.

24 THE COURT: This is book one?

25 MR. JENSEN: Yes. Book one. Exhibits A through Z,

1 and when your Honor is ready, we'll mark for identification
2 the exhibits -- the pages behind Exhibit tab A.

3 THE COURT: Okay. Those are marked as Exhibit A.

4 (Respondent's Exhibit A was marked for
5 identification by the Court.)

6 BY MR. JENSEN:

7 Q Ms. Jimenez, do you recognize the documents behind
8 Exhibit A?

9 A It's minutes of a City of Vernon counsel meeting.

10 Q Did you review this document in the course of your
11 review of Mr. Malkenhorst's pension?

12 A If it was provided to us, then yes.

13 Q Can you review this document in itself and tell me
14 whether or not you reviewed this?

15 A I believe I did.

16 MR. JENSEN: Your Honor, I'd like to mark -- I'd
17 like to offer into evidence Exhibit A.

18 THE COURT: Any objection?

19 MR. LEVIN: No objection.

20 THE COURT: Exhibit A is admitted.

21 (Respondent's Exhibit A was received in
22 evidence by the Court.)

23 MR. JENSEN: Thank you, your Honor.

24 BY MR. JENSEN:

25 Q And Ms. Jimenez, just so you know, you previously

1 mentioned that you had reviewed minutes of the City of
2 Vernon; is that correct?

3 A That's correct.

4 Q And so the documents I'm about to show you are
5 minutes of the City of Vernon. So if there are documents
6 that you reviewed, I'd like you to tell me.

7 MR. JENSEN: So I'd like to mark for identification
8 the documents behind Exhibit tab B.

9 THE COURT: They're marked as Exhibit B.

10 (Respondent's Exhibit B was marked for
11 identification by the Court.)

12 MR. JENSEN: Thank you, your Honor.

13 BY MR. JENSEN:

14 Q Ms. Jimenez, do you recognize the documents behind
15 Exhibit B?

16 A They are City counsel minutes.

17 Q Did you use this document in your determination of
18 this Matter?

19 A If it was provided, I did.

20 Q And I'm just going to ask you to review the document
21 itself because I don't know what was provided to you. If it
22 would help you, I can turn your attention to the B -- page
23 B-4 where the resolution 4469 is adopted, and it says "fixing
24 the compensation." It's at the top of page B-4.

25 A I do remember seeing meeting minutes addressing the

1 compensation for certain employees. I can't recall every set
2 of minutes that was provided to me, but if it was provided, I
3 have read it and this --

4 Q I need you --

5 THE COURT: Hold on. Please let her finish. Go
6 ahead.

7 THE WITNESS: And this terminology is familiar. I
8 would have to reread the whole section, but I can't remember
9 if this was, but it was provided, I read it.

10 BY MR. JENSEN:

11 Q Did you review the minutes that was attached that
12 were associated with adopting the pay resolutions?

13 A If they were provided, yes.

14 Q You indicated earlier that you reviewed minutes of
15 the City of Vernon and you based your determination on the
16 minutes; is that correct?

17 A Partly, yes.

18 Q Which minutes did you review?

19 A The ones that were provided.

20 Q And did you review the minutes that adopted the pay
21 resolutions for the City of Vernon?

22 A If they were attached to the resolutions, yes.

23 Q Okay. Did you -- did you review -- you indicated
24 that you reviewed the resolution behind Exhibit 12. That's
25 your prior testimony. Did you review the resolution and

1 minutes that adopted the resolution behind Exhibit 12?

2 A If they were attached and provided to me, yes, I
3 did.

4 Q So you didn't go and look to see whether the minutes
5 were -- whether the resolutions were adopted in the minutes
6 of the City of Vernon?

7 A In some cases I know that I have read minutes for
8 resolutions. Whether I've read every set of minutes for
9 every resolution, I wouldn't be able to tell you at this
10 point, but if it was provided, than I have read it.

11 Q But do you recall Ms. Montez's letter indicating
12 that there was a question whether these pay resolutions were
13 adopted in open meetings?

14 A I do remember that e-mail.

15 Q And were you charged with the responsibility for
16 looking into that, whether they were adopted in open
17 meetings?

18 A It could have been me. It could have been Lolita.

19 Q Do you not recall?

20 A I recall putting the issue forward that we needed to
21 make sure that the meetings were held in open session, and my
22 recollection is that that they were and we did see minutes.
23 I don't -- I can't tell you if I reviewed every set of
24 minutes, but if it was in the documents provided by Vernon,
25 then I have read them.

1 Q But you're Lolita's supervisor; is that correct?

2 A Yes. Indirectly, yes.

3 Q And so if you were tasked with the responsibility
4 for determining whether these resolutions were adopted in
5 open meetings, would that also require you to look at the
6 minutes that adopted that resolution?

7 A Yes. If we had them, yes.

8 Q And if you didn't have them?

9 A Well, if the City of Vernon typically holds their
10 meetings in open session and we were able to get documents
11 and meeting minutes providing that it was done in open
12 session and they reiterated that they were, then I'm not sure
13 if they were able to provide meeting minutes for every
14 resolution, but the ones that they did and according to their
15 assertion, those are the ones that I've reviewed.

16 Q So -- but you basically said that -- do you believe
17 there's an issue of whether these resolutions were adopted in
18 open meetings?

19 A No, I don't.

20 Q So you believe that -- that all the resolutions were
21 properly presented and adopted in open meetings; is that
22 correct?

23 A That's correct.

24 Q And so as part of that, do you believe the
25 resolutions were publicly available at the time of the

1 adoption of the minutes?

2 A Yes. I believe the resolutions were approved in
3 open sessions.

4 Q Okay. Thank you. So let's just turn back to
5 Exhibit B. Do you recall seeing Exhibit B?

6 A Again, if it was provided, --I can't state whether I
7 have seen this exact page of minutes off of memory.

8 Q Let's turn to Exhibit C.

9 MR. JENSEN: I'd like to mark for identification the
10 documents behind Exhibit tab C.

11 THE COURT: They are marked as Exhibit C.

12 (Respondent's Exhibit C was marked for
13 identification by the Court.)

14 BY MR. JENSEN:

15 Q I'd like to draw the witness's attention to the
16 documents behind Exhibit C. Have you reviewed the documents
17 behind Exhibit C before?

18 A Again, if it was provided, then I had. Going off
19 memory, I don't recall if I reviewed this exact set of
20 minutes.

21 Q And I just want to turn your attention of page four
22 of Exhibit C where at the bottom -- it says, "resolution
23 4742." Would this be the document that you would review to
24 determine whether the pay resolution was publicly adopted?

25 A State your question again.

1 Q Would this part of the minutes --

2 A Uh-huh.

3 Q -- for resolution 4742 be a part of the minutes that
4 you would refer to if you were looking into the public
5 adoption of the pay?

6 A We would -- we would look at the whole document. We
7 would definitely look at that piece, but the whole document
8 as well.

9 Q I'd like to turn your attention to Exhibit D.

10 MR. JENSEN: I'd like to mark for identification the
11 documents behind Exhibit D.

12 THE COURT: It's marked as Exhibit D.

13 (Respondent's Exhibit D was marked for
14 identification by the Court.)

15 BY MR. JENSEN:

16 Q Do you recall reviewing the documents behind Exhibit
17 D?

18 A It's the same answer. If it was -- if it came to us
19 from the City of Vernon, I read it.

20 Q And I -- just so -- for purposes of clarity, I don't
21 know what came to the City of Vernon, and you have previously
22 testified that you reviewed minutes and I just was trying to
23 get you to identify which minutes you reviewed.

24 A Based on --

25 MR. LEVIN: Objection. I don't think there's a

1 question pending.

2 BY MR. JENSEN:

3 Q So is this one of the documents you reviewed?

4 MR. LEVIN: Asked and answered.

5 THE COURT: Overruled. You may answer.

6 THE WITNESS: Again, in the 22,000 pages of
7 documentation, I can not recall if this was a specific set of
8 minutes that I read.

9 BY MR. JENSEN:

10 Q Would -- which minutes would have been important to
11 your review in this Matter?

12 A They would have all been important. If they were
13 attached, I have read them. What I can't answer is if this
14 was included and I looked at it, off of memory.

15 Q So you only reviewed the documents that were
16 provided to you?

17 A What other documents would I -- would I review?

18 Q Did you request any documents?

19 A We did request documents.

20 Q What documents did you request?

21 A We requested meeting minutes. We requested a break
22 down of hours for each position. We requested the publicly
23 available pay schedules that would denote all of those
24 positions' pay rates.

25 Q And which meeting minutes did you request?

1 A I don't recall off the top of my head.

2 Q What category of meeting minutes were important to
3 you?

4 A For the resolutions.

5 Q The resolutions that adopted the pay scales?

6 A I would imagine, yes.

7 Q And I have just pointed out two of those resolutions
8 to you, two of those minutes that adopted those resolutions,
9 and you didn't recognize those. Is there some reason that
10 you wouldn't recognize those?

11 A What I don't recognize is if I read this set of
12 minutes. I recognize them as minutes. I have read minutes
13 that look like this. What I don't remember is this exact
14 date or this exact resolution.

15 Q Okay. So let me turn your attention to page three
16 of Exhibit D and the title that says "resolution 4817. Do
17 you see that in the minutes?

18 A I do.

19 Q And was resolution 4817 important to you? Did you
20 review resolution 4817? It's in Exhibit 16.

21 A Yes. This is an important resolution.

22 Q So would you have looked at the minutes to determine
23 whether it was publicly adopted?

24 A We would have requested them, yes.

25 Q And do you recall Exhibit D being a document that

1 you would have received upon request?

2 A If I received it, this is what it would like like.

3 Q You're not sure if this is the document itself?

4 A I don't know if we received what was requested.

5 Q Did you ever request minutes about the public
6 adoption resolutions that you did not receive?

7 A I believe we were unable to obtain all minutes,
8 yes.

9 Q And do you remember approximately how many minutes
10 you did not receive?

11 A I don't remember.

12 Q Do you remember whether you received a bulk, the
13 majority, of the minutes that you requested?

14 A I don't remember.

15 Q Let me just turn your attention to Exhibit E. Do
16 you recognize --

17 MR. JENSEN: Oh, I'd like to mark for identification
18 the documents behind Exhibit tab E.

19 THE COURT: They are marked as Exhibit E.

20 (Respondent's Exhibit E was marked for
21 identification by the Court.)

22 BY MR. JENSEN:

23 Q Do you recognize the documents behind Exhibit E?

24 A These are minutes of a City counsel meeting.

25 Q And did you use these as part of your determination

1 in this Matter?

2 A If I received them, yes.

3 Q And again, I have no idea. So if you recognize this
4 document as part of it, then say yes. If you don't --

5 A I don't know.

6 Q You don't know. Okay. If I can turn to Exhibit F.

7 MR. JENSEN: Can I have it marked for identification
8 as Exhibit F?

9 THE COURT: They are marked as Exhibit F.

10 (Respondent's Exhibit F was marked for
11 identification by the Court.)

12 BY MR. JENSEN:

13 Q Do you recognize the pages behind Exhibit tab F?

14 A It's minutes of a City counsel meeting.

15 Q Do you recall receiving and reviewing these specific
16 minutes?

17 A I don't recall these specific minutes or if I
18 received them.

19 MR. JENSEN: And your Honor, I'd like to mark for
20 identification the exhibit -- the pages behind Exhibit G.

21 THE COURT: They're marked as Exhibit G.

22 (Respondent's Exhibit G was marked for
23 identification by the Court.)

24 BY MR. JENSEN:

25 Q And I'd like the witness to testify -- do you

1 recognize these pages behind Exhibit tab G?

2 A They're minutes of a City counsel meeting.

3 Q Did you review the specific documents in the course
4 of your -- of your review in this Matter?

5 A I am unable to recall if I received this particular
6 set of minutes to review.

7 MR. JENSEN: And I guess your Honor, what I would
8 like to do is that these are public documents, and I would
9 just like to move them into evidence A through PP. The
10 individual exhibits behind tabs A through PP as -- as
11 individual exhibits and then move them into evidence as -- as
12 official documents provided by the City of Vernon or CalPERS
13 under discovery.

14 THE COURT: And Exhibits A through PP are all
15 minutes of the City counsel of the City of Vernon?

16 MR. JENSEN: That's my understanding. I'm going to
17 check that right now.

18 THE COURT: Mr. Levin, I'd ask you to take a look as
19 well.

20 MR. LEVIN: Yes, your Honor.

21 MR. JENSEN: And Mr. Yim would probably know better
22 than others. Actually, I think LL is another resolution, but
23 it's similar. Actually, it's more than PP. It goes --

24 THE COURT: QQ?

25 MR. JENSEN: No. QQ is different, but there's more

1 minutes later, and it would be 3G through 3I are also minutes
2 or ordinances.

3 THE COURT: In order to save time, given this
4 witness's limited availability, I'm going to ask the witness
5 to look through those Exhibits A through PP and triple G
6 through triple I. If you remember receiving and reviewing
7 any of them, please so state.

8 THE WITNESS: Your Honor, where did the triple
9 letters start?

10 THE COURT: GGG, HHH, and III.

11 MR. LEVIN: Your Honor, I had previously stated on
12 the record that I didn't have any objection to the admission
13 of City of Vernon public records, and we went through our
14 exhibits. We had our --

15 THE COURT: You had --

16 MR. LEVIN: I didn't have any objections. So I'm
17 going through all the records to see what those are, but I
18 had offered before if Mr. Jensen wanted to put together a
19 list of what those are. We could submit it by stipulation.

20 THE COURT: Are you currently looking at A through
21 PP?

22 MR. LEVIN: I have gone through A through PP.

23 THE COURT: And GGG, III, JJJ.

24 MR. LEVIN: I have not gone through the triple
25 letters yet.

1 THE COURT: Take a look. It's three exhibits.

2 MR. LEVIN: Okay.

3 MR. JENSEN: And if by some reason, there's
4 another -- a non-official document of Vernon in there, I'll
5 just withdraw it later. These are just background stuff, and
6 I appreciate the stipulation to it.

7 MR. LEVIN: So what was after III, triple I?

8 THE COURT: That's it.

9 MR. LEVIN: I recognize that those are all City of
10 Vernon public records, and we don't have any objection to
11 their admission.

12 THE COURT: All right. Exhibits A through PP and
13 GGG through III are so marked and are admitted.

14 (Respondent's Exhibits A-PP and GGG-III were
15 marked for identification by the Court and received
16 in evidence.)

17 MR. JENSEN: Thank you, your Honor.

18 BY MR. JENSEN:

19 Q Can I ask the witness to turn to QQ? This is the
20 actuarial evaluation we previously discussed. Do you
21 recognize this document?

