

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA
MARY AGNES MATYSZEWSKI, ADMINISTRATIVE LAW JUDGE

CERTIFIED
COPY

In the Matter of the)
Calculation of Final)
Compensation of:)
RICHARD LEWIS,) No. 2014-0256
Respondent,) OAH No. 2014040945
and)
CITY OF SAN BERNARDINO,)
Respondent.)
_____)

TRANSCRIPT OF PROCEEDINGS
San Bernardino, California
Monday, October 13, 2014

Reported by:
HEIDI BAMBER
CSR No. 12080
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TRANSCRIPT OF PROCEEDINGS, taken at
650 East Hospitality Lane, Suite 330,
San Bernardino, California, commencing at
10:28 a.m. on Monday, October 13, 2014,
heard before MARY AGNES MATYSZEWSKI,
Administrative Law Judge, reported by
Heidi Bamber, CSR No. 12080, a Certified
Shorthand Reporter in and for the State of
California.

1 APPEARANCES:

2

3

For the AGENCY:

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SENIOR STAFF COUNSEL

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-and-

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LAW OFFICES OF
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Also Present:

Mrs. Richard Lewis

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I N D E X

AGENCY'S Witnesses:	Direct	Cross	Redirect	Recross
Lolita Lueras	22	70		

E X H I B I T S

COMPLAINANT'S:	Marked for Identification	Received in Evidence
1 - Statement of Issues	10	21
2 - Amended Notice of Hearing	10	21
3 - Formal Determination Letter (Supplemented)	10	39
4 - Appeal by City	10	withdrawn 17
5 - Unidentified on the record	10	21
6 - Settlement Agreement	10	51
7 - Letter from Ms. Easland to Finance Department	10	51
8 - Letter from Ms. Chamberlin	10	51
9 - Determination Letter by Carlous Johnson	10	39
10 - E-mail from Ms. Chamberlin	10	171

1
2
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E X H I B I T S (Continued)

COMPLAINANT'S:	Marked for Identification	Received in Evidence
11 - Application	10	172
12 - MOU for battalion chief	10	51
13 - MOU for fire captain	10	51
14 - Payroll detail report	10	27
15 - Pay rate for fire captain	10	50
16 - Contract between City and CalPERS	10	173
17 - E-mail from Ms. Lueras dated 1/22/13	41	63
RESPONDENT'S:		
1 - Settlement Agreement with handwriting	10	
2 - Cover letter with Settlement Agreement and handwriting	10	177
3 - Finance Interoffice Memo	10	
4 - Letter from Ms. Easland to Finance Department dated 6/13/07	10	180

	E X H I B I T S (Continued)		
		Marked for	Received
	RESPONDENT'S:	Identification	in Evidence
1			
2			
3			
4	5 - Letter from	10	
5	Ms. Easland		
6	6 - Letter from	10	
7	Ms. Chamberlin		
8	7 - Determination	10	181
9	Letter by		
10	Carlous Johnson		
11	dated 7/05/07		
12	8 - Payroll History	10	181
13	9 - Letter from	10	183
14	Carlous Johnson		
15	to the City		
16	dated 10/26/12		
17	10 - Mr. Lewis's	10	171
18	Retirement Request		
19	and CalPERS reply		
20	11 - Finding of	10	172
21	fact/law		
22	12 - CalPERS letter	10	
23	to Respondent		
24	13 - Respondent's	10	
25	Retirement		
	Application		
	14 - CalPERS	10	122
	Touch Point		
	documents		
	15 - Formal Determination	10	187
	16 - Contract between	10	173
	City and CalPERS		
	17 - My CalPERS	10	
	screen		

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E X H I B I T S (Continued)
Marked for Identification Received in Evidence

RESPONDENT'S:

18 - Resolution 1999-235	10	
19 - Resolution 1999-236	10	
20 - Resolution 1999-252	10	
21 - Resolution 1999-253	10	
22 - Resolution 2000-13	10	
23 - Resolution 2000-333	10	
24 - Resolution 2000-251	10	
25 - Resolution 1999-242	10	
26 - Resolution 2006-66	10	
27 - Resolution 2005-454	10	
28 - Motion regarding Collateral Estoppel and Res Judicata	10	10
29 - Letter by Mr. Jensen dated 10/06/14	10	10
30 - Pay stubs	10	
31 - Order of Court 10/10/14	11	11

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E X H I B I T S (Continued)

RESPONDENT'S:	Marked for Identification	Received in Evidence
32 - Respondent's Notice of Defense with Attachment	19	19
33 - Duty Statement of Fire Captain	138	
34 - Duty Statement Battalion Chief	138	

1 San Bernardino, California, Monday, October 13, 2014,
2 10:28 a.m.

3
4
5 THE COURT: On the record in the matter of the appeal
6 of the calculation of final benefits of Richard Lewis and
7 also Respondent City of San Bernardino, OAH Case Number
8 2014040945, agency number 20140256.

9 My name is Mary Agnes Matyszewski. I'm the
10 Administrative Law Judge assigned to hear this matter here
11 at the San Bernardino office of CalPERS on
12 October 13, 2014.

13 May I have appearances, please, beginning with
14 the agency representative?

15 MR. KENNEDY: Yes, Wesley Kennedy, senior staff
16 counsel, California Public Employees' Retirement System,
17 and the agency representative sitting next to me today is
18 Lolita Lueras, L-U-R-E -- I'm sorry, L-U-E-R-A-S, excuse
19 me, and she's a research program -- or retirement program
20 specialist 2.

21 THE COURT: Sir?

22 MR. JENSEN: Good morning, Your Honor. John Jensen
23 for Richard Lewis, and Mr. Lewis and his spouse are
24 present in the courtroom.

25 THE COURT: Good morning, Mr. Lewis. We've had a

1 lengthy discussion off the record regarding various
2 exhibits, arguments, witnesses, order of witnesses,
3 documents and issues. What I've done is I've been given
4 two notebooks, CalPERS' exhibits which go 1 through 16 and
5 Respondent's which go 1 through 27.

6 (Complainant's Exhibits 1 through 16
7 were marked for identification by the Court.)

8 (Respondent's Exhibits 1 through 27 were
9 marked for identification by the Court.)

10 THE COURT: I've marked as Exhibit 28, and I'm going
11 to receive it as argument, the October 6, 2014 motion
12 regarding the collateral estoppel and res judicata as
13 filed by Respondent.

14 (Respondent's Exhibit 28 was marked for
15 identification by the Court and
16 received in evidence.)

17 THE COURT: I'm going to receive and mark as
18 Exhibit 29 as argument the October 6, 2014 letter by
19 Mr. Jensen with further discussions regarding the motion.

20 (Respondent's Exhibit 29 was marked for
21 identification by the Court and
22 received in evidence.)

23 THE COURT: I've marked as Exhibit 30, it's two pages
24 of payroll checks, one dated June 30th, 2011, another
25 dated July 13 -- excuse me, July 31, 2012.

1 (Respondent's Exhibit 30 was marked for
2 identification by the Court.)

3 THE COURT: And I'm going to mark and receive as
4 Exhibit 31 my order that was issued on Friday,
5 October 10th.

6 (Respondent's Exhibit 31 was marked for
7 identification by the Court and
8 received in evidence.)

9 MR. KENNEDY: Clarification? Did I hear you say two
10 payroll checks? Did you mark them as A, B?

11 THE COURT: Just 30.

12 MR. KENNEDY: Both 30, okay.

13 THE COURT: And 29, 28, 30 and 31, they are going to
14 be Respondent's exhibit numbers because both parties have
15 numbered their documents, so for clarity on the record,
16 we'll refer to things as Complainant's Number 1,
17 Respondent's Number 1 and so forth. So if I interrupt you
18 when you give a number, that's why, I'm just trying to
19 keep the record clear.

20 And so the record is clear, the issue before me
21 is whether or not temporary upgrade pay for the value of
22 the employer-paid member contributions can be included in
23 Mr. Lewis's final compensation calculation; is that
24 correct, Mr. Kennedy?

25 MR. KENNEDY: Yes, it is, Your Honor.

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

2 MR. JENSEN: Yes, Your Honor.

3 THE COURT: Thank you. Mr. Kennedy, how do you wish
4 to proceed?

5 MR. KENNEDY: Before we proceed, Your Honor,
6 Mr. Lewis's spouse is here and just an inquiry, is she
7 intending to testify at any point in this hearing?

8 MR. JENSEN: I don't believe so.

9 THE COURT: She's just here for moral support?

10 MR. JENSEN: Just here for moral support. She's not
11 someone that I believe has any percipient knowledge in
12 this case.

13 MR. KENNEDY: Your Honor, just if she is, then I
14 would make a request for exclusion if she's going to
15 testify.

16 MR. JENSEN: I don't anticipate her testifying, but I
17 think it would be important for her to be in the courtroom
18 anyway.

19 THE COURT: All right. Mr. Kennedy?

20 MR. KENNEDY: Your Honor, before we proceed, I just
21 have two threshold issues I just want to raise for the
22 record.

23 THE COURT: Okay.

24 MR. JENSEN: And I want to be clear that I do respect
25 your ruling on the collateral estoppel issues and the

1 charter city issues, but I wanted to reiterate either for
2 purposes of reconsideration or otherwise the motions that
3 we have made that are jurisdictional challenges to CalPERS
4 bringing forth this administrative hearing.

5 The collateral estoppel arguments were made in a
6 prior brief to the Court, which were -- the Court's ruling
7 was that we should bring them forth in the administrative
8 hearing, and so we believe that these are jurisdictional
9 threshold challenges which would deny CalPERS the right to
10 bring forward this hearing.

11 And on the separate matter of collateral estoppel
12 and res judicata, we believe that CalPERS has already made
13 a binding determination in this matter and it has no power
14 to reopen the hearing to change the final decision. The
15 prior ruling is in evidence by the determination letter
16 of -- or has been offered into evidence in the pleadings
17 by determination letter of Carlous Johnson of
18 July 5th, 2007, which is Exhibit 9 in CalPERS' binder,
19 it's also in ours, and in that matter CalPERS directs the
20 City to report the compensation at the battalion chief
21 level in a certain manner, and we believe that they
22 brought forth no new evidence, no new law that would allow
23 them to change that, and therefore collateral estoppel and
24 res judicata would bar this hearing.

25 So I just wanted to make that notation in the

1 record on both of those grounds, the charter city autonomy
2 to determine the job duties and compensation of their
3 battalion chief and fire chief, and that CalPERS can't
4 intervene in a matter that changes the designations of a
5 charter city with respect to the subgovernment and
6 structure of its fire fighting offices. And in CalPERS'
7 position in this, they reject the position of the binding
8 decisions by the City of San Bernardino about Mr. Lewis's
9 compensation and pay as battalion chief and seek to change
10 them, and I believe that is barred by law under the
11 charter city's autonomy.

12 MR. KENNEDY: I loathe to interrupt, Counsel, but is
13 this opening argument?

14 THE COURT: No, he's doing his Motion for
15 Reconsideration.

16 MR. JENSEN: I'm just stating for the record. And
17 that no contract between the City and San Bernardino could
18 interrupt or intervene or otherwise change the decisions
19 that were made by the charter city in these matters. So
20 for those reasons, we believe that this case should not
21 proceed. Thank you.

22 THE COURT: Thank you.

23 Mr. Kennedy, do you wish to make any argument?

24 MR. KENNEDY: Well, we believe that the Court has
25 already ruled on all those points, and all that's set

1 before the Court at this point is without any additional
2 facts or law being presented on a Motion for
3 Reconsideration, we would ask that the Court deny the
4 Request for Reconsideration and adhere to its prior
5 rulings, understanding that in part, some of those issues
6 the Court reserved for its decision on the merits in this
7 case.

8 THE COURT: Thank you. I'm going to affirm my order
9 issued on Friday and deny the Motion for Reconsideration.

10 As I reviewed all the documents and the motions
11 that were filed, I believe it's going to require evidence
12 to make a determination of collateral estoppel and
13 res judicata issues, and the order previously issued by my
14 office was to allow the hearing to take of evidence here,
15 which I'm going to do throughout the hearing, and put
16 those issues in my proposed decision that I will review
17 that will go up to CalPERS and be in their final decision.

18 And I believe that the law does allow CalPERS to
19 take the action of this hearing in this matter as far as
20 moving forward with the filing without any determination
21 of what the final outcome will be, but so for that, I'm
22 going to consider argument in their support of why they
23 think they can go forward with this.

24 Mr. Kennedy?

25 MR. KENNEDY: Yes. At this point, Your Honor, I'd

1 like to request to move in jurisdictional documents.

2 THE COURT: Okay.

3 MR. KENNEDY: And Exhibit 1 in CalPERS' exhibits is
4 under the Statement of Issues issued in this matter dated
5 April 22nd, 2014.

6 Exhibit Number 2, there are one original and two
7 Amended Notices of Hearing.

8 Exhibit 3 is a final determination letter, and I
9 would like to request the supplement of it because it
10 should have an attachment with Notice of Appeal Rights to
11 it, but I believe it references the Notice of Appeal
12 Rights in the letter itself, but there's usually an
13 attachment that sets forth the appeal rights, but it's the
14 final determination and notice of appeal rights by CalPERS
15 dated May 8, 2013, and signed by Ms. Tomi Jimenes, it's
16 T-O-M-I, J-I-M-E-N-E-S.

17 Exhibit 4 is the appeal by the Office of the City
18 Attorney -- well, actually, by the City of San Bernardino,
19 and I'm -- well, and Exhibit 5 is the appeal by -- of this
20 matter by Mr. Lewis.

21 The pause that I had there for a moment there,
22 Your Honor, was Number 4, which is the appeal by
23 San Bernardino, and before we took the record today, the
24 Court had indicated that, you know, since the City of
25 San Bernardino has declined to appear today or show up

1 today -- well, I guess there's a default in their appeal.
2 So I don't know if the Court would like me to remove their
3 Request for Appeal at this time because -- or if the Court
4 would enter a default on behalf of them?

5 THE COURT: Right. So looking at Exhibit 2, they
6 were properly noticed of this proceeding and there's no
7 appearance by them, but I would keep Exhibit 4 in just to
8 show they did appeal and didn't appear and I issued a
9 default against them.

10 MR. KENNEDY: I agree. I would request to remove
11 from the record Exhibit 4, the appeal by the City of
12 San Bernardino.

