

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

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

TRANSCRIPT OF PROCEEDINGS
Los Angeles, California
Thursday, September 4, 2014

Reported by:
BRITTANY SILVA
CSR No. 13940
Job No. :
2602OAH

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3 STATE OF CALIFORNIA

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15 TRANSCRIPT OF PROCEEDINGS, taken at

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

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

18 on Thursday, September 4, 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

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19 Also present: Bruce Malkenhorst, Sr.
20 Tomi Jimenez

20

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22

23

24

25

1 I N D E X

2 RESPONDENT'S				
3 Witnesses:	Direct	Cross	Redirect	Recross
4 Terrance Rodgers	8	49		
5 Lolita Lueras	51			
6 Bob Adams	89			
7 Hilario Gonzales	142	180	209	214
	108	117	139	141

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11

12 E X H I B I T S

13 DEPARTMENT'S:	Marked for	Received
14	Identification	in Evidence
15 1 through 6 (unidentified)	223	223
16 RESPONDENT'S:		
17 LLLL (unidentified)	97	148
18 UUUUU (unidentified)		5
19 VVVVV (unidentified)		6
20 WWWW (unidentified)	43	

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24

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1 Los Angeles, California, Thursday, September 4, 2014

2 9:00 a.m.

3

4

5 THE COURT: Let's go on the record. This is day
6 five of the hearing. In the Matter of the Final compensation
7 of Bruce Malkenhorst before CalPERS, City of Vernon,
8 Respondent, as well. It's September 5, 2004. 9:00 a.m.
9 Before you call your next witness, Mr. Jensen, you had me
10 mark Exhibit 5Us and 5Vs yesterday. You did not move them
11 in. Do you wish to do so?

12 MR. JENSEN: Yes, your Honor. If I could move of
13 them.

14 THE COURT: Any objection?

15 MR. LEVIN: Yes, your Honor. I believe that two of
16 the pages of 5V lack authentication and foundation. I
17 believe it was pages two and five. I'm trying to find my
18 notes from yesterday.

19 MR. JENSEN: And your Honor, I withdraw those pages
20 to the extent that she couldn't determine it.

21 THE COURT: Let's deal with them individually. How
22 about 5Us which is a one-page exhibit?

23 MR. LEVIN: No objection.

24 THE COURT: 5Us is admitted.

25 (Defendant's Exhibit UUUUU was received in

1 evidence by the Court.)

2 THE COURT: And 5Vs, which pages are you
3 withdrawing, Mr. Jensen?

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

5 THE COURT: You may.

6 MR. JENSEN: I believe she couldn't identify two of
7 the pages, and I'll just talk to Mr. Levin, briefly and
8 Mr. Yim.

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

10 (Recess)

11 THE COURT: Let's go back on the record. First of
12 all, I've been told by the court reporter that I stated
13 yesterday's date wrong and today's date wrong. Yesterday
14 was the 3rd of September and today is the 4th. We want an
15 accurate record. Okay. Mr. Levin, you are objecting to
16 pages one and five of Exhibit 5Vs; is that correct?

17 MR. LEVIN: Yes, your Honor.

18 THE COURT: Mr. Jensen?

19 MR. JENSEN: Your Honor, I withdraw pages one and
20 five of 5Vs.

21 THE COURT: Okay. With those two pages withdrawn,
22 there being no further objection, Exhibit 5Vs is admitted.

23 (Defendant's Exhibit VVVVV was received in
24 evidence by the Court.)

25 MR. JENSEN: Thank you, your Honor.

1 THE COURT: Thank you. All right, and while we were
2 off the record, there was some discussion about motion to
3 exclude witnesses. Mr. Jensen, did you wish to so move?

4 MR. JENSEN: Yes, your Honor. I'd like to exclude
5 from the courtroom Ms. Lolita Lueras.

6 THE COURT: Okay, any objection to that?

7 MR. LEVIN: No objection.

8 THE COURT: Okay. That motion is granted. Then
9 Mr. Jensen, you may call your first witness.

10 MR. JENSEN: Thank you, your Honor. I call Terrance
11 Rodgers, and I'm just going to clean it up for you.

12

13

TERRANCE RODGERS,

14 called as a witness, and having been first duly sworn by
15 the Court, was examined and testified as follows:

16 THE COURT: Thank you. Have a seat and state and
17 spell your name.

18 THE WITNESS: Terrance, T-e-r-r-a-n-c-e. Rodgers,
19 R-o-d-g-e-r-s.

20 THE COURT: Thank you very much.

21 MR. JENSEN: Is it my witness?

22 THE COURT: Your witness.

23 ///

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. JENSEN:

3 Q Mr. Rodgers, where are you employed?

4 A I work for the California Public Employees'
5 Retirement System.

6 Q And in what division do you work?

7 A I'm in the retirement research, planning division.

8 Q And prior to that, in between, say, January, 2012
9 and June, 2012, what position were you employed in?

10 A Customer account services division.

11 Q And is there a specific department within that
12 customer account services division in which you worked?

13 A I worked in the compensation and employee review
14 unit.

15 Q And is there another name for that unit?

16 A Comp review.

17 Q Comp review, and what is the purpose of comp review?

18 A Comp review reviews the compensation that's reported
19 by a public agencies, state, and schools to verify that that
20 being reported complies with the Public Employees' Retirement
21 Law.

22 Q And how many people work in the comp review unit at
23 the time you were working in it?

24 A I would say about 23.

25 Q And what was your position within the comp review

1 unit?

2 A I was a staff services manager one.

3 Q And who were the other staff services managers at
4 the time you were employed there?

5 A I believe it was Angelina Ray and Nicole Horning.

6 THE COURT: And who.

7 MR. JENSEN: Nicole Horning.

8 THE COURT: Thank you.

9 BY MR. JENSEN:

10 Q And who was your direct supervisor?

11 A Tomi Jimenez.

12 Q And did, at any point, you review any documents
13 related to Bruce Malkenhorst?

14 A Yes.

15 Q And what was the earliest time you reviewed those?

16 A I don't recall the specific day. To the best of
17 my memory, I believe early, 2012.

18 Q And what were the circumstances in which you were
19 reviewing those documents?

20 A Lolita Lueras was one of my staff. So she reported
21 to me. So any time there was any questions she may have in
22 the course of doing her work for any type of case, she may
23 ask my opinion or my thoughts, direction on work product and
24 that's when that would have been brought to my attention.

25 Q And so are you Lueras's direct supervisor?

1 A I was at that time, yes.

2 Q And Ms. Jimenez was your direct supervisor; is that
3 correct?

4 A That is correct.

5 Q And did Lolita report to you or to Ms. Jimenez?

6 A Well, she reported to me directly and vicariously
7 to Tomi by virtue of her position.

8 Q And did at any point Ms. Jimenez ask you to review
9 documents related to Mr. Malkenhorst?

10 A I don't recall a specific instance of Tomi asking
11 me to review documents.

12 Q And if there's a document that says per Tomi's
13 request, would that refresh your recollection?

14 A It may.

15 MR. JENSEN: Your Honor, may I --

16 THE COURT: You may.

17 BY MR. JENSEN:

18 Q This two-page document has been previously marked
19 and I believe admitted as 5N.

20 THE COURT: 5N has been admitted.

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

22 THE COURT: You may.

23 BY MR. JENSEN:

24 Q And, Mr. Rodgers, I'm going to show you that e-mail.
25 Do you recognize that document?

1 A I don't recognize the document, no.

2 Q Do you recognize the circumstances, or maybe take
3 a moment to review it.

4 A I don't have a specific recollection of this.

5 Q And do you have a general recollection?

6 A Well, what it appears is that I was --

7 THE COURT: Let me instruct the witness. Do you
8 recall this document?

9 THE WITNESS: I don't recall this document.

10 THE COURT: Okay.

11 BY MR. JENSEN:

12 Q Do you recall the circumstances around this
13 Matter?

14 A Not specifically.

15 Q Do you recall there being an issue of Bruce
16 Malkenhorst's pension amount?

17 A Yes.

18 Q And what do you recall the circumstances during that
19 period of 2012?

20 A That our unit was establishing a determination on
21 the amount of compensation earnable that could be used in his
22 retirement calculation.

23 Q And was there discussion among members of the comp
24 review unit about this Matter?

25 A Yes.

1 Q And can you tell me the nature -- do you recall the
2 nature of that discussion?

3 A I mean, there would have been discussion about
4 establishing what is compensation earnable for
5 Mr. Malkenhorst. I don't remember specifics, but the general
6 nature is trying to establish what meets the definition in
7 the PERL of compensation earnable.

8 Q And are there differing interpretations of what meet
9 the definition in the statute?

10 A Differing interpretations from whom?

11 Q Among the members of the compensation review unit?

12 A There certainly could be.

13 Q And how could there be?

14 A Well, when we look at cases, we're looking at all
15 material facts, all the relevant documents, and applying it
16 against case law and while using case law and applying it
17 against the PERL.

18 Q So do you recall any of the relevant facts in
19 Mr. Malkenhorst's case?

20 A Very little.

21 Q What do you recall?

22 A I recall that he was being reported with several
23 different -- well, I should say he was being reported, but
24 the documents that I looked at through the course of working
25 with Lolita showed that he had served in several capacities

1 with the City of Vernon. We looked at -- we would have
2 looked at the definition of pay rate because that's defined
3 in the PERL to apply to what was reported and the relevant
4 documentation.

5 Q And do you recall reviewing that in this Matter?

6 A Not specifics. In general conversations or maybe
7 in assisting Lolita.

8 MR. LEVIN: And your Honor, may I approach the
9 witness?

10 THE COURT: You may.

11 MR. JENSEN: And I just want to show you, Counsel,
12 5M. Your Honor, 5M.

13 THE COURT: 5M.

14 MR. JENSEN: Has that been previously admitted?

15 THE COURT: It has.

16 BY MR. JENSEN:

17 Q Mr. Rodgers, can you just take a moment to review
18 that?

19 A Okay.

20 Q Do you recall reviewing this employment history?

21 A I vaguely remember this chart. I don't recall much
22 more than that. I have a vague recollection of the chart
23 itself.

24 Q And do you -- looking at your reasoning in that
25 letter, can you --

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

2 THE COURT: You may.

3 BY MR. JENSEN:

4 Q Mr. Rodgers, may I look at the document with you?

5 A Yes.

6 Q Okay. Thank you. Sorry. I don't have an extra
7 copy of it handy. It says in reading this chart, did you
8 mean the chart attached here as the second page of Exhibit
9 5Ms?

10 A I don't know.

11 Q And then it says, "to me" -- in the second part of
12 that -- "it seems to me the determination is that Senior," is
13 that referring to Mr. Malkenhorst, Senior?

14 A Yes.

15 Q "Was only in the position of City administrator/City
16 clerk"?

17 A Yes.

18 Q Do you see that?

19 A I see that.

20 Q And how do you draw that conclusion -- with review
21 of that chart today, would you draw that same conclusion?

22 A They show several positions listed, and I'm not sure
23 the context in which I was writing this.

24 Q What context would you be writing it in?

25 A It appears to me I'm posing more of a question.

1 Q And what was the question you were posing?

2 A That it appears that there's only one position.

3 Q And how do you draw that question?

4 A Based on the language?

5 Q No, no. Based on your review of the chart.

6 A I'm not sure why I would have drawn that
7 conclusion.

8 Q Now, let's -- let's move to the next sentence. It
9 says, "as the chart progress," I guess that means
10 progresses?

11 A It probably should have been that.

12 Q "It appears no compensation is related when
13 additional positions are added." Can you just take a look at
14 this chart, and see if that is your -- your conclusion that
15 you would draw from that chart?

16 A I'm not sure I could draw a conclusion from this
17 chart.

18 Q How about an observation from the chart?

19 A I don't know. In looking at this now, it seems like
20 what the chart is indicating is that there was increases when
21 additional positions were added to the chart.

22 Q And show me on the chart and try to speak for the
23 record -- first let's go through the columns. In column one,
24 there's a date in it; is that correct?

25 A Yes. April 13, 1975.

1 Q Oh, I don't need you to read it. Just the
2 understanding -- the understanding of what that first
3 column --

4 A Yeah.

5 THE COURT: Excuse me. One moment. I just want to
6 instruct the witness because we have a court reporter trying
7 to make an accurate record of everything that's being said,
8 your discussion with Counsel can't be conducted as a
9 conversation where everybody is talking at once. Please let
10 him finish his question before you begin your answer. I'll
11 instruct Counsel to wait until you finish your answer before
12 he asks you a question.

13 THE WITNESS: Yes.

14 THE COURT: Thank you.

15 BY MR. JENSEN:

16 Q So column A on that chart. Do you have an
17 understanding that there is a column A on there?

18 A No.

19 Q Let me just refer you to the column in which it
20 says date and then there's dates that are at the margin?

21 A Yes. I see that column.

22 Q And was this -- to the best of your understanding,
23 was there a document that was prepared by CalPERS?

24 A Yes.

25 Q And do you know who prepared it?

1 A I cannot say definitively.

2 Q Can you make an educated estimation of who might
3 have prepared it?

4 MR. LEVIN: Objection. Calls for speculation.

5 THE COURT: Sustained.

6 BY MR. JENSEN:

7 Q And so if column A is the date on which the position
8 is -- is -- Mr. Malkenhorst takes that position and column B
9 is a reported name of an additional position and pay rate is
10 in column C or -- pay period is in column C. Excuse me, and
11 pay rate is in column D, do you see those columns?

12 A Yes.

13 Q Is that understandable to you?

14 A Yes.

15 Q Is that your understanding of what this document
16 reports to present?

17 A Yes.

18 Q And so when you wrote in your e-mail of May 14th
19 that it appears no compensation is related when additional
20 positions are added, column C and D, can you review this
21 document -- this chart again and indicate whether you still
22 believe that to be true?

23 A That doesn't appear to be the case, no.

24 Q And why not?

25 A Well, what I'm assuming is an assignment to City

1 clerk, director of finance July 19, 1977, and a pay rate
2 increase.

3 Q Okay, and is that consistent throughout this
4 chart?

5 A There are pay increases when another position isn't
6 added to the chart.

7 Q And what does that mean when there are pay increases
8 when a position is not added?

9 A Based on the chart, it looks like that was the pay
10 period in which a pay increase took effect.

11 Q But let me get your understanding of -- there were
12 pay increases when there wasn't a position added?

13 A According to these columns, that would be my
14 understanding.

15 Q And actually, the vast majority of them or all of
16 the pay increases after 1978 were not associated with the
17 additional positions or responsibilities added; is that
18 correct?

19 A I don't know if I could draw that conclusion.

20 Q Just with reference to this chart.

21 A With reference to the chart, yes.

22 Q And how would you -- how would you draw the
23 different conclusion for the time period starting in 1979?

24 MR. LEVIN: Objection. Vague. Speculation.

25 MR. JENSEN: With reference to the chart.

1 THE COURT: Why don't you rephrase your question?

2 BY MR. JENSEN:

3 Q With reference to the chart after 1979, is there any
4 evidence that -- that there was any pay associated with
5 additional responsibilities or job titles?

6 A I'm sorry. Can you say that again.

7 Q Yeah. Starting -- in the period after 1979 -- I'm
8 sorry if I'm too close to you. In the pay period after 1979,
9 is there any evidence on that chart that there were any pay
10 increases associated with additional titles or
11 responsibilities?

12 A Based on the way this chart is formatted, it doesn't
13 appear so.

14 Q It does not appear so, and based on that chart,
15 would it still be your position that -- that after 1979,
16 there was no pay increases associated with these different
17 responsibilities or titles?

18 A Based on the chart, yeah.

19 Q And have you learned anything since that date of
20 that e-mail in May, 2012, which would change your opinion?

21 A No.

22 Q And did you communicate that opinion to the other
23 members in CalPERS, the other staff or people in the
24 compensation review unit?

25 A I don't recall other than the e-mail that was

1 here.

2 Q And so was this an e-mail that was sent after your
3 review of the chart? This was sent before. So let me ask
4 you, your conclusion here is that -- is that -- it seems to
5 me the determination of Senior was only in the position of
6 City administrator/City clerk. Would that be your conclusion
7 based on that chart today?

8 A Today I wouldn't draw a conclusion based on this
9 chart.

10 Q And what -- so let me just -- you did at the time
11 draw a conclusion based on the chart?

12 A I don't believe I did.

13 Q You made a determination based on the chart?

14 A I don't believe I did.

15 Q Well, what's the language? It says "seems to me the
16 determination about Seniors" -- can you read that?

17 A "It seems to me the determination is that Senior was
18 only in the position of City administrator/City clerk."

19 Q Okay, and what piece of information have you learned
20 that would change that opinion?

21 MR. LEVIN: Objection. Assumes facts that it was his
22 opinion.

23 THE COURT: Sustained.

24 BY MR. JENSEN:

25 Q Was that your opinion at the time?

1 THE COURT: Mr. Jensen --

2 MR. JENSEN: Okay.

3 THE COURT: -- there's an ambiguity in the way that
4 sentence is phrased and your question is phrased, and I'd
5 like you to clear it up.

6 BY MR. JENSEN:

7 Q Okay. Let me look at the document if I may
8 approach?

9 A Yes.

10 Q In reading this chart, it seems to me the
11 determination is that Senior was only in the position of
12 City administrator/City clerk. Would that still be
13 your -- your opinion today?

14 MR. LEVIN: Objection. Assumes facts that that was
15 his opinion.

16 THE COURT: Let me ask the witness a question.
17 Looking at that first sentence, were you saying that you
18 determined that Senior was only in the position of City
19 administrator/City clerk?

20 THE WITNESS: To me, it seems as though I'm making
21 just a general observation. It seemed the determination
22 is --

23 THE COURT: The determination is? Whose
24 determination?

25 THE WITNESS: I'm not sure.

1 THE COURT: Not yours?

2 THE WITNESS: No. I don't believe it was mine.

3 THE COURT: I see. Okay. You may continue,
4 Mr. Jensen.

5 BY MR. JENSEN:

6 Q So let me just refer you again to document N --
7 5Ns and in particular the section four of 5Ns, and if
8 I may look on it with you?

9 A Yes, please.

10 Q Thank you. It says "another possible course of
11 action," and if you want to read that, please. Not to the
12 court, just to yourself. Let me just ask you this question,
13 it says "due to the lack of specific information to establish
14 a full-time pay rate." What information would you need to
15 establish a full-time pay rate?

16 A We would review documents that show what one
17 position -- the pay rate would be for one position working on
18 a full-time basis.

19 Q And so let's first talk about the document that was
20 established a pay rate, and let me just refer you to -- in
21 the exhibit binder four. I can probably get it for you as
22 soon as I find it myself. I believe it is Exhibit 65. So
23 actually, it's in the other one.

24 MR. JENSEN: May I approach?

25 THE COURT: You may.

1 BY MR. JENSEN:

2 Q So document 65 and so you mentioned two issues about
3 information needed to establish a pay rate, and then you
4 mentioned a publicly -- did you mention a publicly available
5 pay schedule?

6 A I believe so.

7 Q And would that, in your estimation, qualify as a pay
8 schedule?

9 A Assuming it met all the requirements of a publicly
10 available pay schedule.

11 Q And what are those requirements?

12 A It would be in 570.5, but I don't remember all nine
13 requirements off the top of my head, but it shows all the
14 positions, lists the pay rate for those positions, either
15 single amount or a range, it's been duly approved and adopted
16 by the governing body and complies with open meeting laws,
17 doesn't reference another document in lieu of disclosing the
18 pay rate, that's all I can recall. I haven't been in comp
19 for a while.

20 Q And let me ask you a question, do positions that
21 have no salary attached -- no pay attached to them have to
22 be listed on the pay schedule?

23 MR. LEVIN: Objection. Incomplete hypothetical.

24 THE COURT: Overruled. You may answer.

25 THE WITNESS: Can you resay that?

1 BY MR. JENSEN:

2 Q Do positions that have no pay associated with them
3 have to be listed on the pay schedule?

4 A In order to meet the definition of pay rate, they
5 would need to be listed on the pay schedule.

6 Q Even if there's zero pay associated with them?

7 A I -- well, the definition of pay rate is rendering
8 service and receiving compensation.

9 Q And if there's no compensation received for the
10 service, does that position need to be listed on a pay
11 schedule?

12 A All positions should be listed on a pay schedule.

13 Q Okay. So let me -- you just said the position is
14 defined as -- well, can you say that again? Rendering
15 service for compensation; is that correct?

16 A The definition of pay rate?

17 Q No, no. You just mentioned something about
18 compensation earnable that the positions that you render
19 service for pay need to be listed; is that correct?

20 A Yes.

21 Q And so there's no pay, does that need to be
22 listed?

23 Objection. Asked and answered.

24 THE COURT: I'll allow it.

25 THE WITNESS: All positions should be on a pay

1 schedule.

2 MR. JENSEN: Your Honor, that's not an answer.

3 THE COURT: Do you understand the question?

4 THE WITNESS: Apparently not.

5 THE COURT: You can ask it one more time.

6 BY MR. JENSEN:

7 Q If there is a punitive title for which there was
8 no compensation paid, does that punitive title need to be
9 listed on a pay schedule?

10 A I believe that title should be listed on a pay
11 schedule.

12 Q Even if there's no compensation associated with
13 that?

14 A Yes.

15 Q And can I ask what your authority for that is?

16 A Well, 570.5. A publicly available pay schedule
17 requires that you listed all positions.

18 Q Isn't it a pay schedule? It assumes pay?

19 A Yeah.

20 Q So if there's no pay, does it need to be listed?

21 MR. LEVIN: Objection. Asked and answered.

22 THE COURT: I'll allow it.

23 THE WITNESS: I would say yes. All positions should
24 by listed on a pay schedule.

25 ///

1 BY MR. JENSEN:

2 Q And your Honor, I don't want to belabor this, but
3 are you basing that on compensation earnable or 570.5?

4 A Yes.

5 Q And I believe --

6 A And the definition of pay rate.

7 Q And the definition of pay rate which all include
8 some reference to compensation; is that correct?

9 A (Nods head)

10 Q And how is zero compensation, compensation?

11 A It's not.

12 Q So do you recognize the issue?

13 A I understand your question.

14 MR. LEVIN: Objection. Vague.

15 THE COURT: Sustained.

16 BY MR. JENSEN:

17 Q So let me move on. Back to this -- so you mentioned
18 what were the other facts that needed to be -- refer you to
19 the specific language in the e-mail here. You mentioned --

20 THE COURT: Which exhibit are you looking at now?

21 MR. JENSEN: This is 5N.

22 BY MR. JENSEN:

23 Q "Due to lack of specific information to establish a
24 full-time pay," and we just directed you to Exhibit 65 and
25 the listing of the City administrator's pay rate; is that

1 correct?

2 MR. LEVIN: Objection. The question didn't pertain
3 to Mr. Malkenhorst, and there's no foundation for this
4 witness to testify about Exhibit 65.

5 MR. JENSEN: And your Honor, we're actually
6 referring to his e-mail about what would be further
7 information needed to establish a full-time position and he
8 testified there needed to be a pay schedule.

9 THE COURT: Yes, and what is the current question?

10 MR. JENSEN: And the current question is, does that
11 document in Exhibit 5 --

12 THE COURT: Exhibit 65?

13 MR. JENSEN: 65 and particularly 65-73 establish --

14 BY MR. JENSEN:

15 Q Is that a pay schedule to your understanding?

16 A May I look at the entire document?

17 Q Yes, you may.

18 A It appears some of the components required in 570.5
19 appear in this document.

20 Q And can you explain your answer a little -- in
21 greater detail?

22 A What it appears is, there are positions listed on
23 this document and there is a column with -- titled "monthly
24 salary."

25 Q So is there any reason to believe that wouldn't

1 satisfy the pay schedule aspect?

2 A There are many requirements in the definition of a
3 publicly available pay schedule.

4 Q And I'm not speaking to the public available part
5 right now. I'm just speaking to in your review, do you
6 determine whether documents satisfy the requirements of
7 just pay schedule?

8 A I don't think we distinguished the two. It's a
9 public available pay schedule. Both of those components are
10 critical.

11 Q And assuming that it is publicly available, would
12 that satisfy the pay schedule?

13 A At face value it does appear to.

14 Q And so then you mentioned this other -- what would
15 be the other information needed to establish the full-time
16 position part with reference to your N -- 5N e-mail?

17 MR. JENSEN: May I approach, your Honor?

18 THE COURT: You may.

19 BY MR. JENSEN:

20 Q I'm just referring you to this sentence, "due to
21 the lack of specific information to establish a full-time
22 pay rate."

23 A What was the question, Mr. Jensen?

24 Q And you mentioned that there was two aspects of
25 establishing full-time pay rate. The publicly available pay

1 schedule part which would -- you have agreed on the
2 hypothetical if this was publicly available that it would be
3 in the pay schedule. So I'm moving over to the second part
4 of that which is that your determination of whether it was
5 full time. What are the variables that you take into
6 consideration in your job about whether it's a full-time
7 position?

8 A Well, we would need to look at documents to see what
9 that person's work schedule was. Full time, in general, is
10 34 to 60 hours. So if there was additional documentation, we
11 need to see what hours were -- the employee was working per
12 week.

13 Q So hours --

14 THE COURT: I'm sorry. How many hours?

15 MR. JENSEN: 34 to 60 --

16 THE COURT: Thank you.

17 MR. JENSEN: -- is considered full time depending on
18 the agency.

19 THE COURT: Thank you.

20 BY MR. JENSEN:

21 Q And the agency determines the full-time salary?

22 A Yes. As long as it's within 34 to 60 hours with
23 the exception of classified members.

24 Q And what about exempt employees? People --
25 employees that are in a managerial or supervisory position

1 that aren't paid by the hour?

2 A 34 to 60 hours is what's been established by the
3 board as considered as full time.

4 Q And what sort of sources of information do you
5 look at for exempt employees that don't keep hours?

6 MR. LEVIN: Objection. Vague.

7 THE COURT: Overruled.

8 THE WITNESS: In that case, I think we'd look at any
9 other relevant documentation pertaining to their employment
10 with the agency. For instance, potentially, in general,
11 a contract that an employee may have with an agency.

12 BY MR. JENSEN:

13 Q And so if the agency requires the employee to work
14 full time in an exempt position, would you -- would you be
15 satisfied by the agency's determination that he worked full
16 time?

17 A If the full time was within what the board had
18 said 34 to 60 hours.

19 Q And so if people testified that they worked, you
20 know, full time, is that sufficient to you?

21 MR. LEVIN: Objection. Vague.

22 THE COURT: Sustained.

23 BY MR. JENSEN:

24 Q Yes. So what -- so with respect to an individual
25 who performs multiple duties within one designated position,

1 how does CalPERS look at the performance of those duties
2 within one position?

3 MR. LEVIN: Objection. Vague.

4 THE COURT: Sustained.

5 BY MR. JENSEN:

6 Q Mr. Rodgers, have you been in the position in comp
7 review where you have reviewed exempt employee's employment
8 history?