22 A I recognize this type of document.

23 Q And is this the type of document that you saw when
24 you were working as -- in the actuarial department?

25 A Yes, it is.

1 MR. JENSEN: Your Honor, I'd like to move QQ into
2 evidence. I believe it might already be, but I want to make
3 sure

4 THE COURT: I know it was marked. Yes. It's been
5 admitted.

6 MR. JENSEN: Thank you, your Honor.

7 BY MR. JENSEN:

8 Q And may I turn the witness's attention to SS. I
9 believe it was marked, but not yet -- do you recognize this
10 document, Ms. Jimenez?

11 A Yes, I do. It's a letter from the City of Vernon to
12 CalPERS.

13 Q Did you review this document as part of your
14 evaluation in this Matter?

15 A I did.

16 MR. JENSEN: Your Honor, I'd like to move SS into
17 evidence.

18 THE COURT: Okay. It was not previously marked.

19 MR. JENSEN: Oh, I'm sorry.

20 THE COURT: But it is marked and moved.

21 (Respondent's Exhibit SS was marked for
22 identification by the Court.)

23 THE COURT: Any objection?

24 MR. LEVIN: No objection.

25 MR. JENSEN: I'd like to mark --

1 THE COURT: One moment. It is also admitted.

2 (Respondent's Exhibit SS was received in
3 evidence by the Court.)

4 MR. JENSEN: Thank you, your Honor.

5 THE COURT: Your welcome.

6 MR. JENSEN: May I turn the Court's attention to the
7 documents behind Exhibit tab TT and mark --

8 THE COURT: I will mark them as Exhibit TT.

9 (Respondent's Exhibit TT was marked for
10 identification by the Court.)

11 BY MR. JENSEN:

12 Q And can I ask the witness to review the document
13 behind Exhibit TT? Did you review this document as part of
14 your review in this Matter?

15 A I did.

16 MR. JENSEN: Your Honor, I'd like to move Exhibit TT
17 into evidence.

18 THE COURT: Any objection?

19 MR. LEVIN: No objection.

20 THE COURT: Exhibit TT is admitted.

21 (Respondent's Exhibit TT was received in
22 evidence by the Court.)

23 MR. JENSEN: Your Honor, I'd like to mark for
24 identification the document behind Exhibit tab UU.

25 THE COURT: It's marked as UU.

1 (Respondent's Exhibit UU was marked for
2 identification by the Court.)

3 BY MR. JENSEN:

4 Q And may I ask the witness to review the document
5 behind tab UU? Do you recognize this document?

6 A It's a letter from CalPERS to the City of Vernon.

7 Q Did you review this document in the course of your
8 interpretation of this Matter?

9 A I did.

10 MR. JENSEN: Your Honor, I'd like to move UU into
11 evidence.

12 THE COURT: Any objection?

13 MR. LEVIN: No objection.

14 THE COURT: Exhibit UU is admitted.

15 (Respondent's Exhibit UU was received in
16 evidence by the Court.)

17 MR. JENSEN: Your Honor, I'd like to mark for
18 identification the document behind Exhibit tab VV.

19 THE COURT: It's marked as Exhibit VV.

20 (Respondent's Exhibit VV was marked for
21 identification by the Court.)

22 BY MR. JENSEN:

23 Q Ms. Jimenez, can I draw your attention to the
24 document behind tab VV?

25 A Okay.

1 Q Do you recognize this document?

2 A It is a letter from CalPERS to the City of Vernon.

3 Q Do you recognize this document as part of your
4 review in this Matter?

5 A I did.

6 MR. JENSEN: Your Honor, I'd like to move VV into
7 evidence.

8 THE COURT: Any objection?

9 MR. LEVIN: No objection.

10 THE COURT: Exhibit VV is admitted.

11 (Respondent's Exhibit VV was received in
12 evidence by the Court.)

13 MR. JENSEN: Your Honor, I'd like to mark for
14 identification the document behind exhibit tab WW.

15 THE COURT: It's marked as WW.

16 BY MR. JENSEN:

17 Q Can I turn the witness's attention to document
18 behind Exhibit tab WW?

19 A Okay.

20 Q Do you recognize this document?

21 A I do.

22 Q And what is -- did you use --

23 THE COURT: Actually, this has been marked before.

24 MR. JENSEN: Oh, it has. I'm sorry.

25 ///

1 BY MR. JENSEN:

2 Q Did you review this document in the course of
3 this -- your determination?

4 A I did.

5 MR. JENSEN: Your Honor, I'd like to move the
6 document behind WW into evidence.

7 THE COURT: It has already been admitted.

8 MR. JENSEN: Oh, it has? I'm sorry. Okay. So
9 let's turn to -- I think actually, KKK is already in evidence
10 as part of the CalPERS audit response. I just want to make
11 sure that it is.

12 THE COURT: KKK, triple K?

13 MR. JENSEN: Triple K.

14 THE COURT: I don't believe so.

15 MR. JENSEN: Well, let's mark it for identification.

16 THE COURT: One moment. Which binder was that in?

17 MR. JENSEN: That would be in binder number three.

18 THE COURT: All right. The documents behind tab KKK
19 are marked for identification as Exhibit KKK.

20 (Respondent's Exhibit KKK was marked for
21 identification by the Court.)

22 MR. JENSEN: Thank you, your Honor.

23 BY MR. JENSEN:

24 Q Ms. Jimenez, do you recognize this document?

25 A Yes. This is the response by the City of Vernon to

1 the audit report.

2 Q Did you utilize this document in your determination
3 of this Matter?

4 A Yes, I did.

5 MR. JENSEN: Your Honor, I'd like to move KKK into
6 evidence.

7 THE COURT: Any objection?

8 MR. LEVIN: No objection.

9 THE COURT: Exhibit KKK is admitted.

10 (Respondent's Exhibit KKK was received in
11 evidence by the Court.)

12 BY MR. JENSEN:

13 Q Can I turn your attention to Exhibit LLL or
14 actually, let me withdraw that.

15 To MMM.

16 THE COURT: Would you like me to mark it?

17 MR. JENSEN: Yes. I'll mark it for identification
18 the documents behind Exhibit tab MMM.

19 THE COURT: Okay. They are marked as MMM.

20 (Respondent's Exhibit MMM was marked for
21 identification by the Court.)

22 BY MR. JENSEN:

23 Q Did you review these documents as part of your
24 determination in this Matter?

25 A Some pages, yes; some pages, no.

1 Q Just to help the -- speed time, if we can
2 conditionally admit the exhibit with respect to which pages
3 she used in the determination of this Matter, and then we'll
4 enter those into the determination -- into evidence
5 afterwards. If she can just stipulate to which pages she
6 reviewed afterwards?

7 THE COURT: I'm not sure I understand you.

8 MR. JENSEN: Okay. I'm just trying to save time.

9 THE COURT: That's okay. Do you want her to
10 identify the pages she reviewed?

11 MR. JENSEN: Yeah. If she can just identify the
12 pages that she reviewed.

13 THE WITNESS: I believe I've seen page 20.

14 BY MR. JENSEN:

15 Q 20.

16 A None of the rest of this -- the rest of this
17 document looks familiar.

18 Q Okay, and then I want to turn your attention to --
19 the very last document in Exhibit book 18.

20 THE COURT: Before we move to that, did you wish to
21 move --

22 MR. JENSEN: Yeah. I'm sorry. Move page 20 into
23 evidence of Exhibit MMM.

24 THE COURT: Any objection?

25 MR. LEVIN: No objection.

1 THE COURT: Okay. Exhibit MMM, page 20 is admitted.
2 (Respondent's Exhibit MMM, page 20, was
3 received in evidence by the Court.)

4 MR. JENSEN: And then I'm going to move back to one
5 more later, but I'd like to move to the last book and mark
6 for identification the documents behind Exhibit tab 5F.

7 THE COURT: The last book? Which binder number is
8 that?

9 MR. JENSEN: 18 and your Honor, there's just one
10 more exhibit after this. Actually, two after this.

11 THE COURT: Okay. We're in binder 18?

12 MR. JENSEN: Yes, your Honor.

13 THE COURT: Exhibit 4Fs?

14 THE COURT: Exhibit 5Fs. I'm sorry. 5Fs. That's
15 been marked.

16 MR. JENSEN: It's been marked.

17 BY MR. JENSEN:

18 Q Did you refer to this document in the course of your
19 determination in this Matter?

20 THE COURT: To save you time, Mr. Jensen, it's
21 already been admitted.

22 MR. JENSEN: Oh, it's already been been admitted?

23 THE COURT: Yes.

24 MR. JENSEN: Okay. Great.

25 ///

1 BY MR. JENSEN:

2 Q So then -- so Ms. Jimenez, are you aware of CalPERS'
3 writing policies and procedures? Just turn your attention to
4 exhibit -- for purposes of ease, Exhibit 4H.

5 THE COURT: 4Hs?

6 MR. JENSEN: 4Hs, yeah.

7 THE COURT: And that's a --

8 MR. JENSEN: It's a multi-binder exhibit.

9 THE COURT: Which binders?

10 MR. JENSEN: It go goes from binder 5 through 13.

11 So it's an eight binders in one exhibit, and just for
12 purposes of everybody's knowledge, these were documents
13 provided by CalPERS as their policies and procedures.

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

15 MR. JENSEN: Yes, your Honor.

16 THE COURT: And let the record reflect that page
17 HHHHH1 is entitled "CalPERS procedures manual," and this
18 Exhibit 4Hs runs from binders 5 through 13; is that correct?

19 MR. JENSEN: Yes, your Honor.

20 THE COURT: All right. The documents behind tab
21 HHHHH throughout those binders are collectively marked for
22 identification as Exhibit HHHHH.

23 (Respondent's Exhibit HHHHH was marked for
24 identification by the Court.)

25 MR. JENSEN: And just for purposes of clarity,

1 there's -- they're marked HHHHH, page 1 through 2,523, and
2 maybe we can just get a stipulation from Mr. Levin that
3 CalPERS policies and procedures are admissible?

4 MR. LEVIN: Your Honor, should I respond?

5 THE COURT: Please.

6 MR. LEVIN: CalPERS does not object to the admission
7 of its procedures manual.

8 MR. JENSEN: Okay.

9 THE COURT: Are you moving this in?

10 MR. JENSEN: I'd like to move it into evidence.

11 THE COURT: Okay. Exhibit HHHHH is admitted.

12 (Respondent's Exhibit HHHHH was received in
13 evidence by the Court.)

14 BY MR. JENSEN:

15 Q And Ms. Jimenez, did you refer to any parts of this
16 policies and procedures manual?

17 THE COURT: Give me some specificity as to time.

18 BY MR. JENSEN:

19 Q When you were working in the compensation review
20 unit.

21 A Do you want me to look through the 2,000 pages?

22 Q Which parts of it did you refer to, and I can make
23 maybe point your attention to places to look in the last
24 binder, 2014.

25 THE COURT: That's binder 13?

1 MR. JENSEN: Yes, your Honor, and page in particular
2 2,431.

3 BY MR. JENSEN:

4 Q Is there anything in the policies and procedures
5 that talks about dividing up one position and one pay rate
6 into different jobs?

7 THE COURT: Mr. Jensen, I'm going to stop you right
8 there. On this page, on page 2,431? You have asked several
9 questions --

10 MR. JENSEN: Yeah. Okay.

11 THE COURT: -- and she hasn't answered yet --

12 MR. JENSEN: Okay. I'm sorry.

13 THE COURT: so why don't you pick the question.

14 MR. JENSEN: Okay.

15 BY MR. JENSEN:

16 Q Which parts of the CalPERS policies and procedures
17 manual did you utilize with respect to page 2431?

18 MR. LEVIN: Utilize -- vague as to time. Are we
19 talking about Mr. Malkenhorst or --

20 BY MR. JENSEN:

21 Q In your interpretation of -- in your review and
22 determination of this Matter, which parts of the CalPERS
23 policies and procedures did you utilize?

24 A Well, I would have utilized the PERL which is
25 identical here in the requirements for a publicly available

1 pay schedule. The section marked 20630, the compensation
2 section. On our determination, we relied on the PERL, not so
3 much the procedures manual.

4 Q And can you point to a part of this procedures
5 manual that authorizes dividing a specific named position
6 into multiple positions?

7 A Each position has to be reported separately. Each
8 part-time position has to be reported separately.

9 Q Is there a procedure for dividing up one position
10 into multiple positions?

11 THE COURT: Real quick, I'll allow the witness to
12 answer and then we have to move to redirect. Go ahead.

13 THE WITNESS: So further on page 92 -- on HHHHH
14 2,451 and 2,452, it talks about requirements that the
15 employer has to meet such as denoting the number of days an
16 employee is schedule to work per work week. Reporting
17 scheduled full-time hours per week. It talks about reporting
18 earnings during normal working hours. It goes on to define
19 pay rate as the normal full-time rate of pay or base pay of
20 the member, and the same group or class for full time. It
21 talks about issues resulting from inaccurate payroll
22 reporting.

23 THE COURT: What page?

24 MR. JENSEN: HHHHH 2,451.

25 THE COURT: Thank you. Any other pages?

1 THE WITNESS: Without looking further, those would
2 be the pages.

3 THE COURT: Okay. Thank you. Mr. Levin,
4 redirect.

5 MR. LEVIN: Thank you, your Honor.

6

7 REDIRECT EXAMINATION

8 BY MR. LEVIN:

9 Q Ms. Jimenez, could you please turn to Exhibit 71-18.

10 A Okay.

11 Q Is this a document you reviewed and relied upon in
12 determining Mr. Malkenhorst's final compensation?

13 A Yes, it is. This was provided by the City. It was
14 updated as of June 21st, 2005, and is listed as the
15 organizational chart for the City of Vernon.

16 Q What information from Exhibit 71-18 did you find
17 useful important or relevant to your analysis?

18 A It lists out numerous boxes that appear to be
19 different positions and director of personnel is in one.
20 City treasurer is in one. Director of finance, purchasing
21 agent. Again, it's evident that these were different
22 positions.

23 MR. LEVIN: Your Honor, we move to admit Exhibit
24 71-18 into evidence.

25 THE COURT: Any objection?

1 MR. JENSEN: For the basis -- I would just request
2 that it's limited to something she bases her opinion on, but
3 not for the truth of the matter asserted within it. There's
4 no identification particularly of where this came from and
5 who made this. There's been no foundation laid for it.

6 THE COURT: Is it your understanding this was
7 provided to you by the City of Vernon?

8 THE WITNESS: This was provided to us by the City of
9 Vernon.

10 THE COURT: All right. This page is admitted.

11 (Department's Exhibit 71-18 was received in
12 evidence by the Court.)

13 BY MR. LEVIN:

14 Q Ms. Jimenez, I'd like you to assume that
15 Mr. Malkenhorst's retirement benefit was fully funded.

16 THE COURT: Fully?

17 MR. LEVIN: Funded.

18 THE COURT: Funded. Thank you.

19 BY MR. LEVIN:

20 Q Assuming that fact, would it have any bearing on
21 your analysis and determination of Mr. Malkenhorst's final
22 compensation?