13 THE COURT: So you're withdrawing Exhibit 4?

14 MR. KENNEDY: I'll withdraw Exhibit 4.

15 THE COURT: Okay. So Complainant's Exhibit 4 is
16 withdrawn.

17 (Complainant's Exhibit 4 withdrawn)

18 MR. KENNEDY: They were noticed, okay. Thank you.

19 THE COURT: Mr. Jensen, any objection to my receiving
20 Exhibits 1, 2, 3 and 5 as jurisdictional documents?

21 MR. JENSEN: No objection to Exhibit 1 as a
22 jurisdictional document. No objection to Exhibit 2 as a
23 jurisdictional document. With respect to Exhibit 3, there
24 is no indication that appeal rights were actually attached
25 to it, so I don't believe that it would be appropriate to

1 augment or supplement this jurisdictional document with
2 appeal rights.

3 THE COURT: I believe in looking at it, because we
4 get everything electronically filed, and when I was
5 reviewing all the files on the case, I believe there were
6 appeal rights attached to it which CalPERS filed with our
7 office. I think it's an oversight that it's not in the
8 exhibit notebook. Is that correct, Mr. Kennedy?

9 MR. KENNEDY: Yes.

10 THE COURT: So I will give it a CalPERS number and
11 attach it as the complete Exhibit 3.

12 MR. JENSEN: And then I just want to indicate with
13 respect to Exhibit 4, while CalPERS has withdrawn it, it
14 was attached to our Notice of Defense, which we believe is
15 our jurisdictional document in addition to this appeal.

16 THE COURT: Okay.

17 MR. JENSEN: And so CalPERS has not included the
18 Notice of Defense, so we wish to augment the
19 jurisdictional documents with our Notice of Defense in
20 addition to the appeal.

21 MR. KENNEDY: Your Honor, a Notice of Defense in this
22 matter I don't think is a jurisdictional document, and we
23 have included the Notice of the Appeal.

24 THE COURT: I think that a Notice of Defense is a
25 jurisdictional document and it's rare that I don't see one

1 attached to the jurisdictional documents for the agency
2 cases that I do because it's what gives the Respondent the
3 right to the hearing, a request for the hearing, and so it
4 establishes the jurisdiction I think also. But I'm going
5 to mark as Exhibit 32, if you want to provide to me,
6 Mr. Jensen, will be Respondent's Notice of Defense with
7 attachment.

8 (Respondent's Exhibit 32 was marked for
9 identification by the Court and
10 received in evidence.)

11 MR. JENSEN: And just --

12 MR. KENNEDY: Is there a copy?

13 MR. JENSEN: I have just one copy for myself, and so
14 I'll have copies made and distributed tomorrow.

15 MR. KENNEDY: That's fine. So I just -- my
16 confusion, Your Honor, is that the Exhibit 5, if I
17 understand what the Court is saying, Exhibit 5 does set
18 forth -- does negate the appeal; that is, the Notice of
19 Appeal by Respondent Lewis?

20 MR. JENSEN: Well, the Notice of Appeal is filed
21 after the Denial Letter, and the Statement of Issues comes
22 subsequent to that, and the Notice of Defense is in
23 response to the Statement of Issues. And so I appreciate
24 Mr. Kennedy's including the appeal in here, and I think
25 it's appropriate, but I do think it's more appropriate to

1 include our Notice of Defense.

2 And in addition, Your Honor, I also would like,
3 although they're in the record, I would like to include as
4 our jurisdictional challenges, the original charter city
5 motion, and if we can subsequently provide that to you --

6 MR. KENNEDY: Those are not jurisdictional documents,
7 Your Honor, and they should be provided on case in chief,
8 and since there is an appeal in this case, the Notice of
9 Appeal would just simply be supplementing the defenses,
10 the affirmative defenses, if any.

11 THE COURT: Right, that's true. I'm not going to
12 receive it as jurisdictional. If during your case in
13 chief you want to offer it or on cross-examination of any
14 of CalPERS' witnesses, feel free.

15 MR. JENSEN: And, Your Honor, just for these
16 purposes, I think our responsive documents to their
17 assertion of jurisdiction are also jurisdictional
18 documents, so I would just make that note for the record
19 that our challenge on the charter city issue and our
20 challenge on the collateral estoppel would also be
21 equivalent to what we can do to challenge their
22 jurisdiction.

23 THE COURT: Right, and I've included your motion as
24 an exhibit, your argument on the issue.

25 MR. JENSEN: Thank you, Your Honor. And I guess the

1 issue is whether the charter city motion is -- if we can
2 offer that as a -- for argument's sake as an exhibit?

3 MR. KENNEDY: It's in the Court's record already. If
4 they want to -- if they're going to challenge, the ruling
5 has been made already by the Court on that, it's not a
6 jurisdictional document. The jurisdictional documents are
7 those documents that could attach jurisdiction to this
8 Court.

9 THE COURT: Correct, and those documents are already
10 in the record; not in the record, they're already in the
11 court case filing on the case.

12 MR. JENSEN: Thank you, Your Honor. And --

13 MR. KENNEDY: Did Mr. -- sorry.

14 MR. JENSEN: With respect to Exhibit 5, I have no
15 opposition to that coming in as a jurisdictional document.

16 THE COURT: Then I'm going to receive 1, 2, 3 and 5
17 as jurisdictional documents with a notation that 3 will be
18 supplemented.

19 (Complainant's Exhibits 1, 2 and 5 were
20 received in evidence by the Court.)

21 MR. KENNEDY: Thank you, Your Honor. CalPERS at this
22 time, Your Honor, would like to call Lolita -- Lolita, I'm
23 sorry, Lueras.

24 THE COURT: Ma'am, can you approach and raise your
25 right hand?

1 THE WITNESS: (Witness complies)

2 MR. KENNEDY: And, Your Honor, I'd like to, just in
3 case it's necessary, to reference Ms. Lueras has a copy of
4 what I'll refer to as the PERL.

5 THE COURT: That's fine.

6 Raise your hand to be sworn.

7

8 LOLITA LUERAS,
9 called as a witness and having been first duly sworn by
10 the Court, was examined and testified as follows:

11 THE WITNESS: Yes.

12 THE COURT: Can you state your name and spell your
13 first and last name for the record, please?

14 THE WITNESS: Lolita Lueras, first name L-O-L-I-T-A,
15 last name Lueras, L-U-E-R-A-S.

16 THE COURT: Thank you.

17 Mr. Kennedy?

18

19 DIRECT EXAMINATION

20 BY MR. KENNEDY:

21 Q Ms. Lueras, can you correct my pronunciation?

22 A Lueras.

23 Q Lueras. Ms. Lueras, you currently work for
24 CalPERS?

25 A Correct.

1 Q And in your position, you're what's called a
2 RPS-II, which is a retirement program specialist II, would
3 be --

4 THE COURT: Counsel, you're testifying. Start over
5 and ask her some questions.

6 BY MR. KENNEDY:

7 Q Your position with CalPERS is what?

8 A Retirement program specialist II.

9 Q And how long have you been a retirement program
10 specialist II?

11 A I have been at the II level for one year.

12 THE COURT: Is it Roman numeral II or numeric?

13 THE WITNESS: Roman numeral.

14 THE COURT: Thank you.

15 BY MR. KENNEDY:

16 Q And prior to that, was your last position with
17 CalPERS?

18 A Yes.

19 Q And what was that?

20 A In the Compensation Review Unit, I was retirement
21 program specialist I for four years.

22 MR. KENNEDY: Okay. And, Your Honor, is it possible
23 if I could pull -- would it be possible to pull her up,
24 pull her desk up a little bit?

25 THE COURT: Sure. No, go ahead.

1 MR. KENNEDY: She's projecting fine, but I'm still
2 having difficulty hearing.

3 THE COURT: Yeah, no problem.

4 MR. KENNEDY: Thank you. Just if I may just go off
5 the record for just a second, Your Honor?

6 THE COURT: Sure, yep. Off the record.

7 (Discussion off the record)

8 THE COURT: Back on the record.

9 Ma'am, may I remind you, you're still under
10 oath.

11 BY MR. KENNEDY:

12 Q And in your position as an RPS-II with the --
13 excuse me, the Final Compensation Unit?

14 A The Compensation Review Unit, yes.

15 Q And what are your duties in that unit?

16 A My main duty is to review all reported
17 compensation and ensure that it is compensation earnable
18 that can be used in the calculation of retirement
19 benefits.

20 Q And how do you determine -- I mean, what is
21 compensation earnable?

22 A Compensation earnable is defined in Government
23 Code Section 20636, it is what can be used in the
24 calculation for member's retirement benefits.

25 Q It is a statutory part of the concept?

1 A That is correct.

2 Q Is it also set forth in regulations as well?

3 MR. JENSEN: Objection.

4 THE COURT: What's the objection?

5 MR. JENSEN: Leading question.

6 THE COURT: Overruled.

7 BY MR. KENNEDY:

8 Q Is it also set forth in regulations as well?

9 A Yes.

10 Q Okay. And how is compensation earnable -- I
11 mean, is it reported, if at all, to CalPERS by employers?

12 MR. JENSEN: Objection, lacks foundation.

13 THE COURT: Overruled.

14 THE WITNESS: It's reported electronically and
15 currently entered in My CalPERS System.

16 BY MR. KENNEDY:

17 Q And so employers are required to report their
18 employees' compensation to CalPERS?

19 MR. JENSEN: Objection, leading.

20 THE COURT: Overruled.

21 THE WITNESS: Yes.

22 BY MR. KENNEDY:

23 Q Okay. And the electronic reporting, does it --
24 are you aware of whether or not it provides any kind of
25 filter as to what is reported by employers to CalPERS as

1 the compensation of their employees?

2 A No.

3 Q Okay. And does CalPERS maintain a log or
4 document contemporaneous with the reporting of
5 compensation?

6 MR. JENSEN: Objection, leading.

7 THE COURT: You're getting leading, Counsel.

8 Sustained.

9 BY MR. KENNEDY:

10 Q Is there a record maintained by CalPERS as to the
11 compensation reported by employers?

12 MR. JENSEN: Objection, leading.

13 THE COURT: I'm going to allow a little bit of leeway
14 here. There's no jury here and to get through this a
15 little bit, but you are being --

16 MR. KENNEDY: Do you want me to reask the question?

17 THE COURT: How do employers report compensation to
18 CalPERS?

19 THE WITNESS: Electronically into My CalPERS System,
20 there's a record kept for each member on what is reported.

21 BY MR. KENNEDY:

22 Q And is there a name for what that record is
23 within CalPERS?

24 A The payroll transcripts I believe you're
25 referring to.

1 Q Okay. Can I direct your attention, please, to
2 the white exhibit binder, it's in CalPERS' exhibits, and
3 specifically to Exhibit 14?

4 A (Witness complies)

5 Q And can you identify for us what that document
6 is?

7 A This is a printout of the payroll transcripts for
8 member Richard J. Lewis, II.

9 Q Okay. And is this document prepared
10 contemporaneously with reporting by the employers?

11 MR. JENSEN: Objection, lacks foundation.

12 THE COURT: Overruled.

13 THE WITNESS: Yes.

14 BY MR. KENNEDY:

15 Q Okay. And are there categories -- and at this
16 time, Your Honor, I would like to admit Exhibit 14.

17 THE COURT: Any objection to my receiving Exhibit 14?

18 MR. JENSEN: I think it lacks foundation as far as
19 what this information is in this document, but if you can
20 lay a little foundation.

21 THE COURT: Overruled. She's already told us what
22 the document is. Exhibit 14 is received for Complainants.

23 (Complainant's Exhibit 14 was received
24 in evidence by the Court.)

25 ///

1 BY MR. KENNEDY:

2 Q And when an employer reports the compensation,
3 are there subcategories what's reported as compensation?

4 A Yes.

5 Q And what are those subcategories?

6 A They're two types of compensation reported,
7 there's the pay rate compensation and the earnings that
8 are associated with that pay rate and also special
9 compensation.

10 Q Now, are employers -- I mean, we asked you
11 before, employers are screened on what they can -- does
12 the system screen employers on their reporting under
13 My CalPERS? Or is there a privacy setting under
14 My CalPERS?

15 MR. JENSEN: Objection, vague and lacks foundation.

16 THE COURT: It's also compound, so sustained.

17 BY MR. KENNEDY:

18 Q You mentioned My CalPERS. Was there a prior
19 system for reporting prior to My CalPERS?

20 A Yes, agencies reported via, I believe, several
21 different types of systems, the most common was something
22 called Aces.

23 Q But it also was an electronic version that
24 employers would input the compensation reporting?

25 A Correct.

1 Q Okay. Now, does the fact that an employer
2 reports a specific item or amount of pay as either pay
3 rate or special compensation render that as compensation
4 earnable?

5 MR. JENSEN: Objection, it calls for speculation.

6 THE COURT: Overruled.

7 THE WITNESS: No.

8 BY MR. KENNEDY:

9 Q And who determines whether or not a reported
10 compensation constitutes compensation earnable?

11 A CalPERS under the public employment retirement
12 law.

13 Q So how is it that employers could determine,
14 prior to reporting the payroll, whether a specific item or
15 amount of compensation is either pay rate or special
16 compensation?

17 A CalPERS offers a lot of education to our
18 employers to understand the PERL and what items can be
19 reported to the system. We have publications such as
20 circular letters that contact the employers and let them
21 know of any changes to statute or regulation that --

22 Q Can I ask you to slow down just a little bit for
23 both me and the reporter? Thank you.

24 A I apologize.

25 Q I apologize, I should have asked you earlier.

1 A So there are circular letters that would notify
2 employers if there were any changes in regulation or
3 statute that would apply to compensation earnable.
4 There's also educational opportunities, and the
5 educational forum is a platform that we utilize annually.
6 We also have a call center where the employer can contact
7 and ask questions and a CalPERS representative would be
8 able to assist.

9 Q Okay. If an employer had a question as to how to
10 report a specific item or amount of compensation, could
11 they contact, let's say, your office?

12 A Yes, my office would be one that could answer
13 that question, yes.

14 Q Is there any other logical office that would come
15 to mind they might contact?

16 A We have a payroll reporting area that is able to
17 answer any questions with how to technically report an
18 item to the system.

19 Q Okay. And have you, in your experience at
20 CalPERS, received contacts from employers from time to
21 time on how to report an item?