9 A Yes.

10 Q And have you reviewed exempt employees that have
11 supervisory or managerial positions?

12 A Yes.

13 Q When you reviewed those managerial, supervisory
14 employees, were you aware of whether they performed multiple
15 duties or multiple capacities within one position?

16 A Yes. Depending on the documentation we reviewed.

17 Q And without revealing any confidential information,
18 do you recall any exempt employees that you reviewed in the
19 comp review unit?

20 THE COURT: Not by name?

21 BY MR. JENSEN:

22 Q Not by name. Position.

23 A I remember reviewing exempt employees.

24 Q Do you remember the positions in which you reviewed
25 them?

1 A The employee's position?

2 Q Yes.

3 A Yes.

4 Q And can you recall a couple of them?

5 A City managers, assistant City managers, CEOs,
6 general managers.

7 Q How many of those have you reviewed approximately?

8 A Many.

9 Q Could you -- how long were you in the comp review
10 unit?

11 A Less than three years.

12 Q And approximately how many did you review in that
13 period of time?

14 A I'm not sure. I wouldn't feel comfortable putting
15 a number on it.

16 Q More than 20?

17 A Yes.

18 Q More than 50?

19 A Yes.

20 Q More than 100?

21 A I'm not sure.

22 Q Maybe more than 70?

23 A Yes.

24 Q Okay, and did you ever look into how the costs of
25 the salary of those exempt employees were allocated in the

1 budget of the City?

2 A Yeah. There were times, yeah.

3 Q And what sources of information did you look at?

4 A Employment contracts, personnel action forms, any
5 other information that was relevant to their specific
6 position.

7 Q And so does CalPERS have a policy or -- or procedure
8 on taking into account how those accounts -- how those --
9 the costs of those salaries are allocated over different
10 departments?

11 A There's no policy or procedure.

12 Q So can you tell me what you learned in your
13 experience of reviewing these exempt employees with multiple
14 duties? What inferences did you draw from the cost
15 accounting over different departments?

16 MR. LEVIN: Objection. Vague and overbroad.

17 THE COURT: Sustained.

18 BY MR. JENSEN:

19 Q Do you recall any instance in particular where you
20 reviewed the accounting or allocation of the salaries over
21 different departments?

22 A Yes.

23 Q And can you -- what was the position in which you
24 reviewed?

25 A City manager and a chief of police.

1 Q With respect to the -- and did -- do you recall how
2 those salaries were allocated for the City manager?

3 A Not specifically.

4 Q And what -- what inference did you or -- what
5 information did you gather out of the accounting of those
6 costs?

7 A Well, what we reviewed showed what department was
8 paying for that employee's pay rate, paying their salary.

9 Q And you mean the source of funds to pay the payroll?
10 Is that what you mean?

11 A Right. Which account -- which department the funds
12 came from to pay for that salary, yes.

13 Q So basically you were looking at a source of funds
14 for the payroll; is that correct?

15 A Yeah. The situation I'm thinking of is.

16 Q And just -- was that individual paid from one source
17 of funds?

18 A There were multiple sources.

19 Q And based on there being multiple sources from
20 different funds, what was the conclusion you drew?

21 A Well, in that case, that it was being paid from
22 multiple funds.

23 Q And was there a conclusion you drew about his -- and
24 let me just specify. Was this a question of whether it was
25 paid in cash from sources of funds controlled by the

1 employer?

2 A No.

3 Q And what was the -- what was the legal variable you
4 were looking into when you were looking into the source of
5 funds?

6 A In this case, it dealt with public availability.

7 Q And so have you ever been in a position where you
8 have -- you have divided a position into multiple part-time
9 positions based on the allocation of funds across departments
10 if the pay rate -- if the payroll was paid from one fund?

11 A I'm sorry. Mr. Jensen, can you say that again?

12 Q Yeah, and I appreciate your interest in this. Have
13 you ever seen in the compensation review unit a scenario
14 where an individual is paid one payroll check from the
15 general fund, but his salary is allocated over different
16 departments and with the result being that CalPERS determines
17 that he has multiple part-time positions instead of one
18 full-time position?

19 A In the case that I'm referring to, that was not the
20 determination.

21 Q Have you ever seen that?

22 A Not to my knowledge.

23 Q And when you had City managers before, were you
24 aware of whether their salaries were allocated over different
25 departments?

1 A In the one instance I referenced earlier, yeah. I
2 recall that.

3 Q And did you divide his position into multiple
4 part-time positions?

5 A In that situation, no.

6 Q And why not?

7 A I don't recall the specifics, and I think the facts
8 in that case -- I don't think that was in question in that
9 particular review.

10 Q And so in your experience of 70 or so high level
11 employees, have you ever seen a position -- have you ever
12 seen a situation where CalPERS is taking a position that the
13 employer designates as full-time work in a single position
14 and dividing it into multiple part-time positions?

15 A I'm not recalling any right at this moment.

16 Q And you have seen 70 or more of these cases?

17 A Yes.

18 Q Thank you. So I want to just address some of these
19 other issues too. Mr. Rodgers, were you aware of there being
20 proposals, -- oh, wait.

21 MR. JENSEN: Actually, may I approach, your Honor?

22 THE COURT: You may.

23 MR. JENSEN: It's Exhibit 50s -- ZZ and, your Honor,
24 is this in evidence?

25 THE COURT: 50s?

1 MR. JENSEN: It was actually withdrawn as 50s and
2 put in as ZZ. Sorry.

3 THE COURT: It was not withdrawn. You said it was a
4 duplicate.

5 MR. JENSEN: A duplicate. It is a duplicate

6 THE COURT: 50s was admitted.

7 MR. JENSEN: Okay. Your Honor, may I approach?

8 THE COURT: You may.

9 BY MR. JENSEN:

10 Q Mr. Rodgers, may I approach?

11 A Yes.

12 Q Okay. Can you take a moment to look at that
13 document, and in particular, the second page of this
14 document.

15 MR. JENSEN: And your Honor, may I approach the
16 witness?

17 THE COURT: You may.

18 BY MR. JENSEN:

19 Q And Mr. Rodgers, may I approach to look on it
20 with you?

21 A Yes.

22 Q Thanks. Do you recall this document?

23 A I don't.

24 THE COURT: I'm sorry?

25 THE WITNESS: I do not.

1 THE COURT: Thank you.

2 BY MR. JENSEN:

3 Q And how often have you seen a -- in your working
4 compensation review proposals or -- excuse me. For potential
5 results of the compensation review unit?

6 A How often have I seen it?

7 Q How often have you seen e-mails like this?

8 A I don't know if they were exactly like this, but
9 with a chart like that, frequently. When we had discussions
10 about making determinations, we would review certain
11 scenarios and have a discussion about ways to apply the PERL
12 to the member's compensation earnable. So I don't think
13 this is uncommon, maybe in this exact format.

14 Q And so you just characterized this as three
15 different scenarios that could be supported by the PERL;
16 is that correct?

17 MR. LEVIN: Objection. Misstates testimony.

18 THE COURT: Sustained.

19 MR. LEVIN: Lacks foundation.

20 THE COURT: Sustained.

21 BY MR. JENSEN:

22 Q So did you receive this document?

23 A I assume. I'm on the e-mail chain. I don't recall,
24 but I assume.

25 Q So does -- is there many different potential

1 interpretations of the PERL to a designated set of facts?

2 MR. LEVIN: Objection. Vague.

3 THE COURT: Sustained.

4 BY MR. JENSEN:

5 Q Yeah. What is -- when it says -- well, first let
6 me ask you this. It says here "Mr. Malkenhorst was a high
7 profile case"?

8 A Sure.

9 Q And how was it a high profile --

10 MR. LEVIN: Objection. Lacks foundation.

11 BY MR. JENSEN:

12 Q Were you aware -- how were you aware that it was
13 a high profile case?

14 MR. LEVIN: Objection. Lacks foundation. This
15 witness just said he doesn't recognize the document.

16 THE COURT: Sustained.

17 BY MR. JENSEN:

18 Q Without reference to this document, was -- within
19 the compensation review unit, was Mr. Malkenhorst a high
20 profile case?

21 A The City of Vernon was high profile.

22 Q And Mr. Rodgers, you actually worked on a very
23 high profile case, the City of Bell; is that correct?

24 A I testified in the hearings. I didn't work on
25 the case.

1 Q Okay, but you were the agency representative at
2 the comp review unit in the Spaccia case?

3 A That's correct.

4 Q And Randy Adams's --

5 A That's correct.

6 Q -- case. Any of the other City of Bell former
7 employees?

8 MR. LEVIN: Objection. Relevance.

9 THE COURT: Sustained.

10 BY MR. JENSEN:

11 Q So is -- is CalPERS' staff aware of the -- or let
12 me ask you this question, does the comp review unit often
13 get calls or influence from higher levels of CalPERS to pay
14 particular attention to certain cases?

15 A I'm not sure that I could state that I've been in
16 either an e-mail chain or been exposed to that in my position
17 as a staff services manager one.

18 Q But I mean just in -- has there --

19 THE COURT: I'm going to ask you, Mr. Jensen, let's
20 focus on this case.

21 MR. JENSEN: Okay.

22 THE COURT: I'm not restricting your questioning
23 along the same lines about this case, but let's stick to
24 this case.

25 ///

1 BY MR. JENSEN:

2 Q Right. Do you remember the circumstances of how
3 the Bruce Malkenhorst case was raised again in 2012?

4 A I do not remember the circumstances.

5 Q Were you aware that there had been a prior
6 determination of the Matter in Bruce Malkenhorst's case in
7 previous years?

8 A I knew Mr. Malkenhorst had retired earlier. So he
9 would have been put on roll.

10 Q Were you aware of whether there was any prior
11 determination of what his appropriate pay rate was?

12 A In general.

13 Q And tell me how you mean "in general."

14 A Well, if a member is placed on roll, then something
15 would be reviewed. I don't remember anything specifically.

16 Q So you don't remember any prior administrative
17 appeal in the Matter?

18 A No.

19 MR. JENSEN: And your Honor, may I approach?

20 THE COURT: You may.

21 BY MR. JENSEN:

22 Q So --

23 THE COURT: Which document are we looking at?

24 MR. JENSEN: Yeah. Actually, now they're mixed up
25 here. So I'm going to have to look at the --

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

2 (Recess)

3 THE COURT: Let's go back on the record. Go ahead,
4 Mr. Jensen.

5 MR. JENSEN: And I'm going to show this to Counsel.
6 This has not previously been admitted.

7 THE COURT: Has it been marked?

8 MR. JENSEN: It has not been marked.

9 THE COURT: Okay.

10 BY MR. JENSEN:

11 Q This is a --

12 THE COURT: Would you describe the document,
13 Mr. Jensen?

14 MR. JENSEN: Yeah. This is a two-page e-mail from
15 Teresa McGinity to -- cc'd to --- actually, it's two separate
16 e-mails, and let's just work with this one first. That is
17 dated May 8th, 2012, and it's from Teresa McGinity to Marion
18 Montez, Terrance Rodgers, Tomi Jimenez, Lolita Lueras, and
19 Angelina Ray, and the subject is RE: Malkenhorst, Senior
20 compensation. With your permission, your Honor, I'd like
21 to mark it as 6Ws.

22 THE COURT: All right, and Counsel, have you seen it?

23 MR. LEVIN: Yes. We have an objection, your Honor.
24 This document --

25 THE COURT: Let me mark it.

1 MR. LEVIN: Okay. Thank you.

2 THE COURT: The document is marked as Exhibit 5Ws.

3 (Defendant's Exhibit WWWW was marked for
4 identification by the Court.)

5 THE COURT: You have an objection to it being shown
6 to the witness?

7 MR. LEVIN: Yes, your Honor.

8 THE COURT: Go ahead.

9 MR. LEVIN: The objection is that, first of all,
10 this document was not earlier disclosed or put on an exhibit
11 list, and it is not or can't be used for impeachment because
12 it wasn't written by the witness. So there's no proper
13 reason for showing this document to this witness.

14 MR. JENSEN: So let me just refresh -- ask him if
15 recalls it, and then I'll refresh his recollection with it.

16 THE COURT: Go ahead.

17 BY MR. JENSEN:

18 Q Mr. Rodgers, do you recall an e-mail from Teresa
19 McGinity in May 8th, 2012, where they indicated that they
20 wanted -- they wanted the determinations to follow the
21 audit?

22 A I don't recall that e-mail.

23 MR. JENSEN: Your Honor, if I may show the witness
24 5W to refresh his recollection?

25 THE COURT: You may.

1 MR. LEVIN: Your Honor, I'd like to restate our
2 objection. I would also like to alert your Honor that
3 Mr. McGinity is the attorney for CalPERS, and so that
4 there -- this line of questioning might divulge into an
5 attempt to have a disclosure of attorney-client
6 communication.

7 THE COURT: All right. I'd like you to address
8 that, Mr. Jensen.

9 MR. JENSEN: And, your Honor, I didn't know that she
10 was the attorney. So -- and it is actually -- there's two
11 e-mails on here. I guess it does actually on the top part
12 say senior staff counsel. So at this point, I don't need
13 to show him the letter.

14 THE COURT: Okay.

15 MR. JENSEN: And if you'd like to have it back as
16 attorney-client privilege, you may have it.

17 THE COURT: Thank you.

18 MR. LEVIN: Thank you.

19 BY MR. JENSEN:

20 Q So Mr. Rodgers, if there is an e-mail that is to the
21 members in the compensation review unit directed from council
22 telling the people involved to follow the audit, the
23 determination to follow the audit, what does that mean to
24 you?

25 A I don't know if it necessarily has any meaning.

1 Q So were there findings in the audit that you recall?
2 Typically, are there findings in an audit about what would
3 be, say, the last publicly available pay rate?

4 A It depends. If the agency didn't have a publicly
5 available -- did you say pay rate?

6 Q Pay rate.

7 A There could be findings on pay rate, yes.

8 Q So if you -- how often were you directed in your
9 position in the compensation review unit to follow the
10 audit?

11 A Never. I didn't work in the audits unit.

12 THE COURT: You didn't work in the?

13 MR. JENSEN: I did not work in the audits unit.

14 THE COURT: Thank you.

15 BY MR. JENSEN:

16 Q But in the compensation review unit, if there was an
17 e-mail addressed to you and Tomi Jimenez, Lolita Lueras, and
18 others in the compensation review unit working on this Matter
19 indicating that they want the determinations to follow the
20 audit, would that surprise you?

21 A No.

22 Q And why not?

23 A Because it's a request from legal to do something
24 with comp. I don't think that's uncommon. I don't know that
25 it would necessarily be followed, but it wouldn't surprise me

1 if there's communication between comp review and the legal
2 department on compensation earnable determinations or
3 evaluations.

4 Q So -- so included in the comp review unit are -- do
5 you ask legal questions to counsel for inclusion in your
6 determination letters?

7 A Yes. We work with legal.

8 Q And so what questions without divulging into any
9 specific attorney/client communications, what would be the
10 type of questions that would be asked of legal?

11 A They could be very broad. Any area of ambiguity,
12 any area where that particular analyst or manager may want
13 clarification or input from the legal department. It could
14 be on a wide range of things.

15 Q And how often is there ambiguity in your position?

16 A Compensation earnable is very specific and depending
17 on the relevant facts, there could be some ambiguity in the
18 application for our unit.

19 Q And how often do you run against ambiguity in the
20 compensation review unit?

21 A It happens.

22 Q In half of the cases?

23 A No.

24 Q In 25 percent of the cases?

25 A No.

1 Q In 10 percent of the cases?

2 A Possibly.

3 Q And when there is a term that's something ambiguous,
4 do you construe it to the benefit of the member?

5 A We try to work with our members, always.

6 Q But when there's an ambiguous issue, is it the
7 practice of the compensation review unit to give the highest
8 benefit that is possibly pertainable -- attainable under the
9 PERL to the member?

10 A I don't know that I can make a statement yes or
11 no.

12 Q And how would you characterize how you interpret
13 ambiguous --

14 A How do I interpret ambiguous?

15 Q How do you -- is there a policy or a practice when
16 you were in the compensation review unit of giving the member
17 the benefit of the doubt in an ambiguous situation?

18 A I don't know. I don't know that I ever looked at
19 that like that in my position.

20 Q How did you look at it?

21 A I would do my best to take the relevant
22 documentation and apply it to the PERL and provide my input
23 to the decision makers.

24 Q And did you do that in these e-mails that you
25 have in front of you?

CROSS-EXAMINATION

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BY MR. LEVIN:

Q Mr. Rodgers, please describe your role, if any, in making a determination of Mr. Malkenhorst's final compensation?

A I did not make a determination of Mr. Malkenhorst's final compensation.

Q What role, if any, did you play in evaluating the documents and information provided to CalPERS by the City of Vernon in connection with Mr. Malkenhorst?

A Can you say that again? I'm sorry.

Q What role did you play, if any, in evaluating the documents and information provided to CalPERS by the City of Vernon in connection with Mr. Malkenhorst's final compensation?

A If I played any role, it was to supervise Lolita and assist her if questions came up in her review and evaluation of the relevant documentation, and address any questions or maybe provide suggestions if she had any issues.

Q Did you review -- withdraw the question.

Are you generally aware of the volume of documentation provided to CalPERS by the City of Vernon?

A I have some idea, I think.

Q Generally aware that was in the thousands of pages?

1 A Yes.

2 Q What proportion of that documentation did you review
3 and analyze in connection with Mr. Malkenhorst's final
4 compensation review?

5 A Very little.

6 MR. LEVIN: No further questions.

7 THE COURT: Anything else, Mr. Jensen?

8 MR. JENSEN: No, your Honor.

9 THE COURT: Thank you. I excuse the witness. Let's
10 go off the record for a moment.

11 (Recess)

12 THE COURT: Mr. Yim, do you have any questions for
13 this witness?

14 MR. YIM: No questions, your Honor. Thank you.

15 THE COURT: Thank you very much. Let's go off the
16 record.

17 (Recess)

18 THE COURT: Let's go back on the record. Mr. Jensen,
19 you may call your next witness.

20 MR. JENSEN: Thank you, your Honor. I'd like to call
21 Lolita Lueras.

22 THE COURT: Thank you. Please rise.

23 ///

24 ///

25 ///

1 LOLITA LUERAS,
2 called as a witness, and having been first duly sworn by
3 the Court, was examined and testified as follows:

4
5 THE WITNESS: Yes.

6 THE COURT: Thank you. Have a seat. State and
7 spell your name, and please speak loud enough for our court
8 reporter to hear you.

9 THE WITNESS: Sure. My name is Lolita Lueras,
10 spelled, L-o-l-i-t-a. Last name, L-u-e-r-a-s.

11 THE COURT: Thank you. Go ahead.

12

13 DIRECT EXAMINATION

14 BY MR. JENSEN:

15 Q Thank you, Ms. Lueras, for coming down today. Who
16 is your employer?

17 A The California Public Employee Retirement System.

18 Q And what is your position?

19 A I'm currently a retirement program specialist two.

20 Q And are you -- do you work in a specific division?

21 A I work in the customer account services division.

22 Q And is there a division within the customer account
23 services division which you work?

24 A There is a unit that I work in, the compensation
25 employee review unit.

1 Q And is there a -- an often used term for that unit
2 that you work in?

3 A It's known as a few things, but comp review is
4 probably the most common.

5 Q What are the other names?

6 A CRU.

7 Q And how long have you been in comp review?

8 A I've been in comp review for coming up to five years
9 next month.

10 Q And what was your employment history prior to
11 joining -- actually, what is your education background?

12 A I'm a high school graduate with some college.

13 Q And when did you join -- what is your employment
14 history before CalPERS?

15 A I was in retail for maybe six months.

16 Q And then what was your position -- when did you join
17 CalPERS?

18 A I started with CalPERS in 2004 as a student
19 assistant.

20 Q And what was your next position at CalPERS?

21 A I was then brought on permanent as a benefit program
22 specialist.

23 Q And what does a benefit program specialist do?

24 A There are several duties of a benefit program
25 specialist in state service.

1 Q Just briefly without going into any detail, what did
2 you do in that job?

3 A So while I was a benefit program specialist, I was
4 in the member service, service credit area where I enforced
5 or reviewed the service credit purchase methods and ensured
6 quality insurance.

7 Q So you were reviewing air time and military time
8 purchases?

9 A Yes. Those are two that we offer, yes.

10 Q And after being a benefit program specialist, did
11 you have another position?

12 A Yes. Then I became a personnel tech within the
13 human resources department.

14 Q And what does a personnel tech in human resources
15 do?

16 A I was in the recruitment area. So I dealt with
17 employment applications.

18 Q People that were applying to become employed at
19 CalPERS?

20 A Correct.

21 Q And what was your next position after personnel
22 tech?

23 A Then I became a retirement program specialist one
24 within the compensation review unit.

25 Q And what were the prior, I guess, requirements for

1 becoming -- is it known as becoming an RPS one?

2 A Yes. It is known as RPS one.

3 Q What are their requirements for becoming an RPS
4 one?

5 A There are requirements. I'm not sure of the
6 requirements off the top of my head.

7 Q And what were -- did you have to take a civil
8 service test to take that position in the comp review unit?

9 A Yes.

10 Q And what was the civil service test?

11 A A staff service analyst transfer exam.

12 Q And when did you begin in the comp review unit?

13 A In October, 2009.

14 Q And what were your duties in -- as an -- in the comp
15 review unit?

16 A To review retiree's payroll to make sure of
17 compliance with the Public Employees' Retirement Law.

18 Q And you say "retiree's payroll." How do you mean
19 that?

20 A Most of our work is generated when a member submits
21 a retirement application. There are instances where we
22 review active members, but for the most part we review
23 members at the time of their retirement.

24 Q So the payroll is the employer's payroll; is that
25 correct?

1 A Correct. The payroll that's submitted is owned by
2 the employer.

3 Q So when you say "retiree's payroll," this is
4 information that's submitted by the City to CalPERS during
5 employment; is that correct?

6 A Correct.

7 Q And on the payroll submitted by the employer,
8 there's information related to the employee; is that
9 correct?

10 A Yes.

11 Q And what information do you look at in that
12 payroll -- in your compensation review unit?

13 A Most commonly we review the pay rate reported as
14 well as any special compensation that is reported.

15 Q And what in the pay rate do you review?

16 A What in the pay rate do I review? I don't think I
17 understand your question.

18 Q Okay. You said in the payroll that's brought into
19 the comp review unit, you review -- I believe you said you
20 review the pay rate?

21 A Yes.

22 Q What do you review when you review the pay rate?

23 A To verify the pay rate is correct, we ask for
24 publicly available pay schedules from the employer.

25 Q Okay. So you have the reported pay rate produced by

1 the employer and it comes into your office, and what triggers
2 you to look at that pay rate?

3 A Are you asking me what triggers a review?

4 Q I'm just curious. In your personal experience, how
5 is a case identified that you have to look at the pay rate?

6 A We look at the pay rate of all accounts that we
7 review. We review everything that we reported for a person
8 to -- for payroll to be reported, a pay rate must be
9 reported. So in every case, a pay rate would be reviewed.

10 Q So I'm just going to try to organize it a little
11 bit. So some case is brought to the comp review unit
12 independent of pay rate and then once it's in front of you,
13 then your job is to look at the pay rate and verify it; is
14 that correct?

15 A My job is to look at all payroll reported to the
16 system and insure its compliance with the Public Employees'
17 Retirement Law.

18 Q Yes, but you don't have any knowledge of how the
19 case got into the comp review unit?

20 A I had other standard business practices that bring
21 cases into the compensation review.

22 Q Are you aware of what those standard business
23 practices are?

24 A I believe there are -- if there's any anomalies or
25 misreporting, it triggers the system to -- to ask for a comp

1 review.

2 Q And are these standard business practices something
3 that's written down?

4 A I assume it would be written into the system, not
5 per se in a document.

6 Q When you say in the system, you mean as part of
7 the computer program?

8 A Right.

9 Q And are you aware of what -- when you refer to part
10 of the system, are you aware of variables that would trigger
11 a review of the -- that puts the case in the comp review
12 unit?

13 A I'm aware of a few, yes.

14 Q What are these?

15 A One of which would be a large increase in the pay
16 rate or special compensation being reported that maybe that
17 member had never received. Those would be a couple.

18 Q And -- and so you mentioned anomalies. Can you
19 elaborate on what you mean by anomalies?

20 A A common anomaly I can say is a monthly pay rate
21 being reported or coded as an hourly pay rate. It would
22 trip the system to have that be reviewed.

23 Q So let me just turn your attention to -- for
24 Counsel's purposes, exhibit book 18, the last document in
25 there.

1 THE COURT: That's 5Fs?

2 MR. JENSEN: Yeah. I believe it's 5F and, your Honor,
3 may I approach the witness?

4 THE COURT: You may.

5 BY MR. JENSEN:

6 Q Ms. Lueras, can I help you with that?

7 A Sure.

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

9 THE COURT: Please.

10 BY MR. JENSEN:

11 Q And, Ms. Lueras, can I approach?

12 A Yes.

13 Q I'm going to turn your attention to this last
14 document here. Do you recognize this document?

15 A No.

16 Q So in Mr. Malkenhorst's -- in Mr. Malkenhorst's
17 cases -- in Mr. Malkenhorst's case, did you review the
18 payroll as reported by the City of Vernon?

19 A Yes.

20 Q And under what time period did you report -- did
21 you review the reports?

22 A Are you asking me when I reviewed his payroll?

23 Q Let me clarify.

24 A Please.

25 Q Did you review the payroll reported over his whole

1 tenure of work at the City of Vernon?

2 A Yes, I did.

3 Q And is the information in the document FFF the
4 information reported by the City of Vernon?

5 THE COURT: That's 5Fs.

6 MR. JENSEN: Yeah. Sorry. Yes.

7 BY MR. JENSEN:

8 Q 5Fs for Mr. Malkenhorst?

9 A It looks like there's many names listed on this.

10 Q If you can just --

11 A Oh, I see Mr. Malkenhorst.

12 MR. JENSEN: May I approach, your Honor?

13 THE COURT: You may.

14 MR. JENSEN: And with your permission, I'm going to
15 hand the witness a yellow highlighter pen, and ask her to
16 highlight the entry for Mr. Malkenhorst and is 5Fs in
17 evidence?

18 THE COURT: 5Fs in evidence. Her highlighting won't
19 be because it's not in my copy. If you want to make a
20 request at the end to substitute pages, I'll entertain
21 that.

22 MR. JENSEN: And maybe what I would like to do is --
23 is additionally mark it just as a demonstrative exhibit and
24 then I can take a picture and send it to everybody and mark
25 it as -- I don't know if we can do that.

1 THE COURT: Let's do it the way I suggested.

2 MR. JENSEN: Okay. That sounds great.

3 THE COURT: Thank you.

4 BY MR. JENSEN:

5 Q Ms. Lueras, were you able to find the payroll report
6 from the City of Vernon for Mr. Malkenhorst on page one of
7 5Fs?

8 A There are two entries with his name. It's kind of
9 hard to read.

10 Q So in your job in comp review unit, you mentioned
11 that you reviewed the payroll reported by the City of Vernon;
12 is that correct?