23 A No. Mr. Malkenhorst's case being fully funded is
24 actually not the issue. The issue is about his pay rate
25 being misreported and multiple positions being rolled up into

1 one. The fact that it is funded or not funded was not a
2 consideration in the pay rate determination.

3 Q From Mr. Malkenhorst's work records from the City of
4 Vernon including the resolutions, the ADP pay schedules,
5 everything you've seen from the City of Vernon, were you able
6 to conclude what a normal work period was for
7 Mr. Malkenhorst?

8 A No. What we had to go on was the resolutions
9 stating that their employees were to work full time
10 equivalent to 40 hours, but him, in particular, we were never
11 able to get a listing of numbers, as far as total hours or
12 hours broken up between the different positions.

13 Q For purposes of your analysis of Mr. Malkenhorst's
14 final compensation, how many hours per week worked by
15 Mr. Malkenhorst would be considered overtime?

16 A As far as the City is concerned? Can you ask the
17 question again?

18 Q Sure. How many hours per week would Mr. Malkenhorst
19 have needed to work at the City of Vernon before CalPERS
20 determined that he was working overtime?

21 A Sure. So again, it is up to the City to determine
22 what's full time. Anywhere between 36 -- 34 and 60 and it
23 was clear that it was 40 hours. So anything up to 40 would
24 be -- at 40 would be full time. So anything below that would
25 be part time, and anything above that would be overtime.

1 Q Were you able to determine whether Mr. Malkenhorst's
2 duties as City administrator/City clerk kept him occupied on
3 a full-time basis?

4 A I don't have enough information to determine that.

5 Q Were you able to determine whether the duties
6 undertaken by Mr. Malkenhorst in connection with his position
7 as CEO in the Light & Power department was or was not
8 overtime?

9 A I would imagine the multiple position pushed him
10 into overtime hours, but without documentation I'm not
11 sure.

12 Q Is there a reason that CalPERS enforces its overtime
13 rules against employees that may be exempt under the FLSA?

14 A Well, FLSA is different than the PERL, and there's
15 different requirements. So the PERL has its own requirements
16 of what is overtime, and that is above the regularly
17 scheduled work hours. FLSA overtime is different in that it
18 just focuses on salary. So someone who is working a 40-hour
19 work week and is an exempt or something like that, then they
20 would have to be paid overtime for any hours over 40.
21 However, for us, if the agency says your full-time work
22 schedule was 40 hours, although the agency is paying them
23 and -- paying them overtime for those hours, those wouldn't
24 be reported to us if they matched their work schedule.

25 Q What about for exempt employees?

1 A For CalPERS purposes, it's still the same for exempt
2 employees.

3 Q Are there --

4 THE COURT: One moment. I want to ask you
5 something. You're saying that under the FLSA, exempt
6 employees are or are not entitled to overtime pay if they
7 work more than 40 hours?

8 THE WITNESS: The agency can pay them, but it's not
9 reportable to CalPERS for use in their pension.

10 THE COURT: So if an exempt employee works 50 hours
11 one week and is receiving an annual salary, does that exempt
12 employee -- is that exempt employee entitled to overtime pay
13 under the FLSA? An exempt employee.

14 THE WITNESS: An exempt employee, as far as the FLSA
15 goes, I don't believe he's entitled to overtime.

16 THE COURT: Okay, but as far as CalPERS goes --

17 THE WITNESS: Uh-huh.

18 THE COURT: What's the difference?

19 THE WITNESS: We would rely on what the agency has
20 listed as full-time work hours, and anything above that, any
21 pay above that, is not included for pension purposes.

22 THE COURT: Thank you.

23 THE WITNESS: Yes.

24 BY MR. LEVIN:

25 Q When you refer to pay above -- a base pay for 40

1 hours, are you referring to additional pay, or are there
2 situations where CalPERS will consider that an employee's
3 base pay includes pay for overtime?

4 A An employee's base pay should be -- for an exempt
5 employee should be for the hours normally accepted. I'm an
6 exempt employee and my full-time work schedule is still
7 listed as 40 hours. That's what your entitled to. That's
8 what you're supposed to work. Yes, sometimes you work a
9 little bit extra and sometimes you work less, but my
10 full-time work schedule is 40. If I was routinely working 45
11 hours a week, now my pay really is for 45 hours a week. So
12 when we look at these things, we do go back to the employer.
13 The employer needs to tell us what was he working, what was
14 he being paid for, your resolutions say that full time is 40
15 hours a week. If he's routinely working more than 40 hours a
16 week based on multiple positions or duties that take him over
17 and above what that is, then that would be considered
18 non-compensation earnable.

19 Q And in those cases, would CalPERS then deduct from
20 the reported pay rate for that employee considered that part
21 of that pay rate is overtime?

22 A We have. Yeah. We do that, and it takes a lot of
23 coordination with the employers to provide us information
24 that we need to do so.

25 Q Are there areas of the PERL where CalPERS will give

1 credit towards final compensation for, say, premium pay or
2 other pay mandated by the FLSA?

3 A Yes. It's typical for safety members to have FLSA.
4 So what we would see is in 571 towards the end of the
5 regulation -- so 571A5 has FLSA, the Fair Labor Standards
6 Act, under a statutory item. So again, it goes back to your
7 normal full-time work schedule, and if compensation is paid,
8 your stated publicly available transparent compensation is
9 paid for normal full-time work schedule, then the difference
10 between what you're regularly scheduled hours are and the
11 FLSA premium can be reported. So fire fighters are typically
12 scheduled to work 56 hours. However, FLSA kicks in for fire
13 fighters at 53 hours. Those three hours can still be
14 reported to CalPERS under this section.

15 Q Is there any statute or regulation that governs
16 CalPERS that says if an employee is exempt from overtime
17 under FLSA pay in consideration for overtime must be
18 considered for CalPERS?

19 A No. There's no statute regarding that.

20 Q You've testified about a contracting agency's
21 obligation to provide CalPERS with information that permits
22 CalPERS to determine an employee's final compensation. You
23 mentioned one statute. What role does government code
24 section 20221 play?

25 MR. JENSEN: And to the extent that she's rendering

1 a legal opinion, I object.

2 THE COURT: You may testify as to how you use the
3 section, if you did, in making your determination regarding
4 Mr. Malkenhorst.

5 THE WITNESS: So section 20221 titled information to
6 be furnished to the board states that each state agency,
7 school employer, and the chief administrative officer of a
8 contracting agency or any other person who is the governing
9 body may designate shall furnish all of the following and
10 then under B it lists, any additional information concerning
11 any member that the board may require an administration of
12 the system. So this is the section we use when sometimes we
13 have agencies who say I'm not going to provide that
14 information to you, and we use this section to say that the
15 law states that you are required to do so.

16 BY MR. LEVIN:

17 Q Based on government code section 20221, is it your
18 expectation that contracting agencies will provide documents
19 and other information in response to audit requests from
20 CalPERS?

21 A Yes.

22 Q Has it been your expectation specifically with
23 respect to the City of Vernon and Mr. Malkenhorst that the
24 City of Vernon responded completely to the best of its
25 abilities to provide the information requested by CalPERS

1 during its audit?

2 A Yes. When we had initially requested information,
3 the City of Vernon had said, you know, we don't have that or
4 we can't find it. So we had used this section to say, you
5 know, remember under 20221, you're required to give us the
6 information that we're requesting. We used it in numerous
7 times and they repeatedly had come back and said we have
8 given you everything we have.

9 Q You testified about the -- withdraw that.

10 MR. LEVIN: May I approach, your Honor?

11 THE COURT: Yes.

12 BY MR. LEVIN:

13 Q Here it is. Ms. Jimenez, can you please look back
14 to Exhibit 89?

15 A Okay.

16 Q You were testifying about a mathematical weighing
17 process to determine an employee's pay rate when the employee
18 works multiple positions; correct?

19 A Correct.

20 Q What authority do you rely upon for determining a
21 member's final compensation when the absence of publicly
22 available pay schedules and position specific hours don't
23 permit you to do the type of calculation you did in Exhibit
24 89?

25 A So under -- again, in 570.5 which is the regulation

1 discussing publicly available pay schedules, there is a
2 component that when the employer fails to meet the
3 requirements of a publicly available pay schedule, that the
4 board in its sole discretion may determine an amount that may
5 be considered to be pay rate.

6 Q Did you rely upon that authority with respect to
7 your effort to determine Mr. Malkenhorst's pay rate?

8 A Yes, we did. With the lack of information, we were
9 forced to use something to put in -- to use something to
10 calculate his retirement.

11 Q Did you believe that you had sufficient information
12 to arrive at a final compensation for Mr. Malkenhorst that
13 was consistent with the requirements of the PERL and 570.5?

14 A No. There wasn't -- there was not a publicly
15 available pay schedule that would meet the requirements.

16 Q The pay rate that you finally settled upon and
17 presented in your final determination letter, did that
18 represent your best effort to comply with the requirements of
19 the PERL and 570.5?

20 A Yes, it did.

21 Q Do you believe that your effort was consistent with
22 the law as you understand it?

23 A Yes, it was.

24 MR. LEVIN: I have not further questions, your
25 Honor.

1 MR. JENSEN: Just a very quick --

2 THE COURT: One moment. Mr. Yim, anything?

3 MR. YIM: No, your Honor. Thank you.

4 THE COURT: Mr. Jensen?

5 MR. JENSEN: Thank you, your Honor.

6

7

RECROSS-EXAMINATION

8 BY MR. JENSEN:

9 Q Can I just turn your attention to Exhibit ZZ? Do
10 you recognize this document?

11 A Yes. This is an e-mail that you showed me yesterday
12 from Lolita.

13 MR. JENSEN: And your Honor, I'd like to mark for
14 identification Exhibit ZZ.

15 THE COURT: All right. The documents behind Exhibit
16 tab ZZ are marked for identification.

17 (Respondent's Exhibit ZZ was marked for
18 identification by the Court.)

19 BY MR. JENSEN:

20 Q Did you receive this document, Ms. Jimenez?

21 A Yes, I did.

22 Q And who is Lolita Lueras?

23 A She's an analyst in the compensation review unit.

24 Q And are you her supervisor?

25 A Not directly, but yes.

1 Q Can you explain what your relationship
2 professionally is with Ms. Lueras?

3 A At this time, there was a staff services manager one
4 between her and I.

5 Q And did you receive this e-mail?

6 A Yes. It was cc'd to me.

7 MR. LEVIN: Your Honor, I'd like to move into
8 evidence Exhibit ZZ.

9 THE COURT: Any objection?

10 MR. LEVIN: No objection.

11 THE COURT: Exhibit ZZ is admitted.

12 (Respondent's Exhibit ZZ was received in
13 evidence by the Court.)

14 MR. JENSEN: Thank you, your Honor.

15 BY MR. JENSEN:

16 Q Can I turn your attention to the second page of ZZ?

17 A Okay.

18 Q What is this document?

19 A It looks like it is three different scenarios for
20 Mr. Malkenhorst.

21 Q And what is this scenario?

22 A The first scenario is --

23 Q No, no. What is a scenario?

24 A Oh, when we were -- again, in the lack of
25 information, we were trying to determine what to use, and so

1 in the process, we were looking at all the information and
2 all the options to see if they would be compliant and that's
3 what these are.

4 Q And what are your reasons for believing that option
5 number one is not compliant?

6 A Option number one, again, includes multiple
7 positions that need to be broken up, put on the pay
8 schedules, and reported separately.

9 Q Thank you. I'd like to turn your attention to
10 Exhibit 67 and 68. Again, we challenged the admissibility of
11 the those documents for the extent that they might be relied
12 on.

13 THE COURT: I'll allow the question.

14 MR. JENSEN: Thank you.

15 BY MR. JENSEN:

16 Q Was overtime ever reported for Bruce Malkenhorst on
17 the ADP reports?

18 A Again, these documents were relied upon to show that
19 he was working in multiple positions. The pay rate -- the
20 pay hours weren't -- weren't considered accurate.

21 Q Well, they were once considered accurate?

22 A We didn't consider them as what he was working each
23 pay period. The point of those documents that we used was
24 that he was working in multiple positions under multiple
25 departments.

1 Q Well, maybe -- maybe those numbers are inaccurate
2 and he was just working 80 hours in the City
3 administrator/City clerk position?

4 A When we asked the City how many hours he was working
5 in each position, they were unable to tell us. If these were
6 accurate, then they would have told us these were accurate
7 hours.

8 Q But when we previously reviewed the ordinance and
9 the charter, the ordinance said that the City administrator
10 should be a full-time position. Is that your
11 understanding?

12 A That it said it was a full-time position? Do you
13 have the ordinance?

14 Q I do, and for these purposes, turn to Exhibit 9 and
15 page 11 of Exhibit 9, and it's subsection P where it says
16 "full-time duties upon that review." Does that change your
17 opinion in this Matter?

18 A No, it doesn't.

19 Q So is there CalPERS policies or procedures that
20 requires exempt employees to report their hours?

21 A The CalPERS statute that would require an agency to
22 keep its hours as if they were working in multiple
23 part-time positions and need to denote it in the reporting of
24 payroll.

25 Q My question to you is, does CalPERS require exempt

1 employees to keep timesheets and their hours?

2 A We would not -- there wouldn't be a statute that
3 specific, no.

4 MR. JENSEN: Your Honor, is ZZ in evidence? I don't
5 know if I moved it in.

6 THE COURT: Yes.

7 MR. JENSEN: Thank you, your Honor.

8 BY MR. JENSEN:

9 Q So I guess I just have one last question for you,
10 and that is if an exempt position is paid a salary, say, of
11 \$10,000 a month and sometimes that exempt position has to
12 work 40 hours, but then is given additional duties so he has
13 to work 60 hours, what is his reportable compensation for
14 CalPERS?

15 A We would ask the agency to provide us what hours he
16 was doing in each of the different components and if it
17 turned out to be a position, then they would need to put that
18 on the pay rate, develop a pay schedule that included it, and
19 report multiple part-time positions. If they included duties
20 into his full-time position and altered his duty statement
21 and provided that, then again, we would just work with the
22 agency to see what the situation was.

23 Q How about an attorney who has different cases?

24 MR. LEVIN: Objection. Vague.

25 MR. JENSEN: Who is on a salary.

1 THE COURT: Why don't you ask it as a complete
2 question.

3 MR. JENSEN: Yes.

4 BY MR. JENSEN:

5 Q So for purposes of this hypothetical, say an
6 attorney who is an exempt -- is an attorney an exempt
7 position? It's a managerial position or it's an expertise
8 position. Is that your understanding?