22 A Yes.

23 Q And how to report, I mean, essentially whether
24 it's pay rate or special compensation?

25 A Yes.

1 Q Okay. And have you also been contacted by
2 employers in the past to inquire whether or not an item
3 is, you know, should be reported or is capable of being
4 reported?

5 A Yes.

6 Q Okay. And in those responses, do you consider
7 those responses to be determinations, final determinations
8 or preliminary determinations as to whether the
9 compensation that they're inquiring about is in fact
10 compensation earnable?

11 MR. JENSEN: Objection, Your Honor, he's asking --

12 MR. KENNEDY: I'll withdraw the question.

13 BY MR. KENNEDY:

14 Q Is it your understanding that in giving those
15 responses that you are making a final determination on
16 behalf of CalPERS as to whether the item does or does not
17 qualify as compensation earnable?

18 MR. JENSEN: Objection, Your Honor. He's asking her
19 a legal opinion in the guise of a question about final
20 determination, which she's -- it's a legal question that's
21 reserved for Your Honor and she's not qualified to make
22 that determination.

23 THE COURT: I appreciate your argument, but what we
24 got from her is she gives an answer instead of a
25 determination for the employer.

1 So you can answer that question.

2 THE WITNESS: It's not a final determination, no.

3 THE COURT: How would the employer know that?

4 THE WITNESS: How would the employer know that it was
5 not a final determination?

6 THE COURT: Um-hum.

7 THE WITNESS: If a final determination is made, there
8 is a letter that is sent in an official format that would
9 lay out why the item is or is not reportable and any
10 statute or regulation supporting that determination.

11 BY MR. KENNEDY:

12 Q Your responses, your informal responses, as you
13 indicated, would be sometimes verbal?

14 A Not a formal response.

15 Q No, your informal?

16 A Informal, possibly.

17 Q You could do it by writing like e-mail?

18 A Correct.

19 Q And do you have a practice of informing employers
20 when you respond to that that your responses are subject
21 to adjustment?

22 A Yes. My normal practice to indicate to an
23 employer is this is -- we believe it is reportable as
24 compensation earnable; however, that is no guarantee that
25 it will be utilized in the member's calculation.

1 Q Now, is it uncommon that after an employer has
2 reported an item as either pay rate or special
3 compensation that there will be an adjustment made to --
4 or a determination adjusting the reporting?

5 MR. JENSEN: Objection, Your Honor, lack of
6 foundation.

7 THE COURT: Overruled.

8 THE WITNESS: It is not common.

9 BY MR. KENNEDY:

10 Q Now, in your experience, is it uncommon that --
11 well, let me ask you this: Do you know what the term
12 "going on roll" means?

13 A Yes.

14 Q What does that mean?

15 A That's the term we use to define a member that is
16 beginning to receive a retirement check.

17 THE COURT: What's the term?

18 MR. KENNEDY: Going on roll.

19 THE COURT: R-O-L-L?

20 THE WITNESS: Yes.

21 MR. KENNEDY: R-O-L-L, right.

22 BY MR. KENNEDY:

23 Q And is it your experience that it's uncommon that
24 an adjustment may be made to a member's compensation
25 earnable even after they've gone on roll?

1 A It's not uncommon.

2 Q Okay. Now, in this specific case, there was --
3 I'm sorry, could I direct your attention to Exhibit 9,
4 please?

5 A (Witness complies)

6 Q This is a June 5th, 2007 letter, and it's on
7 CalPERS' letterhead, and it's signed by, let's see if it's
8 on here, someone named Carlous Johnson. Do you know who
9 Mr. Johnson is?

10 A Yes.

11 Q And who is Mr. Johnson?

12 THE COURT: For the record, Carlous is C-A-R-L-O-U-S.
13 BY MR. KENNEDY:

14 Q Who is Mr. Johnson?

15 A Mr. Johnson was an analyst inside the
16 Compensation Review Unit.

17 Q Does he still work at CalPERS?

18 A No, he does not.

19 Q He held the position similar to yours?

20 A Correct.

21 Q Okay. And have you had a chance to review this
22 letter before today?

23 A Yes.

24 Q Okay. And based on your experience and practice,
25 does this appear to be a formal determination by CalPERS

1 as to whether or not the items discussed in it, temporary
2 upgrade pay, are compensation earnable or not?

3 MR. JENSEN: Objection, calls for a legal opinion of
4 this line.

5 THE COURT: Overruled.

6 THE WITNESS: In reading the letter, it sounds like
7 it's a specific question posed and Mr. Johnson was
8 answering that question of whether or not an item should
9 be reported as pay rate or as special compensation.

10 BY MR. KENNEDY:

11 Q So how would you characterize the advice that
12 Mr. Johnson is giving here?

13 A It sounds as though Mr. Johnson was answering the
14 question that it is not base pay rate, but it should be
15 reported as special compensation.

16 Q And so is he basically, in your opinion, is he
17 basically telling which bucket to put it in?

18 A Correct.

19 Q Because there's only two types of compen -- two
20 types of categories you can report compensation; right?

21 A Right, pay rate and special compensation.

22 THE COURT: What sort of things are included in
23 special compensation?

24 THE WITNESS: There are several items in special
25 compensation, there's the California Code of Regulations

1 Section 571(A), and that gives an exclusive, exhaustive
2 list of what items of special compensation can be
3 reported. For example, you have longevity pay, temporary
4 upgrade pay, a bonus; those are some items that are
5 listed.

6 THE COURT: Great. Thank you.

7 THE WITNESS: Um-hum.

8 BY MR. KENNEDY:

9 Q Now, you took over this file after Mr. Johnson
10 responded to this in 2007; correct?

11 A Correct.

12 Q And we're going to get to this in a moment, but
13 you actually were the author of the final determination or
14 the determination in this matter?

15 MR. JENSEN: Objection, these are leading questions.
16 I understand the foundational background on some of these,
17 but, I mean, some of these --

18 THE COURT: What was your involvement with this case?
19 Sustained.

20 THE WITNESS: I reviewed all the documentation
21 presented to me and wrote a formal determination letter
22 that was signed by my manager.

23 BY MR. KENNEDY:

24 Q Can I direct your attention to Exhibit 3?

25 A (Witness complies)

1 THE COURT: So the record is clear, these are all
2 CalPERS' exhibits?

3 MR. KENNEDY: Yes, I'm sorry, CalPERS.

4 BY MR. KENNEDY:

5 Q And unless I specify otherwise, Ms. Lueras, when
6 I'm asking questions, my questions will be directed at
7 CalPERS' exhibits. If I do go over to Respondent's, I
8 will indicate to look in Respondent's binder; okay?

9 A Okay.

10 THE COURT: Thanks, Counsel.

11 BY MR. KENNEDY:

12 Q Now, do you recognize this document?

13 A I do.

14 Q And how would you characterize what this document
15 is?

16 MR. JENSEN: Objection, Your Honor, document speaks
17 for itself.

18 THE COURT: Overruled.

19 THE WITNESS: It's a formal determination of
20 compensation reported on behalf of the member.

21 BY MR. KENNEDY:

22 Q Okay. And did you actually do the research and
23 drafting of this document?

24 A Yes.

25 Q And who is Ms. Jimenes?

1 A Ms. Jimenes is my staff services manager III.
2 Q And who is Karen Frank or who was Karen Frank?
3 A Karen Frank was our division chief at that time.
4 Q Okay. And Georgia Chamberlin?
5 A She was my contact at the City of San Bernardino.
6 Q Okay. And this is addressed to Mr. Lewis;
7 correct?
8 A Yes.
9 Q Okay. And comparing this -- this is the kind of
10 document you were talking about that would be a formal
11 determination as to whether or not an item was or was not
12 recognized as compensation earnable; correct?
13 MR. JENSEN: Objection, these are leading questions
14 and --
15 THE COURT: Overruled.
16 THE WITNESS: Correct.
17 BY MR. KENNEDY:
18 Q And although it's not here, we had this
19 preliminary discussion, this also would be issued by your
20 office with appeal rights attached to it; correct?
21 A Yes.
22 MR. KENNEDY: All right. Now, Your Honor, I would
23 like at this point to admit Exhibit 3 as a determination,
24 a formal determination letter by CalPERS in this matter.
25 THE COURT: Mr. Jensen?

1 MR. JENSEN: No objection.

2 THE COURT: Exhibit 3 will be admitted as the final
3 determination.

4 (Complainant's Exhibit 3 was received
5 in evidence by the Court.)

6 THE COURT: You reference Exhibit 9 but didn't move
7 it into evidence, Carlous's letter?

8 MR. KENNEDY: Yes, we'll move Exhibit 9, Your Honor.

9 THE COURT: Any objection to my receiving Exhibit 9?

10 MR. JENSEN: No objection, Your Honor.

11 THE COURT: Exhibit 9 will be received.

12 (Complainant's Exhibit 9 was received
13 in evidence by the Court.)

14 BY MR. KENNEDY:

15 Q Now, you said you undertook some research in
16 preparation for drafting this letter?

17 A Yes.

18 Q Okay. And did you have a chance to do any
19 research also to look at your -- was there a file
20 maintained by your office concerning this, Mr. Lewis's
21 compensation earnable?

22 MR. JENSEN: Objection, Your Honor, leading.

23 THE COURT: Overruled.

24 THE WITNESS: We do have files for each member.

25 ///

1 BY MR. KENNEDY:

2 Q And can you tell me if you -- did you have a
3 chance to review that file before you testify -- before
4 you wrote the letter?

5 A Yes.

6 Q Okay. And in reviewing the letter, were you able
7 to ascertain what Mr. Johnson may or may not have had in
8 front of him at the time that he responded to -- well,
9 drafted Exhibit 9, put it that way?

10 A Yes.

11 Q And what was that?

12 A The Settlement Agreement.

13 Q And when you say "Settlement Agreement," could I
14 direct your attention, please, to Exhibit 6?

15 A (Witness complies)

16 Q Is this the document you're referring to?

17 A Yes.

18 Q Okay. And when you undertook to do your research
19 on it, did you attempt to get additional documentation, if
20 any?

21 A I did reach out to the City and ask for
22 documentation, yes.

23 MR. KENNEDY: And if I could, Your Honor, I'd like to
24 have marked as CalPERS' Exhibit 17 for identification an
25 e-mail from Ms. Lueras dated January 22nd, 2013.

1 THE COURT: It's marked Exhibit 17.

2 (Complainant's Exhibit 17 was marked for
3 identification by the Court.)

4 MR. KENNEDY: I'm sorry, marked. Counsel has a copy.

5 MR. JENSEN: 17?

6 MR. KENNEDY: 17.

7 BY MR. KENNEDY:

8 Q Now, have you seen this document before,
9 Ms. Lueras?

10 A Yes.

11 Q And can you place it in context for us and tell
12 us what it represents?

13 MR. JENSEN: Objection, lacks foundation.

14 THE COURT: Overruled.

15 THE WITNESS: I contacted the City in regards to the
16 special compensation that was reported on behalf of
17 Mr. Lewis, and this was the City's response to me with
18 attached documentation.

19 BY MR. KENNEDY:

20 Q And attached in -- could I ask you to, if you
21 could, look at CalPERS' Exhibit 7?

22 A (Witness complies)

23 Q And ask you, is this a document that was included
24 in that response?

25 A Yes.

1 Q And could you please look at Exhibit 8?

2 A (Witness complies)

3 Q And CalPERS' 8, is this a document that was
4 included in that response?

5 A Yes.

6 Q And if I could direct your attention to -- you
7 mentioned -- the document mentions MOUs and salary
8 schedules. Could I direct your attention to Exhibit 12?

9 A (Witness complies)

10 Q Do you recall if this was included in their
11 response?

12 A It was not directly included in the response, but
13 I was told where to access the information.

14 Q And you did access that information?

15 A Yes.

16 Q And this is the information you accessed in 12?

17 A Yes.

18 MR. JENSEN: And, Your Honor, I just want to make an
19 objection to this, although it's the first I've heard of
20 it. It is my understanding that there is a huge amount of
21 documents on the website of the City, and so she has
22 chosen a certain document here and says it's responsive to
23 this, but it says "Copies of the MOUs and salary schedules
24 are available on our website," and it lists the website,
25 and these are certain ones that she's selected, but it's

1 by no means the complete version of it.

2 So if this Exhibit 12 is going to be offered in,
3 then we, for the rule of completeness, would like to offer
4 all the other documents, MOUs and salary schedules that
5 are available on the website.

6 THE COURT: When you cross-examine her, if you want
7 to do that, you can do that, but right now she's talking
8 about the work that she did on the document and the
9 document she chose, but I understand your argument.

10 MR. JENSEN: Thank you.

11 BY MR. KENNEDY:

12 Q So you pulled up Exhibit 12 to refer to as a
13 result of the note from Ms. Chamberlin; right?

14 A Correct.

15 Q All right. And can you explain to me why you
16 would be looking at Exhibit 12?

17 A As per the Settlement Agreement, temporary
18 upgrade pay was paid for the position of fire captain, I
19 believe it was, so to determine the benefits associated
20 with that position, I pulled up the Memorandum Of
21 Understanding that pertained to that specific position.

22 Q This one pertains to management confidential?

23 A Correct.

24 Q Twelve does?

25 A Correct.

1 Q Is that the MOU that you believe pertains to
2 fire captain?

3 A That was what was portrayed to me was that that
4 pertained to fire captain.

5 Q Could I direct your attention to Number Item 13,
6 CalPERS' Exhibit 13?

7 A I apologize, battalion chief, there's two
8 different positions.

9 Q So 12 related to the position of battalion chief?

10 A Battalion chief, correct, sorry.

11 Q Okay. And 13?

12 A Thirteen is specific to the fire captain.

13 Q And why were you specifically just only looking
14 at those two?

15 A Those were the two positions noted in the
16 Settlement Agreement.

17 THE COURT: When you looked on the website, did you
18 see MOUs for other positions?

19 THE WITNESS: Typically MOUs aren't broken down by
20 position, it's broken down by groups or classes identified
21 by the City. I'm pretty familiar with how groups or
22 classes are identified within city government, so I knew
23 that fire captain fell under rank and file and
24 battalion chief could fall under management if the agency
25 identified that as such.

1 THE COURT: As you did that, with that knowledge in
2 your head and you did the research, is that what you found
3 to be the case for the City of San Bernardino?