13 A Correct.

14 Q Did you review the information that is in the same
15 format as contained in this document in 5Fs?

16 A It was not in the same format, no.

17 Q Have you seen this -- this reporting by the City
18 of Vernon for Mr. Malkenhorst?

19 MR. LEVIN: Objection. Vague.

20 THE COURT: Sustained.

21 BY MR. JENSEN:

22 Q When you reviewed the payroll records of the City of
23 Vernon for Mr. Malkenhorst, was the information reported with
24 the same columns as in -- were the same data places as 5Fs?

25 THE COURT: I'm sorry. I don't understand that

1 question.

2 BY MR. JENSEN:

3 Q I'm sorry. Let me just go through. When Vernon --
4 when you reviewed the City of Vernon's reporting for
5 Mr. Malkenhorst, did it include the name of
6 Mr. Malkenhorst?

7 A Yes.

8 Q Did it include the coverage group?

9 A Yes.

10 Q Did it include the service period?

11 A Yes.

12 Q And what is P slash C in the fourth column?

13 A I believe it's pay code, but I'm not 100 percent
14 sure.

15 Q And when you reviewed the records, did it include a
16 pay rate reported for Mr. Malkenhorst?

17 A Yes.

18 Q Did it include member earnings?

19 A Yes.

20 Q Did it include member paid contribution?

21 A Yes.

22 Q Did it include the rate of the member paid
23 contribution?

24 A Yes.

25 Q And is it your understanding that CC is contribution

1 code?

2 A Yes.

3 Q And is the amount of -- was the amount of the member
4 paid contributions also reported to CalPERS?

5 A Yes.

6 Q And can you -- is it the survivor contribution
7 amount? Is that what S-u-r-v-c-n-t-v-a-n-t?

8 A That's what it stands for, yes.

9 Q Are you familiar with the term of art for survivor
10 benefits?

11 A I am familiar with it in the payroll context, yes.

12 Q And was it often -- was it referred to, in your
13 knowledge, as that terminology, S-u-r-v-c-n-t-v-a-n-t?

14 A I'm sorry. What was the question?

15 Q Was survivor contributions referred to or shortened
16 to be S-u-r-v-c-n-t-v-a-n-t?

17 A On this document, yes.

18 Q Have you seen that phrase anyplace else?

19 A Yes.

20 Q And does that refer to survivor contribution amount?

21 A Yes.

22 Q And was the work schedule code reported to
23 CalPERS?

24 A Yes.

25 Q And what is 173 as a work schedule code?

1 A This transcript and the number codes are very old
2 and I am not brushed up on that part. So 173 I'm not 100
3 percent sure what it stands for --

4 THE COURT: Allow her to finish, please before you
5 begin speaking. Thank you.

6 BY MR. JENSEN:

7 Q I'm sorry. Can you finish your answer, please?
8 What is your understanding of the code 173?

9 A I know it has to do with the number of hours that a
10 person works in that position, but I don't know what that
11 stands for.

12 Q And so -- but it is your understanding that the City
13 of Vernon was reporting a work schedule code for
14 Mr. Malkenhorst?

15 A Yes.

16 Q And are you aware of what the different work
17 schedule codes are currently?

18 A Currently, there is no work schedule code in the my
19 CalPERS system.

20 Q What does the employer report for the work
21 schedule?

22 A I believe there's a field in my CalPERS system that
23 captures the scheduled hours worked per week.

24 Q And was a code like that reported for
25 Mr. Malkenhorst?

1 A I believe so.

2 Q Now, was my CalPERS in effect in 2004?

3 A No.

4 Q And so what code would be in my CalPERS for work
5 schedules that predated this new system of my CalPERS?

6 A Are you asking me how it's reflected in the system
7 now?

8 Q Do you have knowledge of how prior codes are
9 reflected in the current system that you review?

10 A I don't think I've ever gone to look.

11 Q So where did you review the payroll reporting for
12 Mr. Malkenhorst?

13 A It was a while ago, but I believe I reviewed it from
14 what was called the SmartDesk System.

15 Q And what is the SmartDesk System?

16 A It was a system that housed much of the information
17 that is now in the my CalPERS system. One of the components
18 was payroll.

19 Q And was the payroll in this form that you
20 reviewed?

21 A It was not in this format, no.

22 Q And are you aware of how the information was treated
23 in -- when it was changed from one system to the next
24 system?

25 A I believe it was just carried over.

1 Q And was the 173 carried over?

2 A That code in particular, no.

3 Q And so not all the information was carried over?

4 A Whatever the code 173 stood for was the information
5 that was carried over, I think.

6 Q Did you go back and check the original documents
7 that were filed by Mr. -- by the City of Vernon during
8 Mr. Malkenhorst's employment?

9 A During the review, I reviewed the payroll through
10 the SmartDesk system.

11 Q And -- but you just testified you don't know which
12 information was carried over from the payroll system that
13 existed while he was employed with the City of Vernon and
14 what was on the SmartDesk System; is that correct?

15 A Repeat your question.

16 Q Was it your testimony that some of the variables
17 that were reported when Mr. Malkenhorst was working for the
18 City of Vernon were not maintained in the system that you
19 reviewed?

20 A No. I reviewed the payroll reported through the
21 SmartDesk System when I initially reviewed Mr. Malkenhorst's
22 account.

23 Q Right, and I'm pointing your attention to 5Fs here.

24 A Yes.

25 Q And there's this code 173.

1 A Correct.

2 Q And you're not familiar with that?

3 A No.

4 Q And then these are payroll documents that were filed
5 by the City of Vernon, and you were saying that the documents
6 that you reviewed in this SmartDesk System did not maintain
7 the same codes that are listed in this document; is that
8 correct?

9 A No. The SmartDesk System did have the same codes.
10 Our new my CalPERS system does not have these codes.

11 Q So this document in 5Fs existed in SmartDesk?

12 A This exact document, I'm not sure. This is not the
13 format that I actually reviewed payroll.

14 Q And was the work schedule code 173 present in that
15 system that you reviewed?

16 A I don't recall, but I assume so.

17 Q Isn't one of the main issues in this the hours
18 worked?

19 MR. LEVIN: Objection. Vague.

20 THE COURT: Sustained.

21 BY MR. JENSEN:

22 Q In your review of this case, was there a question
23 about Mr. Malkenhorst's hours?

24 A Can you repeat your question, please?

25 Q When you reviewed this Matter, was there a question

1 about the hours that Mr. Malkenhorst worked?

2 A When I reviewed the payroll, he looked to be a
3 full-time employee.

4 Q And what information did you see that led you -- did
5 you -- did you maintain that opinion throughout this case?

6 A My opinion that --

7 Q That he appeared to be a full-time employee?

8 A Yes. He appeared to be a full-time employee, yes.

9 Q Do you still believe he's a full-time employee?

10 THE COURT: Currently?

11 MR. JENSEN: No. I'm sorry.

12 BY MR. JENSEN:

13 Q Is it still your opinion today that Mr. Malkenhorst
14 was a full-time employee through his retirement at 2004?

15 A Yes. I believe he was a full-time employee.

16 Q And what -- so let me -- the next step in this.

17 MR. JENSEN: Your Honor, 5Fs is in? Okay.

18 THE COURT: Excuse me. The answer is yes.

19 MR. JENSEN: Thank you, your Honor.

20 BY MR. JENSEN:

21 Q So Ms. Lueras, at some point -- well, okay. What
22 else did you do in your comp review unit of Mr. Malkenhorst
23 other than review his payroll which you indicated he was a
24 full-time employee?

25 A So I reviewed the payroll. He looked to be

1 receiving full-time service credit for his services with the
2 City of Vernon. We also -- I also reviewed all other
3 documents that were submitted through the audit process.

4 Q And let me clarify that. The City of Vernon
5 submitted documents to you in the audit process?

6 A They were submitted to our audit staff.

7 Q And do you recall approximately how many documents
8 were submitted by the City of Vernon?

9 A I don't have an exact number, but there were very
10 many.

11 Q And were you aware that Mr. Malkenhorst submitted
12 many documents as well?

13 A There were documents submitted. I believe after a
14 presentation letter was sent.

15 Q And did you review those documents?

16 A I did.

17 Q And did you review all these documents that the City
18 of Vernon provided?

19 A Yes. All that were made available to me, yes.

20 Q Were some documents provided in the audit process
21 that weren't made available to you?

22 A I am not aware if there were.

23 Q Did you ever have any communications with the audit
24 department regarding additional documents?

25 A What kind of communication?

1 Q E-mail, calls, something.

2 A To ask what?

3 Q If there were additional documents?

4 A I believe -- I worked very closely with the auditors
5 to insure that I received all the documents that were
6 available, yes.

7 Q And did the auditors ask for your help when there
8 were documents that they were looking for?

9 A I don't think I understand your question.

10 Q Did the auditors call you and ask for help getting
11 more documents?

12 A No.

13 Q Did the auditors call you and ask for help
14 interpreting documents?

15 A No.

16 Q To the best of your ability, do you remember when
17 the audit called you -- called Ms. Jimenez and asked for
18 additional documents?

19 A I'm sorry. Repeat your question.

20 Q To the best of your recollection, do you remember
21 when the auditors called Ms. Jimenez and asked her for help
22 getting additional documents?

23 MR. LEVIN: Objection. Calls for speculation.

24 MR. JENSEN: To the best of your recollection.

25 THE COURT: You may answer if you know.

1 THE WITNESS: I'm still not 100 percent sure I'm
2 understanding the question.

3 BY MR. JENSEN:

4 Q Let me repeat it. To the best of your recollection,
5 do you recall whether the auditors including Chris Wall
6 called Tomi Jimenez and --

7 THE COURT: Let's lay a foundation for how she could
8 know this.

9 MR. JENSEN: Okay. Great. Thank you, your Honor.

10 BY MR. JENSEN:

11 Q Ms. Lueras, thank you. Who is your supervisor in
12 the comp review unit?

13 A Currently?

14 Q At the time of this determination between, say -- or
15 the time of this review process, say, between January 1st,
16 two thousand -- well, how about November of 2011, through
17 November, 2012.

18 A I believe my direct supervisor was Angelina Ray at
19 that time.

20 Q And was your direct supervisor at one time
21 Mr. Rodgers?

22 A While I was in the compensation review unit, yes.

23 Q And can you just describe the hierarchy in the
24 compensation review unit, and if it changed, if you can
25 describe that as well?

1 A The hierarchy in the compensation review unit
2 consists of analysts and then we have our direct manager who
3 is the staff services manager one, and then there is a staff
4 services manager two, and also a staff services manager three
5 or assistant division chief. Those were interchangeable.

6 Q And -- and when you began in the comp review unit,
7 can you just describe who occupied those positions?

8 A When I began in the compensation review unit?

9 Q How about when you began review of this Matter of
10 Bruce Malkenhorst.

11 A That's a few years back and there has been some
12 management changes so I can not say with certainty who was
13 in those positions.

14 Q Just to the best of your recollection.

15 A So I believe around that time my staff services
16 manager one was Angelina Ray. The staff services manager
17 two was Tomi Jimenez, and the staff services manager three
18 or assistant division chief was Marion Montez.

19 THE COURT: Marion?

20 THE WITNESS: Montez.

21 THE COURT: Thank you.

22 THE WITNESS: Uh-huh.

23 BY MR. JENSEN:

24 Q And did that change over the period of time when you
25 were reviewing the Malkenhorst Matter? Just to the best of

1 your recollection.

2 A It may have.

3 Q Do you remember whether you directly reported to
4 Ms. Jimenez?

5 A If I directly reported to her?

6 Q Yes.

7 A No. I always had a staff services manager one.

8 Q Do you he recall when Mr. Rodgers was a supervisor
9 in the chain above you?

10 A I don't recall when exactly he came onto comp
11 review.

12 Q But was he -- was he your supervisor at one point?

13 A At one point, yes.

14 Q And was anyone else a supervisor of you during the
15 period of your review of the Malkenhorst Matter?

16 A In the very -- well, I don't think so, but again, I
17 can't say with 100 percent certainty.

18 Q Okay, and so you said you were -- you established
19 that you had a full-time position, and then you were
20 proceeding to another part of the comp review. What was the
21 second part of the comp review process that you were doing
22 with respect to Mr. Malkenhorst?

23 A Can you be more specific?

24 Q What were the other -- if -- if -- you said -- you
25 said you reviewed the payroll and you determined if he was a

1 full-time employee, and then was there anything else that you
2 reviewed?

3 A When I reviewed the payroll, I determined that he
4 was receiving full-time service credit for his duties within
5 the City of Vernon. What I -- I'm still not 100 percent what
6 you're asking me what I did next.

7 Q What else did you do? So you determined he's a
8 full-time employee with the City of Vernon and that's it?

9 A When reviewing -- in general, when I review payroll
10 for a case that may come through, I verify the pay rate
11 reported is pursuant to the publicly available pay schedules,
12 and I also review any special compensation that was reported
13 and make sure that it is compliant with the California code
14 of regulations as well as the statutes and make sure that
15 there are illustrated well in the employer's written policy
16 or agreements.

17 THE COURT: I'm sorry. You faded away at the end.
18 And illustrated well --

19 THE WITNESS: In the employer's written policy or
20 agreements.

21 THE COURT: Thank you.

22 MR. JENSEN: And, your Honor, I'd like to show the
23 witness Exhibit 65.

24 THE COURT: Go ahead.

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

1 THE COURT: You may.

2 BY MR. JENSEN:

3 Q Ms. Lueras, may I approach?

4 A Yes.

5 Q Just to assist you. So Exhibit 65 and -- yeah.

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

7 (Recess)

8 THE COURT: Back on the record.

9 BY MR. JENSEN:

10 Q Did you -- can you take a moment to look at

11 Exhibit 65, Exhibit 65.

12 THE COURT: It's over 80 pages.

13 MR. JENSEN: Yeah. Let me just -- I'll just direct

14 the witness's attention. May I approach?

15 THE COURT: Please.

16 MR. JENSEN: Thanks.

17 BY MR. JENSEN:

18 Q Did you review the resolutions about establishing

19 the pay rate for Mr. Malkenhorst?

20 A Yes.

21 Q Did you review the document in front of you, Exhibit

22 65, page 73?

23 A I may have, yes.

24 Q Would you have reviewed the pay schedule that is --

25 establishes his compensation earnable?

1 A Repeat your question, please.

2 Q In the process of comp review, would you have
3 reviewed the pay schedule that is -- establishes his final
4 one year compensation?

5 A I'm not following you.

6 Q You mentioned you reviewed some resolutions?

7 A Yes.

8 Q Was this one of the resolutions you reviewed?

9 A It may have been, yes.

10 Q Okay, and were you aware of what position that the
11 City of Vernon was reporting that Mr. Malkenhorst occupied?

12 A In the system, it's not a position that's reported.
13 It's a pay rate that's reported.

14 Q Right, and then you mentioned that you looked at the
15 publicly available pay schedules as part of your process?

16 A Correct.

17 Q And what were you looking for in the publicly
18 available pay schedules?

19 A Mr. Malkenhorst indicated that his position with
20 the City of Vernon was City administrator slash City clerk.
21 So what I was attempting to do was to verify the pay rate
22 reported was reflected on a pay schedule.

23 Q And with reference to that document in front of
24 you, is there a pay rate reflected for the position of
25 City administrator, City clerk?

1 A There is a monthly salary listed.

2 Q And so did you accept that monthly salary listed?

3 MR. LEVIN: Objection. Vague.

4 THE COURT: Sustained.

5 BY MR. JENSEN:

6 Q And so when you looked at the publicly available pay
7 schedule, did you see that there was a salary associated with
8 the City administrator/City clerk position on the payroll --
9 on the pay schedules for the City of Vernon?

10 A Yes. There was a salary listed for the City
11 administrator slash clerk position.

12 Q And did you -- and did you accept that pay rate
13 reported for -- the pay rate that is on the pay schedule for
14 the City administrator/City clerk?

15 MR. LEVIN: Objection. Vague as to "accept."

16 THE COURT: Sustained.

17 BY MR. JENSEN:

18 Q Yeah. So when you saw that there was a pay rate on
19 the publicly available pay -- on the pay schedule for City
20 administrator/City clerk, what did you do next?

21 A I compared the amount reported to the amount listed
22 on the pay schedule.

23 Q And what did you find when you did that?

24 A That the amount reported was the amount that was
25 listed for City administrator slash City clerk.

1 Q And then what did you do?

2 A Again, that's a really broad question. I'm not --

3 Q Well, if you determined that it's a full-time
4 position and that it's listed on a pay schedule, doesn't that
5 end the inquiry?

6 A There were issues with the salary schedule that was
7 provided by the City, and there is also accompanying
8 documentation that I reviewed. I don't solely base or
9 complete my review on a single document.

10 Q So let's get to those. You said there was -- I'm
11 not sure how you referred to it, issues in the pay
12 schedule?

13 A Yes.

14 Q And can you identify those issues?

15 A From what I recall, one of the issues was there are
16 many positions listed with a zero salary.

17 Q Can you -- with reference to the pay schedule in
18 Exhibit 65, can you show me which positions are listed with
19 zero salary?

20 A In this document, it doesn't seem like there's a
21 position with \$0.

22 Q Did you review any document that listed a salary
23 with \$0 in a pay schedule?

24 A In the pay schedule submitted by the City, yes.
25 There were positions listed as \$0.

1 Q On a pay schedule?

2 A On what they submitted as their pay schedule.

3 Q For positions that Mr. Malkenhorst was said to have
4 occupied?

5 A Not that I recall.

6 Q Can you show me -- point to that document that shows
7 positions on a pay schedule with zero salary associated with
8 them?

9 A You want me to go through all these documents in the
10 binder?

11 Q Unless Counsel wants to stipulate that there is no
12 such document. I -- you know, I've never seen them.

13 THE COURT: Why don't you ask the witness whether
14 she can identify it. I'm not going to make her --

15 MR. JENSEN: Yeah.

16 THE COURT: -- go through 20 binders of documents.

17 BY MR. JENSEN:

18 Q Can you identify over what time period or where it
19 would be?

20 A I'm going to take a step back and say that I
21 reviewed all documents that were submitted to our audit --
22 our office of audit services for a broad timeframe and I did
23 come across pay schedules. They may have been more recent.
24 I'm not 100 percent sure of the timeframe, but there are
25 documents that had positions listed as \$0. It was an issue

1 that was identified or a finding that was identified in the
2 audit, and it was something that I had to address.

3 Q I think we have the audit -- would you know where in
4 the audit it would list -- it would identify that there was
5 pay schedules with zero salary associated with positions?
6 What section of the audit it would be in?

7 A If I can look at the audit, I may be able to.

8 MR. JENSEN: With your Honor's permission I'm looking
9 for the audit.

10 THE COURT: All right. Let's go off the record.

11 (Recess)

12 THE COURT: Let's go back on the record. We're
13 looking at Exhibit 86 --

14 MR. JENSEN: Thank you, your Honor.

15 THE COURT: -- which has already been admitted.

16 BY MR. JENSEN:

17 Q Ms. Lueras, if you can just take a moment to just
18 locate for me where you indicated that there's pay schedules
19 with zero compensation associated with duties or
20 responsibilities that could be associated with
21 Mr. Malkenhorst?

22 MR. LEVIN: Objection. Misstates the testimony that
23 it was in connection with Mr. Malkenhorst.

24 THE COURT: Sustained.

25 ///

1 BY MR. JENSEN:

2 Q To the extent that there are pay schedules listed
3 with zero salary in it. If you could identify that part of
4 the audit. I'm not sure if it's helpful to Ms. Lueras, but I
5 believe that on page 67 of Exhibit 86 there is a chart that
6 refers to an individual number seven which I believe was
7 referenced to Mr. Malkenhorst, but I don't --

8 A What page?

9 Q 67 of 86.

10 A Were you asking a question about this document?

11 Q No, no, no. I was just asking if that would help
12 you find the information that you indicated that there was
13 positions listed on the pay schedule with no pay?

14 A This particular document you pointed to me does
15 not --

16 Q No. Oh, it does not?

17 A It does not. So I don't believe that zero pay rates
18 on the salary schedule was specifically addressed in the
19 audit in the final report.

20 Q And can you direct me to any other place that you
21 might see where positions with zero pay rate were listed on a
22 pay schedule?

23 A On my desk I know where they are. Here, I have no
24 idea.

25 Q Would it be important? Was that document important

1 to you? Was that document a crucial part of your
2 determination that there was zero pay rate associated with a
3 position that was reported on a pay rate schedule?

4 A In determination of what?

5 Q In your opinion in consideration of this Matter, was
6 that document on your desk that showed zero pay for a
7 position an important part of your determination?

8 A I will say that all documents that were submitted to
9 me were reviewed. As far as their importance to the
10 determination made, I don't think I can comment on that.

11 Q And -- but was it one of the factors you brought to
12 Ms. Jimenez's attention?

13 A For Mr. Malkenhorst, I do not recall.

14 Q Okay. So let me go through your thought process.
15 In the compensation review unit, you looked at payroll first
16 and you saw that he was reported as a full-time employee; is
17 that correct?

18 A That he was receiving full service for the services
19 that he provided for the City of Vernon.

20 Q And the City had reported him as a full-time
21 employee; is that correct?

22 A The City did report him as a full-time employee,
23 yes.

24 Q And then your next step is you looked at the pay
25 resolutions and saw that there was a City administrator

1 position and a pay rate associated with that; is that
2 correct?

3 A That is correct.

4 Q And then the next thing you said is that you said
5 you saw some pay schedules that listed positions with zero
6 pay; is that correct?

7 A Yes.

8 Q And so those are the three things that you have
9 mentioned to us. What was the next thing you did?

10 A For Mr. Malkenhorst, I reviewed all the
11 documentation associated to his account or to his record.

12 Q What would be important information that you
13 reviewed in his record?

14 A I reviewed many resolutions that established or what
15 looked to establish pay rates for several positions. I also
16 looked at information that was in Mr. Malkenhorst's file from
17 previous reviews.

18 Q Let me ask you a question. Did you either say or
19 represent to Ms. Jimenez that the City of Vernon had sent
20 appropriate resolutions to verify his pay rate up through
21 1995?

22 A Can you repeat your question, please?

23 Q Do you recall saying to Ms. Jimenez that the City
24 had provided appropriate resolutions to verify his pay rate
25 through 1995?

1 A I am not sure. That was a long time ago.

2 Q But is it your opinion that there are appropriate
3 resolutions at least through 1995 that establishes his pay
4 rate and -- establishes pay rate?

5 A I would have to look at it again.

6 Q Just to refresh your recollection about it --

7 MR. JENSEN: Your Honor, I'd like to mark this
8 four-page -- I think it's actually a five-page e-mail as part
9 of a chain in April 19th, 2012, and I'm going to show it to
10 Counsel. There is one marking on it which is my marking,
11 and -- but I'd like to mark it as --

12 THE COURT: 5Ws.

13 MR. JENSEN: 5Ws. Again, it's a five-page e-mail
14 and it's got the Bates stamps are CalPERS P-r-a 1270 3,138 to
15 3,142, and I'm going to mark it as 5Ws in the upper right
16 hand corner.

17 THE COURT: Just for the record, the e-mail that you
18 offered that Mr. Levin objected to with our prior witness
19 that you withdrew that was 5Ws. So this would be --

20 MR. JENSEN: Oh, okay.

21 THE COURT: -- 5Xs.

22 MR. JENSEN: And so let me -- can I change the
23 marking in the upper right hand corner?

24 THE COURT: Yes. Sure.

25 MR. JENSEN: That's my mistake. I'm sorry.

1 THE COURT: I'll mark it. That's all right.

2 MR. JENSEN: Let me cross it out.

3 THE COURT: Thank you. Mr. Levin, have you had an
4 opportunity to look at Exhibit 5Xs?

5 MR. LEVIN: Yes, your Honor.

6 THE COURT: Any objection to showing this to the
7 witness?

8 MR. LEVIN: No objection.

9 THE COURT: Mr. Yim?

10 MR. YIM: No objection.

11 MR. JENSEN: And your Honor, I have crossed out 5Ws
12 and put 5Xs. May I approach?

13 THE COURT: Yes, you may. Let's staple this
14 together, and I'm handing it to the witness.

15 MR. JENSEN: Thank you, your Honor.

16 BY MR. JENSEN:

17 Q Ms. Lueras, can you take a moment and review that
18 document to see if it refreshes your recollection?

19 A What was your question?

20 Q Do you recall saying to Ms. Jimenez or forwarding
21 the document that appropriate resolutions that had been
22 received from the City of Vernon at least through 1995?

23 A I assume that you're referring to the marking you
24 made on the page?

25 Q I marked the word appropriate, but I'm not

1 referring to my marking. I'm referring to --

2 MR. JENSEN: May I approach, your Honor?

3 THE COURT: You may.

4 BY MR. JENSEN:

5 Q Ms. Lueras, may I approach?

6 A Yes.

7 Q Do you recognize this document?

8 A I vaguely recall it, yes.

9 Q So what did you mean by that sentence? Maybe you
10 can read the sentence first that begins with the City -- the
11 City, the Respondent? I don't know if that's a typographical
12 error.

13 A So it's half way down --

14 MR. LEVIN: Your Honor, I would object to the
15 witness reading it into the record. It's just used for
16 recollection --

17 MR. JENSEN: Right. Do you recall --

18 THE COURT: One at a time, please. The objection is
19 sustained. May I see the document for a moment? Thank you.
20 Okay, and you're referring to the third page, the fourth
21 paragraph?

22 MR. JENSEN: Yes, your Honor.

23 BY MR. JENSEN:

24 Q And do you recall communicating that the City had
25 filed appropriate resolutions at least through 1995?

1 A I don't know if that is what this is saying.

2 Q What is your understanding -- of your recollection
3 of what you were trying to communicate with that document?

4 A This document was created to capture all of the
5 events that happened with Mr. Malkenhorst's account.

6 Q And with respect to this, do you recall what you
7 were trying to communicate when you indicated that the City
8 had provided appropriate resolutions at least through 1995?

9 MR. LEVIN: I object to the question. It assumes
10 facts not in evidence until that document is admitted. It
11 doesn't refresh her recollection.

12 THE COURT: Does it refresh your recollection as to
13 what you meant?

14 THE WITNESS: No.

15 BY MR. JENSEN:

16 Q Do you recall writing this document?

17 A Vaguely.

18 Q And do you recall how you characterized the
19 resolutions that were provided by the City at least through
20 1995?

21 A No.

22 Q Does this document refresh your recollection of how
23 you characterized the documents received from the City of
24 Vernon up to 1995?

25 A No.

1 Q So after reading this document, it doesn't refresh
2 your recollection about how you characterized them?

3 A After reading this document, it sounds as though I
4 was trying to capture what happened. It says the City
5 responded in 1995, but it doesn't say that all resolutions
6 that were received through '95 were true and correct.

7 Q So what -- does this document refresh your
8 recollection of how you used the word "appropriate" in
9 consideration of the resolutions?