9 A I think it could be.

10 Q Are attorneys enrolled in CalPERS?

11 A Yes. There are attorneys.

12 Q How many exempt positions that you're aware of that
13 get CalPERS benefits?

14 A I wouldn't be able to answer that question.

15 Q Do you review a lot of exempt positions in the
16 compensation review unit?

17 A Yes.

18 Q Do you treat all of them identically?

19 A Yes, we do.

20 Q So I'll give you a hypothetical. An attorney --

21 THE COURT: This is it?

22 MR. JENSEN: This is it.

23 BY MR. JENSEN:

24 Q An attorney earns \$10,000 a month, has a number of
25 different cases. Sometimes his work load is low, he works 40

1 hours, but often, say, he works 80 hours a week. For a whole
2 year, he's working 80 hours a week, and it's just different
3 cases. How would you require -- what would you do in that
4 scenario?

5 A If he had a full-time pay rate listed and he met all
6 the components of the law, I'm not sure that we would look at
7 his case load.

8 Q But if he's added duties, so he has more cases and
9 it increases his work load, still gets the same compensation
10 amount. What would you do?

11 A If it came to our attention that a member was
12 working routinely over 40 hours a week, we would work with
13 the agency to make sure that he was reporting it in
14 compliance with the PERL.

15 Q And what would be the reporting in compliance with
16 the PERL?

17 A It could be that he now needs to be -- part of it
18 reported as overtime. The hypothetical -- there's some
19 variables in a hypothetical, and it's hard to determine what
20 exactly we would need.

21 Q So say -- say you applied the hypothetical to
22 Mr. Malkenhorst to this hypothetical.

23 MR. LEVIN: Objection. Vague.

24 MR. JENSEN: Apply the rules that you applied to
25 Mr. Malkenhorst to this example.

1 MR. LEVIN: Objection. Vague.

2 THE COURT: I'm not sure what you're asking.

3 BY MR. JENSEN:

4 Q Follow the -- did you -- so in there Malkenhorst's
5 case, you said he was doing multiple duties and you only paid
6 him for some of his duties, that was the pension -- the pay
7 rate was only associated with a certain of his duties?

8 A Sure.

9 MR. LEVIN: Objection. Misstates her testimony.

10 THE COURT: Do you understand the question?

11 THE WITNESS: Somewhat. Can you reask your
12 question.

13 BY MR. JENSEN:

14 Q Yes. So again to this attorney who is now having to
15 work 80 hours instead of 40 hours of different cases. It's
16 on a full-time basis, still paid the same amount but it's
17 a -- it's one job but different duties within that job,
18 different cases, even different supervisory
19 responsibilities. How would you deal with that under the
20 same rules that you applied to Mr. Malkenhorst?

21 A I don't think their cases are similar enough to
22 compare. Mr. Malkenhorst had numerous positions clearly
23 stated.

24 Q Okay. So say he's an appellate lawyer at certain
25 points, and he's a brief writer at other points, as many

1 different position titles you can give an attorney or a
2 litigator. So he has those different position titles, but
3 it's still all being a lawyer, say half of it is appellate
4 law and half of it is litigation.

5 A If it was clear that he was in two separate
6 positions doing those, then he would need to be reported as
7 two separate pay items.

8 Q And so if he is only paid \$10,000 a month, what
9 would be his reportable compensation under this rubric?

10 A I can't follow along with your hypothetical --

11 Q So he's an attorney working 80 hours a week. Half
12 the time he's an appellate lawyer, half the time he's a
13 litigator, two different titles, still paid \$10,000 a month.

14 A That sounds like that would be classified as two
15 full-time positions. One would be -- and if he was earning
16 10,000 for the 80 hours, the agency and CalPERS would work
17 together to -- again, if he's working in two positions, it
18 needs to be clearly denoted on the pay schedule reported as
19 if there are two part-time positions, reported as two
20 part-time positions, and if it's one position, then the 40
21 hours and the 5,000, if I'm following your numbers correctly,
22 would we considered overtime and the hours worked for the --
23 the hours paid with the other position would be reported.

24 THE COURT: Okay.

25 MR. JENSEN: No further questions.

1 THE COURT: Thank you very much. The witness may
2 step down. She is excused.

3 MR. JENSEN: Actually, after the witnesses leave,
4 I'd like to speak to counsel before we begin this afternoon.

5 MR. JENSEN: Okay.

6 THE COURT: We're off the record.

7 (Recess)

8 THE COURT: Let's go of back on the record. The
9 witnesses have left. Mr. Levin, you asked me to take a look
10 again at your renewed motion to exclude Mr. Malkenhorst's
11 expert witnesses. As I understand, there are three. Two of
12 them have -- two of them worked for other cities or worked
13 with other cities and want to discuss practices, and other
14 cities that appear to be similar to the practices at issue
15 with Vernon with respect to Mr. Malkenhorst, and the third
16 witness appears to be someone who used to work for CalPERS;
17 is that correct, Mr. Jensen?

18 MR. JENSEN: Yes, your Honor.

19 THE COURT: All right.

20 MR. JENSEN: The expert testimony with regard to
21 the -- to the City managers, it is more broad and
22 generalized, but it really does inform the issues in this
23 case and it is --

24 THE COURT: Well, when you say "inform the issues in
25 this case," neither of those witnesses has any personal

1 experience with the City of Vernon or with Mr. Malkenhorst;
2 is that correct?

3 MR. JENSEN: They have personal awareness of the
4 situation for many years. Mr. Malkenhorst was well-known and
5 his situation was well-known.

6 THE COURT: They don't have any personal knowledge?

7 MR. JENSEN: They don't have any percipient
8 knowledge of -- they weren't employed by the City of Vernon
9 at that time or afterwards, actually.

10 THE COURT: I'm looking at the designation and the
11 subject matter of their testimony is going to be what common
12 practices are in their cities with respect to employees
13 holding multiple positions or having multiple duties. Is
14 that the subject matter of their testimony?

15 MR. JENSEN: That's part of it, but also the
16 allocation of costs of different departments and that's part
17 of what a City manager does is allocate costs across
18 departments. It's one of the basic commonalities of these
19 Cities.

20 THE COURT: All right. Okay. I understand that,
21 and I can see that there is a possibility that there will be
22 probative information offered in the course of that
23 testimony. I can't say what weight it will carry at the end
24 of the day, but I'm not going to exclude it.

25 MR. JENSEN: Thank you, your Honor.

1 THE COURT: With respect to the former employee of
2 CalPERS, I've got more problems with that. You continually
3 requested that I restrict Ms. Jimenez to testifying not as to
4 what CalPERS does, but as to what she did with respect to
5 Mr. Malkenhorst and the expert that you want to offer has
6 nothing to say about Mr. Malkenhorst; is that correct? In
7 fact, he left CalPERS as an employee before any of this came
8 up.

9 MR. JENSEN: He was there during the 1995, '6
10 review, but he has no personal knowledge of CalPERS and your
11 Honor, it's not essential. I mean, I'm not trying to just
12 blot the record. I think if there's questions about how
13 they -- I mean, how -- the real issue is are these employees
14 directed to follow specific procedures.

15 THE COURT: And what your witness will be able to
16 say is when he was there, he was told to follow certain
17 procedures, and we're not going to know whether those
18 procedures were in place at the time the work was done on
19 Mr. Malkenhorst's final compensation determination at this
20 case, will we?

21 MR. JENSEN: That's right because he was not
22 there.

23 THE COURT: If there is no offer of proof as to the
24 usefulness of that information, I'm going to exclude that.

25 MR. JENSEN: Okay, and just let me make the offer of

1 proof just for these purposes is that I do believe that that
2 agencies have -- are limited to the positive -- law and
3 positive authority granted to them, and that CalPERS is
4 charged with performing its duties and responsibilities under
5 the Public Employee's Retirement Law which is in statute and
6 government code section 20,000 and subsequent, and that in
7 order to follow the statutory authority and limitations that
8 are in that code section, CalPERS is supposed to establish
9 rules and regulations under the code of California
10 regulations and there's a process by which they are supposed
11 to go through to enact -- enact policies and procedures and
12 resolutions.

13 THE COURT: Regulations?

14 MR. JENSEN: Regulations. I'm sorry. Thank you,
15 your Honor. And so those -- that official adoption of
16 regulations is after public comment and it is -- has the
17 force of law based on an interpretation of the government
18 code. However, in this case when individuals are not
19 applying either regulations or applying the plain meaning of
20 statutes, then those interpretations are not entitled to any
21 discretion. They're not entitled to being given any higher
22 level of determination than any other court.

23 THE COURT: Okay. Let me stop you there. This
24 witness, Ms. Jimenez, testified as to what statute she
25 applied and what regulations she applied, and if you believe

1 that they call for different practices or conclusions that
2 she used or approved, you may certainly brief that in your
3 closing brief. I can read a statute. You'll tell me what it
4 means. I'll see whether I think you are right.

5 MR. JENSEN: And your Honor, I wasn't trying to say
6 that in the least. What -- basically what I'm saying is that
7 there is -- in law there is this deference paid by certain
8 administrative determinations, and the deference paid should
9 be the deference of your Honor, not the deference of an
10 employee who is not following established regulations and
11 law.

12 THE COURT: I'm just saying that this former CalPERS
13 employer -- employee rather is not going to be of assistance
14 here.

15 MR. JENSEN: And your Honor, I -- I understand your
16 ruling and respectfully, you know, disagree, but I will
17 accept that.

18 THE COURT: If you can tell me how -- tell me how
19 that's going to help me make a decision.

20 MR. JENSEN: And your Honor, actually, I think I
21 just articulated it and I defer to your -- I respect and
22 defer to how closely you've been paying attention to this and
23 following this and understanding this. So I'm -- I am -- I
24 respectfully withdraw Mr. Niehaus.

25 THE COURT: Okay. Then we will have two experts?

1 Is that this afternoon?

2 MR. JENSEN: No. This afternoon we have -- we
3 have -- we have requested a collateral estoppel evidentiary
4 hearing, and in addition to that, these two attorneys who are
5 coming in were involved in the 2005, 2006 determination.
6 They submitted information to CalPERS in that prior process,
7 and they received the determination from CalPERS at that time
8 2005, 2006; and so part of it is that -- that they understood
9 there to be a final resolution, but also part of it is that
10 CalPERS was on notice at that time and without respect -- I
11 mean, irregardless of whether estoppel and res judicata
12 apply, which we believe they do, but irregardless of that
13 CalPERS was fully informed at that time and reached a
14 determination and there has been no new factual evidence that
15 has been developed in this hearing at the close of CalPERS
16 case which should change that prior decision.

17 There has been words said into a record but there's
18 been no new facts, and even as of the letters that we have
19 seen in 2002, there's been nothing developed since then. So
20 there's been no reason to go forward with this reduction in
21 his pension.

22 THE COURT: All right. Now, as I discussed, I
23 think, both of the motions in limine rulings and the
24 prehearing conference discussions, whether -- it's conceded,
25 is it, not that CalPERS made a prior determination as to

1 Mr. Malkenhorst's benefits and has now recalculated it and
2 changed it?

3 MR. JENSEN: Correct.

4 THE COURT: And where it's prior determination as a
5 collateral estoppel effect or res judicata effect or any
6 other preclusive binding effect is a matter of law, and I am
7 very interested to hear why the testimony of today's
8 witnesses is relevant to determining that question of law.

9 MR. JENSEN: Well, I think what -- what was not
10 established earlier is the evidence that was presented in
11 that 2005, 2006 process, and there is -- there is not just
12 the documents that we have, but there is additional evidence
13 and we understand, communications between these witnesses and
14 CalPERS regarding this Matter and so it's not just a question
15 of law. It's also a question of what -- what -- what facts
16 were -- were presented.

17 There is issues that CalPERS has addressed that --
18 that they're not bound to prior determinations of law, but
19 yet -- and this is part of the legal question, but that there
20 is no statutory authority to reopen cases in the PERL, and so
21 their continuing oversight or continuing jurisdiction is not
22 equivalent to providing them legal authority to open. That's
23 the legal open but the factual issue is whether there's any
24 new facts that have been developed since that period that
25 would allow them to reopen, and I think that we have to go --

1 your Honor, respectfully trying to develop -- I'm not trying
2 to intrude on the legal questions involved because that is --
3 that is -- you know, those are your determinations, but as
4 far as the percipient witness's that were providing
5 information to CalPERS, I think that those are valid
6 inquires.

7 THE COURT: Mr. Levin?

8 MR. LEVIN: Your Honor, I'm not quite sure I
9 understand the offer of proof. I heard a few words that call
10 into question the relevance of the testimony. I heard
11 discussion of notice -- that CalPERS was put on notice of
12 certain facts in 2005 or 2006, but there's no indication that
13 whatever that notice was, was relevant to what Ms. Jimenez
14 and CalPERS did in 2012. I also heard a discussion of the
15 intent to have the witnesses discuss their impressions. I
16 don't know how the impressions of these witnesses that were
17 formed in 2005 or 2006 would be relevant to what CalPERS did
18 in 2012.

19 There is no dispute that there was a determination.
20 Clearly, there is an issue of law that has been raised and
21 fully briefed as to whether that determination is binding and
22 whether CalPERS has the authority to recalculate, and that is
23 as pure an issue of law as I can imagine. We have a
24 determination. I mean, it's -- it's in here. It's in the
25 exhibits. It can certainly be entered into evidence if it

1 hasn't already. Ms. Jimenez testified to it. So I don't get
2 it.

3 THE COURT: Ms. Jimenez testified as to the body of
4 information provided by the City of Vernon on which she --
5 that she analyzed -- that her unit analyzed on which they
6 base their determination. Is it your position, Mr. Jensen,
7 that it's the same body of information that was relied on
8 years prior and that there's nothing added?

9 MR. JENSEN: That is my -- that is my contention but
10 I believe that -- that we have -- we have to present some
11 evidentiary basis for that through -- through the testimony
12 of the percipient witnesses who -- they are attorneys but
13 they're the only ones that -- that is available to us that
14 would have been involved in that presenting the information.
15 So my understanding is we -- is that -- well, I think they're
16 the same facts therefore, res judicata applies and collateral
17 estoppel.

18 THE COURT: Leave the issues alone.

19 MR. JENSEN: But if they're different issues,
20 then -- then there may be an argument that, you know, new
21 facts have come to light or something like that, and
22 actually, that was really what Ms. Jimenez's testimony was is
23 that -- you know, that she was relying on these ADP reports
24 or whatever.

25 MR. LEVIN: Your Honor, --

1 THE COURT: Mr. Levin, is it your position that
2 there was some -- Ms. Jimenez testified as to the exhibits
3 that she relied on.

4 MR. LEVIN: Right.

5 THE COURT: The City resolutions, ordinances, pay
6 schedules, et cetera. Is it your position that there was a
7 different body of information provided to the prior staff at
8 CalPERS when they made their 2005 determination?