4 THE WITNESS: Yes.

5 THE COURT: Thank you. Thank you, Counsel.

6 BY MR. KENNEDY:

7 Q Now, in Exhibit 3, you indicated that CalPERS had
8 determined that the reported temporary upgrade pay for
9 Mr. Lewis would not be recognized as an item of special
10 compensation; correct?

11 A Can you repeat your question, please?

12 Q Exhibit 3?

13 A Yes.

14 Q Was it your conclusion that the temporary upgrade
15 pay could not be reported as compensation for the purposes
16 of calculating Mr. Lewis's retirement?

17 A Yes.

18 Q Okay. Now, you previously mentioned that -- let
19 me ask you: Is temporary upgrade pay a particular
20 category of special compensation under the PERL?

21 A It is an item listed under California Code of
22 Regulations 571(A), yes.

23 Q And can you tell us what the criteria for falling
24 within temporary -- or qualifying an item of pay as
25 temporary upgrade pay is under the PERL? In other words,

1 what is temporary upgrade pay as defined under the PERL?

2 A Temporary upgrade pay is defined as, "Payment due
3 employees who are required by their employer to perform
4 duties in a higher classification for a limited duration."

5 Q And could you just, for the Court's sake, could
6 you open up the PERL and identify specifically, is that
7 571(A) and you indicated it's under "Premium Pay;"
8 correct?

9 A Correct, it's 571(A)3 "Premium Pay: Temporary
10 upgrade pay is defined as compensation to employees who
11 are required by their employer or governing body -- board
12 or body to work in an upgraded position or classification
13 of limited duration."

14 Q And you'd previously also used the term of "group
15 or class of employment." What is a group or class of
16 employment under the PERL?

17 A I'm going to refer to my PERL. Group or class is
18 defined in Government Code Section 20636(E)1 --

19 THE COURT: Wait, wait, hold on, 206?

20 THE WITNESS: -- 36(E)1 as "A number of employees
21 considered together because of similarities in job duties,
22 work locations, collective bargaining unit, or other
23 logical work-related grouping. One employee may not be
24 considered a group or class."

25 ///

1 BY MR. KENNEDY:

2 Q And can, under the PERL, as you applied and
3 understand it, can there be -- can an employee be in more
4 than one group or class?

5 A No.

6 Q What group or class did you determine Mr. Lewis
7 to be in?

8 A Rank and file fire safety.

9 Q And your understanding, then, was that
10 Exhibit Number 13 then applied to that group or class for
11 the City of San Bernardino at that time?

12 A Yes.

13 THE COURT: Why did you make that determination that
14 he was rank and file?

15 THE WITNESS: If I may read through it?

16 BY MR. KENNEDY:

17 Q Is the classification -- if I may, Your Honor?
18 Is the classification of fire captain classified under the
19 rank and file with the City of San Bernardino?

20 A Yes.

21 MR. KENNEDY: Does that respond to the Court's
22 question?

23 THE COURT: Well, but I'm saying: Why did you
24 determine he was rank and file and not battalion chief?

25 THE WITNESS: I'm sorry, your question?

1 THE COURT: Why did you determine he was rank and
2 file fire captain and not management battalion chief?

3 THE WITNESS: After reading the Settle Agreement and
4 also as noted on his Retirement Application, I believe he
5 listed his position was fire captain.

6 THE COURT: Thank you.

7 BY MR. KENNEDY:

8 Q Now, and just turning to Exhibit 6 again, the
9 Settlement Agreement, does anything in this
10 Settlement Agreement instruct you that Mr. Lewis had been
11 promoted to the position of battalion chief?

12 A No. After reading this Settlement Agreement, it
13 sounds as though he was paid at the battalion chief level,
14 however, was not performing the duties of a battalion
15 chief.

16 Q And when you say "pay," was his entire
17 compensation, then, that of a battalion chief, as far as
18 you know?

19 A No.

20 Q So his pay rate was elevated to a battalion
21 chief?

22 A The pay rate reported was not elevated, it was
23 reported as special compensation.

24 Q So the increase between the base pay, then, of a
25 fire captain was simply then -- between fire captain and

1 battalion chief was just being reported as special
2 compensation?

3 A Correct.

4 Q Okay. Is there -- does that qualify, as far as
5 you know, as temporary upgrade pay?

6 A Can you reask your question?

7 Q Would -- they're basically just paying him as
8 special compensation an increased amount between fire
9 captain and battalion chief as part of this settlement;
10 right?

11 A Right.

12 Q Is there any -- and that's -- let me take one
13 step back. Did he have a pay rate?

14 A Yes.

15 Q For fire captain?

16 A Yes.

17 Q And could I direct your attention, please, to
18 item 15 in CalPERS' exhibit list?

19 A (Witness complies)

20 Q Did you undertake a review as to what the pay
21 rate or base pay for a fire captain was for the City of
22 San Bernardino?

23 A Yes.

24 Q And is that reflected in Exhibit 13?

25 THE COURT: Exhibit 15?

1 MR. KENNEDY: I'm sorry, 15. Sixteen, sorry. No,
2 sorry, 15.

3 THE WITNESS: Yes, it's reflected in Exhibit 15.

4 MR. KENNEDY: And, Your Honor, if I could move in
5 Exhibit 15, please?

6 THE COURT: Objection to my receiving Exhibit 15?

7 MR. JENSEN: No objection.

8 THE COURT: Fifteen is received.

9 (Complainant's Exhibit 15 was received
10 in evidence by the Court.)

11 THE COURT: Counsel, you also referenced 6, 7, 8 and
12 12 but didn't offer them, just so you know.

13 MR. KENNEDY: Yes.

14 THE COURT: Okay.

15 MR. KENNEDY: And 13, Your Honor.

16 THE COURT: Yep, 13 as well. So those are not in
17 evidence, just so you're aware.

18 MR. KENNEDY: Pardon?

19 THE COURT: So those are not in evidence, just so
20 you're aware, 6, 7, 8, 12 and 13.

21 MR. KENNEDY: I would move those.

22 THE COURT: Any objection to my receiving 6, 7, 8, 12
23 and 13?

24 MR. JENSEN: Objections only to 12. I'm not quite
25 sure that she testified these were the documents she found

1 when she was searching on the entire website, is that what
2 12 was?

3 THE COURT: Correct.

4 MR. JENSEN: Then no objections to any of those, 6,
5 7, 8, 12 or 13.

6 THE COURT: Okay.

7 MR. KENNEDY: And these are the documents you --

8 THE COURT: Counsel, those exhibits will all be
9 received.

10 (Complainant's Exhibit 6, 7, 8, 12 and 13 were
11 received in evidence by the Court.)

12 MR. KENNEDY: Thank you.

13 BY MR. KENNEDY:

14 Q And these are the documents you reviewed,
15 including 15, in reviewing and preparing your
16 determination; right?

17 A Correct.

18 Q Okay. Now, I'd just like to back up for a moment
19 now. The claim in this case, as you understand it, is not
20 that the settlement payments that Mr. Lewis was receiving
21 were pay rate but were approvable as special compensation;
22 correct?

23 MR. JENSEN: Objection, Your Honor, leading.

24 THE COURT: Sustained.

25 ///

1 BY MR. KENNEDY:

2 Q Mr. Lewis was receiving additional payments
3 pursuant to a Settlement Agreement; correct?

4 MR. JENSEN: Objection, leading.

5 THE COURT: Overruled.

6 THE WITNESS: Yes.

7 BY MR. KENNEDY:

8 Q And it was those additional payments that were
9 the -- that the City and Mr. Lewis were attempting to
10 report as compensation earnable; correct?

11 MR. JENSEN: Objection, Your Honor, leading.

12 THE COURT: Overruled.

13 THE WITNESS: Yes.

14 BY MR. KENNEDY:

15 Q Your answer?

16 A Yes.

17 Q Okay. So you undertook a review, then, as to
18 whether or not those qualified, those payments, those
19 settlement payments qualified as special comp.; right?

20 MR. JENSEN: Objection, misstates the testimony and
21 leading.

22 THE COURT: Sustained on the, I'm sorry, on the first
23 part.

24 MR. KENNEDY: I'm sorry?

25 THE COURT: Ask her direct questions. So what did

1 you do?

2 BY MR. KENNEDY:

3 Q Did you undertake your review to determine, then,
4 whether or not the settlement payments constituted special
5 compensation?

6 A Yes.

7 Q Okay. And your conclusion was they did not;
8 correct?

9 A Correct.

10 Q Okay. Now, as far as special compensation, is it
11 articulated in the statutory provisions of the PERL
12 anywhere?

13 A Yes.

14 MR. JENSEN: And, Your Honor, I just want to make a
15 continuing objection to all of these leading questions.

16 THE COURT: Understood.

17 MR. JENSEN: I can keep saying it, but he's
18 testifying and she's saying yes.

19 THE COURT: Okay. So we all know the value of the
20 attorney testifying and not the witness.

21 BY MR. KENNEDY:

22 Q Is there a reference in the statutory provisions
23 of the PERL as to special compensation?

24 A Yes.

25 Q And did you review those statutory provisions in

1 drafting and researching of your determination letter?

2 A Yes.

3 Q And under the statutory definitions, what are the
4 threshold requirements, if any, for special compensation?

5 A Special compensation is defined in
6 Government Code Section 20636(C), as in cat, 1 as,
7 "Special compensation of a member includes a payment
8 received for special skills, knowledge, abilities, work
9 assignment, work days or hours or other work conditions."
10 It also goes on to --

11 Q May I stop you right there?

12 A Sure.

13 Q In your review of the documentation in drafting
14 this determination, was it your understanding that
15 Mr. Lewis was being paid for his special skills,
16 knowledge, abilities, work assignment, work days or hours
17 or similar conditions?

18 MR. JENSEN: Objection to that, lacks foundation.

19 THE COURT: Overruled. She's the one who made the
20 determination, so that is what he was asking, what the
21 determination was.

22 BY MR. KENNEDY:

23 Q How about special skills, was he being paid for
24 special skills?

25 A No.

1 Q Okay. Do you show any indication he was being
2 paid for specific knowledge of any kind?

3 A No.

4 Q How about abilities?

5 A No.

6 Q Work assignment?

7 A No.

8 Q Work days or hours?

9 A No.

10 Q So, I mean, at that point could you have not just
11 stopped your analysis and said it's not special
12 compensation by just this threshold requirement?

13 A Yes.

14 Q But you went on; didn't you?

15 A Correct.

16 Q Okay. What other requirements are there in the
17 statute, if any, for qualifying an item as special
18 compensation?

19 A So if I read 20636(C)2, it says, "Special
20 compensation shall be limited to that which is received by
21 a member pursuant to a labor policy or agreement."

22 Q Okay. Now, was your understanding in the
23 documents you reviewed that Mr. Lewis was receiving this
24 additional pay pursuant to a labor policy or agreement?

25 A No.

1 Q And, well, it was pursuant to an agreement; was
2 it not?

3 A It was.

4 Q So why, in your mind, does this not qualify as a
5 labor policy or agreement?

6 A Settlement Agreement is for a specific
7 individual, it's not a written labor policy or agreement
8 that is for an entire group or class.

9 Q Okay. And was he not being paid -- well, does
10 the statute have, besides labor policy, it has a notation
11 about similar situated; does it not?

12 A Correct.

13 Q Okay. What is a similar situated member of a
14 group or class?

15 A For instance, someone that falls under the same
16 written labor policy or agreement, so someone that is, for
17 instance, rank and file or management.

18 Q Okay. And you had indicated previously that a
19 member can only have -- be in one group or class?

20 A Correct.

21 Q And that group or class for Mr. Lewis was the
22 rank and file, the fire captain?

23 A That is correct.

24 Q Okay. So you would be looking to whether or not
25 other fire captains within the rank and file had received

1 similar compensation?

2 A Correct.

3 Q And did you -- were you able to ascertain whether
4 that -- they did or didn't?

5 A I did not find any documentation that any other
6 individual in that group or class received the payments.

7 Q Now, you had also indicated that in addition to
8 the statutory provisions, there were regulatory
9 provisions?

10 A Correct.

11 Q In addition to statutory provisions, there are
12 regulatory provisions that define what is or is not
13 includable in the special compensation?

14 A Correct.

15 Q And I think you indicated that that was
16 Section 571?

17 A Correct.

18 Q Okay. And we've already gone over what temporary
19 upgrade pay was, but can you explain to us why you felt
20 that the settlement payments being paid to Mr. Lewis
21 didn't qualify as temporary upgrade pay?

22 A Because there were no services performed in the
23 capacity of battalion chief as per the
24 Settlement Agreement.

25 Q So in addition to the Settlement Agreement, you

1 said you also referred to -- if I could direct your
2 attention to Exhibit 7?

3 A (Witness complies)

4 Q Now, this is a letter apparently drafted by a
5 Ms. Stephanie Easland to the Finance Department of
6 San Bernardino on June 13th, 2007. Is there anywhere in
7 this document that it indicates that Mr. Lewis is being
8 promoted to the position of battalion chief?

9 A No.

10 Q And, in fact, doesn't this document continue to
11 refer to him as serving in the capacity as the fire
12 captain?

13 MR. JENSEN: Objection, Your Honor, the document
14 speaks for itself.

15 THE COURT: Sustained.

16 BY MR. KENNEDY:

17 Q I direct your attention to Exhibit 8, please.

18 A (Witness complies)

19 THE COURT: For the record, Stephanie Easland is
20 spelled, E-A-S-L-A-N-D.

21 BY MR. KENNEDY:

22 Q This is another document you received from -- and
23 I believe it was Ms. Chamberlin; is that correct?

24 A Correct.

25 Q Okay. And when you received it, was it -- did it

1 have the handwriting on it like it does?

2 A It did.

3 Q Okay. And what, if anything, in this document
4 was material to your determination?

5 A I reviewed the entire document and I noticed that
6 there were payroll code 5 indicated on the document, which
7 is a code for retroactive salary adjustments, and there
8 was also a notation in here that stated, "Mr. Lewis will
9 only be receiving the pay of battalion chief; however, he
10 will not be working in the capacity as a battalion chief."

11 Q Okay. Now, halfway down the first -- or
12 actually, this document, this letter is dated
13 June 19th, 2007?

14 A Yes.

15 Q And do you know, I mean, it purports to be -- or
16 does it reflect to you, in your understanding, that the
17 City is questioning as to if, and if so how, they could
18 report these Settlement Agreements?