10 A All this document does is refresh my memory that I
11 created a write-up for my management to understand the events
12 or to capture the events that happened throughout
13 Mr. Malkenhorst's file.

14 Q And does it refresh your recollection of whether you
15 represented to Tomi Jimenez or others -- supervisors that you
16 -- in your review of them of what you considered the
17 resolutions to be appropriate at least through 1995?

18 A No. I don't recall. That's not what it says.

19 MR. JENSEN: Your Honor, no further questions of
20 this witness.

21 THE COURT: Thank you cross-examination.

22 MR. LEVIN: No questions, your Honor.

23 THE COURT: Thank you very much. You're excused.

24 MR. JENSEN: I just want to -- no, no. I just want
25 to thank --

1 THE COURT: And before you do, and this is my fault
2 again, Mr. Yim, any questions?

3 MR. YIM: No questions, your Honor.

4 THE COURT: Thank you very much.

5 MR. JENSEN: I just want to thank you, Ms. Lueras.
6 I really appreciate it.

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

8 (Recess)

9 THE COURT: Mr. Jensen, you may call your next
10 witness.

11 MR. JENSEN: Yes. I'd like to call Bob Adams.

12 THE COURT: Thank you, and it's my understanding
13 that due to another witness's scheduling issues this
14 afternoon we may be breaking from Mr. Adams, going to
15 another witness, and coming back to Mr. Adams; is that
16 correct?

17 MR. JENSEN: Yes, your Honor. That's correct.

18 THE COURT: And, Mr. Levin, you have no objection to
19 that?

20 MR. LEVIN: Correct, your Honor.

21 THE COURT: And Mr. Yim?

22 MR. YIM: No objection.

23 THE COURT: That's fine.

24 MR. JENSEN: Thank you.

25 THE COURT: Mr. Adams?

1 BOB ADAMS,
2 called as a witness, and having been first duly sworn by
3 the Court, was examined and testified as follows:

4
5 THE WITNESS: Yes.

6 THE COURT: Thank you. Have a seat. State your
7 name.

8 THE WITNESS: My name is Bob Adams. My formal name
9 is Robert Adams.

10 THE COURT: Thank you very much.

11

12 DIRECT EXAMINATION

13 BY MR. JENSEN:

14 Q And, Mr. Adams, first I want to ask you, have you
15 served as a chief executive officer municipality?

16 A Yes, I have.

17 Q And how many different municipalities have you
18 served as chief executive officer?

19 A Five.

20 Q And over approximately how many years did you serve
21 over as chief executive officer for the five different
22 cities?

23 A Approximately 33.

24 Q Is that 33 years?

25 A Yes. 33 years.

1 Q And were some of the cities general law cities?

2 A Yes.

3 Q And were some of the cities charter cities?

4 A Yes.

5 Q And are you generally familiar with the policies
6 and practices of municipalities as far as the duties and
7 responsibilities of chief executive officer?

8 MR. LEVIN: Objection. Lacks foundation.

9 THE COURT: Overruled.

10 THE WITNESS: Yes.

11 MR. JENSEN: And, your Honor, I'd like to just go
12 back to his work history now.

13 BY MR. JENSEN:

14 Q Just briefly, Mr. Adams, I'll -- what was your
15 educational background?

16 A I have a bachelor's degree in criminology and a
17 master's degree in public administration.

18 Q And what is a master's degree in public
19 administration?

20 A It's similar to what -- commonly referred to as MBA
21 which most people are familiar with. The MBA focuses on
22 public service, public accounting, public personnel
23 practices, a series of analytical courses and statistics,
24 business statistics, social statistics --

25 THE COURT: I'm going to ask the witness to slow

1 down a little so that the court reporter can make sure she
2 makes an accurate record of everything that is said.

3 MR. JENSEN: Thank you.

4 THE COURT: Thank you.

5 BY MR. JENSEN:

6 Q And if there's other matters that you wanted to
7 elaborate on, just slowly --

8 A The basic -- the basic curriculum is to, you know,
9 management practices and organizational issues that one might
10 come across in the public setting.

11 Q And does that include municipalities?

12 A Yes, it does.

13 Q And what was your first executive level employment
14 in municipality?

15 A In 1981 I was selected to be the City manager in
16 Dinuba, California.

17 Q And prior to becoming the City manager, did you have
18 experience in -- in financial accounting in a different
19 employment?

20 A Yes.

21 Q And what was that employment?

22 A That was with the City of Santa Rosa where I was the
23 administrative assistant and finance administrative services
24 department for three years.

25 Q And what did do you in that capacity?

1 THE COURT: I'm sorry. In which department?

2 THE WITNESS: Finance administrative services.

3 THE COURT: Thank you.

4 BY MR. JENSEN:

5 Q What were the tasks that you performed in that
6 capacity?

7 A Budget preparation, budget control, grants
8 administration, grants review, the record keeping for grants.
9 There were a lot of difficult accounting issues. There were
10 mostly dealing with the administration of -- the financial
11 administration of grant record keeping and of course
12 preparing the whole City budget.

13 Q And in the City of Santa Rosa, did the City have
14 different departments or funds over which expenses were
15 accounted for?

16 A Yes.

17 Q And can you describe that for us?

18 A The City of Santa Rosa is a fairly sophisticated
19 financial operation in that it's the largest City south of
20 the Oregon border for northern California. So one of the
21 regional services that was provided was waste water
22 treatment. and that involved a partnership between three
23 cities and the county of -- excuse me. Sonoma County and the
24 records had to be kept in order to charge between all the
25 various funds and the regional activities that were going on

1 to make sure the City recouped those actual costs.

2 Q And what type of costs were allocated over different
3 departments or --

4 A Excuse me. It had to be -- it had to be
5 determined how much of each department had played a part in
6 the -- in the oversight of those operations. For example, the
7 regional waste water treatment plant, and those costs that
8 were allocated -- that were incurred by the City and had to
9 be allocated to those functions so that the cost to the other
10 agencies could be recouped. So in other words, the City did
11 not want to subsidize the operation.

12 Q And what was the process in the City -- were you
13 aware of the process in the City by which the City
14 allocated --

15 A For the most part, I wasn't directly involved with
16 the accounting aspect of it. I was involved in the
17 allocation aspect.

18 Q I'm sorry. I'm going to ask you to let me finish
19 asking my question before you respond. What part were you
20 familiar with, with respect to the accounting of costs over
21 different departments?

22 A For putting the budget together, we were aware of
23 what the departments cost and -- and from the departments
24 themselves we would then have to give estimates of how much
25 the time should be allocated to those functions. In some

1 cases, there were actual time cards kept, especially for the
2 employees that worked directly for the regional water plant.
3 Although they were City employees, they did a lot of work at
4 the regional plant. Those costs need to be tracked in order
5 to be charged to the entities that were participating in that
6 effort.

7 Q And was this part of the budgeting process?

8 A Yes.

9 Q And was it prospective over the next fiscal year?

10 A Yes.

11 Q And was it by percentage?

12 A Some were by percentage.

13 Q And which ones were by percentage?

14 A All the oversight functions such as HR, finance,
15 City management, City council city attorney, risk management.
16 There are those the ones that come to mind initially.

17 Q And can you elaborate how or provide an example of
18 how say the costs -- first let me step back.

19 Was the City of Santa Clara, was --

20 A Santa Rosa.

21 Q Was the City of Santa Rosa a City management form
22 of government?

23 A Yes, it was. Council management form.

24 Q Council management form, and was the City manager
25 salary allocated over different funds or departments?

1 A Yes.

2 Q And how was the City manager salary allocated over
3 different funds or departments?

4 A The way that was handled was, there was a percentage
5 of -- at one time -- I don't know -- I can't attest to what
6 they do today because I was there from '77 to '88. At the
7 time what we did is, we took the actual council agendas and
8 decided or made a decision that the things that came before
9 the City council or which the City manager was directly
10 involved; that was the same percentage that they were
11 charged. So if they had several items on the agenda, for
12 example, if they do 30 percent of the agenda, the 30 percent
13 of that charge of their overall cost of their budgets, not
14 just their salary, but their whole budget would be allocated
15 to those other funds that were being used. So that would
16 include City council, City attorney --

17 THE COURT: I'm going to ask you to slow down, please.

18 BY MR. JENSEN:

19 Q So you were mentioning that the salary of the
20 City manager was allocated over different departments?

21 A Correct.

22 Q And you mentioned it was by percentage?

23 A Yes.

24 Q And then you mentioned that it was by percentage
25 associated with the amount of text in the resolutions or --

1 maybe you can explain that.

2 A It was the actual council agendas. We would count
3 the number of items that were on the agenda for each of the
4 various funds, and that's how that allocation was made at
5 that time.

6 Q So by basically, you counted, say, the bullets on
7 the agenda? Can you explain?

8 A We would essentially count the agenda items and that
9 would -- for a year we would just go through all the agendas,
10 add up all the agenda items, and then make that decision
11 based on the percentage that those different funds
12 represented as part of the activity of that function.

13 Q But isn't it the case that some items on the agenda
14 require significantly more time than other items on the
15 agenda?

16 A That's correct.

17 Q So it wasn't based on how much time was needed to
18 achieve a certain goal in an agenda item?

19 A That would be a correct statement.

20 Q Can you -- so even if there was a recurring agenda
21 item that didn't take a great deal, of time, it would still
22 be equally weighted with every other agenda item that
23 otherwise appeared?

24 A Yes. At that time.

25 Q Okay, and so is there anything else about that

1 allocating costs that -- of the City manager salary that
2 would be significant in your mind?

3 A No. Not at this time.

4 Q And then what was your subsequent employment?

5 MR. JENSEN: And, your Honor, I'm not offering it
6 right now, but I'd like to turn the Court's attention and
7 Counsel's attention to the exhibit behind 4Ls as the resume
8 or CV of Robert "Bob" Adams. I'd like to mark it for
9 identification as a three-page document and of course with
10 permission, I'd like to give it to the witness as well.

11 THE COURT: Which volume is that in?

12 MR. JENSEN: This is exhibit book 17. Your Honor,
13 may I approach?

14 THE COURT: You may.

15 BY MR. JENSEN:

16 Q And, Mr. Adams, may I approach?

17 A (Nods head)

18 Q And your resume is -- well --

19 THE COURT: All right. The document behind tab 4Ls
20 as described in Respondent Malkenhorst's exhibit list is
21 marked for identification as Exhibit LLLL.

22 (Defendant's Exhibit LLLL was marked for
23 identification by the Court.)

24 MR. JENSEN: And, your Honor, I'm going to hand you
25 the Exhibit marked 5X, which was --

1 THE COURT: Thank you.

2 BY MR. JENSEN:

3 Q So, Mr. Adams, what was your first position as
4 City manager?

5 A Dinuba, California. 1981.

6 Q And have you reviewed documents associated with
7 the City of Vernon in this Matter?

8 A Yes.

9 Q And do you have those documents with you?

10 A Yes.

11 Q And they're available for Counsel if they would
12 like to review them. In your review of this Matter, did you
13 notice any similarities between the City of Dinuba and the
14 City of Vernon?

15 A They are both municipal corporations according to
16 the state of California.

17 Q Let me clarify a little closer. Are both Dinuba
18 and and Vernon small cities?

19 A Relatively, yes.

20 Q And do both Dinuba and Vernon have utilities?

21 A Yes.

22 Q And tell us a little bit about your understanding of
23 the utilities that Dinuba had?

24 A We had water; utility, waste/water, treatment plant.
25 We also -- there was a utility, but it was really handled as

1 a contract, garage management or solid waste management
2 franchise, and that -- those were essentially the utilities
3 that we managed.

4 Q And in your position as City manager of Dinuba,
5 did you have many different duties and responsibilities?

6 A Yes.

7 Q And can you tell us what duties and responsibilities
8 you had in your position as City manager?

9 MR. LEVIN: Vague as to time.

10 BY MR. JENSEN:

11 Q Over which time period did you work as City manager
12 for the City of Dinuba?

13 A From 1981 to 1988.

14 Q And when you started at the City of Dinuba as City
15 manager, what was the position that you had?

16 A City manager.

17 Q And what were the duties and responsibilities of
18 the City manager over the period of, say, 1981 to 1982?

19 A When I was initially hired, I was -- let me turn my
20 phone down. I forgot to do that before coming in. Sorry.

21 THE COURT: That's all right.

22 THE WITNESS: Initially when I was hired, I was --
23 the City was in the process of canceling the contract,
24 personnel services and labor relations function, and they
25 wanted a new City manager to perform those tasks. So that

1 was -- there were -- they were trying to cut costs. So
2 the -- the duties were assigned at the assigned salary
3 range.

4 BY MR. JENSEN:

5 Q So let me stop you for a second. So when you became
6 City manager, was -- were those duties contracted to another
7 individual or company?

8 A Yes. I worked with them initially when I came to
9 work as we transitioned by bringing their records into our
10 office.

11 Q So when you began the City manager position, it did
12 not have those duties; is that correct?

13 A That's correct.

14 Q And then were those duties added to the City manager
15 position after you became City manager?

16 A Yes. Within the first two months.

17 Q Okay, and what were those duties that were added to
18 the City manager position?

19 A Personnel officer.

20 Q And what is a personnel officer's
21 responsibilities?

22 A Overseeing the process of hiring and firing,
23 disciplining employees.

24 Q And was that -- were those duties and
25 responsibilities performed in your position as City

1 manager?

2 A Yes.

3 Q And let me ask you, are you aware of the differences
4 between the duties and responsibilities of the City
5 administrator versus the City manager?

6 A I believe so.

7 Q And how did you come to have that belief?

8 A My understanding is that the City manager hires and
9 fires, is responsible in hiring and firing and the evaluation
10 of all department heads. Whereas --

11 Q Slow down.

12 A Whereas the City administrator makes recommendations
13 on the hiring and firing of department heads. It has to be
14 ratified by the City council.

15 Q And do you have -- over your experience, have you
16 seen -- over your 30 years of experience, have you seen
17 comparable -- over your 30 years of experience, are the City
18 manager and the City administrator positions comparable
19 except for this ability to actually hire or fire the
20 individuals?

21 A Yes.

22 Q Let's get back to this personnel -- the extra duties
23 for personnel. What did those entail?

24 A Along with the ones I have mentioned which are the
25 hiring and firing and overseeing the process by which

1 employees are hired and fired and disciplining, there's also
2 labor relations in that particular community.

3 Q And was it a formal position as labor relations
4 or -- not positions. Was it a formal title associated with
5 labor relations?

6 A I have got a -- my memory on this one. but I believe
7 that the City council designated that I would be the City
8 negotiator. So I was identified by closed session documents
9 as the City's negotiator, City manager or City manager Robert
10 Adams. I don't recall how he listed it, but that would be
11 the way it was listed on an agenda in a closed session.

12 Q And were those duties and responsibilities part of
13 your City manager position?

14 A Yes.

15 Q And what was the process by which the City council
16 increased or added additional duties and responsibilities
17 within your City manager position?

18 A They felt because I had prior HR experience that
19 I would be able to do the job. So they based it on my
20 background.

21 Q And did -- was there a formal resolution or an
22 agenda item regarding that additional duties?

23 A I don't recall. We had to cancel the contract, and
24 I don't recall what transpired during that resolution to
25 change that arrangement with the company, consultant.

1 Q And here's an important question. Were you paid any
2 additional compensation for assuming these additional duties
3 of personnel director?

4 A No.

5 Q Were you subsequently, specifically paid any
6 additional compensation for performing those duties as
7 personnel director?

8 A Is that a yes or no question? Can I answer --

9 Q Well, it's a --

10 THE COURT: It was a yes or no question.

11 BY MR. JENSEN:

12 Q It's a yes or no question?

13 A Then the answer is I was not compensated for that.

14 Q And were you specifically compensated for taking on
15 the position or title duties of the labor negotiator?

16 A No.

17 Q And over your tenure at Dinuba, did you maintain
18 those duties and responsibilities as personnel director
19 within the City manager position?

20 A Yes.

21 Q And over your tenure to 1988, did you maintain the
22 duties and responsibilities of the negotiator?

23 A Yes.

24 Q And were you in charge as City manager -- not in
25 charge. Were you involved in the budgeting process at the

1 City of Dinuba?

2 A Yes.

3 Q And what was your involvement in the budgeting
4 process?

5 A Oversight. The City -- the ordinance on the budget
6 called for the City manager to present the budget to council
7 annually. Therefore, I was responsible for the presentation
8 of potentially a balanced budget every year --

9 Q And --

10 A -- but it was actually prepared by the finance
11 department.

12 Q And was the -- was the finance department -- was
13 there an individual who was in the finance department who was
14 responsible for giving you the budget?

15 A Yes.

16 Q And do you remember what the title of that position
17 was?

18 A Finance director slash City clerk.

19 Q So can you explain that -- was that the name of one
20 position?

21 A Yes.

22 Q Tell me about what your understanding of that one
23 position was.

24 A The finance director also served as a City clerk for
25 the City.

1 Q And were they paid, to the best of your
2 recollection, one salary?

3 A One salary for that position.

4 Q And that position had various duties; is that
5 correct?

6 A That's correct.

7 Q Were there any other positions in the City of Dinuba
8 that had either slashes in their titles or a combination of
9 other titles?

10 A I believe in 1983, the City formed a redevelopment
11 agency and as the manager, I became the executive director of
12 the redevelopment agency as well. So I, again, assumed
13 additional duties without additional compensation, but I
14 assumed additional duties at that time, and I'm trying to
15 think if we had hybrid positions. We probably did, but I
16 just don't recall them at this time.

17 Q But let me --

18 A I do recall one. The personnel clerk was also the
19 secretary to the City manager, and the senior accountant
20 clerk was also the deputy City clerk.

21 Q And were these positions that had slashes in their
22 titles?

23 A They were slashed. Correct.

24 Q And to the best of your recollection, was that a
25 standard process across municipalities at that time?

1 A Generally in small cities, you would see that more
2 often than you would in a larger city where they have more to
3 do or more for an assignment to do. The record keeping is
4 fairly similar whether it's a large or small city, span of
5 control is relatively similar in a large or small city.

6 THE COURT: We're going to break for lunch. Let's
7 go off the record.

8 (Lunch recess)

9 THE COURT: We're taking a witness out of order.
10 You may call that witness, Mr. Jensen.

11 MR. JENSEN: Thank you, your Honor. I'd like to --
12 well, first a preliminary matter that Mr. Yim and I have
13 discussed.

14 THE COURT: Yes.

15 MR. YIM: Yes, your Honor. I did discuss with
16 Mr. Jensen outside just before we started here this
17 afternoon, and just wanted to clarify for the record that
18 Mr. Gonzales -- Larry Gonzales will not be testifying today
19 about any closed session, divulging any closed session
20 material or information gained during his tenure as City
21 council member, and Mr. Jensen has indicated that that would
22 not be part of his testimony this afternoon.

23 THE COURT: Okay. Thank you.

24 MR. YIM: Thank you.

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

1 if we happen to stumble on something that Mr. Yim believes is
2 closed session, I would hope he would assert the privilege,
3 but Mr. Gonzales and I have been very clear that we would --
4 all of the matters that are subject to this brief testimony
5 are public and in open session.

6 THE COURT: Okay, and things do happen inadvertently,
7 Mr. Yim. Just state your objection if that happens.

8 MR. YIM: Thank you, your Honor.

9 THE COURT: Thank you, and that's the nature of the
10 stipulation, Mr. Jensen?

11 MR. JENSEN: Yes, your Honor.

12 THE COURT: Very good. All right. You may call
13 Mr. Gonzales.

14 MR. JENSEN: Yes. Mr. Gonzales, can I ask you to sit
15 in the witness chair there.

16

17 HILARIO GONZALES,

18 called as a witness, and having been first duly sworn by
19 the Court was examined and testified as follows:

20

21 THE WITNESS: Yes, I do.

22 THE COURT: Thank you. Have a seat and spell your
23 name, and speak loudly for our court reporter to hear you.

24 THE WITNESS: My name is Hilario Gonzales.

25 H-i-l-a-r-i-o and Gonzales is, G-o-n-z-a-l-e-s.

1 THE COURT: Thank you very much. Go ahead, Mr. Jensen.

2 MR. JENSEN: Thank you, your Honor.

3

4 DIRECT EXAMINATION

5 BY MR. JENSEN:

6 Q Mr. Gonzales, you have a long history with the City
7 of Vernon. Can you tell us the location of your birth?

8 A My birth?

9 Q When you first became acquainted with the City of
10 Vernon?

11 THE COURT: That's a different question.

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

13 THE COURT: Which one are you asking?

14 BY MR. JENSEN:

15 Q Let me clarify. When did you first become
16 acquainted with the City of Vernon?

17 A Okay. In the City of Vernon -- I was actually born
18 back in 1929, about four or five blocks from the City border
19 of the City of Vernon, and I got more acquainted with the
20 City because I transferred to go to school there at the
21 elementary school in Vernon City.

22 Q And at the time when you were in school there, can
23 you describe what the -- what the City of Vernon looked
24 like?

25 A Well, it was going way back. At that time, the City

1 of Vernon what it is today, it was mostly -- it was farm
2 land. It was where you can grow vegetables and fruit and
3 plants. They didn't have many businesses in there. You had
4 what you called partial ranches, and you had more residents
5 in that City at that time and you had more housing. Not very
6 much.

7 Q And when did you first take an official position in
8 the government of the City of Vernon?

9 A Well, back in 1974, I was approached by a member of
10 the City council at that time which was Thomas Ibarra, and I
11 met him at the Vernon City school when we were small kids and
12 he happened to come to the door of my house and came and
13 asked me if I would be interested in running for the City
14 council, because the other council person passed away and
15 they needed somebody to fill this term out.

16 Q And how long were you member of the City council at
17 the City of Vernon?

18 A All these years? About 38 years.

19 Q And when you first -- in 1974, was Vernon a wealthy
20 City? How would you describe the City in Vernon in 1974?

21 A Back in 1974, you could see the City was starting to
22 grow with more businesses coming in through the City because
23 of the residentials that we had living in the City at that
24 time. Businessman were starting to buy out the properties as
25 a business deal. The residents were willing to sell their

1 property to a businessman because they would offer them more
2 money, and the result of that is the businessman would expand
3 his business and knock the residential property down, no
4 houses, no residences, no residential property. So it got
5 smaller and smaller.

6 Q And did the City of Vernon have a motto that you
7 were aware of?

8 A Oh, yes. When it was first founded in 1905, the
9 City was strictly had the motto of exclusively industrial
10 City.

11 Q And when did you first become acquainted with Bruce
12 Malkenhorst?

13 A Mr. Bruce Malkenhorst, I met him when we hired him
14 to work for the City of Vernon.

15 Q And do you recall when he was made City
16 administrator?

17 A It's a process that the City had when I got on the
18 council at that time. All they had besides the council, they
19 had a City clerk. They had no City manager or City
20 administrator. That's the way they had their process of
21 government over there was the City clerk which was
22 responsible for reporting to the City council.

23 Q And did Mr. Malkenhorst want to be City manager with
24 more power?

25 A At the time we hired him, he was referred to us by

1 the City clerk because he was retiring. He was retiring at
2 that time, and he told us that he had a candidate that he
3 knew that will be a responsible person for the City of
4 Vernon, and he recommended him to us and spoke to
5 Mr. Malkenhorst and Mr. Zimmerman which was the City clerk at
6 that time. He told us that he worked in the City at some
7 companies in the financial situations with the companies or
8 something like that. So --

9 Q Go. Please finish?

10 A So if anything, we found a good responsible person
11 because the economics in that City at that time were starting
12 to grow.

13 Q And over the course of time, did the City council
14 retain ultimate authority and power over decision making?

15 A Yes, they did.

16 Q And how did they do so?

17 A Well, Malkenhorst worked -- he got hired on as a
18 City clerk and he -- his responsibilities weren't like the
19 other City clerk over the other departments that he had to
20 talk and see how the process of going on with different
21 departments. When we hired him, we hired him as City clerk
22 and then maybe a couple years later the City started growing
23 a little bit more. Then he came and asked us for the
24 position that we should have; a City manager for the City to
25 conduct a business for the City. We heard that and asked the

1 City council and we discussed that, the council, among
2 ourselves, and we came up with a way to say that we didn't
3 want a City manager.

4 We wanted a person who's responsible to the City
5 council. We offered him the City administrator position
6 because that way he reports to the City council. Therefore,
7 any reason that he wanted to talk to the council, make
8 changes, with finances and all of that, that he would be
9 responsible, but he would report before he makes any decision
10 on his own what to do about any problems that arose.

11 The City council had to know about it and that's why
12 we told him, as City manager, he could do whatever he wants
13 on his own and then the council would find out afterwards
14 what he did, and he might have done it wrong and we might not
15 have wanted to have it done that way. This way the City
16 administrator -- City council said we could listen to what he
17 is bringing to the Council, what changes are going to have to
18 be made at the time or in the future and what the department
19 is doing, what they want, and let the council have the final
20 decision, but he could not do it on his own because we want
21 to make sure everything that was done was for the benefit of
22 the whole City.

23 Q And under Mr. Malkenhorst's guidance, did the City
24 prosper?

25 A Oh, yes, it did. It changed. It changed because he

1 started communicating with people outside of the City. I
2 could tell you before I got into the council, the council
3 were all family members of the original founders of the City
4 of Vernon. The three business people who decided to build
5 that City as a business community for the businessman to
6 bring businesses to the west coast (because at that time,
7 everything was coming and stopping at the Mississippi),
8 from back east; and then we would have to pay for the
9 transportation cost for the business products to come to the
10 west coast. And the three business persons decided they
11 wanted a City that was strictly business oriented to give the
12 businessman a chance to have a business on this side, on the
13 west coast; say we want to bring the cost down and have his
14 products put across.

15 That was their idea and all the time that they were
16 on the council, they were bankers and businessman. So that's
17 the way the City would run. That's a business City,
18 community. They did not discourage any new residents coming
19 into the City. They never did. Any person could come into
20 our City that wanted to live in the City, and who wanted to
21 live there. They can buy the property, property for sale,
22 they could build their own house and live there if they
23 wanted to. But like I said, the residents there -- that were
24 there, they didn't want to rehabilitate their own properties
25 because they would rather sell it to the businessmen. They

1 got more money so they found another house, another place,
2 but that's how it rapidly change from -- if I'm trying to
3 recall, they had at least 250 residents in that City. But
4 then it dropped down to less than 100 because no residential
5 housing was available anymore.

6 Q And, Mr. Gonzales, as the City prospered, were there
7 more responsibilities and duties that you -- that you, as
8 City council, required the City administrator to perform?

9 A Oh, yes. Like I said, before Mr. Malkenhorst came
10 on, there was no communication outside, not even with our
11 Senator or assemblyman. They never came to our City or
12 anything to see how the City was going and all that.

13 When Mr. Bruce came on, he started outreaching,
14 telling them we should outreach and make sure that all of
15 the things that the City can offer businessmen would come
16 into our community especially economically-wise that he
17 communicated with them and they would listen to the
18 businessmen and then he would come to us, or Council, and
19 tell us, and he said, "We can do this, we can do that. We
20 can show the businessmen that there's a different type of
21 City, that it's strictly different from other cities
22 surrounding us."