9 MR. LEVIN: Yes. If I can explain, I don't think
10 any of the resolutions or ADP records or all those materials
11 that came from the audit in 2010 were in CalPERS in 2005,
12 2006. So I believe Ms. Jimenez said there were no new facts
13 about Mr. Malkenhorst's employment, but the whole
14 recalculation process was brought about by the audit in the
15 delivery of, you know, 15,000 pages or whatever the number
16 was to CalPERS. So these new witnesses won't be able to say
17 what CalPERS did or didn't have in 2005 and 2006. Unless
18 they're going to say, oh, I sent all of these resolutions to
19 CalPERS at that time, but I see no indication of that.

20 THE COURT: What are they going to say?

21 MR. JENSEN: You know, they are not my controlled
22 witnesses. So there's an intermediary between the witness
23 and I. So my original understanding from them when I talked
24 to them was that they presented all of these issues and they
25 presented some resolutions and some underlying evidence to

1 CalPERS in response to their inquiry, and I understand that
2 the City also provided additional documents to CalPERS or
3 they were under CalPERS' control of some how and then the
4 City -- and then CalPERS made a final determination on these
5 multiple duties, single job, single pay rate issue. That's
6 my understanding and it was a final decision --

7 THE COURT: The effective -- when you say the word
8 "final," the legal effect of that is at issue here.

9 MR. JENSEN: Yeah. I actually -- how about -- let
10 me describe the factual background. It has some legal
11 terminology in it. It was a formal contested process.

12 THE COURT: Yes, and you say it was an adjudication
13 and certainly that's going to be the subject of your briefs
14 and it already has been.

15 MR. JENSEN: Right. I'm not trying to litigate that
16 here. I'm trying to articulate that the underlying scenario
17 or jurisdiction in which these facts and law were presented
18 to that 2005, 2006 process. It wasn't in an informal
19 process. It was a clearly initiated contested evidentiary
20 process, and I think that the matters that were in dispute in
21 that and the evidence that was presented is --

22 THE COURT: And wasn't it done through
23 correspondents and telephone conversations and the like?
24 There was not a hearing.

25 MR. JENSEN: There was no -- there was no -- there

1 was no OAH hearing. There was no formal testimonial hearing
2 and -- but the law says -- well, that's a legal question.

3 MR. LEVIN: Your Honor, to answer the question I
4 believe you were asking, the administrative appellate process
5 never got to the SOI or accusation stage.

6 THE COURT: Right, and I believe everybody has
7 agreed as to that.

8 MR. JENSEN: And your Honor --

9 THE COURT: One of your two witnesses this afternoon
10 is threatening not to appear?

11 MR. JENSEN: Yeah.

12 THE COURT: All right. We'll here the first
13 witness.

14 MR. JENSEN: Okay.

15 THE COURT: And I may decide during the course of
16 that testimony to limit the scope of it depending on whether
17 I think what's being offered is relevant to the issues to be
18 determined in this case. Let's --

19 MR. JENSEN: And your Honor, procedurally, this is
20 kind -- I would like to kind of segregate this if possible as
21 being kind of a -- to the extent that there can be the
22 equivalent of a collateral estoppel threshold hearing.

23 THE COURT: As Judge Rovner already ruled, it's all
24 going to be considered together and it will be part of my
25 proposed decision.

1 MR. JENSEN: Right, and your Honor, I agree with
2 that. I'm trying to articulate my position in case this goes
3 up on appeal just so that I reserve those rights.

4 THE COURT: You can put your evidence on in whatever
5 order you think is most advantageous to your case. We're
6 going to break for lunch. Let's make it 1:45 when we get
7 back. Thank you.

8 (Recess)

9 THE COURT: Let's go back on the record. Mr. Levin,
10 CalPERS rests?

11 MR. LEVIN: Yes, your Honor.

12 THE COURT: Your case, Mr. Jensen.

13 MR. JENSEN: And first, your Honor, I want to
14 reiterate my motion to dismiss on the various grounds.
15 Charter City collateral estoppel, res judicata, that CalPERS
16 fails in state facts in which they may proceed, and the other
17 points and authorities that we have submitted to the Court.

18 THE COURT: Those motions are pending.

19 MR. JENSEN: And I also want to reiterate the other
20 motion to strike and the demurrer on those same grounds.

21 THE COURT: Okay.

22 MR. JENSEN: Thank you, your Honor, and there is an
23 issue which there is a witness that Mr. Yim and I need to
24 discuss with the court confidentially about a matter that is
25 unrelated to this issue but it is related to the

1 attorney-client relationship.

2 THE COURT: I see and you're asking for everyone to
3 be excluded from the courtroom?

4 MR. JENSEN: Yes, sir.

5 THE COURT: Including counsel for CalPERS?

6 MR. JENSEN: Yes. I don't think they would have
7 any -- any interest in this issue which is totally collateral
8 to anything to do with the pension.

9 MR. LEVIN: Your Honor, I would ask at least a
10 general description of what is going to be discussed. Are
11 attorney-client communications going to be revealed to the
12 Court? Of course we don't need to be present for that.

13 MR. JENSEN: Actually, we would ask to exclude
14 Ms. Aspinwall at this time as well. It's a personnel matter.

15 THE COURT: A City personnel matter?

16 MR. JENSEN: Yeah. It would be a City personnel
17 matter. Well, it's not a City -- yeah. It would have been
18 discussed in closed session in the City, and actually, it's
19 not -- not with this witness. So I don't have all of the
20 facts, but she is supposed to be here right now.

21 THE COURT: And this concerns a witness who is
22 supposed to be present in the court now and who is not?

23 MR. JENSEN: Yes, but I think she is here because
24 she has called me. May I check in the hall?

25 THE COURT: Okay.

1 MR. JENSEN: And your Honor, we have previously
2 discussed this with Mr. Yim who's counsel for the City.
3 There's somebody down here. I've never met with this
4 witness.

5 THE COURT: Why don't you check?

6 MR. JENSEN: Yeah. Can I check in the conference
7 room?

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

9 (Recess)

10 THE COURT: Let's go on the record.

11 MR. JENSEN: Your Honor, I would just like to make a
12 motion to exclude not only the witnesses, but the other
13 attorneys other than Mr. Yim and the witness, Ms. Feldman, to
14 discuss a confidential personnel matter that is related to
15 the attorney-client privilege. It's unrelated to any of the
16 facts of this case, but it is informative of some of the
17 relationships, legal relationships.

18 THE COURT: That may be, but I'm not going to
19 exclude a party or party's counsel from the hearing. If this
20 is not related to what we are here to consider today, then it
21 should be done outside the courtroom and not on the record.
22 If there's a separate side motion that has to be made, you
23 can do that in writing. I can let you do that.

24 MR. JENSEN: Okay. Can I do that in writing now?
25 Because it is -- it is present in this case and it may also

1 involve Mr. Friedman because Mr. Friedman, do you represent
2 Loeb?

3 MR. FRIEDMAN: I represent Ms. Aspinwall, yes.

4 MR. JENSEN: Okay. I'm just doing the best I can
5 for everybody, your Honor.

6 THE COURT: I understand, but I'm conducting a
7 hearing that is on the record and that is open to the public.

8 MR. JENSEN: Yes. Do we have a sidebar or chambers
9 issue where to preserve the privileges that need to be
10 preserved?

11 THE COURT: Has somebody raised a privilege
12 objection?

13 MR. JENSEN: I think that in my understanding of the
14 discussion of the relationship, it would have been a closed
15 session matter, and that's the way that I understand it. So
16 it is --

17 THE COURT: If you need some time to discuss
18 something with Mr. Yim and any other counsel and this
19 witness, I'll give you some time before we open the record
20 this afternoon.

21 MR. JENSEN: Well, Mr. Yim, you understand the
22 situation. How would you wish that we proceed?

23 MR. YIM: I'm comfortable with all the counsels
24 being present and addressing that issue.

25 MR. JENSEN: That -- that -- that might -- that

1 might be the best way to do it then, just have counsel
2 present and then if you can seal a certain part of this
3 record. I don't know --

4 THE COURT: I can entertain a motion to seal a part
5 of this record. We'll see about that.

6 MR. JENSEN: Okay.

7 THE COURT: Are you moving to exclude witnesses?

8 MR. JENSEN: Yes, your Honor. I move to exclude the
9 witnesses and any non-counsel.

10 THE COURT: I've already told you that the party
11 representative for CalPERS can remain during the course of
12 the hearing.

13 MR. JENSEN: Then as long as we seal the record and
14 exclude the other witnesses --

15 THE COURT: I can't guarantee I'm going to seal --

16 MR. JENSEN: Okay.

17 THE COURT: -- a portion of the record, but I will
18 entertain a motion to seal a portion of the record.

19 MR. JENSEN: Thank you, your Honor. So I move to
20 exclude the witnesses and then anticipate a motion to seal
21 this part of the transcript.

22 THE COURT: All right. Well, we all live in
23 anticipation. Are any witnesses in the courtroom?

24 MR. JENSEN: Or any non-attorneys.

25 THE COURT: Members of the public are perfectly

1 welcome in this courtroom. If there's a witness in the
2 courtroom who has not testified, I will exclude the witness.

3 THE WITNESS: Except for me?

4 THE COURT: You're about to testify.

5 THE WITNESS: You just said all the witnesses. So I
6 was going to get up and walk out.

7 THE COURT: Is there anyone in the courtroom who is
8 going to be testifying?

9 MR. JENSEN: And Ms. Aspinwall may testify so maybe
10 you can ask her to step out for a moment.

11 THE COURT: Step out, please. All right.

12 Mr. Jensen, you have reserved, as we discussed at the
13 beginning of the hearing, your right to make an opening
14 statement to this point. Do you wish to make an opening
15 statement?

16 MR. JENSEN: And your Honor, the way I formulated
17 this is, this is part of our collateral estoppel, evidentiary
18 hearing.

19 THE COURT: It's all one hearing.

20 MR. JENSEN: Then I'm going to waive the opening
21 argument.

22 THE COURT: You may call your first witness.

23 MR. JENSEN: Thank you. I'd like to call Carla
24 Feldman.

25 THE COURT: Please rise. Raise your right hand.

1 CARLA FELDMAN,
2 called as a witness, and having been first duly sworn by
3 the Court, was examined and testified as follows:

4 THE WITNESS: I do.

5 THE COURT: Thank you. Have a seat. State and
6 spell your name, please.

7 THE WITNESS: It's Carla Feldman, F-e-l-d-m-a-n.

8 THE COURT: Thank you very much.

9 THE COURT: Go ahead, Mr. Jensen.

10 MR. JENSEN: Thank you, your Honor.

11

12 DIRECT EXAMINATION

13 BY MR. JENSEN:

14 Q Good afternoon, Ms. Feldman.

15 A Good afternoon.

16 Q When did you first become acquainted with
17 Mr. Malkenhorst?

18 A I don't know. It was a long time ago, but I'm
19 terrible with dates. So I don't know.

20 Q In what capacity did you become acquainted with
21 him?

22 A I was engaged by the City of Vernon to provide labor
23 and employment counseling.

24 Q And were you an attorney at that point?

25 A Yes.

1 Q And who were you working for?

2 A I was a partner with Loeb & Loeb at the time.

3 Q And what was the matter in which you were engaged
4 to -- to represent Mr. Malkenhorst and the City of Vernon?

5 MR. LEVIN: Objection. Misstates testimony.

6 THE COURT: Overruled. You may answer.

7 THE WITNESS: I think it might have something to do
8 with redoing their policies and procedures, but I'm not sure
9 the first matter that I was assigned.

10 BY MR. JENSEN:

11 Q Did you ever appear as defense counsel in a
12 litigated matter representing Mr. Malkenhorst and the City of
13 Vernon?

14 A Yes.

15 Q And what was that matter?

16 A There were several. I really only remember one
17 right now.

18 Q Tell us what the nature of your representation of
19 Mr. Malkenhorst was?

20 A I defended him because he was an individually named
21 defendant in a sexual harassment case.

22 MR. JENSEN: And your Honor, this is the reason that
23 I wanted to preserve this part of the record for potential
24 sealing. So I just wanted to make that clear.

25 THE COURT: All right. You should make a note of

1 what portion of the record you wish to seal, and you can make
2 a motion and I will entertain it.

3 MR. JENSEN: Okay. So is there some point in the
4 transcript that I can refer to so that we can seal there
5 after?

6 THE COURT: Sure. Testimony from two o'clock on
7 today.

8 MR. JENSEN: Okay. Thank you, your Honor.

9 THE COURT: Your welcome.

10 BY MR. JENSEN:

11 Q So Ms. Feldman, can you tell me, were you personally
12 representing Mr. Malkenhorst?

13 A Yes. I represented Mr. Malkenhorst and the City in
14 that case.

15 Q And what was the approximate date of that?

16 A I don't know. I'm sorry. I'm really terrible with
17 dates. I say something was two months ago and then my
18 husband says it was two weeks ago and it was yesterday. I'm
19 just really bad with time estimation.

20 Q Do you remember the sequence of events? What
21 happened before and what happened afterwards?

22 A I'm not sure I understand your question.

23 Q Do you recall whether the pension issue arose after
24 the sexual harassment issue?

25 A I think it was after.

1 Q The pension was after?

2 A I think so.

3 Q Okay, and were you an attorney in the employe of
4 Loeb at the time you represented Mr. Malkenhorst in the
5 sexual harassment case?

6 A I certainly was a partner at Loeb. I have always
7 been trained that partners weren't fully employed of anyone
8 except themselves. So I was a partner of Loeb at the time
9 for sure.

10 Q Okay, and I apologize. I associated in the --
11 within the firm or partnership of Loeb & Loeb attorneys at
12 law?

13 A Yeah.

14 Q Did you ever thereafter send a letter to
15 Mr. Malkenhorst that you were no longer representing him?

16 A I don't know.

17 Q Is it -- how many matters did you represent him as
18 designated attorney of record that you recall?

19 A I really only recall that one matter right now
20 although I think there were more.

21 Q And did you meet personally with Mr. Malkenhorst?

22 A Yes.

23 Q And did Mr. Malkenhorst tell you directly
24 information in the attorney-client relationship?

25 A Definitely.

1 Q And did -- were those matters -- I'm not inquiring
2 into the subject matter of those. Were those matters
3 considered to be confidential and privileged?

4 A I think so.

5 Q So do you recall when the pension matter first
6 arose?

7 A I don't.

8 Q What is your first recollection of Mr. Malkenhorst's
9 difficulty getting his -- what he considered to be his
10 correct CalPERS pension?

11 A I don't recall that being what I learned of it, but
12 I really -- that time, I really don't. My first recollection
13 is the City attorney asking me if our firm could take a look
14 at this.

15 MR. JENSEN: And your Honor, at this point, I think
16 as long as we don't revisit those issues about the personnel
17 matters and the sexual harassment issues, I'd like to unseal
18 the record.