19 MR. JENSEN: Objection, Your Honor, the document
20 speaks for itself, she being in no position to speak to
21 the documents.

22 THE COURT: Sustained.

23 BY MR. KENNEDY:

24 Q As far as your understanding, how did you take
25 this document to -- how was it material to your decision?

1 A It looks as though the agency had questions posed
2 to their City Attorney's Office to understand how the
3 Agreement should be reported to CalPERS, and other
4 payments, how they should be made to Mr. Lewis.

5 Q Okay. And you noted, you indicated -- there was
6 an indication that a code 5, PERS 5 -- what is a PERS --
7 what is that code, if you know?

8 A It's a code for retroactive salary adjustment.

9 Q And when you say "salary adjustment," is that
10 special compensation?

11 A No, referring to pay rate.

12 Q Okay. But it was my understanding that the
13 settlement payments, the difference between the
14 fire captain's salary, the position Mr. Lewis held, and
15 the battalion chief was paid -- was reported as special
16 compensation?

17 A That is correct.

18 Q Okay. And do you recall when the
19 Settlement Agreement -- or the Settlement Agreement is
20 page -- is Exhibit 6. Was this document, as far as you
21 know, being executed after the Settlement Agreement was
22 entered into?

23 MR. JENSEN: Objection, Your Honor, the document
24 speaks for itself.

25 THE COURT: Sustained, calls for speculation.

1 BY MR. KENNEDY:

2 Q What was your understanding as to when the
3 Settlement Agreement was entered into?

4 A It was signed and dated March 6th, 2007, so it's
5 my understanding that it would become effective that day.

6 Q So here now we are three months after that, after
7 the Settlement Agreement was entered into, and the City is
8 now concerning itself, apparently, with how to report it;
9 right?

10 MR. JENSEN: Objection, Your Honor, it's a leading
11 question, it's outside of her personal knowledge, and
12 she's interpreting this document. It calls for
13 speculation.

14 THE COURT: Sustained.

15 BY MR. KENNEDY:

16 Q All right. Now, your work is directly related to
17 the interpretation and application of the statutory
18 provisions and regulatory provisions under the PERL
19 relating to compensation; correct?

20 A Correct.

21 Q In reviewing this case, did you attempt to
22 determine whether or not the settlement payments could
23 qualify under any other area of those -- of the sections
24 concerning compensation earnable?

25 MR. JENSEN: Objection, Your Honor, it's vague and

1 ambiguous as to what sections, it's a leading question.

2 THE COURT: Overruled.

3 BY MR. KENNEDY:

4 Q Do you want me to repeat the question?

5 A I think I can answer it. So when I review a
6 member's account, we don't strictly stick to how the item
7 was reported. We would determine if an item that was
8 reported fits any definition of compensation earnable,
9 whether it be pay rate or special compensation.

10 Q And did you apply that practice in this case?

11 A Yes.

12 Q And what was your conclusion?

13 A That it did not fit either pay rate or special
14 compensation.

15 Q Okay. I'd like to -- the other issue in this
16 case -- and, Your Honor, I'd like to move in 17 at this
17 time if I could?

18 MR. JENSEN: Which is 17?

19 THE COURT: The e-mail. Any objection to my
20 receiving Exhibit 17?

21 Ma'am, can I have 17 back, please?

22 THE WITNESS: (Witness complies)

23 THE COURT: Thank you.

24 MR. JENSEN: No, Your Honor, no objection, I mean, to
25 the extent that it's something that she used, you know, to

1 start this inquiry.

2 THE COURT: Exhibit 17 will be received.

3 (Complainant's Exhibit 17 was received
4 in evidence by the Court.)

5 BY MR. KENNEDY:

6 Q The other issue is member compensation issues
7 known as EPMC. What is EPMC?

8 A It is employer-paid member contributions.

9 Q And can you describe what it is? I mean, is it
10 a -- based on a percentage of compensation earnable?

11 A Yes.

12 Q Okay. So how is the amount of EPMC determined,
13 the amount of?

14 A It's an agency has to adopt a resolution to
15 identify how much of the member contribution rate they
16 wish to pay on behalf of the member. There are also
17 several options that they have. They can solely pay it on
18 behalf of the member. They can pay and report that value
19 as special compensation. And there's also another
20 contract provision where they can convert that benefit --
21 they can pay on behalf of the member and then convert it
22 in the final year of the member's final comp.

23 Q So in this case, do you recall what the
24 percentage of EPMC was for the position of fire captain or
25 what type? I mean, let me ask you first: What type of

1 EPMC? In other words, what type of EPMC? You're speaking
2 of different types of EPMC; right?

3 A Right.

4 Q Okay. And one of them you mentioned was a
5 conversion type?

6 A Correct.

7 Q And can you explain in more detail what you mean
8 by that conversion type? And you're referring to the
9 PERL?

10 A Yes. If I can find the statute. Government Code
11 Section 20692, "Employer-paid member contributions
12 converted to pay rate during the final compensation
13 period" --

14 THE COURT: Whoa, whoa, whoa.

15 THE WITNESS: Sorry.

16 BY MR. KENNEDY:

17 Q Can you -- you've identified the statute in the
18 PERL that you read. Can you just explain to the Court
19 just how that type of EPMC operates?

20 A So the agency contracts to pay all or a portion
21 of the member contribution rate.

22 Q When you say contracts, you're talking about the
23 contract with CalPERS?

24 A Contract with CalPERS, correct, and they would
25 cease paying that portion on behalf of the member in the

1 final compensation period and then convert that into a
2 base pay rate.

3 Q So the employer is paying the -- to CalPERS
4 during the employee's employment the employee's
5 contributions?

6 A Correct.

7 Q And then in the final year or the final
8 compensation period at least, then the employee would --
9 the employer would cease paying CalPERS directly the
10 employee's contributions and increase the employee's pay
11 rate accordingly; right?

12 A So the employer would cease paying member
13 contributions and then adjust the pay rate upwards, the
14 percentage that they were paying.

15 Q And this is an option that if they've contracted
16 for this and have a resolution supporting it or an MOU
17 supporting it that they can -- an employee can opt to do;
18 right?

19 MR. JENSEN: Objection, Your Honor, leading questions
20 again.

21 THE COURT: Overruled.

22 THE WITNESS: That is correct. Any payment or
23 benefit afforded to a member must be contained in a
24 written labor policy or agreement and the correct
25 resolutions needs to be on file for any employer payment

1 or contributions.

2 BY MR. KENNEDY:

3 Q Now, direct your attention, if I could, to
4 Exhibit 13, and if you could turn, please, to page 24?

5 A (Witness complies)

6 Q And subparagraph F.

7 A Okay.

8 Q And is this -- does this subparagraph on page 24
9 reflect a pay-and-convert type of EPMC?

10 MR. JENSEN: Objection, Your Honor, this is a
11 document by the City, and if she's testifying to the
12 City's understanding of it, then she has to lay some
13 foundation.

14 THE COURT: Overruled. My understanding of the
15 question is: Ma'am, how did you interpret the paragraph F
16 on page 24?

17 THE WITNESS: After reading it, it sounded as though
18 it was a conversion option of the employer-paid member
19 contributions, meaning they would pay 9 percent member
20 contributions and cease in the final year and then convert
21 that into a pay-rate increase.

22 BY MR. KENNEDY:

23 Q And this is for the rank and file, this is the
24 proven class that Mr. Lewis was in; correct?

25 A That is correct.

1 Q Okay. Now, I'd like to direct your attention
2 back to, briefly, to Exhibit 14, the payroll detail
3 report?

4 A Yes.

5 Q And if this option would have been triggered,
6 would it have been reflected in Mr. Lewis's pay rate,
7 reported pay rate?

8 A Typically when an employer contracts for that
9 provision, you would see retroactive salary increases to
10 reflect the EPMC conversion to pay rate.

11 Q But it would be under the category of pay rate;
12 correct?

13 A Correct.

14 Q Not special comp.?

15 A Correct.

16 Q And do you see it reflected in Mr. Lewis's
17 payroll detail?

18 A I do not see an apparent 9 percent increase in
19 pay rate.

20 THE COURT: Can I ask you: You're looking at
21 page 14, about 12 lines down it says, "Retroactive salary
22 adjustment for 4/15/2012." Do you know what that would
23 be?

24 THE WITNESS: It looks as though there was a decrease
25 in the pay rate, so the --

1 MR. KENNEDY: Where are we at, Your Honor?

2 THE COURT: On page 1 of Exhibit 14, about 10, 12
3 lines down it says, "Retroactive salary adjustment."

4 THE WITNESS: So a retroactive salary adjustment
5 doesn't necessarily mean upwards, it's any kind of
6 adjustment of any kind to a pay rate. And in this
7 instance, it looks like the pay rate went from \$9,075 to
8 \$9,037, so there was a slight decrease in pay rate.

9 THE COURT: Going through the document, I see that
10 entry several times. Do you know what any of those were
11 for?

12 THE WITNESS: Not specifically, no.

13 THE COURT: But as you went through Exhibit 14, you
14 didn't see the 9 percent that you saw in the MOU?

15 THE WITNESS: That is correct.

16 THE COURT: Thank you.

17 BY MR. KENNEDY:

18 Q Now, the other type of EPMC you mentioned was
19 simply paid as special compensation?

20 A That is correct.

21 Q Now, is that -- was that a benefit that you're
22 aware of that was covered for the battalion chief, the
23 management?

24 A I believe it was stipulated in the management
25 written labor policy or agreement.

1 Q Okay. And would that be a benefit, then, that
2 would be compensation -- I'm sorry, that would be
3 authorized to be reported on behalf of Mr. Lewis in this
4 case?

5 A No, because he did not fall in the category of
6 management or the group or class of rank and file fire.

7 Q Okay. Would that also -- so is it your
8 determination, then, that that would not be paid -- that
9 would not have been paid to similarly situated members of
10 Mr. Lewis's group or class?

11 A Correct.

12 MR. KENNEDY: Okay. Your Honor, I have no further
13 questions at this time of this witness.

14 THE COURT: Cross-examination?

15 MR. JENSEN: Yes, Your Honor. Can I first ask what
16 the Court's schedule is as far as lunch break and those
17 issues?

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

19 (Recess)

20 THE COURT: Back on the record.

21 Ma'am, may I remind you, you're still under oath.
22 Mr. Jensen?

23 MR. JENSEN: Thank you, Your Honor.

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CROSS-EXAMINATION

BY MR. JENSEN:

Q So, Ms. Lueras, in what department of CalPERS do you work?

A The Compensation Review Unit.

Q And what does that unit do?

A We are -- one of our duties are to review the compensation reported on behalf of a member and make a determination of if everything is compensation earnable and can be used in the calculation of retirement benefits.

Q And how did this case come to your attention?

A It was assigned to me through a process called work flow. It was a work flow that was assigned to me.

Q And was it indicated when it was assigned to you why it was in the Compensation Review Unit?

A In work flow, there is what's called a finding that would sort of direct me to what compensation they would -- the system would like me to review.

Q And who makes that, quote, finding?

A The system trolls through a member's employment, and if there's any anomalies or something of that nature in the reporting, it would trigger a flag which would identify it for compensation review.

Another method is to go for calculation to our Benefits Services Department and they see something that

1 they might want to have reviewed and that would be
2 triggered or forwarded to us as well.

3 Q So what did the finding say?

4 A I actually don't recall off the top of my head
5 today.

6 Q To the best of your recollection, what did it
7 say?

8 A I believe it was for the amount of special
9 compensation that was reported.

10 Q And was there any more detail in the line?

11 A Well, usually the findings are very generic.

12 Q And was this a flag that was generated
13 automatically by the computer?

14 A Yes.

15 Q And was there any more detail other than the
16 question about the special compensation?

17 A Not that I'm aware of today, no.

18 Q And what was the nature of the issue with special
19 compensation on the flag?

20 A Just the amount.

21 Q And what do you mean by the amount?

22 A If there is a high amount of special compensation
23 reported, it could trigger a flag for CalPERS to review
24 it.

25 Q And with respect to this document in

1 Exhibit 14 --

2 A I'm sorry, which binder are you referring to?

3 Q I'm referring to the document in the CalPERS'
4 binder.

5 A Fourteen?

6 Q Yes.

7 A Okay.

8 Q And did you use this document in your review of
9 Mr. Lewis's pension?

10 A I did.

11 Q And can you indicate on here which amount of
12 special comp. would cause the flag, cause it to go to
13 comp. review?

14 A It's not necessarily one single -- singular
15 reporting, it would be an accumulation of, let's say, a
16 one-year final compensation period.

17 Q With reference to this document, can you indicate
18 to me what was flagged so that it went to your attention?

19 A So there was consistently an amount of around
20 \$2,000 reported as special compensation in each
21 semi-monthly pay period, which converts to about \$4,000 of
22 special compensation every month, and if you multiply that
23 by 12, it's a considerable amount of special compensation.

24 Q And so was that the amount that was triggered,
25 that triggered the flag?

1 A Yes.

2 Q And was that special comp., was that amount
3 flagged because it was a high percentage of the --
4 associated with the pay rate as well?

5 A Not necessarily.

6 Q Is it the percentage of special comp. as part of
7 the overall retirement check that flags the matter?

8 A I kind of want to get away from percentage, it's
9 not a direct percentage of the total if it's whatever,
10 50 percent or whatever the case may be. In general if the
11 amount is, let's say, over \$20,000 annually, it's
12 something that would trigger CalPERS to review it.

13 Q So perhaps, in your understanding, the gross
14 amount of special comp. that would cause a review?

15 A Correct.

16 Q And what was the first thing you did when you had
17 this document when this case was brought to your
18 attention?

19 A So anytime there's special compensation reported,
20 we have to verify that it is compensation earnable. We
21 also have to verify that the pay rate is pursuant to
22 publicly available pay schedules. So I first try and
23 gather all information on my own, whether it be from the
24 City's website or from documents we house inside of our
25 own files, and if I'm not able to find information I need

1 or I feel I need further information, I reach out to the
2 employer to provide me more documentation.

3 Q So in this case, what did you do?

4 A I found the pay schedule online. I also compared
5 the special compensation reported and tried to deduct from
6 the MOU what items were reported. I had some outstanding
7 questions, so I reached out to the employer and said, "Can
8 you identify this special compensation and please provide
9 any documentation to support the payment?"