23 Those are residential cities surrounding the City of
24 Vernon. We have a big work force out there that you can hire
25 people and that's why the City grew from a small community,

1 business community, up to what the City has with the last few
2 years or quite a long time now. We have over 1,800
3 businesses and it's only a five and a half square mile area
4 because it's all business.

5 Q Mr. Gonzales, let me ask you, when the City council
6 required Mr. Malkenhorst to perform additional duties and
7 responsibilities, were those to be performed within his
8 single job as City administrator?

9 A Yes, it was. He was responsible for the rest of the
10 City and the other departments because he would -- he could
11 understand what the -- what the other departments are doing;
12 and I told him that he would be looking out of these
13 departments, but he would be doing this under the
14 administration as a City administrator because he still would
15 have to report to the City council.

16 Q And did the City council -- did the City Council pay
17 Mr. Malkenhorst a single salary for his performance of his
18 City administrator position?

19 A Yes. Only one single salary.

20 Q And after many years did that salary become large?

21 A Well, yes, it did. We went through -- maybe one
22 reason for that because of the work that changed the City
23 around for quite a bit, economy-wise, money-wise. The City
24 didn't have that much money in reserves at that time, but it
25 kept growing. And with the different ideas that he brought

1 to the City that we should do to look ahead to the future of
2 the City, to maintain its objectives and what the City is
3 about, that we had to be responsible and do responsible
4 financial arrangements of whatever we had to do to keep the
5 City strictly business friendly to the businessmen.

6 Q And when was the date that you left the City
7 council of the City of Vernon?

8 A Excuse me?

9 Q What was the last date that you were serving on the
10 City --

11 A My last day?

12 Q Yes.

13 A I retired in December the -- December the 1st of
14 2011.

15 Q 2011, and were you a City council member
16 continuously from the 1974?

17 A Yes. I as a member continuously until the last year
18 when I was the mayor of the City.

19 Q Were you aware of whether Mr. Malkenhorst worked
20 full time in the position as City administrator?

21 A Yes.

22 MR. JENSEN: Your Honor, I have no further questions
23 for this witness.

24 THE COURT: Okay, Mr. Levin.

25 MR. LEVIN: Thank you.

1 CROSS-EXAMINATION

2 BY MR. LEVIN:

3 Q Good afternoon, Mr. Gonzales. You just testified
4 that Mr. Malkenhorst was working full time as City
5 administrator; correct? Is that correct, sir?

6 A Yes.

7 THE COURT: I'm just going to ask you, when you
8 answer --

9 THE WITNESS: Oh, okay. Sorry.

10 THE COURT: That's okay. Please answer verbally so
11 our court reporter can take it down.

12 THE WITNESS: Yes.

13 THE COURT: Thank you.

14 BY MR. LEVIN:

15 Q What did full time mean for Mr. Malkenhorst?

16 A Well, sometimes he spent his time in the City and
17 take care -- oversee the other departments.

18 Q In terms of a number of hours in a week or a month,
19 what did full time mean to employees at the City of Vernon?

20 A Well, in his position, we considered him -- he was
21 on call or full-time duty almost 24 hours a day.

22 Q Were there times when you and other members of the
23 City council would require Mr. Malkenhorst to attend work on
24 the weekends?

25 A Not unless there was a situation that required him

1 to be there for the City at that time.

2 Q Were there times when the City council required
3 Mr. Malkenhorst's services in the late hours during on a
4 Monday through Friday?

5 A Well, I can imagine, like I said, there were -- can
6 I can give you one occasion, one incident, when we had the
7 fireman strike. We had the fireman strike against the City,
8 and he was responsible and he was required to be there 24
9 hours a day. City council was, too. We were there on call.
10 We spent most of our time there because of the union and the
11 fire department, they were trying to go on strike and they
12 did go on strike on the City, and he was there, all the time,
13 24 hours a day. He was on call when we needed him.

14 Q Was there a requirement at the City of Vernon that
15 Mr. Malkenhorst work a certain amount of hours in a time
16 period?

17 A Certain number of hours? I don't think we put him
18 on a 8:00 to 4:00 -- 8:00 to 4:00 schedule because he was on
19 call anytime we needed him. He came. He was responsible to
20 come to the City and the incidents that happened in our
21 City, he would be the first person to call and he would be
22 responsible to be there.

23 Q How much time did you spend at City Hall during
24 the period of time that you were on the City council?

25 A Well, the meetings that we had, I might have been

1 there almost every day.

2 Q So for the period of time that you were on the City
3 council, would you find yourself at City Hall almost every
4 day?

5 A At least, yeah. I only lived next door.

6 Q Did you see Mr. Malkenhorst at City Hall typically
7 when you were there?

8 A Yes. I would go there, and he was there.

9 Q Would you sometimes go into City Hall on Fridays?

10 A They were closed. City Hall was closed on Friday.
11 They are on the four day a week schedule for the City.

12 Q Did you ever go into City Hall on a Friday to see
13 what was going on around there?

14 A No.

15 Q Did you ever have a discussion with Mr. Malkenhorst
16 about the number of hours that he was working each week?

17 MR. JENSEN: Objection. Vague as to time.

18 THE COURT: One moment. One moment. Let's limit it
19 to time.

20 BY MR. LEVIN:

21 Q At anytime have you ever had a discussion about
22 Mr. Malkenhorst about the number of hours he was working
23 in a week?

24 A No. To my knowledge, no, I didn't.

25 Q Have you ever had a discussion with Mr. Malkenhorst

1 at anytime about typical number of hours that he would work
2 each day or each month?

3 A No.

4 Q Did the City council from time to time declare
5 positions in the City of Vernon, positions other than the
6 City administrator?

7 MR. JENSEN: Objection. Vague and ambiguous. What
8 positions?

9 THE COURT: Sustained.

10 MR. JENSEN: And your Honor, there's a noise, an
11 electronic noise that's going, bing, bing. I don't know what
12 it is. It sounds like a recording device or something. Is
13 it the reporter?

14 THE REPORTER: No.

15 MR. JENSEN: Oh, okay.

16 THE COURT: I don't hear that noise.

17 MR. JENSEN: I hear it occasionally. Maybe I'm
18 really, really sleep deprived. I'm sorry. I was just
19 wondering because it goes off every two minutes or something.
20 It has happened like five or six times.

21 THE COURT: If you're able to identify it, let me
22 know.

23 MR. JENSEN: Okay. Thank you.

24 BY MR. LEVIN:

25 Q Was Mr. Malkenhorst at some point in time named

1 City treasurer?

2 A City treasurer? Yeah.

3 Q Was Mr. Malkenhorst at one point in time named
4 City clerk?

5 A Yes.

6 Q Were these appointments for Mr. Malkenhorst
7 performed by the City council?

8 MR. JENSEN: Objection. As to "performed."

9 THE COURT: Sustained.

10 BY MR. LEVIN:

11 Q Did Mr. Malkenhorst become City clerk by action
12 of the City council?

13 A When we hired him, yes.

14 Q Did Mr. Malkenhorst become City treasurer by action
15 of City council?

16 A It was -- it was considered by the council at that
17 time, to my understanding, that he was in that position to
18 oversee those departments that we asked him to oversee.

19 Q Did the City council pass a resolution describing
20 Mr. Malkenhorst as City clerk?

21 MR. JENSEN: Objection. Vague as to time.

22 THE COURT: Overruled.

23 THE WITNESS: Well, I'm trying to think now that
24 he had that position when we first hired him as City clerk.
25 At that time, I could tell you truthfully that I was not a

1 politician and that's why I first refused to go into City
2 council, but he finally talked me into it. They needed
3 somebody. There was no other person in the City that could
4 apply for that position. So I didn't know a lot of any of
5 those procedures. What I learned was after I got on the
6 City council that that's the way the City was run before
7 I got on there.

8 BY MR. LEVIN:

9 Q You were on the City council when Mr. Malkenhorst
10 first began employment with the City of Vernon; correct?

11 A City council at that time, yes.

12 Q Were you involved in discussions with the City
13 council as to whether to make Mr. Malkenhorst the City
14 treasurer?

15 A Would that be in closed session or something like
16 that?

17 THE COURT: I beg your pardon?

18 MR. JENSEN: Well, he asked me which would actually
19 be appropriate to Mr. Yim was, was that in closed session
20 that that would have been asked, and I'll just refer to
21 Mr. Yim, who's the counsel for the City.

22 THE COURT: Would a resolution -- would a resolution
23 to appoint someone City treasurer be taken in closed session?

24 MR. JENSEN: Was it it a question of resolution or
25 was it a question of appointment?

1 THE COURT: It was a resolution.

2 MR. JENSEN: I believe Mr. Levin was asking about
3 an appointment that --

4 THE COURT: All right. Let's clarify that. Mr. Levin,
5 what's your question?

6 BY MR. LEVIN:

7 Q Mr. Gonzales, were you involved with the City
8 council in acting to make Mr. Malkenhorst the City
9 treasurer?

10 A Yes.

11 Q Was that done in an open session meeting in the
12 City council?

13 A Any -- any hiring or firing of any employee for the
14 City of Vernon that was brought to our attention, we would go
15 into personnel in closed session. So there we would discuss
16 what -- what the reasons are for hiring or firing or what the
17 problem is. We would discuss it in closed session.

18 Q In open session, would the City council declare its
19 decision as to whether to hire somebody or to have them fill
20 a position?

21 A Yes.

22 Q And did the City council do that with respect to
23 Mr. Malkenhorst in the position of City treasurer?

24 A Well, for every position, yes.

25 Q What other positions other than City treasurer and

1 City clerk and City administrator did the City council ask to
2 fill for Mr. Malkenhorst?

3 A I remember every position that he was responsible
4 for was the same as the former City clerk had at that time.
5 So everything when he became City clerk, since we had no City
6 manager, no City administrator, that covered all of the
7 department heads -- department heads that are in the
8 different departments that we had in review. That was his
9 responsibility.

10 Q Do you call -- withdraw that.

11 Do you recall an act by the City council making
12 Mr. Malkenhorst the City of Vernon's purchasing agent?

13 A Purchasing agent? I can't recall that. I'm not
14 sure.

15 Q Do you recall an act by the City council making
16 Mr. Malkenhorst the CEO of the City's gas municipal utility
17 department?

18 A The CEO?

19 Q CEO, chief executive officer.

20 A I can't recall of any title that we specified any
21 department had to be a CEO.

22 Q Do you recall any action by the City of Vernon City
23 council making Mr. Malkenhorst the chief executive officer of
24 the City's department of Light & Power?

25 A All I can say is what I've been saying in the

1 beginning. When he became a City administrator at that time,
2 he was responsible for all the departments. That includes
3 Light & Power and the works, to answer to him that he be
4 responsible that the department heads or the administrative
5 heads of each department would talk to him and inform him of
6 all these different -- whatever problem came up or whatever
7 decision they wanted to make to the City council had to go
8 through him to the City administrator.

9 Q Did the City of Vernon have a department of Light &
10 Power when Mr. Malkenhorst first began to work for the
11 City?

12 A Yeah. Yes.

13 Q When Mr. Malkenhorst first began working for the
14 City of Vernon, did, to your recollection, the City council
15 make him the person to whom all department heads would
16 report?

17 A As far as I can recall, like I said, the
18 responsibility of the City clerk at that time, they -- they
19 reported to him, the former City clerk, and reported to the
20 City council. He would make up the City agenda, the agenda
21 for the City Council meetings and what each department head
22 was asking for, it would be on the agenda. That became his
23 responsibility until he got the position of City
24 administrator, then -- and the other City clerk retired,
25 automatically, he just took over the responsibilities that

1 the other City clerk was doing at that time. He was still
2 responsible for the agenda for the City council.

3 Q Did the City council ever prepare a resolution
4 making all department heads accountable to Mr. Malkenhorst?

5 A I can't recall.

6 Q Did the City council ever pass a resolution making
7 Mr. Malkenhorst the chief executive officer of the gas
8 municipal utility department?

9 MR. JENSEN: Asked and answered. Objection.

10 THE COURT: Sustained.

11 BY MR. LEVIN:

12 Q Did the City of Vernon City council ever pass a
13 resolution making Mr. Malkenhorst the executive director and
14 secretary of the industrial development authority?

15 A I can't recall how these -- excuse me, sir. I can't
16 recall all the resolutions of all the City goes through and
17 what we did at that time, but that would be a matter of
18 record. That should be in the City records there that this
19 information is out there in public.

20 MR. JENSEN: And I just want to assert an objection
21 to this continuing line -- we already have these resolutions
22 in the record already, and to the extent that he's testifying
23 about something that is more explicitly represented in the
24 exhibits, it's just not necessary. I think to his
25 recollection is much less precise than what would be in the

1 contemporary documents that aren't in dispute with the City.

2 THE COURT: I agree. Let's move it on.

3 MR. LEVIN: Your Honor, may I make an offer of
4 proof?

5 THE COURT: You may.

6 MR. LEVIN: I would present this evidence and this
7 series of questions related to show that this witness lacks
8 a memory about the events that occurred way back to the
9 '70s when Mr. Malkenhorst first began, and that his
10 testimony suggesting that he had a particular memory of
11 Mr. Malkenhorst's duties is selective memory.

12 MR. JENSEN: Your Honor, may I just address that? I
13 mean, the witness has been crystal clear about the duties and
14 responsibilities of the City clerk position as it existed in
15 1974, and I think that's remarkable.

16 THE COURT: Whether you think it's remarkable has no
17 bearing on this Matter, Mr. Jensen.

18 MR. JENSEN: Sorry.

19 THE COURT: Let's move it on. We don't have to go
20 through every resolution and every appointment, but I think
21 you have made whatever point you are trying to make and let's
22 continue.

23 MR. LEVIN: Thank you, your Honor.

24 BY MR. LEVIN:

25 Q Mr. Gonzales, did you ever participate in salary

1 negotiations with Mr. Malkenhorst?

2 A Yes.

3 Q Did you do that on behalf of the City council?

4 A No. All of the City Council.

5 Q Was there a finance committee for the City
6 council?

7 A There was a finance committee for the City, the
8 finance department.

9 Q Was there a finance committee made up of members
10 of the City council?

11 A Yes.

12 Q Did you ever serve on that finance committee?

13 A Yes.

14 Q What role, if any, did that finance committee have
15 in negotiating salaries with City of Vernon employees?

16 A We would go out -- the finance committee would look
17 at what was asked of the finance committee, but people would
18 go into personnel -- closed session with the whole council.

19 Q Did Mr. Malkenhorst have the opportunity to speak
20 with the City council --

21 A Yes.

22 Q About --

23 A Excuse me. I'm sorry.

24 Q I'm sorry. I was speaking slowly. Let me reask
25 the question. In your memory, did Mr. Malkenhorst have the

1 opportunity to speak to the council and request raises?

2 MR. JENSEN: Objection. Vague as to time.

3 BY MR. LEVIN:

4 Q At any time.

5 A Yes.

6 Q How frequently did the City council entertain a
7 discussion with Mr. Malkenhorst about raises?

8 A On a year -- every year.

9 Q Was it the City council's expectation that
10 Mr. Malkenhorst would have the same salary for a year
11 period?

12 MR. JENSEN: Objection, your Honor, to the extent
13 that he is asking the witness to speak for the whole City
14 council other than just his own percipient knowledge. I
15 think that his -- whatever his understanding can't be
16 attributed to the other members of the City council.

17 THE COURT: That's a fair point. Is there a
18 particular resolution you want the witness to review?

19 MR. LEVIN: No, your Honor. I'll ask about his
20 personal knowledge.

21 THE COURT: Thank you.

22 BY MR. LEVIN:

23 Q Was it your understanding, Mr. Gonzales, that
24 Mr. Malkenhorst after he received a salary would maintain
25 that salary for a year?

1 A Yes.

2 Q Can you recall any instances where a City employee
3 was provided more than one raise in a one year period?

4 A If we're talking about raises for all the City
5 employees, there were two raises as a matter of record. That
6 was on the anniversary date of the employee which would be
7 reviewed by the department heads, and in their departments
8 and they would grant them step raise because you have about
9 seven different steps in a position of a classification of
10 each employee and every anniversary, they would be evaluated.
11 If they were eligible, they would go up another step so they
12 would get that raise. The second time, all the employees got
13 a raise was in the budget in July when we had a cost of
14 living raise. That was for every employee in the City was
15 getting that.

16 Q Did department heads get step raises?

17 A They got the same as the other ones. All the
18 employees. The department heads got their steps too.

19 Q Did -- was there a step one for certain departments,
20 the top step?

21 A Yeah.

22 Q Did department heads who were at step one, did they
23 get additional step raises?

24 A No.

25 Q The COLA raise you mentioned, that's cost of living;

1 correct?

2 A Yeah.

3 Q Was it your intent with the cost of living raises
4 that the raises given to City of Vernon employees would match
5 the additional cost of living, match the inflation rate?

6 A I always look at what the rate was for -- you know,
7 for the cost of living and all employees that are public
8 employees and all that, that get the cost of living raises.
9 We would look at that.

10 Q Did the finance committee for the City of Vernon
11 make recommendations to the entire City council about the
12 amount of raises and the timing of raises?

13 A Yes.

14 Q And then the whole City council would vote?

15 A The finance committee would discuss it, and then
16 recommend it to the City council.

17 Q So whether or not you were on the finance committee,
18 you, as a member of the City council, would get to weigh in
19 on proposed raises for each City employee?

20 A Yes.

21 Q Was -- withdraw that.

22 Do you recall a time in about 2005 when the City
23 of Vernon was attempting to build or develop its own power
24 source?

25 MR. JENSEN: Objection. Relevance. Mr. Malkenhorst

1 retired in 2005, I believe.

2 THE COURT: Are you going outside the scope of
3 Mr. Malkenhorst's employment?

4 MR. LEVIN: No, your Honor. It's 2004, 2005.
5 Mr. Malkenhorst retired in July 1st. So if you'd like,
6 I can try to narrow it down to months.

7 THE COURT: Thank you.

8 BY MR. LEVIN:

9 Q Do you recall a point in time before Mr. Malkenhorst
10 retired when the City of Vernon took steps to develop its own
11 power source?

12 A Yes.

13 Q When did that occur?

14 A Right before he retired.

15 Q Approximately when did that occur? 2004? 2005?

16 A Yeah. If I recall back, what led up to the power
17 plant discussion with Mr. Malkenhorst was a position to say
18 was then because we had our own power plant run by diesels.
19 Now, at that time, all the environmentalists complained about
20 that, and we couldn't rehabilitate diesels. That's when
21 Mr. Malkenhorst came and talked to us about the idea of
22 building a new power plant.

23 Q Did Mr. Malkenhorst do the necessary leg work for
24 the City of Vernon to help it build its own power plant?

25 MR. JENSEN: Objection, your Honor. Lacks foundation.

1 Necessary to build a power plant?

2 THE COURT: Could you restate the question?

3 MR. LEVIN: Yes, your Honor.

4 THE COURT: Thank you.

5 BY MR. LEVIN:

6 Q Did Mr. Malkenhorst do work for the City of Vernon
7 to put in place the effort to build that power plant?

8 A Yes.

9 Q Did Mr. Malkenhorst discuss all the various work
10 that he was doing towards the power plant with the City
11 council?

12 A Yes.

13 Q Did it seem to you that Mr. Malkenhorst was spending
14 a lot of time getting this power plant to take shape?

15 A What you consider a lot of time -- the City council
16 were looking at that and knew or we thought that we only had
17 a certain time limit if we were going to build a power plant,
18 we had to find a way to do it because of the diesel plant not
19 being available. It won't be available to the City
20 anymore.

21 Q Because the City of Vernon wanted to expedite the
22 project, that meant a lot of work needed to be done in a
23 short period of time to get that power plant built?

24 A Yes.

25 Q Did Mr. Malkenhorst do a lot of that work himself?

1 A Yes. He was involved in it.

2 Q Was it your perception that Mr. Malkenhorst was
3 spending a lot of his time on that power plant project?

4 A He would spend the time that he had to spend with
5 the financial people, the political positions, I was involved
6 in that. He had to spend that time that he had, but he also
7 maintained his other responsibilities that he had to do.

8 Q Did the City council, as far as you know, ever tell
9 Mr. Malkenhorst that he didn't have to perform any of his
10 other duties because he was too busy working in Light &
11 Power?

12 A No, no.

13 Q So he had to do his normal duties and additional
14 duties --

15 A Yes.

16 Q -- is that correct?

17 A Right.

18 Q Were there other instances during the course of
19 Mr. Malkenhorst's employment, where he had to spend time on
20 extra duties given to him for City council similar to the
21 issue with the power plant that you just described?

22 A Yes.

23 Q Did you award Mr. Malkenhorst with a greater salary
24 in reflection of, or in gratitude for, the extra work that he
25 put in for behalf of the City?

1 A Not what we considered -- after we considered all of
2 the things that he had performed over the year, no. We
3 didn't give him everything he was asking for.

4 Q Did Mr. Malkenhorst come to the City council and
5 make salary requests?

6 A Yes.

7 Q Did Mr. Malkenhorst make a salary request based on
8 the number of hours he was working in various positions and
9 duties at the City of Vernon?

10 A Well, actually not hours. As results that came
11 about of his involvement in whatever project or whatever was
12 happening that the City was involved in.

13 Q Was it your expectation that Mr. Malkenhorst would
14 work as many hours as he needed to at the City of Vernon to
15 get those results that council expected as good results?

16 A Yes.

17 Q Even if it required Mr. Malkenhorst to work more
18 than 40 hours a week?

19 A Yes.

20 Q Did the City council discuss the allocation of
21 Mr. Malkenhorst's salaries across different departments at
22 the City of Vernon?

23 MR. JENSEN: Objection, your Honor. He used the word
24 "salaries."

25 THE COURT: Sustained.

1 BY MR. LEVIN:

2 Q Did the City council discuss allocation of
3 Mr. Malkenhorst's salary across the various departments that
4 he headed?

5 A I don't understand the question.

6 Q Was there a process by which the City of Vernon
7 council adopted a budget?

8 A Yes.

9 Q Did that budget discuss the allocation of
10 Mr. Malkenhorst's salary to various departments within the
11 City?

12 A Well, making a City budget, we had that process in a
13 position that the salary we were making or any department --
14 any department head or administrator office there, if they
15 work in a different department or they spend time in a
16 different department, that they would more or less put that
17 time down in that department so that the budget will reflect
18 that the salary was spent from this department's budget to
19 pay for that -- as part of the time that he spent with the
20 department.

21 Q Those allocations were done at the -- based on
22 information provided by the department heads?

23 A Right.

24 Q With respect to Mr. Malkenhorst, he was the head
25 of several departments; correct?

1 MR. JENSEN: Objection. Lacks foundation and there's
2 no -- lacks foundation.

3 THE COURT: Overruled.

4 BY MR. LEVIN:

5 Q To your recollection, was Mr. Malkenhorst the head
6 of several departments?

7 A I'm confused. The question that you're asking me --
8 I'm trying to think. How was that question -- ask me
9 again.

10 Q Okay. There were various departments within the
11 City of Vernon; correct?

12 A Right.

13 Q There was a City administrator --

14 A Yes.

15 Q -- department? Yes?

16 A Yes.

17 Q City clerk department?

18 A Right.

19 Q There was a Light & Power department?

20 A Yes.

21 Q Was Mr. Malkenhorst the head of those departments?

22 A He was the City administrator of all these
23 departments.

24 Q Was Mr. Malkenhorst the person responsible for
25 allocating his salary to the various departments at the

1 City of Vernon?

2 MR. JENSEN: Objection as to proposed allocations in
3 the budget or final allocations. Ambiguous as to which
4 allocations he's referring to.

5 THE COURT: Overruled. You may answer.

6 THE WITNESS: Ask me the question again, please.

7 BY MR. LEVIN:

8 Q Was Mr. Malkenhorst responsible for allocating
9 his salary across the various departments that he headed?

10 A Yes.

11 Q And in your memory, did the City council ever
12 disagree with Mr. Malkenhorst about his allocation of his
13 salary across departments?

14 A No.

15 Q Were there employees at the City of Vernon who used
16 timesheets or some other method to track the number of hours
17 they worked?

18 A I don't know.

19 MR. LEVIN: Nothing further, your Honor.

20 THE COURT: Thank you. Mr. Yim, anything?

21 MR. YIM: No questions, your Honor.

22 MR. JENSEN: Your Honor, just two very quick follow
23 ups.

24 THE COURT: Okay.

25 ///

REDIRECT EXAMINATION

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BY MR. JENSEN:

Q Mr. Gonzales, did the City council ever award Mr. Malkenhorst increases in salary that were associated with merit increases?

MR. LEVIN: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. JENSEN:

Q And if there is a resolution that indicates that he was awarded merit increases, would that change your recollection?

A I don't recall that.

Q Let me just refresh the witness's memory and as I look for the exhibit, let me ask you another question. When Mr. Malkenhorst was working in these -- in his duties and responsibilities associated with the -- the new power plant, in which capacity or position did you believe Mr. Malkenhorst was working?

A As a City administrator.

Q Thank you, and I just want to quickly -- if I can turn your attention to Exhibit 21?

MR. JENSEN: Your Honor, may I approach?

THE COURT: Please.

///

1 BY MR. JENSEN:

2 Q And it's just the first page. I'm going to show
3 you in the exhibit book.

4 A Sure.

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

6 (Recess)

7 THE COURT: Let's go back on the record. Go ahead,
8 Mr. Jensen.

9 BY MR. JENSEN:

10 Q I'm directing the witness's attention to page one of
11 Exhibit 21, and if I may direct his attention particularly
12 to -- to line 22. If you can just refer to that recital and
13 see if that refreshes your recollection.

14 A Okay.

15 Q Now that you have reviewed Exhibit 21, does that
16 refresh your recollection as to whether Mr. Malkenhorst was
17 provided a merit increase?

18 A It was a resolution. I'm certain it was. The
19 resolution is there. Like I said, I can't recall that.

20 Q And there might be other increases?

21 A Could be.

22 MR. JENSEN: Okay. I have no further questions.

23 MR. LEVIN: I'd like to follow up.

24 THE COURT: Go ahead.

25 ///

1 THE WITNESS: Yes, I do.

2 THE COURT: Thank you very much. Proceed, Mr. Jensen.

3 MR. JENSEN: Thank you, your Honor.

4

5 DIRECT EXAMINATION (Continued)

6 BY MR. JENSEN:

7 Q I believe where we left off we were discussing, as I
8 recall, the multiple duties and responsibilities of a chief
9 executive officer, City manager, or City administrator and we
10 were referencing your experience in the City of Dinuba,
11 California. Is that what you recall?

12 A Yes.

13 Q And was Dinuba a general law city or charter city?

14 A General law.

15 Q And before the break, we discussed that within your
16 City manager position, you were delegated by the City council
17 additional duties. Do you recall that?

18 A Yes.

19 Q And we were discussing position titles such as
20 director of personnel and labor negotiator?

21 A Yes.

22 Q And did you sign documents as labor negotiator when
23 you were doing those duties within your position as City
24 manager?