19 THE COURT: Just for the record, it's not yet
20 sealed.

21 MR. JENSEN: Yeah, yeah, but the motion to propose
22 that section of it so that this is not sealed.

23 THE COURT: Okay.

24 MR. JENSEN: And do you mind if I get my paralegal
25 to come in and help me?

1 THE COURT: You may do that.

2 MR. JENSEN: And then there's the testifying witness
3 that I will exclude?

4 THE COURT: Yes. Leave the witness out, bring your
5 paralegal back. Let's go off the record.

6 (Recess)

7 THE COURT: Let's go back on the record.

8 MR. JENSEN: Thank you, your Honor.

9 BY MR. JENSEN:

10 Q Ms. Feldman, can I direct your attention to one of
11 the exhibit books in front you?

12 MR. JENSEN: May I approach and help the witness?

13 THE COURT: You may.

14 BY MR. JENSEN:

15 Q I will get these out of your way. I'd like to
16 direct your attention to the exhibit that's been marked as
17 VV.

18 A Okay. I have it in front of me.

19 Q Do you recognize this document?

20 A Vaguely.

21 Q Do you recall any -- can I ask to you familiarize
22 yourself with this document?

23 A Yes.

24 Q And were you involved in reviewing this matter, in
25 this letter rather?

1 A I was definitely the partner at Loeb & Loeb who --
2 who is what we call the originating attorney for the City of
3 Vernon's business. I definitely reviewed some document from
4 CalPERS and I don't know a lot about benefits law. So I'm
5 not sure if it was this letter or another one, but I reached
6 out to people in our benefits group and said, is this the
7 kind of thing that we can handle. That's basically what I
8 remember about the -- the assignment.

9 Q And who did you reach out to?

10 A Actually, one of the guys that's the head of our
11 litigation department because I wasn't sure if there was
12 anybody at the firm that might be qualified to handle it, and
13 I think he told me to reach out to Marla Aspinwall, but I'm
14 not really positive about that either but at some point, I
15 reached out to Marla.

16 Q And was there any separate engagement letter
17 regarding this matter that you recall for legal services
18 provided?

19 A I don't know. I don't think so, but I don't know.

20 Q And do you recall the response of Marla Aspinwall to
21 your reaching out to her?

22 A I don't. I didn't realize that was her sitting in
23 the room today. I don't recall.

24 Q What is the -- do you remember what you did next?

25 A Well, the reason I remember something about either

1 this letter or something else is that I definitely left some
2 kind of a message for a woman named Alinda Heringer or
3 something like that. I did that, I think, even before I
4 reached out to Marla to just say we received some letter and
5 we're going to address it, and please call me back.

6 Q So did you -- did you make that response within 30
7 days of receiving this letter?

8 A I definitely did it within 48 hours of receiving
9 some letter from the client, but I don't know if it was this
10 letter, and I don't know how much time elapsed before they
11 gave me the letter. So I don't know.

12 Q And Ms. Feldman, what was your task when you were
13 given this letter?

14 A I think my task was to find out if we had someone
15 who was competent to respond to it.

16 Q Was it your -- was it your understanding that this
17 letter was incorrect and needed to be addressed in some
18 manner?

19 A I don't know if I had an understanding about it. It
20 was that the City got this letter and I think we need to
21 respond and can your firm do it, and so my immediate task was
22 to figure out whether we had somebody that could take it on
23 and I knew I was not that person.

24 Q Great, and let me just turn your attention to XX in
25 that --

1 A Okay.

2 Q -- binder in front of you. Can you take a moment to
3 review this document, and let me know when you're ready.

4 A I've seen this letter before and if that was your
5 question. I'm sorry.

6 Q You have seen this letter before?

7 A Yes.

8 Q And I just want to turn your attention to this on
9 the first page where it says "re-notice of appeal"?

10 A Yes.

11 Q What was your understanding of that?

12 A I mean, I know what an appeal is because I've argued
13 lots of cases in the courts of appeal, but I don't know what
14 my understanding of it was when I saw that. I don't know.

15 Q Did you believe you were filing a legal pleading or
16 the equivalent with CalPERS?

17 A I don't know. I didn't -- Marla was handling it and
18 she's a benefits person, and so if it said notice of appeal,
19 I certainly didn't disabuse myself of the notion that it was
20 an appeal, but since I'm not familiar with the process that
21 you undergo and in the CalPERS environment. I mean, I guess
22 when I saw it. I didn't disagree with the fact that it was a
23 notice of appeal.

24 Q Can I --

25 A What I remember most about it is that I didn't like

1 the fact that the date printed over the top of the firm's
2 logo because it was our new letterhead at that point. So
3 that's how I knew I saw it.

4 Q Can I turn your attention to page three of that
5 letter?

6 A Yes.

7 Q There's a sentence here which I'll read. It says
8 "The City administrator's job description is included in the
9 attached City of Vernon's codes, attached hereto for your
10 convenience as Exhibit C and pursuant to those codes,
11 incorporates a number of different job titles and duties all
12 of which were included in the single full-time job of City
13 administrator." Did you have any discussions or
14 communications that led you to be informed that that is a
15 correct statement?

16 A I know they are some kind of a special City in that
17 they're a charter City or some other, you know, a regular
18 City. So there were a lot of times that we referred to there
19 City codes. I don't remember doing that at all in connection
20 with this particular matter. I may have, but I don't
21 remember it if I did.

22 Q Now, it says Exhibit C. Were you under the
23 understanding that there were exhibits attached to this
24 letter?

25 A I think so.

1 Q And probably Exhibit A and B as well?

2 A I don't know about that, but I remember when I
3 reviewed the letter that I didn't like it because it had the
4 person's name on the header that was over our firm letterhead
5 thing that I seem to recall that there were -- there were
6 exhibits. I don't remember what they were, but I feel fairly
7 confident that the letter had exhibits.

8 MR. JENSEN: And your Honor, this is already in
9 evidence. Is that --

10 THE COURT: It's been marked. I believe it was
11 admitted.

12 MR. JENSEN: I think it was admitted. I don't know
13 if it's appropriate to make that adjustment that this
14 isn't -- there were additional exhibits attached to this
15 letter which were not provided in the discovery.

16 THE COURT: It was admitted as it is, as it appears.

17 MR. JENSEN: Thank you, your Honor.

18 BY MR. JENSEN:

19 Q I'd like to turn your attention to Exhibit YY which
20 is the next exhibit. Can you take a moment to familiarize
21 yourself with this document?

22 A Okay.

23 Q Did you review these correspondents from CalPERS
24 around this time?

25 A I don't recall that one way or the other. I don't

1 know.

2 Q Let me ask you if you recall -- let me refer to you
3 down to the fourth paragraph. It says -- fourth paragraph
4 starts "also according to a letter." Well, just read that
5 paragraph. It goes onto the next page.

6 A Okay. I see it.

7 Q Do you recall any communications to you regarding
8 this issue about Mr. Malkenhorst performing multiple duties
9 within the single position of City administrator?

10 A I don't. I'm sorry.

11 Q You don't. Okay. Can I turn your attention to
12 Exhibit triple A. Can you take a moment to familiarize
13 yourself with this document?

14 A Yes.

15 Q And were you involved at all in crafting this
16 response to CalPERS?

17 A I definitely was involved in trying to get Alinda
18 Heringer to respond to our outreaches because we weren't
19 getting any response from CalPERS. I don't think I was
20 involved in crafting this letter.

21 Q And what sort of communications did you make to
22 CalPERS?

23 A Phone calls, phone calls, phone calls.

24 Q And did you provide information on those phone
25 calls?

1 A No. We were just looking for a call back.

2 Q And did you submit -- did you do any other outreach
3 -- outreach?

4 A Outreach what?

5 Q How else did you reach out to CalPERS?

6 A I didn't. Marla and I were in touch about why we
7 were not hearing back from CalPERS. So I said let me try.
8 you try. I'll try. You try, but I didn't get in touch with
9 anyone.

10 Q Was there anyone else involved that you're aware of
11 who was contacting individuals in CalPERS?

12 A I'm pretty sure my assistant made a few calls also,
13 and she also took care of correcting the problem with the
14 letterhead which you can actually see who it was sent to when
15 it was under the preprinted letterhead that we were using at
16 the same time, but substantively, I don't think so.

17 Q Was there any other attorneys at Loeb that you were
18 aware of that you were reaching out to?

19 A I know that Jon Dirayani, D-i-r-a-y-a-n-i helped --
20 it's J-o-n, not J-o-h-n, helped do some research and he was
21 in my group. So I don't remember exactly what he did, but he
22 did some research.

23 Q Any other attorneys that you remember or partners?

24 A I don't think so, but I don't remember any. Let's
25 put it that way.

1 Q Do you remember if former governor Davis made any
2 calls?

3 A I don't remember that.

4 Q Let me just turn your attention to the bottom of
5 page -- what is page --

6 A I'm not even sure if he was -- was he with our firm
7 at that time? I think that was when he was still in the
8 Schwarzenegger taking over era, but anyway, I'm sorry. I
9 don't know.

10 Q At the bottom of page AA3 --

11 A Uh-huh. I mean, yes. I should know better.

12 Q There is a foot note. It says "salary resolution
13 number 404 -- 8473 was attached as Exhibit B to our
14 correspondents on October 11th." Would that have been one of
15 the documents that were attached to the prior letter?

16 A I don't know if that was one of the documents, but I
17 recall that we pulled out salary resolutions, and I think
18 those were somehow exhibits to the letter, but I'm not -- I'm
19 not certain.

20 Q And I just want to turn your attention to the
21 exhibits attached to this document. Do you know how many
22 exhibits were attached to this document?

23 A I don't. I mean, other than what I see here, I
24 don't. I'm not even sure if I have ever seen this document,
25 but I don't recall it.

1 Q You don't recall this document. Okay. Let me just
2 turn your attention to Exhibit BBB.

3 A Okay.

4 Q Can you take a moment to familiarize yourself with
5 this document?

6 A Okay.

7 Q Have you seen this document before?

8 A I'm not sure.

9 Q Do you recall being informed of the resolution of
10 the process that had started with the two prior Loeb notices
11 of appeal?

12 A That was a loaded question because were there just
13 two notices of appeal because I always freak out when someone
14 asks a question like that when I'm in trial. So --

15 Q Well, do you recall how many notices of appeal there
16 were?

17 A I don't.

18 Q Do you recall what the resolution or -- do you
19 recall whether there was a resolution in this process?

20 A I recall thinking there was a resolution.

21 Q And why did you think there was a resolution?

22 A Because I think -- I think someone told me there was
23 a resolution.

24 Q And how did you understand what they told you?

25 A My understanding was that we won. I don't know

1 exactly what that means, but that is what I was told.

2 Q And did you understand it was a final
3 determination?

4 MR. LEVIN: Objection. Calls for a legal
5 conclusion.

6 THE WITNESS: I don't know.

7 THE COURT: Overruled.

8 THE WITNESS: For me, when someone says we won that
9 means we won, but I don't know. I'm not a benefits person.

10 So --

11 BY MR. JENSEN:

12 Q I'd like to turn your attention to Exhibit CCC.

13 A CCC?

14 MR. JENSEN: Your Honor, Is BBB is in in evidence?

15 THE COURT: It is.

16 MR. JENSEN: Thank you.

17 THE WITNESS: Is it CCC?

18 MR. JENSEN: Yeah. I'm sorry.

19 THE WITNESS: That's what I'm trying to figure out.

20 THE COURT: One at a time, please. Let the witness
21 finish, please. Go ahead.

22 BY MR. JENSEN:

23 Q Just turn your attention to Exhibit CCC?

24 A Okay.

25 Q Can you take a moment to familiarize yourself with

1 that?

2 A Okay.

3 Q Did you ever see this document before?

4 A I don't think so.

5 Q Were you aware of whether CalPERS increased
6 Mr. Malkenhorst's pension as a result of your efforts?

7 A Well, it was my recollection he had a certain level
8 of benefit and CalPERS said they were going to reduce it and
9 they didn't, but I'm not sure if that was really the way
10 everything, you know, sorted out. I'm not sure.

11 Q Were you aware whether they ever withheld any of the
12 higher benefits?

13 A I can't remember if they withheld it unless that's
14 the reason the City wanted to address it, or if they said
15 they were going to withhold it. I don't really remember.
16 I'm sorry. I mean, I'm not sorry. I just don't remember.

17 Q Do you -- did you -- what kind of -- what was your
18 recollection of the documentation that was sent to CalPERS in
19 support of the contentions for a higher pension?

20 A Well, my recollection was that for a period of time,
21 Marla and I tried to get someone from CalPERS to call us
22 back, and I don't know if letters went along with that or not
23 and then the City provided us with the letter that questioned
24 the level of benefit or whether he could have as many jobs as
25 he had and have the benefit and then Jon did research about

1 it and Marla wrote some letters. I can't tell you how many.
2 I don't necessarily recall the substance. It was really more
3 that I was just being kept in the loop because I was the
4 relationship partner with the client, but because I'm not a
5 CalPERS person or CalPERS or benefits person, I wasn't --
6 maybe I wasn't paying a lot of attention to the detail
7 just -- I was just paying attention to what was, you know,
8 ongoing in terms of bringing the matter to a conclusion.

9 Q I just have one further question and I forgot it.
10 So give me a moment. It skipped my mind.

11 THE COURT: Take a moment.

12 MR. JENSEN: Yes. Thank you, your Honor.

13 BY MR. JENSEN:

14 Q Oh, and how long thereafter did you continue to work
15 from -- oh, were you performing this task -- let me start
16 over.

17 Were you performing these tasks as an attorney for
18 Mr. Malkenhorst?

19 A That wasn't my understanding -- is that the person
20 from the City of Vernon said that I got this letter from
21 CalPERS and that they wanted us to look into it.

22 Q And were you aware if this matter was ever submitted
23 to CalPERS' legal office?

24 A I have some really vague recollection of the fact
25 that Marla said that because she had worked on some other

1 stuff with CalPERS that she reached out to someone in their
2 legal department, but I'm not really sure about that.

3 Q And did you ever hear any -- anything else about
4 this pension matter, why you were -- for the next several
5 years after this matter was resolved?

6 A Not other than the client being, you know, thankful,
7 but it wasn't in the specifics. It was just job well done.

8 Q And when did you first learn that there was a
9 potential revisitation of these issues?

10 A Well, I'm not sure if it was when I received a call
11 from your office or if I received a call from Mr. Freidman
12 because somebody was asking about files I might have in my
13 possession, and I didn't have any. So I don't remember if
14 Loeb reached out to me. I know people at my other firm
15 Morgan Luis also received inquires, maybe from you. I'm not
16 sure saying that -- I don't even know. That somebody wanted
17 to know where my file was and did I have it with me.