10 Q And which MOU did you look at when you were
11 trying to identify special compensation?

12 MR. KENNEDY: I'm sorry, Counsel, could I ask that
13 you keep your voice up?

14 THE COURT: Right, keep your voice up, you're just
15 dropping off there.

16 MR. JENSEN: Sure. No, no, no, I understand. I
17 don't want to shout as well.

18 BY MR. JENSEN:

19 Q Ms. Lueras, which MOU did you look at when you
20 were researching special compensation?

21 A The fire safety employees' MOU.

22 Q Is that the one that -- the MOU that's in
23 Exhibit 16?

24 A Exhibit 13.

25 Q Exhibit 13?

1 A Yes.

2 Q Did you look at any other MOUs?

3 A After a conversation or an e-mail with the
4 City of San Bernardino, I also reviewed the management
5 MOU.

6 Q And did you review Mr. Lewis's file at the same
7 time?

8 A I'm sorry, which file are you referring to?

9 Q Mr. Lewis's file at CalPERS.

10 A Yes.

11 Q And what did you find in Mr. Lewis's file at
12 CalPERS?

13 A The file was very slim. There was a letter from
14 Carlous Johnson and there was also a copy of the
15 Settlement Agreement.

16 Q Was there any other items in his file?

17 A Not housed within Compensation Review, but there
18 are many documents housed in the electronic file of a
19 member, it goes from any action requests or correspondence
20 between members, things of that nature are housed in the
21 electronic file of a member.

22 Q Did you review the electronic file when you
23 looked into this matter?

24 A We don't typically review the entire electronic
25 file, we try to stick with the documents that are relevant

1 to the information that I'm trying to gather.

2 Q Did you look at the Touch Point Analysis?

3 A I did review the customer Touch Point log at one
4 point in my review, yes.

5 Q And let me get to your -- just as sort of
6 background on this Compensation Review Unit. Are there
7 established policies and procedures in the Compensation
8 Review Unit?

9 A The public employees' retirement law.

10 Q Are there any specific written policies or
11 procedures for reviewing matters in the Compensation
12 Review Unit?

13 A Written policies, there's -- are you asking if
14 there's any policies on how to conduct a review?

15 Q Let me ask you this question: Which policies did
16 you consult with when you were undertaking a review in the
17 Compensation Review Unit?

18 MR. KENNEDY: Lack of foundation.

19 THE COURT: Sustained.

20 BY MR. JENSEN:

21 Q Are there any policies and procedures in the
22 Compensation Review Unit?

23 A The public employees' retirement law.

24 Q Are there any other documents that you utilized
25 when you were in the Compensation Review Unit?

1 MR. KENNEDY: Vague.

2 THE COURT: Do you mean like policies or she's
3 talking about all the documents she looked at to make her
4 determination?

5 MR. JENSEN: It's interesting I'm getting all these
6 objections.

7 BY MR. JENSEN:

8 Q So are there any written policies and procedures,
9 other than the public employees' retirement law, when you
10 review a matter in the Compensation Review Unit?

11 A No.

12 Q And what kind of training do the individuals --
13 or let me just ask you: Were you trained in how to review
14 a file in the Compensation Review Unit?

15 A There's not a training program per se in place,
16 it's more of shadowing more seasoned analysts and watching
17 how they work and understanding how they apply the PERL
18 when they are reviewing compensation.

19 Q So describe to us your training at CalPERS.

20 A I sat with a seasoned analyst for almost a year
21 to understand what goes in to reviewing the compensation
22 reported on behalf of a member and then applying the PERL
23 to those payments.

24 Q And who was that that you sat with?

25 A I sat with more than one. You'll have to excuse

1 me, that was some time ago. I believe I sat with
2 Carlous Johnson was one that I sat with, I also sat with
3 an Angel Guitierrez, and there may have been a couple more,
4 but those were the two main seasoned analysts that I
5 shadowed.

6 Q And you've worked there four years?

7 A I worked almost five years total in the
8 Compensation Review Unit.

9 Q And how long did you work with Carlous Johnson?

10 A I would say off and on for almost a year.

11 Q And Carlous Johnson was the person who trained
12 you?

13 A Yes.

14 Q And did you -- when you were working under the
15 two different analysts, did you notice any difference in
16 the way that they, Angel Guitierrez and Carlous Johnson,
17 handled the matter?

18 A No.

19 Q They handled it exactly the same way?

20 A They would review the compensation reported,
21 gather the documentation they needed to determine whether
22 or not it was compensation earnable, and capture those
23 determinations in the system and move forward.

24 Q And have you ever asked why there aren't any
25 written policies and procedures in the Compensation Review

1 Unit?

2 A Repeat your question.

3 Q Have you ever asked why there aren't any written
4 policies and procedures in the Compensation Review Unit?

5 A I believe I've asked before, yes.

6 Q What was the answer that you remember receiving?

7 MR. KENNEDY: Mischaracterizes the testimony.

8 THE COURT: Overruled. Other than PERL, she said
9 there aren't any policies and procedures.

10 MR. JENSEN: I was asking -- the answer was -- the
11 answer I requested was what was the answer she received as
12 to why there were not any.

13 THE WITNESS: The answer more or less is we have the
14 public employees' retirement law, those are the rules we
15 must follow, and just because the nature of our review is
16 certainly a case-by-case review on what documentation is
17 needed, it's kind of hard to come up with a set
18 step-by-step procedure on how to review an account.

19 BY MR. JENSEN:

20 Q So there's a lot of different ways that different
21 people can do an analysis; is that correct?

22 A They're all coming down to the same result on
23 determining whether it is compensation earnable, but it's
24 up to the analyst to identify what documents are needed to
25 come to that conclusion.

1 Q And different analysts may look at different
2 documents; is that correct?

3 A Depending on the situation, yes.

4 Q So when you review those files or those
5 documents, is there any procedure about what you do with
6 them after you review them?

7 A We keep them in the member file.

8 Q Is that a policy everyone knows in the program
9 and follows, to your knowledge?

10 A As of today, yes.

11 Q And was that the policy in the past?

12 A How far in the past?

13 Q When you started work there?

14 A There weren't documents kept for every single
15 review, it was common practice to only keep the files of
16 those members that had more extensive review or a more
17 complicated review. If it was a standard review where
18 there was, let's say, no special compensation reported,
19 only a pay rate was reported and that was easily
20 identifiable as that pay rate was reported in compliance
21 with the pay schedule, it wasn't common practice for that
22 material to be kept.

23 Q So Mr. Johnson, do you remember how he taught you
24 when you shadowed him about which documents to keep in the
25 member file?

1 MR. KENNEDY: Counsel, I'm sorry, I apologize to keep
2 asking for you to speak up slightly.

3 THE COURT: Can you talk a little louder, please?

4 MR. JENSEN: Oh, I'm sorry. Since I'm talking that
5 way, it's --

6 MR. KENNEDY: No, it's --

7 THE COURT: Right.

8 BY MR. JENSEN:

9 Q So let's lay the ground work again. What year or
10 what time period were you shadowing Carlous Johnson?

11 A I started in Compensation Review in 2009, so I
12 would say around that area, around that time frame.

13 Q And then I think you said previously you shadowed
14 him for about a year?

15 A More or less, yes.

16 Q So that would be the period of 2009-2010?

17 A Yes.

18 Q Okay. Do you recall how many matters or how many
19 analysts there were in Compensation Review in 2009?

20 A I don't recall the exact number, but I want to
21 say it was around nine to 12 maybe.

22 Q Including yourself?

23 A Including myself.

24 Q And do you recall Mr. Johnson's practices of
25 which documents to keep in a member file after a review?

1 MR. KENNEDY: Lack of foundation.

2 THE COURT: Overruled.

3 THE WITNESS: Again, it goes back to the extent of
4 research that was involved in a member review, how much
5 documentation was actually obtained for that specific
6 review. If there were quite a few documents or
7 substantial documents that were needed to back up, let's
8 say, the determination that was made, those documents
9 would most certainly be kept.

10 BY MR. JENSEN:

11 Q Now, you mentioned that you initiated a lot of
12 the research yourself; is that correct?

13 A Correct.

14 Q And how did you undertake that research?

15 A Again, I looked at the reported payroll on behalf
16 of Mr. Lewis and confirmed the pay rate that was reported
17 that was pursuant to --

18 Q Let me be more clear. Did you utilize the
19 Internet to go review the website of the City of
20 San Bernardino?

21 A Yes.

22 Q Did you print out every document you reviewed?

23 A Yes.

24 Q So do we have in this case, in this file every
25 document that you reviewed?

1 A Every document that I reviewed that supported my
2 determination, yes.

3 Q And did you print out all of the documents that
4 did not support your determination?

5 A No.

6 Q And why did you not print those out?

7 A They were not relevant; therefore, I didn't feel
8 they needed to be included in the member file.

9 Q And so why did you decide to start printing out
10 documents?

11 A Sorry?

12 Q Why did you decide to start printing out
13 documents that would support your review?

14 A To keep a historical file.

15 Q In every case, do you print out every document
16 that you review in a matter?

17 A If, again, there's extensive documentation to
18 support the determination made, yes, I will print out the
19 documentation to support my determination.

20 Q But so basically you make a determination and
21 then you print out the documents?

22 A No.

23 Q So that begs the question of: You said you only
24 print out the documents that support your determination;
25 is that correct?

1 A Yes, that's what I said, yes.

2 Q But you said you don't start printing out the
3 documents until you -- you start printing out the
4 documents before you made the determination?

5 A So as I'm gathering information, if I find
6 something that's important to make a determination or
7 validates a payment that's reported or invalidates a
8 payment that's reported, I print that document and have
9 those documents in front of me when I enter a
10 determination into the system.

11 Q But here the issue is, it sounds like you made a
12 determination and then you just printed out the documents
13 that supported your determination. Is that a fair
14 characterization?

15 A No.

16 Q So did you print out the documents that were --
17 that did not support your determination?

18 MR. KENNEDY: Lack of foundation.

19 THE COURT: Overruled.

20 THE WITNESS: At the time that I did the review, did
21 I print documents that were not relevant to my review?

22 THE COURT: No, he's saying, did you print documents
23 that didn't support you? You said you printed out
24 documents that supported you, did you find documents that
25 didn't support you?

1 THE WITNESS: If there was, I would print those as
2 well because those would either affirm that the payment is
3 reportable or not reportable. Again, that's supporting
4 whatever.

5 THE COURT: We're just talking about, so you're doing
6 your research?

7 THE WITNESS: Yes.

8 THE COURT: Right now you have a file that supports
9 the finding you made?

10 THE WITNESS: Yes.

11 THE COURT: Did you find documents that don't support
12 it so you threw those away, or did you put those in the
13 file, or did you not find anything that did not support
14 you?

15 THE WITNESS: If there was something that didn't
16 support it, it would be included in the file. Any
17 documentation that I gathered in my research, whether it
18 be provided by the employer or I found it online, I would
19 print it and it would be in the documents. So potentially
20 there could be documents that don't support my
21 determination, yes.

22 BY MR. JENSEN:

23 Q Did you find any documents in this matter that
24 did not support you?

25 A No.

1 Q Did you print out the MOU of the management?

2 A I did.

3 Q And is it included in these documents?

4 A It is.

5 Q And did you print out any documents about the
6 underlying litigation?

7 A I'm sorry, repeat your question.

8 Q Did you print out any documents about -- did you
9 find -- look into any documents about the underlying
10 issues in dispute that led up to the Settlement Agreement?

11 MR. KENNEDY: Vague.

12 THE COURT: Other than the Settlement Agreement that
13 she's got printed out, Counsel?

14 MR. JENSEN: Yes.

15 THE COURT: Because she does have Mr. Lewis's
16 settlement. Well, there are a bunch of documents already
17 in there.

18 Were there any other documents than what we've
19 gone through here today that reference the
20 Settlement Agreement?

21 THE WITNESS: No, those are the only documents I had
22 in front of me.

23 BY MR. JENSEN:

24 Q And did you look into any documents about
25 Mr. Lewis's industrial disability finding?

1 A No.

2 Q And why not?

3 A When it comes to the Compensation Review Unit, we
4 don't deal with matters of whether a member is retiring
5 on, say, a service retirement or an industrial disability
6 retirement. There is no difference in how the final
7 compensation or the compensation earnable is reviewed and
8 determined, there is no difference.

9 Q So are you aware of what is considered to be
10 4850 time?

11 A I am familiar with that term, yes.

12 Q What's your understanding of 4850 time?

13 A When a member is on workers' compensation safety
14 payments.

15 Q And what's your understanding about the
16 PERS-ability or whether 4850 time qualifies as
17 compensation that is includable in final compensation?

18 A I believe it is reportable for up to a year.

19 Q And so if Mr. Lewis had 4850 time for a year,
20 would that be includable in his final compensation?

21 MR. KENNEDY: Vague, Your Honor. The term "time,"
22 what do you mean time?

23 THE COURT: What's the proper term, 4850 earnings?

24 THE WITNESS: 4850 time is normally how it's --

25 THE COURT: Okay. Overruled.

1 MR. KENNEDY: Withdrawn.

2 THE WITNESS: So, again, 4850 time is not a concern
3 of the Compensation Review Unit; however, I am familiar
4 with the term. 4850 time is an amount of service, more or
5 less, that would be allowed to a member while they're on
6 workers' compensation, so it relates more so to service
7 than it does to compensation.

8 MR. JENSEN: Well, let me just --

9 THE COURT: Hang on a second.

10 So you're saying it's more related to time than
11 employment?

12 THE WITNESS: Exactly.

13 THE COURT: So you might be on workers' compensation
14 for a year but can be given credit for working six months?

15 THE WITNESS: So the 4850 time is allowed to be
16 reported --

17 THE COURT: As though you were still working?

18 THE WITNESS: -- as though you were still working, so
19 there would be no change in the payment if the member was
20 working or if it the member was on 4850 time, there is no
21 distinction. They would simply get credit as if they were
22 working for a year.