25 A Yes. The labor contracts generally need to be

1 signed by the negotiating team. I believe -- my memory is
2 vague on this. So I don't recall how -- obviously, my name,
3 but it either said City manager or labor negotiator. I don't
4 recall if both titles were on it. It may have just been City
5 manager.

6 Q And was the same in your position as personnel
7 director?

8 A Yes.

9 Q So you signed documents and it said Bob -- Robert
10 Adams, personnel director?

11 A I believe, again, it said Robert Adams, City
12 manager.

13 Q City manager, and did you -- were any other
14 additional duties added to your job in City manager in the
15 City of Dinuba?

16 A Yes.

17 Q And what were those?

18 A Approximately, two years after I -- possibly, three,
19 I became redevelopment -- the executive director of the
20 redevelopment agency of a newly formed redevelopment agency
21 that the City had started at that time.

22 Q And was that a separate entity from --

23 A It's a separate legal entity, yes.

24 Q And you were -- were you paid from the redevelopment
25 agency funds directly?

1 A Not directly, no.

2 Q And how were you paid when you were City manager in
3 the City in Dinuba?

4 A Biweekly like all of the employees, I believe. I
5 can't remember if it was bimonthly or biweekly, but it was
6 one of the two.

7 Q And was it a single payment for your position as
8 City manager?

9 A Yes.

10 Q And were the funds drawn from the general fund?

11 A Yes.

12 Q And I think before the break we mentioned or we
13 briefly discussed your understanding of cost accounting of
14 your salary over, not only different departments, but
15 different legal entities. Can you describe how your salary
16 as City manager was allocated in part to the redevelopment
17 agency?

18 A I believe it was either 10 or 20 percent of the City
19 manager budget which included my salary and benefits were
20 charged to the redevelopment agency because it was determined
21 that it made up about 10 or 20 percent of my time.

22 Q And was that projected at the beginning of the
23 fiscal year for the next fiscal year?

24 A Yes.

25 Q And did you keep timesheets of your time?

1 A No, I did not.

2 Q Did you clock in in any capacity?

3 A No.

4 Q And what was your normal working hours as City
5 manager?

6 A I almost made a humorous comment, but I'll choose
7 not to. Essentially, it was 8:00 to 5:00, but obviously
8 there are more hours for City manager.

9 Q Can you elaborate on that?

10 A Yes. Many times as City manager because you're the
11 administrative head of the government. You're also the
12 liaison to various groups on behalf of the City council. The
13 City council generally wants you to be the representative or
14 the face of the City. You have to be careful you don't
15 compete with the mayor in that regard because the mayor is
16 obviously is the ceremonial head of the City, but, for
17 example, the chamber of commerce had their meetings at 7:00
18 in the morning and I was expected to attend that as part of
19 my duties. We also had City Council meetings in the
20 evenings. I was expected to attend those as well, and to
21 compensate me for that, I was given additional time off such
22 as administrative leave or management leave that I would take
23 when I wasn't so busy.

24 Q And was that -- was there additional -- was this
25 additional leave time given to you specifically for assuming

1 these additional duties?

2 A No.

3 Q And so what would be considered the normal work
4 location of a City manager or a City administrator?

5 A In the City manager's office in City Hall.

6 Q And you previously discussed you were also
7 attending -- you were expected to attend chamber meetings in
8 the morning and reach out to outreach groups and then attend
9 City council meetings. Would those also be part of your
10 normal work location?

11 A Yes. So City council chambers. It also involved
12 inspection of public works projects. I would be out in the
13 field at times to see how the work is progressing, or if
14 anybody had a complaint about how the work was being
15 conducted. In other words, if streets were blocked that
16 shouldn't be blocked, that sort of thing, although
17 technically that's the City engineer public works function
18 and those positions did report to me, and then I would
19 evaluate the situation and give them additional direction
20 if necessary.

21 Q And did these same answers about normal work
22 location and normal work hours apply to your other City
23 manager jobs in over your 30 years of employment?

24 A Yes.

25 Q So would you describe this as a general

1 condition or characteristic of being a City manager or
2 City administrator?

3 A Yes.

4 Q And have you heard or learned of a City manager or
5 City administrator position that works only, say, 7:30 to
6 5:00, four days a week in one office in the City Hall?

7 A No.

8 Q Is there -- are you familiar generally with all
9 of the -- are you generally familiar with the practices of
10 City administrators and City managers in the state of
11 California?

12 MR. LEVIN: Objection. Foundation.

13 MR. JENSEN: Generally.

14 THE COURT: I'll allow the question. If he answers
15 yes, he can lay a foundation.

16 BY MR. JENSEN:

17 Q Are you generally familiar with the work hours and
18 work locations of City managers and City administrators in
19 the state of California?

20 A Yes.

21 Q And how did you become familiar?

22 A I'm involved with the international City management
23 association which is an international group. I'm involved
24 with California City Management Foundation, CMF. California
25 City Management Foundation is a group of managers. I served

1 two terms -- two different terms at different times. I was
2 on the executive committee where we discussed City manager
3 issues in preparation for the annual conferences. I was
4 involved also in the annual conference of the California
5 City managers groups.

6 MR. JENSEN: And, your Honor, for purposes of making
7 this more clear I'd like to refer to Mr. Adams' CV in 4Ls
8 and I'll mark it for identification.

9 THE COURT: That's already been marked.

10 MR. JENSEN: Your Honor, I'd like to --

11 BY MR. JENSEN:

12 Q Mr. Adams, is there a current copy of your resume?

13 A Yes, it is.

14 MR. JENSEN: Your Honor, I'd like to move 4Ls into
15 evidence.

16 THE COURT: Any objection?

17 MR. LEVIN: Yes. Object. It's hearsay.

18 THE COURT: Mr. Adams, is the information reflected
19 in this CV accurate and current?

20 THE WITNESS: Yes.

21 THE COURT: It's admitted.

22 (Defendant's Exhibit LLLL was received in
23 evidence by the Court.)

24 MR. JENSEN: Thank you, your Honor.

25 MR. JENSEN: And at this point I think I've laid

1 sufficient foundation to have him characterized as an expert
2 witness to provide additional information to the Court based
3 on his experience, and if there's not sufficient foundation
4 right now, I will lay it later.

5 THE COURT: I'll take that under submission.

6 MR. JENSEN: Thank you, your Honor.

7 BY MR. JENSEN:

8 Q So, Mr. Adams, what is considered to be the
9 normal -- normal full-time service of a City manager,
10 City administrator?

11 A Can you be more specific in the question?

12 Q What is -- if a -- in your experience of working
13 for the various cities that you have worked for, have
14 they -- each of them hired you in a full-time position?

15 A Yes. Although two of them were interim, but they
16 were full time during interim.

17 Q So can you clarify what that interim status was?

18 A Interim refers to a position I have taken as an
19 annuitant, CalPERS annuitant, and there's a restriction that
20 you can only work 965 hours in a fiscal year. There was a
21 provision for having an exception to that a few years ago,
22 and since that time, that's been my location. I did receive
23 an exception when I was from CalPERS. So that would be one
24 exception from the general rule.

25 Q Let me clarify, when you were in those interim

1 positions for the time period that you worked in those
2 interim positions, were you hired on a full-time basis by
3 the City council?

4 A Yes.

5 Q So when you were hired as a full-time City manager
6 or City administrator, what was -- what was the expectations
7 of the City to -- as regard to the amount of hours that you
8 would be working?

9 MR. LEVIN: Objection. Vague. Speculation as to
10 expectation of his employer.

11 THE COURT: Sustained.

12 BY MR. JENSEN:

13 Q Were any -- when you were hired in these various
14 jobs, was -- at anytime, did the City council indicate to
15 you the number of hours you would be working in a full-time
16 capacity?

17 A I'm trying to recall. There may have been some
18 language in one of the contracts where it appeared there
19 would be a minimum of 40 hours a week.

20 Q A minimum of 40 hours a week?

21 A Yes.

22 Q And was this a maximum?

23 A Yeah. Whatever number of hours there are in a day
24 or a week is maximum.

25 Q So if you can --

1 A Sometimes --

2 Q If you can clarify for us what you understood to be
3 the maximum number of hours?

4 A In times of crisis, there are occasions to have many
5 more meetings that might normally be expected of a position,
6 and the City manager is expected to be at those meetings
7 especially -- I'm trying to slow down. If there are
8 additional meetings of City council and I would site the
9 situation of Valego where there were meetings several times a
10 week in the evening with the City Council and/or other types
11 of meetings related to the bankruptcy.

12 Other times there might be a labor issue. I
13 remember when I first went to Manteca which is a city later
14 on in my career. The first few months I was, there was a
15 flood. Essentially the central valley flooded, and again, in
16 an emergency situation part of it would be as the City
17 manager, you also serve -- one of the titles I had forgotten
18 about until I just thought of this situation based on your
19 question is that you're also the director of emergency
20 services in the community at the time of emergency. You're
21 the designated person. So in an emergency such as a flood,
22 there was also an earthquake when I was in Lafayette. Those
23 were times when I was working weekends and essentially 12 to
24 16 hour days.

25 Q And were you ever paid overtime for those extra

1 hours?

2 A City manager is an exempt position. You're paid a
3 monthly salary or an annual salary divided by the number of
4 pay periods and that's it.

5 Q So were you paid overtime?

6 A No.

7 Q Were you ever paid for hours worked in an excess of
8 40 hours?

9 A Never.

10 Q Never in your 31 years of City -- in your 31 years
11 of experience as a City manager, were you ever compensated
12 for any hours in excess of 40 hours?

13 A No. Well, can I clarify that?

14 Q Please.

15 A I say and it is still true that I was compensated,
16 that I would get, for example, in Manteca, I received 15 days
17 of administrative leave and I was compensated even if there
18 was flood or no blood or many other meetings or not, or
19 negotiations with the county for redevelopment. Sometimes
20 that would take an abnormal amount of time. For example, the
21 county administrator and I would meet at 6:00 for breakfast
22 to discuss areas of mutual concern, mutual agreement and
23 concern, what would stop us when we tried to reach an
24 agreement, for example. So that would be an example of how
25 that can work.

1 Q Let me ask you a question, were you ever provided
2 additional days off for consideration of you previously
3 working longer hours?

4 A No.

5 Q Thank you. So do you recall any other positions or
6 responsibilities that were added to your City manager job in
7 Dinuba?

8 A No.

9 Q And did you receive raises over your seven years at
10 the City of Dinuba?

11 A Yes.

12 Q And when did you receive those raises?

13 A Generally at my annual review.

14 Q And was that a year after you -- every year on the
15 date of your employment?

16 A That was the intent although that date was strictly
17 adhered to by the City council. It may not always be
18 accurate, but it was intended it would be on my anniversary
19 at the time of the City that I would we reviewed and also
20 my compensation package would be reviewed at that time.

21 Q And did you receive increases in your City manager
22 salary?

23 A Yes.

24 Q And were those increases for taking on additional
25 duties and responsibilities?

1 A No. They were strictly based on performance.

2 Q And although there were increased duties and
3 responsibilities in your job, your understanding was that
4 those increases in your salary was not associated with
5 taking on those additional duties and responsibilities?

6 A That's correct.

7 Q Anything else about the City of Dinuba, that in your
8 review of the City of Vernon, which are similar to the two
9 cities?

10 A Nothing that I recall. They're similar cities.
11 Cities have employees that have constituents and you work for
12 the will and pleasure of the City council and do the duties
13 that you expect of you based on the administrative tasks
14 they have for you based on their business.

15 Q And so is a personnel director a civil service
16 job?

17 A Define civil --

18 Q Not a civil service job --

19 THE COURT: One at a time, please.

20 BY MR. JENSEN:

21 Q There's certain positions in which employees have
22 property interests. Are you familiar with those as City
23 manager?

24 A Yes.

25 Q And you can't terminate those positions without --

1 they're not at the will of the council; is that correct?

2 A That's correct.

3 Q So if -- as a City manager, you had in your capacity
4 City manager you served at the will and the pleasure of City
5 council; is that correct?

6 A That's correct.

7 Q And if you had duties and responsibilities that were
8 equivalent to or encompassed responsibilities that had a
9 property interest in it, what was your expectation of what
10 would happen to those positions if you were let go at the
11 will of the council?

12 MR. LEVIN: Objection. Vague.

13 BY MR. JENSEN:

14 Q Does the witness understand the question?

15 A I believe so.

16 Q Can you restate it?

17 A Would you like me to restate it?

18 Q No, no. Please --

19 THE COURT: I would like the witness to answer.

20 THE WITNESS: I'm trying to remember the question
21 now. I did understand it. The expectations are that the
22 additional tasks, even though they might be involved with
23 titles such as redevelopment director, personnel director,
24 labor negotiator, City treasurer -- I'm trying to think of
25 all the different titles in the different cites. Also there

1 was a role that those positions essentially evaporated if you
2 were terminated and that there would be no invested right to
3 those jobs as a definition -- and therefore, in my opinion is
4 that the jobs or the other titles essentially are duties of
5 the City manager position.

6 So in other words, you may have a title that says as
7 personnel manager or whatever, but essentially the duty that
8 City council defined as a City manager duty. So if you lost
9 your City manager job because you serve at the will and
10 pleasure of the council, the common philosophy or the common
11 inside joke, if you might, if you will, is that you serve for
12 two weeks at a time because you can only be terminated during
13 your regular meeting at the City council, and they meet
14 usually every two weeks. So hence the two weeks and so
15 that's why City managers --

16 BY MR. JENSEN:

17 Q Go ahead.

18 A That's why City managers generally want a severance
19 provision for that very fact. There might be a severance if
20 there's a separation of employment, but certainly if you were
21 fired as City manager, you wouldn't come back as the
22 personnel director or labor negotiator or City treasurer or
23 development director.

24 Q So let me just clarify --

25 THE COURT: Next question, please.

1 BY MR. JENSEN:

2 Q So it would not have been your expectation that if
3 they let you go as City manager that you could remain in the
4 position as director of personnel and continue to get a
5 salary paid in the director of personnel?

6 A It's extremely rare and unusual for that to be the
7 case. In those cases, you would be terminated of all your
8 positions and duties.

9 Q Have you ever heard of that occurring?

10 A I'm trying to recall. There might be a couple of
11 situations where had you a police chief who became a City
12 manager and when things didn't work out, they went back to
13 being a police chief. It's very unusual.

14 Q But this situation is different because it's the
15 City manager who --

16 A Correct.

17 Q Who is the hired position who is taking on
18 additional responsibilities?

19 A In that case, the answer is no. I have never heard
20 of it happening.

21 Q Okay. Thank you. So what was the City that you
22 worked next in after the City of Dinuba?

23 A Lafayette.

24 Q And what was your position in Lafayette?

25 A City manager.

1 Q And did have you multiple duties or responsibilities
2 in the City manager of Lafayette?

3 A Yes.

4 Q And please explain what those duties or
5 responsibilities are.

6 A The City manager served as the personnel officer,
7 head labor negotiator. Again, after a couple of years, we
8 adopted the redevelopment agencies. I became the executive
9 director of the redevelopment agencies.

10 Q And were you paid or compensated for performing
11 these additional duties outside of your City manager's
12 salary?

13 A No.

14 Q Were any additional or responsibilities added to
15 your City manager responsibilities after you took the
16 position?

17 A Yes. The redevelopment agency was, I believe,
18 three years after I started there.

19 Q And did you receive any additional compensation
20 for --

21 A No.

22 THE COURT: Allow him to finish his question.

23 THE WITNESS: I realize I did that. I'm sorry, your
24 Honor.

25 THE COURT: Thank you.

1 BY MR. JENSEN:

2 Q And in Lafayette, was any of your salary as City
3 manager allocated across different departments or to the
4 redevelopment agency?

5 A Yes.

6 Q And how is that done?

7 A Through the budget process.

8 Q And was the redevelopment agency a separate
9 entity?

10 A Yes.

11 Q And do you recall whether it was by percentage?

12 A I believe it was a percentage at the time.

13 Q And again, your testimony is that you weren't
14 compensated for taking on the additional RDA
15 responsibilities; is that correct?

16 A Correct.

17 Q Did you receive any funds directly from the RDA
18 entity to pay -- part of your salary?

19 A No.

20 Q And do you remember how those accounting was done?

21 A The revenue that came back to the City's general
22 fund was viewed as a reimbursement for the services provided
23 by the general fund to the redevelopment agency. Therefore,
24 the City manager who was serving as executive director and
25 the City attorney who may have also been the attorney for the

1 redevelopment agency, the City clerk who also became the
2 secretary of the redevelopment agency, all of those positions
3 would then be allocated based on the percentage of time that
4 they believed was used in those cases.

5 Q And did you keep track of the amount of time that
6 you spent in the various duties?

7 A Not directly.

8 Q Did you indirectly?

9 A Indirectly, you made an estimate of how much you
10 spent on an overall basis, not on a daily basis.

11 Q And how often did you make those estimates?

12 A Annually.

13 Q And were they future projections of how much time
14 would be spent in the future or not even -- or estimates of
15 efforts spent in the future associated with these various
16 types of activities?

17 A I believe it stayed consistent the whole time while
18 I was there. The issue would be if something took a long
19 time and got very involved or you realized it should be a
20 different percentage, and you could some how justify it, then
21 you would do that, and that was before the -- the rules have
22 changed since then. Now you have to actually do a Nexus
23 study on how which time was actually spent. Again, it's a
24 budgetary issue where you would take that cost and then apply
25 it to next year's budget based on past experience.

1 Q And were there any are enterprise funds or revenue
2 generating utilities when you were at the City of
3 Lafayette?

4 A No. There were only franchises. Lafayette was a
5 contract city. You didn't have a full array of departments,
6 like a full-service City.

7 Q That actually brings to mind a question about
8 something at Dinuba. You mentioned that there was a
9 contract -- I'm going to go back in time a little bit. You
10 mentioned that there was a contract for waste services,
11 something like that, with the City of Dinuba. Can you
12 refresh my --

13 A The solid waste enterprise fund -- we call those
14 utilities enterprise funds because there are
15 self-sustaining -- self-standing, self-sustaining, they have
16 their own revenue string. So, yes. We were responsible for
17 providing the garbage. We would rather do it ourselves City.
18 We contracted with another company, and, I believe, at that
19 time we sold them our trucks and they hired our employees and
20 it became a private sector function.

21 Q And did -- at that time for that service, did you
22 allocate or -- did the City of Dinuba allocate some of your
23 salary to that outside effort?

24 A Well, again, it was set up as an enterprise account.
25 So it was a function of the City, and all we did was contract

1 it for the actual garage pick up. We handled the billing.
2 So the billing from the City along with the water and sewer
3 bills.

4 Q So my question --

5 A And so there was a direct cost for collecting the
6 revenues, depositing them, and managing the contract. So we
7 did allocate time for that. So even though it was contracted
8 out, it was still managed internally.

9 Q And what costs were allocated to that enterprise
10 fund?

11 A The cost of City attorney, City manager's office,
12 finance department. There was a greater percentage of the
13 finance department. I believe it was 33 percent because the
14 accounts payable was taking care of all of those bills along
15 with the sewer and the water. The City manager, I believe,
16 was 20 percent if I recall correctly along with the City
17 attorney, City council, budget, HR -- actually, HR was not
18 charged because there were no employees.

19 Q But some percentage of the City council cost was
20 allocated to a contract as overhead?

21 A Correct.

22 Q With reference to the City of Lafayette, is there
23 similarities between the City of Lafayette and the City of
24 Vernon?

25 A I'm not familiar with all of Vernon's operations to

1 the extent where they have contracts that they manage, and it
2 would be similar otherwise -- for example, the City of
3 Lafayette at the time that I was there was a city of 24,000
4 people, and we had 24 full-time employees and we contracted
5 with the sheriff's department for sheriff services, fire
6 district for fire services contracted with the county for
7 building construction services. So it was more managing the
8 contracts of that City.

9 Q So let --

10 A We did not have utilities to answer your question.

11 Q So let's move on to the City of Manteca. What was
12 your position at the City of Manteca?

13 A City manager.

14 Q And the City Manteca was described as a full-service
15 City?

16 A Yes.

17 Q Can you just briefly describe the various
18 departments that Manteca had?

19 A Sure. Police, and fire, parks and recreation,
20 public works which included streets, both building and
21 maintenance of streets, solid waste collection which is
22 garage collection, sewer, which is waste and water treatment,
23 and water.

24 Q And did have you multiple duties and
25 responsibilities when you were performing the chief executive

1 officer position as City manager at the City of Manteca?

2 A Yes.

3 Q And can you describe what those various duties and
4 responsibilities within the City manager position?

5 A Okay. On the enterprise council utilities, I was
6 coordinating the work on any rate review and pay increases
7 that needed to be repair. The police and fire, I was
8 observing that they were operating in a proper function. I
9 had oversight of the chiefs to make sure that our procedures
10 were proper, and we were doing the correct things. Same
11 thing with the other internal operations, parks and
12 recreation as well. We operated a senior center to make sure
13 that the services that were being rendered were valid, that
14 there were things that we should be doing, or things that we
15 needed to correct. Seniors can be fairly vocal. so you
16 listen a lot.

17 Q Did you have any -- did City council increase your
18 duties or responsibilities in a time period after beginning
19 the City manager position?

20 A In terms of activity, yes because we got involved in
21 very aggressive economic issues. So we -- it involves
22 traveling, for example, going annually to the shopping center
23 convention. It involved some negotiations and review of
24 other sites where we were trying to get a recreation facility
25 a and large large retailer to come in the City.

1 Q So was more of your time spent out of the office in
2 these activities?

3 A Compared to Lafayette, yes. Compared to Dinuba,
4 maybe a little more percentage-wise.

5 Q And how would you describe your -- the weekly number
6 of hours that you spent when you were in Lafayette?

7 A Really long, about 60 -- 50 to 60 hours a week.

8 Q And what about in the City of Manteca?

9 A Usually around 50. A larger staff had more
10 assistance.

11 Q And in either of these cities, were you ever
12 compensated for work over 40 hours a week?

13 A No.

14 Q And was these economic development activities in the
15 City of Manteca, was that considered part of your duties and
16 responsibilities that the City council required you to
17 perform in the City manager position?

18 A Yes.

19 Q And -- let me step back for a second. I provided
20 you some documents in this case. Have you reviewed them?

21 A Yes.

22 Q And --

23 A I can't recall all of them.

24 Q And approximately how many documents have I provided
25 you?

1 A I don't know the number, but this is where I kept
2 them, the copies. So it represents about 500 pages or so,
3 maybe a little bit more.

4 Q And can you describe to us what those documents
5 are?

6 A Initially they were filings with the court on this
7 case -- not the court but the hearing on this case. Is this
8 considered court?

9 THE COURT: Yes.

10 THE WITNESS: So the filings of the court. Then you
11 also provided me with some documents regarding the City of
12 Vernon and there were resolutions, ordinances, and copies
13 of pages of their code.

14 BY MR. JENSEN:

15 Q And when you reviewed the resolutions of the City
16 of Vernon, did you find anything unusual in those?

17 A No.

18 Q Are those typical resolutions and minutes of cities
19 in your experience?

20 A I believe so.

21 Q And you're being paid to be here; is that correct?

22 A Correct.

23 Q And what are you being paid per hour?

24 A 250.

25 Q And how many -- how many hours have you put into

1 this case up to this moment?

2 A This moment, approximately 20 to 25.

3 Q 20 to 25 hours, and in that period of time, is that
4 counting your review of documents?

5 A Yes.

6 Q And have I supplied you with any documents that are
7 not in that binder?

8 A No.

9 Q Did I instruct you to provide copies of everything
10 that I have provided you and bring it with you?

11 A Yes.

12 Q And is that document binder there contain
13 everything?

14 A The only exception would be some e-mails that
15 transpired in the last two days. I haven't been home to
16 print them out, but they are strictly related to logistics
17 about where to stay, where the hearing was, and when you
18 would need me. Other than that I have everything.

19 Q And if Counsel wants to review those documents in
20 any manner, they are present and available for the opposing
21 Counsel to review, and have you acted as an expert witness in
22 any other cases?

23 A Yes.

24 Q And tell me what cases that you have acted in.

25 A Only one other one and it was a similar case. It

1 was a retirement issue between a former City manager and -- a
2 retired City manager and CalPERS.

3 Q And were you paid as a witness in that case?

4 A I was not paid for that.

5 Q So is this the first case that you ever have been
6 paid to testify to your experience as a City manager or the
7 structure of city governments and its executive officers?

8 A Yes.

9 Q And in your review of -- well, let me go with the
10 respect to the -- after the -- after you were the City
11 manager of Manteca, not after -- within your City manager of
12 Manteca, did you find similarities between the structure --
13 between the City of Vernon and the City of Manteca?

14 A Yes.

15 Q And what were the similarities?

16 A They're both council manager form of governments.

17 Q And you're aware that the City of Vernon had a City
18 administrator?

19 A Correct.

20 Q And you previously testified to your understanding
21 of the difference between City administrator and City
22 manager?

23 A Yes.

24 Q And do you think that -- that makes the City of
25 Manteca structurally different than the City of Vernon?

1 A No.

2 Q And so you think -- do you think that the general
3 activities that you have described as the City managers would
4 apply also to a City administrator?

5 A Yes.

6 Q And do you have understanding of how many City
7 administrators there are in the state of California versus
8 City managers?

9 A At this time, no.

10 Q Did you at one time?

11 A Not an exact number.

12 Q What is your understanding based on your experience
13 of the percentage of City managers versus City
14 administrators?

15 A At the time that I looked at it, I would say there
16 were 90 percent City managers, 10 percent City
17 administrators.

18 Q And approximately when did you look at it?

19 A I would say about 30 years ago.

20 Q And let me ask you a question, are you familiar
21 personally with Bruce Malkenhorst?

22 A Excuse me?

23 Q Are you familiar personally with Bruce Malkenhorst?

24 A No, I'm not. I met him for the first time
25 yesterday.

1 Q But were you aware of Mr. Malkenhorst prior to
2 yesterday?

3 A Yes.

4 Q And how were you aware of him?

5 A That he was a highly compensated City
6 administrator.

7 Q And was -- how did you learn that?

8 A The California City Management Foundation puts
9 out -- they used to. I don't know if they still do this, but
10 they had a weekly e-mail that went out to all City managers
11 of any City manager that was in the news. So generally we
12 kept tabs on one another. When you get so busy in your own
13 city, you really may not be able to know what an associate
14 is doing somewhere else. In this fashion, we knew -- in the
15 state regarding the other Cities managers and administrators
16 in the state.

17 Q And did you remain familiar with Mr. Malkenhorst --
18 I mean, remain familiar with his situation as highly paid
19 over your years as working as City manager?

20 A For the most part. Off and on. It was not a
21 continuous observation. Also, one of the things is that
22 there is a CalPERS watch, where -- I don't believe -- I don't
23 know if that's the name of the organization, but it's a
24 website and you list all of the municipal -- all of the
25 government employees that retired from the state of

1 California. They have retirement incomes of over \$100,000 of
2 CalPERS and he was at the top of that list.

3 Q And I just want to address your question here a
4 little bit about your familiarity with City administrators.
5 Over your career, your 30-year career, were you, when you
6 were employed, readily familiar with the activities of City
7 administrators?