18 Q And that was in the -- that was in the last two
19 years?

20 A Oh, yeah.

21 MR. JENSEN: Your Honor, I have no further questions
22 for Ms. Feldman.

23 THE COURT: Okay. Thank you. Mr. Levin, any
24 questions?

25 MR. LEVIN: No questions, your Honor.

1 THE COURT: Mr. Yim?

2 MR. YIM: No questions.

3 THE COURT: Thank you very much. Thank you. You
4 may step down.

5 MR. JENSEN: And Ms. Feldman, if you would like a
6 witness fee?

7 THE COURT: We're off the record.

8 (Recess)

9 THE COURT: Mr. Jensen, your next witness.

10 MR. JENSEN: Excuse me. Before we do that, I'd like
11 to move to seal the transcript from 2:00 p.m. to 2:00 p.m.
12 for the reasons that we disclosed.

13 THE COURT: Any objection?

14 MR. LEVIN: No objection.

15 THE COURT: Mr. Yim?

16 MR. YIM: No objection, your Honor.

17 THE COURT: I'll consider that. It's under
18 submission.

19 MR. JENSEN: Thank you, your Honor.

20 THE COURT: Now you may call your next witness.

21 MR. JENSEN: I'd like to call Marla Aspinwall.

22 THE COURT: Ms. Aspinwall, raise your right hand.
23

24 MARLA ASPINWALL,

25 called as a witness, and having been first duly sworn by

1 the Court, was examined and testified as follows:

2 THE WITNESS: Yes.

3 THE COURT: Thank you. Have a seat. Please spell
4 your name for the reporter.

5 THE WITNESS: Marla, M-a-r-l-a. Aspinwall,
6 A-s-p-i-n-w-a-l-l.

7 THE COURT: Thank you very much. Go ahead,
8 Mr. Jensen.

9

10 DIRECT EXAMINATION

11 BY MR. JENSEN:

12 Q Ms. Aspinwall, where were you employed -- partnered
13 with in July of 2005?

14 A Loeb & Loeb.

15 Q What was your position at Loeb & Loeb?

16 A I think it was special counselor -- counsel, not
17 partner.

18 Q So you were an attorney?

19 A Yes. I'm an attorney.

20 Q And do you recall when you first heard about Bruce
21 Malkenhorst, Senior?

22 A No.

23 Q Do you recall Carla Feldman bringing a pension
24 matter to your attention regarding Vernon City employee,
25 Bruce Malkenhorst?

1 A Yes.

2 Q And what was your recollection of the initial
3 entrance issue that was brought to your attention?

4 A We represented the City. They had -- there were in
5 negotiations with Malkenhorst. There was an issue that
6 CalPERS had raised with respect to his retirement benefit,
7 and she wanted me to contact CalPERS to see if we could
8 resolve that issue.

9 Q And do you recall the date approximately of when
10 that occurred?

11 A No.

12 Q Was Mr. Malkenhorst still employed with the City at
13 the time?

14 A I don't know. I think maybe not.

15 Q I want to direct your attention to the exhibit
16 binder in front of you.

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

18 THE COURT: You may.

19 BY MR. JENSEN:

20 Q Ms. Aspinwall, may I approach?

21 A Uh-huh.

22 Q I'm going to point you to Exhibit VV.

23 A VV?

24 Q VV. Do you recognize this document?

25 A Yes.

1 Q And what is your understanding of what this document
2 is?

3 A This document was provided to me at the beginning of
4 this matter. It was a document that had been sent to -- by
5 CalPERS explaining why it thought that Malkenhorst may not be
6 entitled to the longevity increase in his retirement
7 benefits.

8 Q And the only issue at that point was longevity? Is
9 that your understanding?

10 A I don't remember. I think that there were some
11 other issues about items included in his compensation that
12 were either -- I'm not sure if they were raised at this time
13 or later, but I think that there were some other issues about
14 what was included in compensation, the main issue being this
15 25 percent increase.

16 Q And let me turn your attention to the -- to page
17 three of VV.

18 A Okay.

19 Q Can you read that paragraph starting with
20 "however"?

21 A However, you have the right --

22 THE COURT: You can read it to yourself.

23 THE WITNESS: Yes.

24 BY MR. JENSEN:

25 Q Did you read this language at the time you received

1 this document?

2 A Yes.

3 Q And what is your understanding of the sentence that
4 reads "as stated in the regulations, an appeal should set
5 forth the factual basis and legal authorities on which it is
6 based"?

7 A That the appeal should set forth the facts and law
8 in which it's based.

9 Q And how did you go about providing -- setting forth
10 the factual basis and legal authorities for an appeal?

11 A Well, I don't recall whether what I did qualified
12 under this paragraph as an appeal. I contacted -- you know,
13 I sent a letter saying that we represented the City and asked
14 to address this issue and in that context, we -- I believe
15 that we set forth facts and legal authority for the City's
16 position that this -- that he was qualified for at least for
17 the 25 percent longevity increase. I don't really know that
18 our -- you know, that our letter fulfilled these requirements
19 as an appeal by him.

20 Q And motion to strike that answer as non-responsive
21 and different --

22 A Okay. I --

23 THE COURT: Hold on a moment. The motion is denied.
24 You may continue.

25 MR. JENSEN: Oh, did she not --

1 THE COURT: No. You may continue. Sorry,
2 Mr. Jensen.

3 BY MR. JENSEN:

4 Q Okay. She started talking again. Let me just turn
5 your attention to Exhibit XX. Do you recognize this
6 document?

7 A Yeah.

8 Q What is this document?

9 A This is a letter that I sent to CalPERS asking them
10 to reconsider this -- their determination.

11 Q And what is the -- I guess, for lack of better word,
12 subject line after the "RE"?

13 A Notice of appeal City of Vernon employer code 209.

14 Q Is this anything else?

15 A Employee B. Malkenhorst.

16 Q So did you understand that this notice of appeal was
17 filed on behalf of the City of Vernon and Mr. Malkenhorst?

18 A Well, it was filed on behalf of the City of Vernon
19 regarding Mr. Malkenhorst.

20 Q And so what was the intended benefit from this
21 letter?

22 A The intended benefit was to get them to -- to revise
23 their decision that Mr. Malkenhorst wasn't entitled to his
24 increased retirement benefit.

25 Q So who was going to be receiving the benefit of your

1 representation in this matter?

2 A Well, both Malkenhorst and the City of Vernon
3 because the City of Vernon had an interest in Malkenhorst's
4 retirement benefit being increased.

5 Q So did you represent both of those people, both of
6 those interests?

7 A Well, my understanding was that I was representing
8 the City of Vernon, and they had an interest in
9 Mr. Malkenhorst having his benefit increased.

10 Q And were you aware of Ms. Feldman's prior
11 representation of Mr. Malkenhorst in the Loeb firm?

12 A No.

13 Q How often had you worked for the City of Vernon
14 before?

15 A It's the first time I had ever worked for City of
16 Vernon.

17 Q How often had you worked for Mr. Malkenhorst
18 before?

19 A Never that I recall.

20 Q How often after this matter did you work for the
21 City of Vernon?

22 A Not that I recall.

23 Q This was the only matter on which you worked for
24 either the City of Vernon or Mr. Malkenhorst?

25 A I think so.

1 Q Did you have an engagement letter with the City of
2 Vernon?

3 A No. I wasn't responsible for that and Carla Feldman
4 was the responsible partner.

5 Q Did you have an engagement letter with Bruce
6 Malkenhorst?

7 A No. Not that I'm aware of, but again, Carla Feldman
8 was the responsible partner. So I knew nothing about the
9 engagement of what she told me.

10 Q So Carla Feldman would be -- as the responsible
11 partner, she would be the one who would establish the
12 attorney-client relationship?

13 A Exactly.

14 Q So if Ms. Feldman said she had an attorney/client
15 relationship with Bruce Malkenhorst, what is your position?

16 MR. LEVIN: Objection. Vague and not specific as to
17 time or matter.

18 THE COURT: Sustained.

19 BY MR. JENSEN:

20 Q If Carla Feldman indicated that she had an
21 attorney/client -- attorney/client relationship with Mr.
22 Malkenhorst --

23 THE COURT: I'm sorry. Indicated to this witness?

24 MR. JENSEN: What's that? It's not important,
25 anyway. Thank you.

1 THE COURT: Let's move on. Thanks.

2 BY MR. JENSEN:

3 Q So why did you use the language "notice of appeal"?

4 A I don't recall.

5 Q Have you worked in front of government agencies
6 often?

7 A I would say occasionally.

8 Q What is your -- what is your primary area of
9 practice?

10 A I specialize in executive compensation.

11 Q For which sector?

12 A Well, I represent companies and executives in the
13 negotiation and documentation of all kinds of compensation
14 arrangements. Primarily in the executive arena including
15 retirement plans and different compensation arrangements and
16 employment agreements and those types of things.

17 Q Are most of those recipients?

18 A No, not most, but yes, plenty.

19 Q What other type of plans do you work with?

20 A All kinds of retirement and deferred compensation
21 plans, incentive plans.

22 Q Have you worked in another matter that involves the
23 Public Employee's Retirement Law?

24 A I have worked on a few matters involving CalPERS.

25 Q And without inquiring into any privileged or

1 confidential material, can you give us a general idea of what
2 those matters are?

3 A You know, reviewing regulations to see whether, you
4 know, plans -- clients -- employees are entitled to benefits
5 like this or helping people -- you know, helping either
6 employees or -- or City's interpret and design retirement
7 plans. I usually work more on the corporate side of
8 structuring plans than on the litigation side. I don't do
9 very much litigation which is why I haven't had very much
10 experience with appeals.

11 Q And were there any other issues pending that you
12 were working on other than Mr. Malkenhorst's appeal?

13 A Yeah. There was another issue related to the -- as
14 I recall, there was a related issue that impacted employees
15 of the City of Vernon more broadly that it was similar to
16 this issue. It was -- it was again, a categorization of
17 employees and their entitlement to longevity increases. So
18 there was a general issue applicable to employees broadly
19 which -- which is I think, apart what interested the City so
20 strongly in the outcome of this particular matter.

21 Q And which did you spend more time on?

22 A I don't know the answer to that question. Maybe the
23 same amount of time on each. I don't know. I didn't spend a
24 lot of time on either one actually.

25 Q And was there any issue about safety classifications

1 pending at that time that you're aware of?

2 A I just don't recall.

3 Q So with reference to this letter XXX, what did you
4 do -- first, did you draft this letter?

5 A Yeah. This letter was originally drafted by Jon
6 Dirayani, and, I, you know, worked with him in the finalizing
7 it.

8 THE COURT: One moment. Just so the record is
9 clear, you mentioned 3Xs. Is that the exhibit you wanted her
10 to look at?

11 MR. JENSEN: I'm sorry.

12 THE WITNESS: 2Xs is what.

13 MR. JENSEN: 2Xs. I apologize. X, X, one.

14 THE COURT: No need to apologize. I just want a
15 clear record.

16 MR. JENSEN: Thank you, your Honor.

17 BY MR. JENSEN:

18 Q And the document we're referring to is the August
19 11th, 2005, Loeb & Loeb letter?

20 A Yes, yes.

21 Q So what did you do once Mr. Dirayani provided you a
22 draft of this?

23 A As a litigation associate, he provided the
24 preliminary draft, and then I reviewed and revised the legal
25 argument.

1 Q Did you consult with any resolutions or attach any
2 exhibits to this letter?

3 A Yeah. I think so. I definitely consulted the
4 resolutions, and I believe that there were resolutions and
5 exhibits attached.

6 Q And can you give me an idea of approximately how
7 many of them were attached?

8 A I don't remember. I would have to -- it says a copy
9 for respondents is attached. It says a copy of resolutions
10 is attached as Exhibit B at the bottom of the first page. I
11 don't really have any idea what's attached other than what's
12 written in here.

13 Q And what was your intent upon submitting this --
14 this notice of appeal?

15 A That -- that CalPERS revised its determination that
16 Malkenhorst wasn't entitled to the 25 percent longevity
17 increase.

18 Q And did you address in your letter here -- well, let
19 me turn your attention to the third page of this letter.

20 A Okay.

21 Q Do you recall any inquires regarding
22 Mr. Malkenhorst's base pay as solely -- solely for the
23 performance of his duties as City administrator?

24 A I don't remember anything about that.

25 Q Do you remember investigating or considering facts

1 or arguments regarding that he held a number of different job
2 titles and duties all of which were included in the single
3 full-time job as City administrator?

4 A Yes, I do. I didn't investigate it, but that's what
5 I was told and that's -- and I think that I told -- I think
6 that I told CalPERS that.

7 Q So where -- how did you get that information?

8 A They provided it to me. The City of Vernon provided
9 it to me.

10 Q Do you remember what kind -- how they provided it to
11 you?

12 A No.

13 Q Were documents provided to you?

14 A I don't know.

15 Q Do you recall communicating with CalPERS on the
16 phone over this period prior to submitting this notice of
17 appeal?

18 A I had a couple of calls with CalPERS, and I don't
19 remember whether they came before or after this letter.

20 Q And what were the nature of those calls?

21 A They were discussing these issues with them, telling
22 them that we were going to send this letter.

23 Q Can you -- can you recall as much as you can recall
24 what those phone calls -- what the content of those phone
25 calls? Can you tell us the content of those phone calls?

1 A I really don't remember. I assume that they were --
2 the content was similar to what's included in the letters,
3 but I don't remember the details and they weren't very
4 extensive. They -- it was usually trying to get to somebody
5 and find out whether or not they were going to consider our
6 appeal --

7 Q But did you --

8 A -- status of their consideration as opposed to
9 substantive decisions. I don't recall having a lot of
10 substantive discussions. They were mostly status of their
11 consideration.

12 Q Okay. Thank you. Let me turn your attention to
13 Exhibit YY.

14 A Okay.

15 Q Do you recognize this document?

16 A Yeah.

17 Q And what is your understanding of what this document
18 is?

19 A It's responding to additional -- additional
20 documentation and questions that CalPERS had sent after -- I
21 think that after our original letter, they sent another
22 letter that I was responding to.

23 Q I'm sorry?

24 MR. LEVIN: May I approach the witness?

25 THE COURT: You may.

1 BY MR. JENSEN:

2 Q We're looking at YY, and this was a September 23,
3 2005 letter from CalPERS.

4 A Oh, I'm sorry. I'm thinking of the wrong -- yeah.
5 This isn't my response. This is the letter that they sent.
6 So they sent a letter in response to my letter asking for
7 additional information and making additional
8 determinations.

9 Q And do you see in the subject line as well that they
10 were referring to it as a notice of appeal?

11 A Yes.

12 Q And it says the "City of Vernon" and it says "B.
13 Malkenhorst"?

14 A Uh-huh.

15 Q Did you understand that CalPERS believed that you
16 were representing both City of Vernon and Bruce
17 Malkenhorst?