23 THE COURT: And hadn't been out on workers'
24 compensation?

25 THE WITNESS: Correct.

1 THE COURT: Great. Thank you.

2 BY MR. JENSEN:

3 Q Can I turn your attention to the definition of
4 compensation in the PERL there? It's 20630, I believe.

5 A Yes.

6 Q Are you familiar with 20630?

7 A I am.

8 Q Do you use this part of the PERL in the
9 Compensation Review Unit?

10 A Yes.

11 Q And pursuant to 20630(A)3, does that make
12 payments under 4850 of the labor code compensation?

13 A They do meet the definition of compensation, and
14 that's for services performed during normal working hours
15 for time during which the member is excused from work, and
16 that is one of the items that excuses a worker.

17 Q Did you make any inquiry about whether Mr. Lewis
18 received 4850 time for the last year of his service in
19 this matter?

20 A In the process of my review of compensation
21 earnable, no.

22 Q And so if he did have one year of payments for
23 4850, would that establish his pay rate in this matter?

24 A 4850 does not establish pay rate, no.

25 Q So tell us how you characterize 4850 time for

1 purposes of establishing a pension amount?

2 MR. KENNEDY: It's been asked and answered.

3 THE COURT: Overruled.

4 THE WITNESS: Can you rephrase your question, please?

5 BY MR. JENSEN:

6 Q The question was: Can you tell us how you
7 utilized what's described as 4850 time, and I'll be more
8 specific, one year of 4850 time in your calculation of
9 Mr. Lewis's pension?

10 A That would have no bearing on what compensation
11 was reported. As I explained to the judge, the
12 compensation wouldn't change, the compensation reported
13 shouldn't change just because a member is on 4850; rather,
14 compensation would continue to be reported as if the
15 member was still working. It's an excused absence for
16 work. They are allowed to report up to a year of
17 compensation as if the member was still working.

18 Q And in this matter, just the factual issue,
19 Mr. Lewis received one year of 4850 time at a certain pay
20 rate, but my question was for you: How would you go and
21 treat that in determining the amount of his pension?

22 A No different than if it was regular.

23 Q And how do you -- what authority allows you to
24 not utilize the amounts of payment under 4850 that are
25 documented in this case?

1 THE COURT: That's not what she's saying. She's not
2 saying they didn't use 4850. My understanding was she's
3 just saying, and you referenced 20630, correct me if I'm
4 wrong, but my understanding of your testimony is 4850 is
5 part compensation under the statute defined and it makes
6 no difference for your determination whether it's
7 compensation earnable, it just lets you know the money
8 came from a different source but it's still earnings for
9 the person?

10 THE WITNESS: Correct.

11 THE COURT: And I think what Counsel is trying to get
12 at is: If he had 4850 at a different pay rate than his
13 regular pay rate, how would that affect your
14 determination?

15 THE WITNESS: We would review the pay rate that was
16 reported, and of course we have to go back to publicly
17 available pay schedules to identify pay rate, and we also
18 have to ensure that the special compensation reported is
19 compliant with the PERL. Again, it's going back to
20 determining whether or not it is compensation earnable.
21 Any amount reported to the system, whether it be 4850 time
22 or regular compensation, must comply with compensation
23 earnable before it is utilized in a retirement benefit
24 calculation.

25 ///

1 BY MR. JENSEN:

2 Q But let me just direct your attention to these --
3 the issues about compensation earnable. Compensation
4 earnable says, (B)1, "For services rendered on a full-time
5 basis during normal working hours." Is that your
6 understanding of one of the requirements of 20636?

7 A Yes.

8 Q And you do understand that 4850 time, if someone
9 is neither working and certainly not normally and is not
10 on a full-time basis?

11 A The compensation reported while they are on that
12 time would be directly related to if they were meeting all
13 those criteria.

14 Q Can you explain that answer?

15 MR. KENNEDY: Your Honor, I believe this has been
16 asked and answered several times, at least as articulated
17 in the question.

18 THE COURT: I'm going to overrule the objection
19 because maybe you can explain it so Counsel can understand
20 it.

21 THE WITNESS: So the definition of compensation, what
22 is compensation? And in this case, there's excused
23 absences. Excused absences include industrial disability
24 leave or 4850 time to which you're referring. So when the
25 compensation earnable is reportable to the system, it must

1 comply with those requirements if the member was
2 performing the duties as if they were working. So there
3 would be no change in compensation earnable if a member is
4 working to if they are not working because they are on an
5 excused absence of 4850 time.

6 BY MR. JENSEN:

7 Q But here's the sort of point to this is that
8 pursuant to the Settlement Agreement and otherwise, is it
9 your understanding that the City intended Mr. Lewis to
10 have the pay and the benefits of the battalion chief
11 position?

12 A It is my understanding that the City wanted to
13 provide Mr. Lewis with payment as battalion chief, yes.

14 Q And is it your understanding that -- maybe I just
15 need to direct your attention to the Settlement Agreement
16 where it says, "All of the benefits associated with." Was
17 it your recollection --

18 MR. KENNEDY: The document speaks for itself. It's
19 an integrated agreement.

20 THE COURT: Counsel, it says it on the document, why
21 don't you direct your attention to it.

22 MR. JENSEN: I was trying to be very patient with
23 Mr. Kennedy's questions, and I'd just like to finish my
24 sentence before he objects.

25 THE COURT: Counsel, please let him finish his whole

1 sentence before you voice your objection.

2 MR. KENNEDY: Okay.

3 BY MR. JENSEN:

4 Q And so can I direct your attention to in CalPERS'
5 binder Exhibit 6?

6 A Yes.

7 Q And on I believe it's page --

8 THE COURT: It's page 2 of the Agreement.

9 BY MR. JENSEN:

10 Q -- 2 of the Agreement and 2(B). Did you read the
11 section in your analysis?

12 A I did.

13 Q And what's your understanding of what this
14 section intends?

15 A My understanding is that the City has agreed to
16 pay Mr. Lewis at the rate of a battalion chief as if he
17 was promoted, but if you further read down, it
18 specifically calls out that overtime will be calculated at
19 his actual position of captain.

20 Q I just want to draw your attention to B, I'm
21 sorry, in particular.

22 A Sure.

23 Q I don't know if you see the language in the
24 parenthesis?

25 A Yes.

1 Q Can you just read that, please?

2 A Sure. "Including all current and/or future
3 benefits granted to battalion chiefs."

4 Q And what was your understanding of that sentence?

5 A Again, it says as if he was promoted, he will
6 continually receive the benefits of a battalion chief. So
7 if the benefit was to increase, he would see those
8 increases in his benefit as well as if he was promoted.

9 Q And is it your understanding that the CalPERS'
10 retirement was one of the benefits that they had intended
11 Mr. Lewis to have?

12 A I don't think I'm understanding your question.

13 Q With reference to just this parenthesis right
14 here (indicating), do you understand or was it ever
15 brought to your attention that the City and Mr. Lewis
16 intended Mr. Lewis to have a CalPERS' retirement benefit
17 of a battalion chief?

18 A It doesn't implicitly say that here, no.

19 Q What is your understanding of what this -- just
20 that parenthesis means?

21 A "Including all current and/or future benefits
22 granted to battalion chiefs."

23 Q I'm just asking for your understanding of -- in
24 your review, how did you use that parenthesis?

25 A To be honest, I don't think it had a bearing on

1 my determination.

2 Q And why not?

3 A Because Mr. Lewis was not performing the duties
4 of a battalion chief, which is compensation earnable.

5 Q And was Mr. Lewis performing the duties of a
6 battalion chief when he was out on 4850 time?

7 MR. KENNEDY: Calls for speculation, vague.

8 THE COURT: Overruled.

9 Just what your knowledge was.

10 THE WITNESS: My understanding of 4850 time is the
11 member is not performing any duties but are excused from
12 work.

13 BY MR. JENSEN:

14 Q And so what was the reason of which -- the
15 primary reason of which you decided that Mr. Lewis wasn't
16 entitled to the benefits of the battalion chief?

17 A Because he was not performing the duties of a
18 battalion chief. He was afforded a benefit through a
19 Settlement Agreement.

20 Q And if you were to be factually informed that at
21 times Mr. Lewis did perform the duties of a battalion
22 chief, would that change your opinion?

23 A It would not change my opinion if they were not
24 part of his regular duties. His pension should be based
25 off of his regular duties.

1 Q And are you -- do you have any knowledge of the
2 regular duties as described in the practices of the
3 San Bernardino Fire Department?

4 A I'm not aware of the specific duties, but I am
5 sure that they have duty statements assigned to each
6 position. It's common practice for a city to have duty
7 statements assigned to each and every position that they
8 have.

9 Q And did you review any duty statements in this
10 matter?

11 A I did not.

12 Q So you don't know; do you?

13 A Don't know what?

14 Q You don't know what the duty statements are?

15 A No, I do not.

16 Q You don't know if there are duty statements?

17 A No.

18 Q You don't know what the regular duties of
19 Mr. Lewis were?

20 A Fair enough, yes -- or no, I don't know them, the
21 actual duties.

22 Q So what's the basis of you deciding that he
23 wasn't performing the regular duties of a position?

24 A He was identified by the City that he was a fire
25 chief and that was reflected in the pay rate that was

1 reported to the -- the pay rate in the system matched the
2 salary schedule for that of fire chief.

3 Q And so you're looking at titles; is that correct?

4 A That is correct.

5 Q And you're assuming that there's duties
6 associated with titles?

7 A Of course.

8 Q And you're assuming that there's different duties
9 between the fire captain and the battalion chief?

10 A Yes, I assume that there are differences.

11 Q And you're assuming that Mr. Lewis was not
12 performing the duties of a battalion chief?

13 A I am assuming that he is not performing the
14 duties of a battalion chief because of the
15 Settlement Agreement I had and other documentation that
16 specifically stated he would not be performing the duties
17 of a battalion chief; rather, solely receiving the pay and
18 benefits of a battalion chief.

19 Q But did you make any investigation of what the
20 actual duties of Mr. Lewis were?

21 A No.

22 Q Did you make any investigation of what the actual
23 duties of battalion chief were?

24 A No.

25 Q Did you make any investigations of what --

1 MR. KENNEDY: Relevancy.

2 THE COURT: Overruled.

3 BY MR. JENSEN:

4 Q -- of the powering authority of the fire chief of
5 the City of San Bernardino?

6 A No.

7 Q Are you under the understanding that there's
8 rigid hierarchy of what an individual does in a specific
9 job in the City of San Bernardino Fire Department?

10 MR. KENNEDY: Lack of foundation, vague.

11 THE COURT: Overruled.

12 THE WITNESS: I am not aware of their specific
13 hierarchy and duties. I do know a hierarchy exists, but
14 how it looks and how it's formatted, I'm not specifically
15 aware of.

16 BY MR. JENSEN:

17 Q Are you aware -- would it surprise you if the
18 fire chief could assign a battalion chief to the duties of
19 janitorial duties?

20 A If it's the fire chief who has the ability to
21 assign duties --

22 MR. KENNEDY: Calls for speculation.

23 THE COURT: Overruled. He's trying to get her
24 knowledge.

25 THE WITNESS: It makes sense that the fire chief

1 would be able to assign duties as needed.

2 BY MR. JENSEN:

3 Q And so if the fire chief could assign the fire
4 captain battalion chief duties, would that change your
5 determination in this matter?

6 A If the City could provide me documentation that
7 stated the fire chief, or whoever the authority figure is,
8 is assigning a fire captain to perform at a level or a
9 higher level such as that of a battalion chief and show me
10 documentation that that assignment has happened, then it
11 would prompt me to investigate a temporary upgrade pay
12 situation.

13 Q And what sort of documentation would you be
14 looking for?

15 A Typically in temporary upgrade pay situations, we
16 ask for any human resource documents showing that the
17 person would be working in a higher classification. I
18 also look to the MOU to see what type of payment or
19 benefit would be afforded to the member if they were
20 placed in a temporary upgrade pay situation.

21 Q Okay. Can you explain that last part, what
22 benefit or would be -- I'm sorry, if you could just repeat
23 that and explain that part? You said there's associated
24 difference within human resources regarding temporary
25 upgrade pay. Can you explain that to me?

1 A So human resources usually houses documents
2 typically referred to as Personnel Action Forms, and it
3 would show that the HR office or human resources office
4 was instructed to change the pay of a person from
5 fire captain to, let's say, battalion chief.

6 As far as the MOUs, temporary upgrade pay is
7 something -- it is a benefit that is paid, and a written
8 labor policy agreement or MOU typically spells out how it
9 would be paid, whether it would be, let's say, a flat
10 percentage. Commonly we see a 5 percent flat amount would
11 be paid for a temporary upgrade pay situation, or it could
12 be we're going to pay you the difference between the two
13 positions. It has to be stipulated in the MOU on how the
14 payment is going to be calculated, and those are then
15 reflected in the human resources documents.

16 Q And you had the chance to review the MOU, at
17 least for the rank and file, in Exhibit 13?

18 A I did review that, yes.

19 Q And did you see anything on temporary upgrade
20 pay?

21 A If I may go through and see if I can refresh my
22 memory?

23 Q Please.

24 A There is one paragraph that catches my eye.

25 Q Okay. Is it labeled temporary upgrade pay?

1 A It is not.

2 THE COURT: What page are you on?

3 THE WITNESS: I'm on page 21, it's section E.

4 MR. JENSEN: Your Honor, one question before the
5 break?

6 BY MR. JENSEN:

7 Q Actually, if you can tell us your understanding
8 of this subsection of salaries E?

9 A So after reading it, it sounds like if a local
10 safety member or fire department is temporarily acting in
11 a position that is higher rank during a period of absence
12 of 10 --

13 Q -- absence of the incumbent or during a vacancy
14 position; is that correct?

15 A Yes.

16 Q Okay. Is this temporary upgrade pay?

17 A It sounds as though it is.

18 Q Does temporary upgrade pay always require a
19 period of absence of the incumbent?

20 A No.

21 Q Does temporary upgrade pay always require a
22 vacancy in the position?

23 A No.

24 Q Okay. So let me just ask you one question before
25 the break. There was a period where there were three --

1 where the dispute was entered into and it wasn't resolved
2 for three years, and upon the resolution of the case,
3 Mr. Johnson indicated to report three years of back pay at
4 the battalion chief level. Can you explain that?

5 MR. KENNEDY: Objection, lack of foundation, there's
6 no -- vague and there's no evidence in the record to
7 support that.