8 A Yes.

9 Q And how were you familiar with them?

10 A I would say starting in Dinuba, the City next door
11 was Fresno county, and they had a City administrator, and he
12 and I met weekly because our cites were geographically close
13 together, and they had common issues even though we were in
14 different counties. They were twelve miles apart, and so we
15 had areas of mutual concerns that we would fairly often
16 discuss.

17 Q And did you discuss your various job duties and
18 responsibilities?

19 A And frustrations, yes.

20 Q And after Dinuba, were you, up through the present
21 moment, were you -- did you remain familiar with the duties
22 and responsibilities of City administrators?

23 A Yes.

24 Q And how did you do is that?

25 A I particularly noted at that time, there was -- it

1 was the time that Jerry Brown was elected mayor of Oakland,
2 and Jerry Brown changed the charter also voted moved to have
3 the charter changed to where the mayor would have the
4 appointed authority for department heads, and they just hired
5 a brand new City manager, Robert Bob on the east coast and he
6 was very concerned that he was losing the designation of a
7 City manager for City administrator and came to -- also came
8 to the California association to argue that his title should
9 still be viewed as a classic manager even though we had a
10 really strong mayor now in Oakland. So that was the crust
11 essentially what really brought it to light. At least it was
12 very important to Bob that he not lose the designation as
13 City manager.

14 Q And during this time, were you familiar with the
15 various duties and responsibilities of the City
16 administrator?

17 A Yes.

18 Q And were you aware and did you compare with the
19 various duties and responsibilities of a City manager?

20 A Yes.

21 Q And when you reviewed Vernon's documents regarding
22 City administrator, is that consistent with your
23 understanding of what a City administrator does?

24 A Yes.

25 Q After Manteca, you were employed at the City of

1 Valego?

2 A Essentially, initially I was hired by a private
3 firm, a municipal partnership.

4 Q And did you have various duties and responsibilities
5 at the City of Valego?

6 A I was assigned to Valego through management
7 partners.

8 Q Were you interim manager at the City of Valego?

9 A Not at that time.

10 Q When you became an interim City manager at the City
11 of Valego, did you have various duties and responsibilities?

12 A Then I worked directly for the City of Valego at
13 that point.

14 Q And in that capacity, did you have various duties
15 and responsibilities?

16 A Yes.

17 Q And can you briefly describe what those various
18 duties and responsibilities are?

19 A Valego was a charter City. The definition --
20 the job duties are defined in the charter of what the
21 City manager does. Again, the administrative head of the
22 government, the face of the City, responsible for the
23 enforcement of ordinances and resolutions of the City,
24 and to attend to the administrative affairs -- all of the
25 administrative affairs of the City.

1 Q And did you have responsibilities -- are you aware
2 that Vernon is a charter City?

3 A Yes.

4 Q Did you review Vernon's charter?

5 A I don't recall if I have or not. It may have been
6 one of the documents that I have looked at, but I don't
7 recall honestly.

8 Q But all of the duties and responsibilities either in
9 an ordinance or a charter would be considered the required
10 duties or responsibilities of a City manager or a City
11 administrator?

12 A Correct. I have seen some --

13 THE COURT: Excuse me. Both of you are speeding up
14 and I know time is running short, but don't speak faster,
15 please, and remember you must leave time for
16 cross-examination.

17 BY MR. JENSEN:

18 Q Yes, and so did you hold any titles when you were
19 at the City of Valego?

20 A I also served as the executive director of the
21 redevelopment agency. Let me correct that. I don't recall
22 the status of the redevelopment agency in Valego. I believe
23 it was not active. I don't know if I had held that title to
24 be honest with you.

25 Q And then you served as interim City manager at the

1 Desert Hot Springs?

2 A Yes.

3 Q And in that position, did you have various duties
4 and responsibilities?

5 A Yes.

6 Q And did you hold any separate or -- any titles that
7 you performed in the job of City manager?

8 A I was the chairman of the foundation. They had a
9 tax exempt foundation that they were trying to create. It
10 hadn't been created yet, and they had meetings that
11 apparently, because I was City manager, I was also the
12 chairman of the committee. I wasn't too thrilled about that,
13 but nonetheless, that's one of the titles.

14 Q So let me just ask you some quick questions about
15 your experience as City manager. In these positions, was
16 your salary allocated over different departments in each of
17 these cities?

18 A In which cities?

19 Q In each of the cities in which you worked.

20 A I don't recall in Lafayette if we allocated to
21 various departments because they were all general fund
22 functions --

23 Q And in --

24 A Excuse me. With the exception of redevelopment. We
25 did allocate the redevelopment. I take that back. In Desert

1 Hot Springs -- all the others, yes and Desert Hot Springs,
2 even know it was recent, I don't recall that part of the
3 budget. I'm sorry. I don't recall that.

4 Q In each of these jobs, were you paid additional
5 monies for performing duties and responsibilities that
6 were -- that were designated -- withdraw the question.

7 Outside of your City manager position, did you ever
8 receive any -- outside of your City manager salary, did you
9 ever receive any compensation for any additional duties or
10 responsibilities you performed?

11 A No.

12 Q And when additional duties or responsibilities were
13 added to the City manager position, were you given any
14 additional compensation?

15 A No.

16 Q And in your 30 years of City manager work, were you
17 ever paid overtime?

18 A No.

19 Q In your 30 years of City manager work, were you --
20 what would you say your average work week was?

21 A Over the whole period?

22 Q Yeah.

23 A Somewhere between 50 and 55 hours.

24 Q And were there periods where you worked
25 substantively in excess of 60 hours?

1 A Yes.

2 Q And were you ever paid for any of those additional
3 hours?

4 A No.

5 MR. JENSEN: And, your Honor, I'd like to offer him
6 to -- for the purpose of rendering an opinion on whether the
7 duties and responsibilities that the City of Vernon provided
8 to its City administrator were all within the one
9 position -- single full-time position as City administrator.

10 THE COURT: Mr. Levin?

11 MR. LEVIN: I object. I believe the witness is not
12 qualified to give an opinion on that. That his experiences
13 at other cities do not bear on the facts as they pertain to
14 Vernon and Mr. Malkenhorst.

15 THE COURT: I'll allow him to testify as to his
16 opinion as to whether what he has read of the practices of
17 the City of Vernon and the documents provided to him,
18 resolutions and minutes and the like, are consistent with
19 his observations of the cities for which he has worked
20 and the cities as which he has knowledge by virtue and his
21 participation in the various committees on which he serves.

22 MR. JENSEN: Thank you, your Honor.

23 BY MR. JENSEN:

24 Q Mr. Adams?

25 A In my opinion, both the City manager and City

1 administrator are hired to administer the affairs of the
2 City. One exception is the appointment and termination of
3 department heads or any other select employees as well in
4 some cases. Therefore, 99 percent of the job is the same.
5 The hiring and firing of department heads is something that
6 is hopefully is not done that often, otherwise they City
7 has a real problem.

8 Q And so with respect to your experience, the
9 question posed to you was whether in your experience, do
10 these various duties and responsibilities in Vernon's
11 resolutions and minutes, are -- are performed in one
12 position -- one full-time position as City administrator?

13 MR. LEVIN: Objection. Overbroad. Lacks foundation.

14 THE COURT: Sustained and again --

15 MR. JENSEN: With respect to the Vernon documents
16 and applying your knowledge in professional activities
17 with -- to your review of the Vernon documents.

18 BY MR. JENSEN:

19 Q Is it your opinion that the City administrator
20 position had various duties and responsibilities that were
21 performed in a single full-time position that was paid a
22 single pay rate for a normal -- for normal work in that
23 position?

24 MR. LEVIN: Objection. Lacks foundation.

25 THE COURT: And again -- sustained, and again, I'll

1 allow the witness to testify as to whether that would be
2 consistent with his experience in the cities for which he
3 worked and the cities he has observed as a member of the
4 committees, but he has no firsthand knowledge of what the
5 City of Vernon did. He is relying on those resolutions and
6 minutes and he can testify whether that's consistent with
7 his experience or not consistent.

8 BY MR. JENSEN:

9 Q Okay. So is -- without -- is it your opinion that
10 the duties and responsibilities of that position would be a
11 full-time single position as City administrator?

12 MR. LEVIN: Objection. Vague. Lacks foundation. I
13 don't know what position we're talking about and what city
14 we're talking about.

15 MR. JENSEN: The position of City administrator in
16 the City of Vernon.

17 THE COURT: Why don't you restate the question to be
18 specific? Thanks.

19 BY MR. JENSEN:

20 Q Yeah. So is -- from your experience in the
21 cities -- working in the cities and your experience in
22 professional activities and your review of the documents that
23 the City of Vernon created a single full-time position of
24 City administrator to perform these various responsibilities
25 in one full-time position paid a single salary that was

1 intended to be performed in that position?

2 MR. LEVIN: Objection. Lacks foundation. Speculation
3 as to what was intended.

4 THE COURT: Would the resolutions and minutes you
5 have seen from the City of Vernon, assigning job titles and
6 duties to the City administrator position be consistent with
7 what you have seen in the cities for which you've worked
8 with respect to City administrator or City manager?

9 THE WITNESS: I would say yes.

10 THE COURT: Thank you. Anything else?

11 MR. JENSEN: And I have no further questions of
12 Mr. Adams.

13 THE COURT: Mr. Levin.

14 MS. LEVIN: Thank you, your Honor.
15

16 CROSS-EXAMINATION

17 BY MR. LEVIN:

18 Q Good afternoon, Mr. Adams.

19 A Good afternoon.

20 Q You testified about a prior case against CalPERS
21 in which you served as an expert witness; correct?

22 A Yes.

23 Q And on whose behalf were you testifying?

24 A On the respondents.

25 Q And what was the name of the respondent?

1 A Am I under disclosure?

2 MR. JENSEN: You can tell him anything.

3 THE WITNESS: Joseph M. Tanner.

4 BY MR. LEVIN:

5 Q Mr. Tanner's attorney in that case was Mr. Jensen;
6 is that correct?

7 A That's correct.

8 Q Do you understand that Mr. Tanner was also
9 designated as an expert in this case?

10 A I believe I saw that in the documentation.

11 Q Did you speak to Mr. Tanner about this case?

12 A No, I did not.

13 Q Did Mr. Tanner ask you to become involved in this
14 case?

15 A No, he did not.

16 Q Have you ever written any articles, studies, or
17 published any materials about the positions of City
18 administrator or City manager?

19 A As they were involved in different projects, yes.

20 Q Have you read any publications that have discussed
21 the City administrator or City manager positions in
22 California, what those positions entail?

23 A No.

24 THE COURT: I'm going to ask the reporter to read
25 back the question.

1 (Record read)

2 THE COURT: Thank you.

3 BY MR. LEVIN:

4 Q Are you friends with Mr. Tanner?

5 A I know him fairly well. I would say we're close
6 associates.

7 Q You worked together with Mr. Tanner at the City of
8 Valego?

9 A Correct.

10 Q Did I pronounce that correctly?

11 A Valego. You pronounced it correctly.

12 Q When you worked with Mr. Tanner at the City of
13 Valego, what position did you hold?

14 A I was --well, I worked for municipal partners, and I
15 was a contract development services director internally.

16 Q And what position did Mr. Tanner hold?

17 A He was the City manager.

18 Q Could you turn to Exhibit 4Ls, please?

19 A Which is 4Ls? Is that my resume?

20 Q It is.

21 A Okay.

22 Q Do you have it in front of you?

23 A Yes, I do.

24 Q On the first page do you see an entry there for
25 interim City manager Valego, California?

1 A Yes.

2 Q And it lists 2008 to 2010; correct?

3 A Correct.

4 Q Were you the interim City manager for the City of
5 Valego between 2008 and 2010?

6 A In 2008 I was the interim development services
7 director. In 2009 I became interim City manager.

8 Q The interim development services director, is that a
9 position different than the ones you described, a contractor
10 position?

11 A That is the position.

12 Q Were you an employee of the City of Valego in that
13 contractor position?

14 A No, I was not.

15 Q Have you ever worked as a City clerk?

16 A I had the job title.

17 Q For what employer did you have the job title City
18 clerk?

19 A Lafayette.

20 Q Did the ordinances charter for the City of Lafayette
21 have a job description for City clerk?

22 A I don't recall. I don't believe so, but I don't
23 recall. It had to be explained somewhere, but I don't
24 recall.

25 Q What were the job duties that you carried out as the

1 City clerk for Lafayette?

2 A I essentially signed the minutes. I signed any
3 legal documents that required a City clerk signature.

4 Q How much of your typical work week was taken up with
5 the duties of City clerk?

6 A Very little. I don't recall, but very little.

7 Q Have you ever worked as a City treasurer?

8 A Yes. Briefly.

9 Q For what employer?

10 A Manteca.

11 Q Did the City of Manteca have a duty statement for
12 treasurer?

13 A Yes.

14 Q Did you carry out the obligations of treasurer as
15 defined --

16 A Yes.

17 Q -- by that job statement?

18 A Yes.

19 Q Have you ever served as a personnel director?

20 A Yes.

21 Q For which employers?

22 A Pardon me?

23 Q For which employers?

24 A Visalia and in Dinuba, it was called personnel
25 officer.

1 Q Did the City of Visalia have a written duty
2 statement for that position?

3 A Yes.

4 Q Was that described in its charter ordinances?

5 A I only recall the job description. This is 1978 or
6 '77. It was a long time ago for me.

7 Q At the City of Dinuba, was there a written
8 description of the personnel director position?

9 A It was contained in the City manager job
10 description.

11 Q So was there, at the City of Dinuba, a written job
12 description for City manager?

13 A Yes.

14 Q And did that written description describe duties of
15 the personnel director?

16 A It referenced the personnel officer duties, yes.

17 Q Did that duty statement describe duties that the
18 City manager would carry out in other departments of the
19 City?

20 A I'm sorry. I don't understand your question.

21 Q At the City of Dinuba, were there various
22 departments?

23 A Yes.

24 Q The City manager was in what department?

25 A City manager's department.

1 Q Did the City manager perform duties in departments
2 other than the City manager's department?

3 A In the sense that there was oversight of the other
4 departments, yes, and as far as the actual day-to-day duties,
5 no.

6 Q Was there a particularized department at the City of
7 Dinuba for personnel?

8 A Yes. It was viewed as a division as opposed to a
9 department, but yes.

10 Q It was a division of what department?

11 A City manager.

12 Q Have you examined the various -- withdraw that
13 question.

14 Have you seen documents from the City of Vernon that
15 describe its organization by department?

16 A I have seen some discussion regarding the various
17 departments. I think -- I believe most of that is in
18 relation to personnel -- excuse me. To salary schedules.

19 Q Have you ever worked as an executive officer of a
20 city's utility department, Light & Power, gas, anything like
21 that?

22 A Not directly, no.

23 Q In the cities for which you've done work, had there
24 been separate departments for the utilities?

25 A Yes.

1 Q Did those utilities have appointed or named
2 executive officers?

3 A No.

4 Q In the various cities in which you've worked, what
5 was the level or the title of the person who ran the utility
6 departments?

7 A Generally, it was the utility manager.

8 Q At the cities where you worked, was there a distinct
9 pay schedule for the utility manager?

10 A Yes.

11 Q At the City of Manteca, was there any public
12 document like an ordinance or a charter or a resolution that
13 declared a -- what was a normal work week for employees?

14 A Yes.

15 Q What was that definition for a normal work week at
16 the City of Manteca?

17 A 40 hours.

18 Q At the City of Manteca, did that standard 40-hour
19 work week -- was it defined to apply to all employees?

20 A Yes.

21 Q At the City of Valego, was there a public
22 designation of a standard work week?

23 A Yes.

24 Q And what was that?

25 A 40 hours.

1 Q Did that apply to all City of Valego employees?

2 A All non-exempt employees. Correct.

3 Q I think you're changing the question a little bit.

4 A I'm sorry.

5 Q Okay. You told me it applied to all employees or
6 all non-exempt employees?

7 A It's all non-exempt employees because exempt
8 employees by definition are restricted to 40 hours a week.

9 Q Okay. So your understanding at the City of Valego
10 was that the 40-hour standard work week applied only to
11 non-exempt employees; correct?

12 A Correct.

13 Q Was your understanding the same for the City of
14 Manteca?

15 A Yes.

16 Q And the City of Lafayette, was there a designation
17 of a standard work week?

18 A Yes. There was, but I couldn't tell you exactly
19 what it said.

20 Q Whatever it was, was it your understanding or
21 impression that applied only to non-exempt employees?

22 A That's correct.

23 Q What about the City of Dinuba? Was there a public
24 designation of a standard work week?

25 A Yes.

1 Q What was that?

2 A 40 hours.

3 Q Was it your understanding or belief that applied
4 only to non-exempt employees?

5 A Correct. However, I need to correct myself. The
6 fire employees have a different definition of a full work
7 week. So it just depends -- in the cities where there were
8 fire departments, it's a different rule, and how it's
9 defined.

10 Q Is that only at the City of Dinuba or --

11 A City of Dinuba, Manteca. Lafayette did not have
12 one. It applies to Valego and Desert Hot Springs -- Desert
13 Hot Springs does not have a fire department, a contract with
14 the fire district.

15 Q City of Dinuba had a fire department; correct?

16 A Yes.

17 Q Was there exempt employees within the fire
18 department?

19 A The chief.

20 Q Was there a standard work week applied to the chief
21 of the fire department at the --

22 A No.

23 Q At the City of Dinuba?

24 A No.

25 THE COURT: Allow him to finish his question first,

1 please.

2 BY MR. LEVIN:

3 Q For all your City employers, did you have a one-year
4 contract or year-by-year contract?

5 A No. It was generally an open-ended contract.

6 Q For each of your City employers, was it the practice
7 to renegotiate your salary each year?

8 A Yes.

9 Q At any time in your 30 years of being in the City
10 management, were you given additional mid-year raises?

11 A Yes.

12 Q When did that occur?

13 A It happened in Dinuba when I was being considered
14 for another position elsewhere. I received a 10 percent pump
15 during that period of time, and again, I would say it
16 happened again in Manteca when I received a job offer from
17 another city.

18 Q Was there ever a time that you went to one of your
19 city employers and actively asked for a mid-year raise?

20 A No.

21 Q I want to turn your attention to your employment at
22 the City of Lafayette. When you first began your employment
23 there, you were the City manager; correct?

24 A No. You said -- I'm sorry. Lafayette?

25 Q Lafayette.

1 A The answer is yes. Yes.

2 Q And as a City manager, you also acted as the
3 personnel officer, the labor negotiator, and you had other
4 duties within the City manager position; correct?

5 A In addition to the City clerk which we discussed.

6 Q When you were at the City of Lafayette approximately
7 three years later, you had new duties given to you;
8 correct?

9 A Yes.

10 Q That was the executive director of the redevelopment
11 agency?

12 A Yes.

13 Q How many additional hours of work did the duties of
14 executive director of the redevelopment agency add to your
15 work week?

16 A The first year quite a few. Are you asking me for a
17 number?

18 Q Your best estimate if you can.

19 A There were many additional meetings that involved
20 community meetings. In other words, to discuss what was
21 being proposed, what was going to happen, and to get the
22 information out to the community. It was a very needy
23 community in terms of information, and those generally were
24 night meetings. There were a lot of negotiations that took
25 place in the county and the other taxing agencies. They took

1 additional time. A lot of that was during normal working
2 hours. All the individual contacts were done before or after
3 hours. Plus we -- if I had meetings regarding redevelopment
4 during the day, I still have City manager duties, reports or
5 whatever needed to be done. So that may have extended my
6 day, maybe not. So it's really difficult to determine an
7 exact number of hours, but I would say I was working a
8 minimum 60 hours a week for probably over a nine-month period
9 of time.

10 Q Before you took on the executive director position
11 at the City of Lafayette, you were working fewer hours;
12 correct?

13 A Sometimes, sometimes not. Sorry. It varies.

14 Q How long were you working as the executive director
15 of the redevelopment agency for the City of Lafayette before
16 you were next able to discuss a new salary at the City of
17 Lafayette?

18 A I don't recall. I do know my salary was discussed
19 or usually reviewed in March of every year because that was
20 my anniversary date.

21 Q Following your taking on the duties of executive
22 director of the redevelopment agency for the City of
23 Lafayette, did you go into salary discussions with the City
24 of Lafayette thinking that you should be receiving a raise
25 to reflect your additional work?

1 A The answer was yes. I always felt I should deserve
2 more money.

3 Q Did you let the City of Lafayette know that?

4 A Yes.

5 Q In your City management groups and committees that
6 you have discussed, was there a discussion of salary
7 negotiations? Did that issue ever come up?

8 A Yes.

9 Q Did you ever hear a discussion of efforts by City
10 administrators and managers to become compensated by their
11 City employers to reflect increased work load?

12 MR. JENSEN: Objection. Vague and ambiguous.

13 THE COURT: Overruled.

14 THE WITNESS: Can I answer the question?

15 THE COURT: You may.

16 THE WITNESS: Yes.

17 BY MR. LEVIN:

18 Q What were the general sentiments on that issue that
19 you can recall?

20 A I believe it was generally discussed often amongst
21 City managers. This is not a foreign subject to City
22 managers. The most organized effort to do that was done in
23 cost accounting when I was in Lafayette, and in there, we did
24 an annual survey of all our salaries and benefits and we also
25 listed what tasks we had, whether we had utilities, whether

1 we had full-service, whether we had contracts, whether we had
2 a redevelopment agency. All of those things were then listed
3 for comparative purposes and those of us that were at the
4 lower end, which I was one of them, we would use that
5 information to help in our negotiation with our employer.

6 Q Did the City administrators and managers with whom
7 you spoke compare work loads by comparing hours spent on the
8 job?

9 A No.

10 Q Were there other instances apart from the City of
11 Lafayette where after you begun in one position as City
12 manager, additional duties were given to you?

13 A Could you repeat the question?

14 Q Apart from the City of Lafayette, were there other
15 examples where you were working for a City as a City manager,
16 and then in the course of your City manager duties, the City
17 council or somebody gave to you an additional position title
18 or job duties that required you to work additional time on a
19 job?

20 A Yes.

21 Q What's another example?

22 A In Dinuba, redevelopment.

23 Q And when you became involved with a redevelopment
24 agency in Dinuba, did that require you to work additionally
25 on top of the hours that you had put in previously?

1 A Yes.

2 Q Can you estimate the number of hours per week that
3 were added to your work load at the City of Dinuba
4 immediately after becoming involved with the redevelopment
5 agency?

6 A Again, the first year is an abnormal amount of work
7 to coordinate and getting a plan adopted and getting that
8 procedure done. After the first year, generally a couple
9 years have to go by before there's enough tax increment
10 generated to where you might be able to do a project. So the
11 first year, yes. The second and third year, no, and then we
12 would get to the point where we could sell bonds and start
13 doing some projects downtown which we were trying to renovate
14 our downtown, which was the reason that we had formed the
15 redevelopment.

16 Q Within the first year following your work with the
17 redevelopment agency at the City Dinuba, did you have the
18 opportunity to discuss your salary with your employer?

19 A Yes.

20 Q Did you let your employer know it was your
21 expectation that you would be compensated for the inordinate
22 amount of work that you had taken on in connection with the
23 redevelopment agency?

24 MR. JENSEN: Objection. It misstates testimony,
25 inordinate amount of additional work --

1 THE COURT: Sustained.

2 BY MR. LEVIN:

3 Q I believe that was a direct quote, but I'll rephrase
4 it. Did you have an opportunity at that time to let the City
5 of Dinuba know that you expected to be compensated for the
6 additional work that you had taken on for the redevelopment
7 agency?

8 A At that time in my career, I was young and naive and
9 I expected them to reward me based on my performance, and
10 they would know that I had done all of those things, but I
11 did not bring it to their attention.

12 Q Were your expectations met at the City of Dinuba in
13 connection with -- I'll just leave it at that. Were your
14 expectations met at the City of Dinuba following your work
15 with the redevelopment agency?

16 MR. JENSEN: Objection. Vague and ambiguous as to
17 what his expectations about what?

18 THE COURT: Overruled.

19 THE WITNESS: My expectations -- I don't recall
20 exactly what my expectations were, whether they were met or
21 not, I don't know. I believe that a reasonable recognition
22 of my efforts was made. Again, based on performance.

23 BY MR. LEVIN:

24 Q At the various cities where you have worked, have
25 you seen that -- have you seen resolutions passed by cities

1 that define a new position?

2 A Yes.

3 Q Have you seen instances of positions that are
4 developed or created for which there is no resolution
5 created?

6 A I'm trying to recall. It's sort of a trick question
7 even though you didn't -- I don't think you intended it to
8 be a trick question because the executive director of the
9 redevelopment agency, for example, that position was not
10 adopted by the City council. That's -- the redevelopment
11 agency would do that separately as a separate entity. So the
12 City would not have adopted that particular title. In most
13 cases, there is a definition of the position. On occasion,
14 there isn't when it's viewed as just the duties. I don't
15 know if I answered your question.

16 Q Well, you did so let me follow-up on that. So
17 there are some instances where you have a position that
18 is defined by a resolution and there will be duties added
19 to that position without a separate position being created
20 by a resolution?

21 A That's correct.

22 Q And in those cases, would the duties then be written
23 into the duty statement of the -- of the position?

24 MR. JENSEN: Objection. Your Honor, lacks foundation.
25 There is a duty statement.

1 THE COURT: Sustained.

2 BY MR. LEVIN:

3 Q In the City manager position that you held for the
4 City of Lafayette, there was a position defined by a
5 resolution?

6 A Yes.

7 Q Were there times when -- that duty description would
8 be expanded by the City council?

9 A Not usually.

10 Q Were you ever involved in a situation where as City
11 manager, you were told to perform tasks that were described
12 in the duty statement for a different position?

13 A In what city or any city?

14 Q In any city.

15 A Yes.

16 Q When did that happen?

17 A In Dinuba I was --

18 Q Please described that situation.

19 A I feel it was a yes or no answer. Sorry. I'll go
20 slower. The police chief left for a variety of reasons and
21 there was a disciplinary issue in regards to involving the
22 chief as well. Therefore, I had to come in and administrator
23 the discipline to others. So I assumed the police chief's
24 duties in administering that discipline.

25 Q Was that an occurrence that you found atypical or

1 unusual based on your 30 years of experience in City
2 management?

3 A That one was unusual.

4 Q When you performed duties of the police chief
5 position as you just described, was there a separate pay
6 schedule for the police chief?

7 A There was a separate pay schedule for the police
8 chief.

9 Q In your experience in City management, have there
10 been separate pay schedules for separate positions as stated
11 in City ordinances the City has?

12 MR. JENSEN: Objection, your Honor. It's vague and
13 ambiguous.

14 THE COURT: Overruled.

15 THE WITNESS: Could you repeat the question, please?

16 BY MR. LEVIN:

17 Q In your experience, if there is a position defined
18 by a City code or City ordinance, is that position
19 accompanied by a pay schedule for that position?