18 MR. LEVIN: Objection. Calls for speculation.

19 THE COURT: Sustained.

20 BY MR. JENSEN:

21 Q Let me address -- direct your attention to the first
22 line. It says "Thank you for the documentation you provided
23 with your letter dated August 11th, 2005." Do you see
24 that?

25 A Yes.

1 Q And then it says -- makes a request -- excuse me --
2 for additional documentation. Was any additional
3 documentation sent to CalPERS in response to this?

4 A I don't know. I mean, I know that a letter was --
5 that we responded to this with an additional letter. I don't
6 recall what we attached to that letter.

7 Q And let me direct your attention to the bottom
8 paragraph. There it says, "Also according to a letter sent
9 to Gloria Orosco"?

10 A Uh-huh.

11 THE COURT: Is that a "yes"? Is that a "yes"?

12 THE WITNESS: I'm sorry. What was the question?

13 BY MR. JENSEN:

14 Q The court reporter need an audible answer, yes or
15 no.

16 A Yes. I mean, isn't the answer -- please restate the
17 question.

18 THE COURT: Thank you for clarifying that.

19 BY MR. JENSEN:

20 Q Can you turn your attention to the bottom paragraph
21 and read that bottom paragraph, please.

22 A "Also according to a letter sent" --

23 THE COURT: You may read it to yourself.

24 THE WITNESS: Sorry.

25 ///

1 BY MR. JENSEN:

2 Q Let me know when --

3 A Okay. I finished.

4 Q Do you recall a letter being sent to Gloria
5 Orosco?

6 A No.

7 Q Do you recall providing a job duties statement to
8 CalPERS?

9 A No.

10 Q Are you aware of what a job duties statement is?

11 A Sort of.

12 Q Would you have provided the job duty statement to
13 CalPERS at that time?

14 A No.

15 Q So what does this language mean? It says as well as
16 the job duties statement you provided?

17 MR. MR. LEVIN: Objection. Calls for speculation.

18 THE COURT: Sustained.

19 BY MR. JENSEN:

20 Q To the best of your recollection, what are they
21 referring to you -- to this when they say as well as the job
22 duty statement you provided?

23 MR. LEVIN: Objection. Speculation.

24 THE COURT: Sustained. The witness just said she
25 doesn't know.

1 THE WITNESS: I don't know.

2 BY MR. JENSEN:

3 Q Okay, and do -- what do you recall -- what is your
4 recollection with respect to providing information to CalPERS
5 about this issue of him serving as City administrator, City
6 clerk, City treasurer, director of finance, personnel
7 purchasing agent, executive director of Light & Power,
8 executive director of redevelopment agency?

9 A The only issues -- the only thing that I provided to
10 them was what was in or attached to the letter that preceded
11 this one and the letter that followed this one.

12 Q Okay, and you're not aware of what was attached?

13 A No. I don't remember what was attached.

14 Q And did you write a response to this letter?

15 A I did.

16 Q And I think you can find -- can I direct your
17 attention to Exhibit AAA, 3As?

18 A Yes.

19 Q Can you take a moment to refresh your recollection
20 of this document and its exhibits?

21 A Okay.

22 Q I just want to point your attention to the subject
23 line as well. It says "notice of appeal." Were you
24 intending this to respond in -- to CalPERS' prior request for
25 legal authorities and factual support for -- to counter their

1 denial?

2 A I was responding to their communication of September
3 23rd, 2005.

4 Q And were you in the understanding that this was
5 forwarded to the legal department of CalPERS?

6 A That my letter was forwarded to the legal
7 department?

8 Q This matter.

9 A I believe it was my understanding that it was
10 forwarded to their legal department at some point.

11 Q Thank you, and do you remember how you got that
12 understanding?

13 A I think that in my phone calls with them, I was told
14 that it had been forwarded to the legal department.

15 Q And this was --

16 A When I was calling about status.

17 Q And this was someone at CalPERS?

18 A Someone at CalPERS, but I don't remember when that
19 call occurred.

20 Q And would that have made a difference to you in any
21 matter that it was forwarded to the legal department?

22 A Well, I hope that they would decide the issue.

23 Q So you were presenting legal authorities in your
24 view for the legal department to at least consider?

25 A Yes.

1 Q Thank you. I want to point your attention to the
2 bottom paragraph, and the sentence that begins "However,
3 these were not positions for which Mr. Malkenhorst was
4 separately compensated but were included in his
5 responsibilities as a City administrator and at no time did
6 he receive overtime or additional compensation for
7 performance of such duties."

8 A Yes.

9 Q Did you -- how did you come to understand that was a
10 fact in this matter?

11 A Somebody at the City of Vernon told me that.

12 Q Do you recall who?

13 A No. I don't recall how that was communicated.

14 Q Did they provide you any supporting documentation?

15 A I don't recall.

16 Q But this was factually true at a time you were
17 representing it to CalPERS to the best of your
18 understanding?

19 A I believed that it was factually true.

20 Q Thank you, and I want to turn your attention to page
21 82 of AAA.

22 A Uh-huh.

23 Q And the paragraph that begins "because the City of
24 Vernon was a small city."

25 A Uh-huh.

1 Q Can you just read that quickly to yourself, that
2 paragraph and the next paragraph.

3 A Yes.

4 Q And can you tell me just with respect to that first
5 sentence there that Mr. Malkenhorst as City administrator was
6 called upon to perform various duties. How did you gain that
7 information to put that in this letter?

8 A From the City.

9 Q And someone at the City told you that information?

10 A Yes.

11 Q And is -- in that next sentence, where did you learn
12 the facts to support that next sentence?

13 A Same.

14 Q And --

15 A I'm not sure whether the information came from
16 people at the City or from Carla Feldman because the
17 information was coming through Carla. A lot of the
18 information was coming through Carla. So it would have been
19 provided by one or the other.

20 Q But Carla would -- in your understanding the way it
21 was communicated, Carla was communicating to you something
22 that had been told to her?

23 A By the City.

24 Q By the City, and with respect to that third
25 sentence, "while the City of Vernon is not yet as large."

1 A Uh-huh.

2 Q And how did you get -- understand the facts to be
3 able to support that representation?

4 A Again, it's information provided to me by the City
5 or Carla Feldman.

6 Q And is it -- the same as true in that next paragraph
7 where it says "over the years"?

8 A Yes.

9 Q That information was communicated to you from the
10 City?

11 A Yes.

12 Q And did you have reason to believe that it was
13 true?

14 A I assumed that it was true.

15 Q And that was the way the City was representing it to
16 you?

17 A Yes.

18 Q At that time, and again, just that sentence to with
19 respect to your question concerning the amount of the salary.

20 A Yes.

21 Q Where did you get the information to support that
22 statement?

23 A These facts were communicated to me by the City of
24 Vernon directly or through Carla Feldman.

25 Q Okay, and I just want to turn your attention to the

1 next page, three of AAA and in that second paragraph down you
2 referred to a government code section?

3 A Yes.

4 Q Was this a product of your research or
5 Mr. Dirayani's?

6 A I don't know. Probably Mr. Dirayani's initially,
7 but I would have looked at it as well.

8 Q Okay, and then with respect to that next paragraph
9 when you cite 20636.

10 A Uh-huh.

11 Q How was that legal opinion formed?

12 THE COURT: Which paragraph or are we on?

13 MR. JENSEN: I'm sorry. I'm talking about the
14 paragraph -- it would be the third paragraph down that starts
15 "government code 20636."

16 THE COURT: Thank you.

17 THE WITNESS: Okay. I'm --

18 MR. FRIEDMAN: I'm going to object to this calling
19 for work product.

20 MR. JENSEN: And -- and -- and if you're asserting
21 work product privilege, I'm not going to inquire into it
22 then.

23 THE COURT: Okay.

24 MR. JENSEN: And Mr. Friedman, I appreciate -- I'm
25 not trying to do that, but at the same time --

1 THE COURT: And I'm going to ask you to please state
2 your name for the record.

3 MR. FRIEDMAN: Daniel H. Friedman with Loeb & Loeb.

4 THE COURT: Thank you Mr. Friedman.

5 BY MR. JENSEN:

6 Q And do you believe this to be an accurate statement
7 of the position that -- at the time you sent this with
8 respect to, not the formation of the opinion, but the opinion
9 as it was sent to CalPERS?

10 MR. LEVIN: Objection. Calls for an expert opinion
11 an issue of law.

12 THE COURT: Overruled.

13 THE WITNESS: Can you restate the question?

14 BY MR. JENSEN:

15 Q Did you believe this to be a legally valid
16 interpretation of this section at the time you sent this
17 letter?

18 A Yes.

19 Q Thank you, and I just want to point your attention
20 on page four. The first sentence that starts on that page
21 which begins, "We understand that this matter had already
22 been submitted to your legal department for review." And how
23 did you have that understanding as of November 3rd, 2005?

24 A It was based on telephone conversations with
25 CalPERS.

1 Q Okay, and do you recall -- can you just quickly look
2 at the exhibits that were attached to this letter?

3 A Okay.

4 Q Do you understand this to be the complete amount of
5 exhibits that were attached to this letter at that time?

6 A I have no idea.

7 Q Okay, and I just want to verify your signature on
8 triple A-4?

9 A Yes.

10 Q Okay, and do -- do you recall -- did you hear or
11 learn anything about this matter in the next -- in the three
12 months after you submitted this notice of appeal on November
13 3rd, 2005?

14 A I don't recall timing or specifically how I heard,
15 but my understanding was that CalPERS had decided this issue
16 in favor of Malkenhorst.

17 Q Now I just want to turn your attention to Exhibit
18 BBB.

19 A Uh-huh.

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

21 THE COURT: You may.

22 BY MR. JENSEN:

23 Q Ms. Aspinwall, may I approach?

24 A Yes.

25 Q Okay. Can you take a moment to familiarize yourself

1 with that document.

2 A Okay.

3 Q Do you recall receiving this letter?

4 A Yeah.

5 Q And what did you understand by the language that
6 says "CalPERS has determined"?

7 A That CalPERS had made a determination with respect
8 to this issue.

9 Q And did you understand that it was with respect to
10 all of the issues that were brought in the notice of
11 appeal?

12 A My understanding is that it was with respect to
13 Mr. Malkenhorst's entitlement to the 25 percent longevity
14 increase.

15 Q And were there any other issues raised about the
16 offices or the duties?

17 A Yeah. There were other issues raised, and I guess
18 my understanding was that those were not being pursued.

19 Q Not being -- how do you mean "not being pursued"?

20 A Well, it doesn't specifically address those. It
21 appears to say that he is entitled to the longevity increase,
22 and it had been reinstated. So I didn't ask about those
23 other issues. I assumed that they had been resolved in his
24 favor or not pursued.

25 Q So did you have any understanding that those issues

1 were open after this determination letter?

2 A No.

3 Q So you believe those issues were closed?

4 A I don't have an opinion with respect to that.

5 Q As an attorney, did you follow up on those issues?

6 A No.

7 Q Why didn't you follow up on those issues?

8 A Because we reinstated the retirement benefit and
9 that was the result that the City was looking for.

10 Q And by reinstating it, what was the -- what what was
11 the result -- what was the -- what did you think?

12 A I thought that they had made a determination that he
13 was entitled to the benefit.

14 Q Okay, and I just want to point your attention --
15 what do you mean by entitled to the benefit?

16 A The benefits division had been notified to make an
17 adjustment to Mr. Malkenhorst's allowance.

18 Q And by that, you meant that the matter had been
19 fully resolved? You understand --

20 A Yes.

21 Q Can I just ask -- I just want to clarify that.

22 THE COURT: Please allow him to finish his question
23 before you answer. Go ahead.

24 BY MR. JENSEN:

25 Q And by that language that the benefits division had

1 been notified to make the adjustment to Mr. Malkenhorst's
2 allowance, what did you understand?

3 A That they were being directed to make the adjustment
4 that we have requested to Mr. Malkenhorst's allowance.

5 Q And did you believe that this was a resolution of
6 this matter?

7 A Yes.

8 Q And did you believe that it was a final
9 resolution?

10 A Yes.

11 Q Thank you. I just want to turn your attention to
12 Exhibit CCC. Did you receive this document or review this
13 document?

14 THE COURT: I'm sorry. Did you say I don't
15 remember?

16 THE WITNESS: I don't remember.

17 BY MR. JENSEN:

18 Q But you did -- were you -- how were you made aware
19 that his benefit was reinstated to the higher amount?

20 A I don't remember. I -- you know, I received by this
21 letter that it would be reinstated. I don't really remember
22 whether I was provided this reinstatement letter or not.

23 Q But you understood that it was reinstated?

24 A That it would be reinstated, and that my
25 understanding was that it was reinstated, yes.

1 Q And were you -- was there ever an issue about any
2 money withheld by CalPERS?

3 A Not that I was aware of, not that it was brought to
4 my attention.

5 Q And so did you feel any need to follow up on it in
6 any way as an attorney?

7 A No. I wasn't asked to follow up on it in any way.

8 Q Did you hear or -- did the matter come to your
9 attention again in the next couple of years?

10 A No.

11 Q And when did you -- let me ask you one question, at
12 the time of the -- that you understand that the benefit had
13 been reinstated, were there any other issues unresolved in
14 the -- with respect to Mr. Malkenhorst's pension?

15 A Not that I was aware of.

16 Q So all of the issues that you were aware of were
17 resolved at the time of this determination letter on August
18 17th, 2006?

19 A That was my understanding.

20 Q Thank you, and when did you hear that there -- when
21 did you next hear there might be a potential issue regarding
22 Mr. Malkenhorst's pension?

23 A I believe that Carla Feldman forwarded me some kind
24 of public announcement about it.

25 Q And what was your reaction?

1 A It was -- I don't know.

2 Q Were you surprised?

3 A Yes. I mean, I didn't expect it. So --

4 MR. JENSEN: Your Honor, I probably have no further
5 questions. Let me just check my notes.

6 THE COURT: Let's go off the record briefly.

7 (Recess)

8 THE COURT: Back on the record.

9 MR. JENSEN: I have no further questions of
10 Ms. Aspinwall.

11 THE COURT: Thank you. How much cross do you have,
12 Mr. Levin?

13 MR. LEVIN: None, your Honor.

14 THE COURT: Mr. Yim?

15 MR. YIM: No questions, your Honor.

16 THE COURT: Thank you very much. You're excused.

17 MR. JENSEN: And thank you, Ms. Aspinwall.

18 THE COURT: Let's go off the record briefly.

19 (Recess)

20 THE COURT: Back on the record. Mr. Jensen, your
21 next witness.

22 MR. JENSEN: Your Honor, I didn't schedule a witness
23 today because there was just -- I anticipated that we would
24 be finished for the day. So with your permission, I'd like
25 to leave off early, and then resume the rest of the witnesses

1 on the next scheduled date.

2 THE COURT: Okay. And the next scheduled date is
3 next Wednesday. We are adjourned until then. Thank you all.

4 (Hearing adjourned at 3:30 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25