20 A Generally, yes.

21 Q In your experience, if duties are added for an
22 individual working in one position, is -- is there somebody
23 responsible for modifying the duty description for that
24 position?

25 MR. JENSEN: Objection. There's no foundation for

1 "duty description for that position."

2 THE COURT: Sustained.

3 BY MR. LEVIN:

4 Q Are you aware of any situation over the course of
5 working in City management where duty statements for a
6 position have been updated?

7 A Are you talking about all positions?

8 Q For any position.

9 A Many positions are updated from time to time.
10 However, most job descriptions have a line in there at the
11 end that says and other duties may be required, and so
12 generally it's felt that will cover most of the changes and
13 duties that occur. It's only when there's a significant
14 change that you might see an update of that particular job
15 description, and from time to time, cities will also do a
16 classification study to catch up on all of these positions
17 that may have been changed that have not been -- and have not
18 been.

19 Q In any of the cities where you have worked, have you
20 come across citizens who have been interested in duty
21 statements for various City employees?

22 A Yes.

23 Q Do you believe that it is important for cities to be
24 transparent for their citizen rate as to the duties of City
25 employees?

1 MR. JENSEN: Objection. Irrelevant as far as his
2 opinion about transparency.

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

4 THE WITNESS: Yes. I believe it is important to be
5 transparent.

6 BY MR. LEVIN:

7 Q Would you agree that if there is significant update
8 to the duties performed by an individual, that that should be
9 made available to the public so the public knows what the
10 City employees are doing?

11 A If it's requested, yes.

12 Q Requested by whom?

13 A By the citizens or if it's directed by the City
14 council, one of the two.

15 Q Would it be your opinion that as a matter course,
16 that it's unnecessary to provide that information to the
17 citizen rate unless the citizens ask for it?

18 A Could you repeat that question?

19 Q Is it your position that information like updated
20 duty statements do not need to be provided to citizens unless
21 they specifically ask for it?

22 A I believe that's true.

23 Q During what period of time were you a participate in
24 the California City managers association?

25 A The entire time I was a City manager in California,

1 and currently I am a retired member of the California City
2 Management Foundation.

3 Q At anytime as a City manager, have you tracked your
4 hours spent in various positions, duties, or departments?

5 A By function? Are you asking me by function?

6 Q By function for any department, duty, position.
7 For any reason, have you tracked your hours?

8 A I may have tracked early on in my redevelopment
9 time.

10 Q Why did you do that?

11 A I said I may have. So it's a little foggy in my
12 recollection. I may have done that in Lafayette or possibly
13 Dinuba when I started so that I would know approximately what
14 percentage of my time was -- I should allocate to that --
15 for that service to the redevelopment agency.

16 Q Have you participated in the past in the creation
17 of City budgets that attempt to allocate your salary across
18 different departments?

19 A Again, I'm not understanding your question. The
20 allocation of the salary, meaning that each department would
21 pay a portion of the salary, or is it are there parts that
22 are charged to that department for the salary?

23 Q The latter.

24 A Then yes.

25 MR. JENSEN: Your Honor, can I just clarify? I didn't

1 understand the latter part?

2 THE COURT: Would you reread the question --

3 MR. JENSEN: I suppose I was --

4 THE COURT: One moment. I'm asking the reporter to
5 read the question back.

6 (Record read)

7 MR. LEVIN: May I ask my next question?

8 THE COURT: You may.

9 BY MR. LEVIN:

10 Q Back to the salary negotiation issue we discussed
11 earlier, did you as City manager negotiate your salary with
12 City council?

13 A Usually.

14 Q In those conversations, did the City council members
15 with whom you were negotiating ever indicate to you that they
16 were going to increase your salary in recognition of the
17 number of hours you were working for the City or increase
18 in hours?

19 A No.

20 Q Have you ever been awarded a mid-year merit raise?

21 MR. JENSEN: Asked and answered.

22 THE COURT: Sustained. You may answer it one more
23 time.

24 THE WITNESS: I'd have to ask in what context. As a
25 City manager or as a none City manager?

1 BY MR. LEVIN:

2 Q As a City manager?

3 A The only times are the ones I have testified to
4 before.

5 Q Based upon your knowledge of City management, based
6 on your participation in your various committees, do you
7 have an opinion on whether it is common or uncommon for
8 City managers to get mid-year merit raises?

9 A They do receive them.

10 Q Do you have an opinion on whether that happens
11 commonly or uncommonly?

12 A Probably a combination of the two. I don't think it
13 happens regularly. I don't know if that's a non-answer or
14 not. It's not a common occurrence, but yet it's not an
15 uncommon occurrence, but it's not a regular occurrence.

16 Q You have brought with you a number of documents
17 that you reviewed to prepare for giving testimony; correct?

18 A Yes.

19 MR. LEVIN: Your Honor, may I approach the witness?

20 THE COURT: You may.

21 BY MR. LEVIN:

22 Q If you could hand me the binder? Thank you.

23 MR. LEVIN: Can I take it back?

24 THE COURT: Yes, you may.

25 MR. JENSEN: Can I look at it because I have not seen

1 it. So --

2 THE COURT: Mr. Levin will look at --

3 MR. JENSEN: Yeah. Yeah. That's fine.

4 THE COURT: -- it and give it to you.

5 BY MR. LEVIN:

6 Q Mr. Adams, approximately how long did you spend
7 going through the materials here?

8 A Roughly 20 hours.

9 Q Were there documents concerning the City of Vernon
10 that you requested to review prior to giving testimony?

11 A No.

12 Q Did you have any discussions with Mr. Malkenhorst's
13 Counsel as to how he selected the documents that were to be
14 reviewed by you?

15 A How he selected them?

16 Q Right.

17 A No.

18 Q You testified earlier today about the typicality of
19 the City of Vernon documents, did you not?

20 A Yes.

21 Q Did you -- do you have any reason for believing that
22 the City charter for the City of Vernon is or is not typical
23 of a City charter?

24 A There is -- I don't believe this is a typical City
25 charter. Some of them are very long. Some of them are a

1 single page, but they're unique to their individual cities.

2 Q Did you see any job descriptions, duty statements,
3 that were stated in the City of Vernon documents that you
4 were provided?

5 A Yes.

6 Q Did you believe that those job duties and
7 descriptions were typical of the positions you described as
8 you understand them?

9 A Yes.

10 MR. JENSEN: Do you want to mark this for identification
11 or anything like that?

12 THE COURT: If you offer it, I'll mark it.

13 MR. JENSEN: Do you want this back?

14 THE COURT: Mr. Levin?

15 MR. LEVIN: No. Thank you.

16 THE COURT: Why don't we return this to the witness.

17 MR. JENSEN: May I approach?

18 THE COURT: You may.

19 BY MR. LEVIN:

20 Q Mr. Adams, was there ever an instance where you took
21 on a separately defined position apart from the position of
22 City manager? And by separately defined, I mean defined in
23 a resolution as a separate position as opposed to additional
24 duties.

25 A I would say yes.

1 Q And when did that occur?

2 A Again, I stated redevelopment. There was also --
3 there were definitions for -- we had a financing authority in
4 Manteca where I served as the executive director, and that
5 had to be a separate resolution because the financing
6 authority is a separate entity. Therefore, they have to have
7 officers. Generally the duties are not as detailed as you
8 might find in a regular job description.

9 Q In your experience, what needs to exist or what
10 needs to happen before a City council will take a number of
11 distinct duties, put them into a single duty statement, and
12 create a separate position for those duties?

13 MR. JENSEN: Objection. Lacks foundation.

14 THE COURT: Sustained.

15 BY MR. LEVIN:

16 Q In your experience, has there been a situation where
17 the City that you have worked for has taken a number of
18 duties from one or more positions and put them into one and
19 created a new position by resolution to take care of those
20 duties?

21 A Yes.

22 Q And when did that occur?

23 A The most recent one I recall is Manteca where we
24 took the various duties for the City manager's office, the
25 planning department.

1 Q Were you employed by the City of Manteca when that
2 occurred?

3 A Yes.

4 Q Are you aware for the reasons for that
5 reorganization?

6 A Yes.

7 Q What were the reasons?

8 A The reasons were that we felt we needed a
9 speciality. There needed to be a speciality rather than a
10 general duty, like a City manager position or the community
11 development director position, and we needed to find a
12 specialist. So we created a job description and took those
13 economic development activities and those two positions and
14 rolled them into the other position.

15 Q Have you ever seen in the City documents of any
16 city a distinct position created for, like a labor
17 negotiator position or duties that you once undertook?

18 A I don't recall. I don't believe so, but I don't
19 recall.

20 MR. LEVIN: I have no further questions at this
21 time. Thank you, Mr. Adams.

22 THE COURT: Mr. Yim?

23 MR. YIM: No questions, your Honor.

24 THE COURT: Okay. Redirect.

25 MR. JENSEN: Just very quick questions.

1 REDIRECT EXAMINATION

2 BY MR. JENSEN:

3 Q Mr. Adams, you mentioned that there's no published
4 books about duties of City managers or City administrators.
5 So there -- so essentially, does the City council construct
6 the job of the City manager, City administrator?

7 MR. LEVIN: Objection. Misstates testimony.

8 THE COURT: Overruled.

9 THE WITNESS: Could you repeat the question?

10 BY MR. JENSEN:

11 Q It was your prior testimony that there were no
12 published books about City managers or City administrators;
13 is that correct?

14 A I believe I was asked if I had read it. The answer
15 to your question is I am not aware of any.

16 Q And the question to you is, is it typical that the
17 City establishes the duties and responsibilities in each City
18 of their City manager, City administrator?

19 A Yes.

20 Q And you mentioned that you had the position of City
21 clerk in the City of Lafayette?

22 A Yes.

23 Q Did you perform that position within your City
24 manager position?

25 A I did.

1 Q And did you sign anything City clerk when you were
2 in that position?

3 A I did and I'm trying to recall. I don't recall if
4 it was the City clerk slash -- City manager slash City Clerk.
5 It may have been strictly City clerk at that time.

6 Q And when you performed or when you acted as City
7 treasurer in this City of Manteca, were you performing those
8 duties within the City manager position?

9 A I'm sorry.

10 Q When --

11 A I was distracted by --

12 Q Did you perform the City treasurer duties in the
13 City of Manteca?

14 A Yes.

15 Q And did you perform the City treasurer duties within
16 the City manager position?

17 A I did.

18 Q And were you paid any additional funds for the City
19 treasurer?

20 A No.

21 Q When you were City clerk in the City of Lafayette,
22 were you paid any additional funds for being city clerk?

23 A No.

24 Q And when you were acting City treasurer in the City
25 of Manteca, did you sign any documents City treasurer?

1 A Manteca?

2 Q Yes. In Manteca.

3 A City treasurer, yes I did. Sorry.

4 Q You mentioned that there was situations where you
5 had performed the duties and responsibilities in different --
6 that were listed in different position duty statements, and
7 you mentioned that you once performed the duties of the
8 police chief. Were there other positions at other times that
9 you performed the duties that were listed in a different
10 position job statement?

11 A Occasionally, yes.

12 Q And can you recall any of those?

13 A Public works documents and in the absence of the
14 public works director. Things that didn't require a
15 certified engineer because that's a different issue all
16 together. You needed to be a registered engineer to sign
17 some of those documents. In a smaller city, generally, when
18 someone is missing or not there, instead of going down to the
19 next level, because there isn't a next level. It has to come
20 back up, rather than go down. So the City manager would sign
21 on the behalf of department heads if they were unavailable or
22 the position was vacant.

23 Q And you mentioned that sometimes there was no pay
24 schedule for a position. Do you recall that?

25 A Yes.

1 Q And can you tell me when that -- when that --
2 in your experience that occurred?

3 A This is no pay scale for an executive director
4 of an redevelopment agency. There was not a specific -- in
5 Lafayette, there was not a specific City clerk salary. It
6 was City manager/City clerk. However, later when we did
7 create a separate City clerk position, the City manager
8 salary was not lowered because it was a City clerk position,
9 but the person -- the deputy City clerk continued to do the
10 same work that she had been doing in that case, and then had
11 the signaturatory responsibility after that.

12 Q And in your 30 years of experience, have you seen
13 on pay schedules positions that are listed for zero pay?

14 A It's possible that the City clerk -- the City
15 treasurer position in Manteca was listed as a position that
16 was filled by an elected position that had no compensation.

17 Q And lastly, I just wanted to clarify this issue
18 about allocation of your salaries over different departments.
19 Were you always paid from the general fund over your 30 years
20 of experience?

21 A Yes.

22 Q And when you allocated those salaries, the cost of
23 your salary over different departments or funds, did that
24 mean that those departments or funds paid part of your
25 salary?

1 A What would happen is that when there was an
2 allocation of my time or the resources behind me, since it's
3 my whole department expense, and it was determined that it
4 was assigned to that other fund. Then there would be -- it
5 would be set up in the budget fund and it would come in as a
6 budget transfer. It would go out of that fund, into the
7 general fund. So there would be a source -- there would be
8 a bill, if you will, to this other department or this other
9 fund for my services that I provided to that fund. It would
10 come back as a revenue or innerfund transfer is what they are
11 called and back to the general fund.

12 Q And just one last question. Over your 30 years of
13 experience, was it typical for the City to describe a 40-hour
14 work week for hourly managers -- for hourly employees that
15 40-hour work week did not apply to exempt employees?

16 THE COURT: I'm sorry. Would you restate that
17 question?

18 BY MR. JENSEN:

19 Q In your 30 years of experience, was it typical for
20 the cities to describe a 40-hour work week for its employees,
21 but that that 40-hour work week would not apply to exempt or
22 managerial employees?

23 A That's correct. With the caveat that the hours of
24 when City Hall is open was something that the City council
25 adopted as well. It wasn't necessarily hours of work and

1 departments and City managers were responsible to make sure
2 the hours were covered in whatever fashion, whether they have
3 to do it themselves or they have other employees that do it.
4 They're responsible to make sure that the staffing -- there's
5 adequate staffing while the City is open.

6 MR. JENSEN: Thank you. No further questions.

7 MR. LEVIN: Your Honor, may I just three minutes.

8 THE COURT: Three minutes.

9

10 RE CROSS-EXAMINATION

11 BY MR. LEVIN:

12 Q Mr. Adams, in any of the cities for which you have
13 worked, have you ever seen a written statement that the
14 standard 40-hour work week does not apply to exempt
15 employees?

16 A As a policy?

17 Q As a written statement in a document.

18 A Of the City --

19 Q Of the City.

20 A Not of the state or the courts?

21 Q Correct.

22 A No, I haven't.

23 Q Have you ever seen a separate pay schedule for the
24 position of City clerk at any of the cities for which you
25 have worked?

1 A Yes.

2 Q Have you seen any separate pay schedule for the
3 position of City treasurer at any of the cities where you
4 have worked?

5 A I don't recall.

6 Q Have you ever seen a separate pay schedule for a
7 executive or director of a redevelopment agency at any of
8 the cities that you have worked?

9 A I don't recall. I don't believe so.

10 MR. LEVIN: No further questions.

11 THE COURT: Thank you. The witness is excused.

12 MR. JENSEN: Thank you.

13 THE COURT: Let's go off the record for a moment.

14 (Recess)

15 THE COURT: We will reconvene on Friday, November 7
16 at 1:30 p.m., and we'll conclude the hearing by 4:30 p.m. on
17 that date. On that date, I will set a briefing schedule and
18 other requirements for briefs -- closing briefs, including
19 argument will be done by brief.

20 MR. LEVIN: Your Honor?

21 THE COURT: Yes.

22 MR. LEVIN: May I ask, would it be appropriate to
23 have a deadline by which CalPERS will be advised if further
24 testimony will be elicited on November 7th and if so, from
25 whom.

1 THE COURT: Well, let me ask you, Mr. Jensen, whom
2 do you intend to put the stand on the 7th?

3 MR. JENSEN: I would like to review it. We have
4 already disclosed Mr. Malkenhorst. I may or may not bring
5 him. I'd have to look at it. It would take me a certain
6 period of time to be able to review this material and have an
7 idea of whether I need to call him.

8 THE COURT: Can you let Mr. Levin know two weeks
9 before the 7th --

10 MR. JENSEN: Sure.

11 THE COURT: -- who you intend to call that day?

12 MR. JENSEN: Yes, I can, your Honor. That's October
13 24th?

14 THE COURT: That would be the 23. Oh, no. Your
15 right. The 24th. So by October 24th you will let Mr. Levin
16 know whom you intend to call as a witness to testify on the
17 7th.

18 MR. JENSEN: Thank you, your Honor, and if I don't
19 choose to go forward with testimony, I guess I would let the
20 Court know as well so that we could set a briefing schedule
21 from that period.

22 THE COURT: Please do, and if that is the case, if
23 there is no more evidence to be offered in the form of
24 testimony, I want to at least set up a telephonic conference
25 to discuss that, and to discuss the state of the documentary

1 evidence as well. So as soon as you know that, the earlier
2 the better, please let us know. Otherwise we're going
3 forward.

4 MR. JENSEN: I understand, that and if it's possible
5 to have a list of the documents that have been admitted, you
6 know, I have my list. I just don't know if the corresponds
7 to other lists. Whenever it's feasible.

8 THE COURT: Well, the list that ultimately matters
9 is my list, and I'd like it be correct.

10 MR. JENSEN: Yes, your Honor.

11 THE COURT: If you want to go through exhibits right
12 now, we can do that. I'm happy to do that if the court
13 reporter is happy to stay for another 10 minutes and happy
14 may be too strong of a word.

15 MR. JENSEN: We'll talk slowly.

16 THE COURT: With respect to Respondent Malkenhorst's
17 exhibits, Exhibits A through PP have been marked and
18 admitted.

19 MR. JENSEN: And, your Honor, what about QQ?

20 THE COURT: It was not marked, not admitted nor RR.
21 Neither of them was offered.

22 MR. JENSEN: I think RR is a duplicate of quadruple
23 O, but that's my recollection.

24 THE COURT: Well, then it was offered as quadruple
25 O. Let me see if -- quadruple O is neither marked nor

1 admitted.

2 MR. JENSEN: Because we have a list of testimony
3 about, I believe, RR.

4 THE COURT: One moment. Let me double check.

5 MR. JENSEN: Let me --

6 THE COURT: I could be wrong.

7 MR. JENSEN: Oh, yeah. I am mistaken. I apologize.

8 THE COURT: All right, and by the way, exhibits that
9 are not going to be offered, I expect Counsel to withdraw and
10 to take the physical documents back out of the official
11 record.

12 MR. JENSEN: And, your Honor, actually, may I speak
13 to QQ because QQ is this actuary evaluation that Ms. Tomi
14 Jimenez referred to --

15 THE COURT: You're correct. QQ was admitted.

16 MR. JENSEN: Okay. So we have -- hold on a second
17 here. So --

18 THE COURT: So we have A through QQ.

19 MR. JENSEN: A through QQ are in.

20 THE COURT: I beg your pardon?

21 MR. JENSEN: QQ is in?

22 THE COURT: Yes, it is. A through QQ. RR was not
23 marked. RR was not admitted.

24 MR. JENSEN: Yes.

25 THE COURT: We then have SS through triple C marked

1 and admitted. We have triple G through triple I marked and
2 admitted.

3 MR. JENSEN: I'm sorry. Triple G through triple I
4 are marked and admitted?

5 THE COURT: That's correct. We have triple J
6 through -- not triple J -- strike that. We have triple K
7 through triple M marked and admitted. We have quadruple H
8 marked and admitted. Quadruple L marked and admitted.

9 MR. JENSEN: And, your Honor, do we have quadruple F
10 in? I believe that was in testimony today.

11 THE COURT: Quadruple F?

12 MR. JENSEN: Quadruple F.

13 THE COURT: Yes -- no, we do not.

14 MR. JENSEN: And I'm working from a list here, and I
15 apologize.

16 THE COURT: Why don't you let me finish and then you
17 can ask me the questions you have?

18 MR. JENSEN: Okay.

19 THE COURT: Okay. Quadruple H is marked and
20 admitted. Quadruple L is marked and admitted. Quintuple F
21 is marked and admitted. Quintuple G through Quintuple P are
22 marked and admitted. Quintuple Q was marked and was not
23 admitted. Quintuple R was marked and admitted. Quintuple S
24 was withdrawn. Quintuple -- one moment. Quintuple T was
25 marked and admitted. Quintuple U was mark and admitted.

1 Quintuple V was marked and admitted except pages one and five
2 were withdrawn. Quintuple W was withdrawn, and quintuple X
3 was marked, but not moved.

4 MR. JENSEN: And quintuple X, I believe, is the
5 exhibit that was used to refresh her recollection, and I'd
6 like to move that into evidence now if we can, just for those
7 purposes of it being a document that refreshed her
8 recollection.

9 THE COURT: Mr. Levin?

10 MR. LEVIN: We object. Refreshing recollection is
11 not grounds for admission.

12 THE COURT: Fine. Quintuple X. Do I have a copy of
13 that?

14 MR. JENSEN: I believe you have the only copy I
15 have, your Honor. It was on the witness stand.

16 MR. LEVIN: And if I'm recalling the document
17 correctly, I believe the witness's testimony was in any event
18 that it didn't refresh her recollection.

19 MR. JENSEN: Actually, I believe that was true that
20 she didn't -- she didn't -- so to the extent that it didn't
21 refresh her recollection, I think -- what do you call that?

22 THE COURT: I think the grounds are well taken for
23 the objection.

24 MR. JENSEN: Yes, your Honor.

25 THE COURT: Will you withdraw?

1 MR. JENSEN: I withdraw 5X.

2 THE COURT: Okay, and after we go off the record,
3 you can take that.

4 MR. JENSEN: Thank you, your Honor.

5 THE COURT: And that is all I have for Respondent
6 Malkenhorst's exhibits. Do you have anything different,
7 Mr. Jensen?

8 MR. JENSEN: No. I believe that we're the same and
9 I thank you and apologize.

10 THE COURT: You're welcome. Do you want me to go
11 through CalPERS' exhibits?

12 MR. JENSEN: I would like you to, your Honor because
13 we consolidated them.

14 THE COURT: All right, and this is as good a time as
15 any to ask CalPERS whether it ever intends to have marked and
16 moved the jurisdictional documents that are Exhibits --
17 behind tabs one through six?

18 MR. LEVIN: Well, your Honor, I guess there is a
19 legal issue that I would discuss with the Court on that
20 point.

21 THE COURT: Go ahead.

22 MR. LEVIN: In the normal appellate process, the
23 filing of the document makes it part of the record, and it's
24 not evidentiary per say. It's just jurisdictional. If, in
25 fact, the practice here is different, then of course I'll

1 move it into evidence even though it's not evidence of the
2 facts being heard.

3 THE COURT: I would like to mark them and you may
4 move them and if so moved, if there is no well founded
5 objection, I will admit them for jurisdictional purposes
6 only.

7 MR. LEVIN: Thank you, your Honor. Then I do so
8 move for jurisdictional purposes to have Exhibits one through
9 six moved into evidence.

10 THE COURT: Any objection?

11 MR. JENSEN: No objection, your Honor, but with the
12 caveat that the other documents that we filed in response to
13 their statement of issues be equally filed with the court as
14 response to documents.

15 THE COURT: I don't know which ones those are, but
16 we will come back to you.

17 MR. JENSEN: Thank you.

18 THE COURT: We are doing CalPERS documents right
19 now.

20 MR. JENSEN: No objections to CalPERS Exhibits one
21 through six.

22 THE COURT: For jurisdictional purposes?

23 MR. JENSEN: For jurisdictional purposes.

24 THE COURT: Very well. They are marked and admitted
25 for those purposes.

1 (Department's Exhibits 1 through 6 were marked
2 for identification by the Court and received
3 in evidence.)

4 THE COURT: Okay. Exhibits 7 through 65 were marked
5 and admitted. Exhibits 67 through 71 were marked and
6 admitted. Exhibit 75 was marked and admitted. Exhibit 79
7 was marked and admitted. Exhibits 81 and 82 were marked and
8 admitted. Exhibits 85, 86, 88, 89 were marked and admitted.
9 That's what I've got. Before we get back to you Mr. Jensen,
10 any discrepancies with your records, Mr. Levin?

11 MR. LEVIN: No, your Honor.

12 THE COURT: Okay. Then let's go back, Mr. Jensen.
13 You say there are some of your documents that you also wish
14 admitted for jurisdictional purposes that have not been
15 marked or moved for that purpose; is that correct?

16 MR. JENSEN: That's correct, your Honor.

17 THE COURT: And please identify them.

18 MR. JENSEN: And we have filed in our binders
19 various pleadings which we believe to be -- well, which we
20 have filed with the Court in response to CalPERS'
21 jurisdictional documents, and I believe that they are located
22 in sequence and I am looking for that sequence right now.

23 THE COURT: You're looking for your exhibit list?

24 MR. JENSEN: Oh, I have my exhibit list. That would
25 be even easier, wouldn't it?

1 THE COURT: It sure would.

2 MR. JENSEN: One moment, your Honor. I apologize
3 for this organizational --

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

5 (Recess)

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

7 Mr. Jensen, while we were off the record has requested that I
8 mark and admit for jurisdictional purposes triple N through
9 quadruple C.

10 MR. JENSEN: And additionally, your Honor, just
11 another set, quadruple P through 5C.

12 THE COURT: I'm sorry?

13 MR. JENSEN: These are jurisdictional challenges and
14 demurrers and notice of motion to strike and various other
15 pleadings.

16 THE COURT: Any objection to those?

17 MR. LEVIN: Yes, your Honor. I would like to take
18 some time to go through those, but I believe that many of the
19 documents that are being introduced are pleadings from civil
20 cases and other related litigation concerning Malkenhorst and
21 other things and we did assert objections to those.

22 THE COURT: And I ruled on those and the motions in
23 limine.

24 MR. LEVIN: I believe you did. Yes, your Honor.

25 THE COURT: I believe I did, too.

1 MR. JENSEN: Yes, but with respect to the documents
2 filed in this action, in this administrative hearing,
3 quadruple P through 5C. These are all, like, motions to
4 strike filed in the administrative process which would be
5 equivalent -- our responses to their jurisdictional
6 documents.

7 THE COURT: All right. I'm going to take this under
8 submission and give you, Mr. Levin, an opportunity to review
9 those and see whether you agree that those are documents all
10 filed in this case and are not documents filed in other forum
11 and we address that on November 7th. If, in fact, we don't
12 go forward on the 7th because Mr. Jensen won't be calling any
13 witnesses, then we will address it in a telephonic conference
14 or another hearing date.

15 MR. LEVIN: Yes, your Honor.

16 MR. JENSEN: Thank you, your Honor.

17 THE COURT: Anything else?

18 MR. LEVIN: Nothing further, your Honor.

19 MR. JENSEN: Nothing further, your Honor.

20 THE COURT: Thank you. Let's go off the record.

21 (Hearing adjourned at 4:50 p.m.)

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