8 THE COURT: It actually calls for speculation on her
9 part, she wasn't a party in the litigation. Sustained.

10 BY MR. JENSEN:

11 Q And let me just direct your attention to
12 Exhibit 9.

13 MR. KENNEDY: Is this in Respondent's?

14 MR. JENSEN: This is your Exhibit 9.

15 MR. KENNEDY: CalPERS.

16 MR. JENSEN: Is 9 in, Your Honor?

17 THE COURT: Yes.

18 MR. JENSEN: Thank you.

19 BY MR. JENSEN:

20 Q Do you recognize this document?

21 A I do.

22 Q Did you work with Mr. Johnson at this time?

23 A No, that was before I came into Compensation
24 Review.

25 Q How long before?

1 A Roughly two years.

2 Q And on the fourth paragraph down, do you see
3 that?

4 A Yes.

5 Q It starts with "CalPERS requests"?

6 A Yes.

7 Q Why does the Compensation Review Unit, in your
8 experience, direct employers to report back pay of, in
9 this case, two and a half years?

10 A Why would the Compensation Review Unit instruct
11 an employer to report back pay; is that the question?

12 Q Yes.

13 A If an agency approaches us and says we have a
14 situation where there was a benefit that was paid to a
15 member, however, we never reported it to the system, how
16 can we correct it, our response would be to report it as a
17 retroactive payment to make up for those payments that
18 should be in the account.

19 Q And is there any indication when those payments
20 should be in the account, what you base that period of
21 when should they start, have been paid to the account?

22 A So any compensation reported to the system should
23 be reported as earned.

24 Q And are you aware of any information of why
25 Mr. Johnson indicated that they should make it retroactive

1 to October 2nd, 2004?

2 A I would have to assume that it was pursuant to
3 the Settlement Agreement.

4 MR. KENNEDY: Are we taking a lunch break?

5 THE COURT: Is Counsel still on this line of
6 questioning?

7 MR. JENSEN: You know what, it might actually be a
8 little bit more prolonged, so maybe we should take lunch.

9 THE COURT: Okay. We'll be in recess for one hour.

10 (Lunch recess)

11 THE COURT: Back on the record.

12 Ma'am, may I remind you, you are still under
13 oath.

14 Mr. Jensen?

15 MR. JENSEN: Thank you, Your Honor.

16 BY MR. JENSEN:

17 Q Before the break, we were looking at, I believe,
18 the documents in Exhibit 9?

19 A Yes.

20 Q And you mentioned that it is --

21 MR. KENNEDY: I'm sorry, for the record, it is
22 CalPERS' Exhibit 9?

23 THE COURT: Yes.

24 MR. JENSEN: Yes.

25 ///

1 BY MR. JENSEN:

2 Q And you made some distinction in your testimony
3 earlier regarding the difference between a final
4 determination and what you characterized this letter as.
5 Do you recall that?

6 A Yes.

7 Q And can you tell us whether -- do you write
8 letters like this presently in your position in the
9 Compensation Review Unit?

10 A No.

11 Q And are you aware of whether other analysts write
12 letters like this in this Compensation Review Unit?

13 A It's not common practice to write any type of
14 letter on the CalPERS' letterhead without the signature of
15 a manager on it.

16 Q And so tell us what your practices are, what you
17 were taught as far as providing employers guidance when
18 you first joined the Comp. Review Unit?

19 A So when I provide employers guidance, it's
20 typically over the phone or via e-mail unless an agency is
21 asking for a formal determination on an item, then it
22 would go through the formal process of being vetted by
23 management and being signed by their signature.

24 Q And were you aware of whether there were
25 additional phone contacts between Mr. Johnson and other

1 people about this matter?

2 A I'm not aware.

3 Q But you mentioned that you are familiar with
4 CalPERS' Touch Point System?

5 A Yes.

6 Q And if I can turn your attention to Exhibit 14 in
7 Lewis's binder?

8 And, Your Honor, may I approach the witness?

9 THE COURT: Yes, you may.

10 MR. JENSEN: Is that yes?

11 THE COURT: Yes.

12 BY MR. JENSEN:

13 Q Ms. Lueras, may I approach?

14 A Yes.

15 Q Do you recognize this document?

16 A I do.

17 Q And what is this document?

18 A It is a printout of the My CalPERS System, what
19 is called the Customer Touch Point or Participant Notes
20 Section.

21 Q And is this regularly kept in CalPERS' records in
22 CalPERS' business?

23 A Yes.

24 Q And have you had a chance to review this
25 document?

1 A Not in its entirety.

2 Q May I just -- but you're generally familiar with
3 these printouts from this database?

4 A Yes.

5 Q And I just want to turn your attention to the
6 first page which is Bates stamped LED141?

7 A Yes.

8 Q LEW, sorry, not LED.

9 A Yes.

10 Q And do you see the category where it says "Notes
11 Summary" about a quarter of the way down?

12 A I'm not sure where you are.

13 MR. JENSEN: May I approach the witness, Your Honor?

14 THE COURT: Yes.

15 MR. KENNEDY: Do you know which one you're directing,
16 Counsel, which one you're referring to?

17 MR. JENSEN: Yes. So this is the Notes Summary here
18 (indicating), and we're just going to ask her questions
19 about that.

20 MR. KENNEDY: Oh, down the page, okay. I was looking
21 at the exhibit notes.

22 THE COURT: Notes Summary is at the top if you go up
23 four lines.

24 THE WITNESS: At the top?

25 THE COURT: Go ahead.

1 THE WITNESS: Oh, okay, yeah, yeah, I see.

2 BY MR. JENSEN:

3 Q And then it says "Category Conversion"?

4 A Right.

5 Q What is that?

6 A Conversion meaning the My CalPERS System went
7 live in September of 2011, prior to that we had a system
8 called Smart Desk and that's where the customer
9 Touch Points were housed, and that is just indicating that
10 they were converted over from that older system into our
11 new My CalPERS System.

12 Q And does the creation date under that, what does
13 that mean?

14 A I'm not entirely sure.

15 Q And are you aware of what the type participant
16 means?

17 A Yes.

18 Q What does that mean?

19 A It's a participant note.

20 Q What is a participant note?

21 A It is the -- it captures any conversation had
22 with the participants or regarding the participant between
23 CalPERS and the person contacting CalPERS.

24 Q And does participant include the employer?

25 A The participant is referring to the member.

1 Q And so if there was communications by the
2 employer, they would not be reflected on this printout of
3 the My CalPERS sheet?

4 A Not unless it was a very specific question about
5 the member account. So the employer could call, have a
6 question regarding the participant, and it would be
7 reflected in the participant note as well as the
8 employer's note.

9 Q And you mentioned earlier that you reviewed the
10 Touch Point pages?

11 A I did look at them, yes.

12 Q And did you review the participant version of it?

13 A I did.

14 Q Did you review the employer version of it?

15 A I don't remember if I did or not.

16 Q So if the employer contacted Comp. Review and it
17 was recorded in the My -- in the Touch Point notes, you
18 would not be aware of that?

19 A If the employer called in general?

20 Q I'm talking about with respect to these pages,
21 well, respect to what you testified about your review of
22 the Touch Point pages. You testified that you did not
23 review the employer database associated with --

24 THE COURT: She said she didn't know if she did or
25 not.

1 MR. JENSEN: Okay.

2 BY MR. JENSEN:

3 Q How would you know if you did or not?

4 A I'm going off recollection at this point. The
5 employer notes, if I may just in general, the employer
6 notes is if the employer is calling on its own behalf and
7 had questions to be answered, but if there were questions
8 regarding a specific member that they had, they would be
9 captured in the member notes.

10 Q So when it says "participant" here, it's
11 typically the member who calls; is that correct?

12 A No. An employer can call with questions
13 regarding a specific member account, and those notes would
14 be captured in this.

15 Q Let me just turn your attention to the second
16 page of this, it's Bates stamped LEW142 at the very
17 bottom, and it continues onto the third page. Can you
18 take a moment to review that?

19 A (Witness complies)

20 Q And then on the top of the third page as well?

21 A (Witness complies)

22 Q And do you see at the top of the third page, can
23 you read that to me, the note text?

24 A Which one, there are several?

25 Q The one that begins at the top of the third page.

1 A So in the note text section it says, "Left
2 message with Laura that" --

3 MR. KENNEDY: Could the witness be admonished to
4 raise her voice?

5 THE COURT: Please.

6 THE WITNESS: Sure. Note text, "Left message with
7 Laura that we would have to review agreement in order to
8 make a determination as to whether or not it qualifies as
9 reportable compensation."

10 BY MR. JENSEN:

11 Q And when it says "...in order to make a
12 determination," is that meaningful to you in any way?

13 A I'm not sure what you're asking me.

14 Q You mentioned earlier that Mr. Johnson's letter
15 in Exhibit 9 was not a determination; is that correct?

16 A Correct, it was more so an answer to a specific
17 question.

18 Q Okay. And now I just pointed your attention to
19 this note on the top of page 3, which indicates that he
20 has to review agreement in order to make a determination?

21 A Right.

22 Q Does that change your opinion of whether the
23 letter in Exhibit 9 was a determination?

24 A Again, no, because it doesn't have the qualities
25 of a determination letter that we would provide to a

1 member and employer.

2 Q And are you aware of -- do you use the My Cal --
3 this database called Touch Point?

4 A Yes.

5 Q And on the bottom of page 2 it says -- well,
6 explain what would be your understanding of who wrote this
7 note in the database?

8 A This particular note that I just read was
9 authored by Carlous Johnson on June 11, 2007.

10 Q And how many days was that before the letter in
11 Exhibit 9 of July 5th, 2007?

12 A Do you want me to do the math?

13 THE COURT: No, I don't. Thank you.

14 BY MR. JENSEN:

15 Q Within a month? Was it within a month?

16 A It appears to be so.

17 Q Okay. And so it's your understanding that
18 Mr. Johnson is the one who entered this note in the
19 database?

20 A Yes.

21 Q And do you have any reason to believe that this
22 isn't a correct notation of what he was thinking at that
23 time?

24 A I have no reason to believe that it was not what
25 he was thinking.

1 Q Now, so when Mr. Johnson trained you, did he
2 train you in how to use this database?

3 A Yes.

4 Q And what was his instructions to you on the use
5 of this database?

6 A Anytime contact was made with a member or action
7 was taken on the member's account, we would have to
8 capture that in the system with a note.

9 Q And what do you mean by capture that?

10 A Enter it into the system at the time of the
11 adjustment or contact with the member so that it would be
12 part of a historical file.

13 Q Okay. So when Mr. Johnson is writing this in
14 June that he has to review the Settlement Agreement in
15 order to make a determination, was it -- was there any
16 reason to believe that that wasn't what he was thinking at
17 that time?

18 MR. KENNEDY: Calls for speculation.

19 THE COURT: Sustained.

20 BY MR. JENSEN:

21 Q Okay. And let me just ask you this question with
22 respect to that note: Mr. Johnson is writing that we have
23 to review the Agreement in order to make a determination
24 as to whether it qualifies as reportable compensation, is
25 that -- is that a different determination than which

1 bucket it falls into?

2 MR. KENNEDY: Again, calls for speculation.

3 THE COURT: Sustained. You're asking her to
4 speculate what Mr. Johnson wrote in his letter, what he
5 was thinking.

6 BY MR. JENSEN:

7 Q Earlier you testified about Mr. Johnson's letter
8 in Exhibit 9. You mentioned that the question was whether
9 it would be pay rate or special compensation. Do you
10 recall that testimony?

11 A I do.

12 Q And is that a different inquiry than whether it's
13 reportable compensation?

14 A Yes.

15 Q Okay. Can you explain how that's a different
16 inquiry?

17 A As I mentioned earlier, the way the question is
18 posed in Mr. Johnson's letter, it's more of a technical
19 question on I have this item of special compensation that
20 I -- or item of compensation that I'm attempting to
21 report, which bucket, if you will, does it fall under, pay
22 rate or special compensation? His answer in this is it
23 should be reported as special compensation.

24 Now, as far as whether an item is reportable
25 compensation, that is a term we use when we're speaking to

1 compensation earnable. If the inquiry was would this item
2 qualify as compensation earnable, as an analyst I would
3 say, "Here's my opinion on whether or not it is
4 compensation earnable."

5 However, I always give the disclaimer, if you
6 will, that because it's reported in the system does not
7 necessarily mean it's going to be used in the calculation
8 of a retirement benefit because there are so many
9 requirements that a payment must meet for it to be used in
10 the calculation. And what I'm referring to really is the
11 California Code of Regulations 571(B), there are
12 requirements that a payment has to make, so it has to meet
13 all the requirements to be compensation earnable.

14 Q So would it be fair to say that it's a two-step
15 inquiry, the first step is whether it's reportable
16 compensation, and the second step, if it is reportable,
17 then whether it's pay rate or special compensation?

18 A It could be, yes, posed that way.

19 Q Well, how would you pose it?

20 A Pose what?

21 Q So let me go back. Is it fair to say that the
22 first determination is whether it's reportable
23 compensation?

24 A In what context?

25 Q Okay. There is, say, a sum of money, and before

1 you get to the idea of which bucket it goes in, pay rate
2 or special compensation, there's a question, threshold
3 question, an initial question that needs to be answered is
4 whether it's reportable. So in order to get to that
5 second issue of distinguishing it between special comp.
6 and pay rate, it has to first be reportable; is that
7 correct?

8 MR. KENNEDY: I think it mischaracterizes the
9 testimony. I mean, I'm sorry, withdraw the objection.

10 THE COURT: Is there any compensation an employee
11 would get that they would report to CalPERS?

12 THE WITNESS: Yes, there are many times.

13 THE COURT: Well, let's look at it. So first of all,
14 does an employer have to determine whether or not it's
15 reportable?

16 THE WITNESS: Yes, and we put that responsibility on
17 the employer. Again, I mentioned earlier all the
18 education that's available to the employer. And, again,
19 if they needed to get a determination on whether or not
20 the item would be considered reportable, then we would
21 answer those questions as well.

22 But there are items, let's say, for example,
23 deferred compensation, an employer can pay deferred
24 compensation on behalf of a member, but as far as
25 reporting it to CalPERS, it's a different set of

1 requirements, it'd have to fall under compensation
2 earnable.

3 BY MR. JENSEN:

4 Q And I'll just follow up briefly. So when
5 Mr. Johnson is referring as part of this inquiry about
6 whether it's reportable, would that be the initial
7 question regarding whether it could possibly be included
8 in his pensionable amount?

9 A In a normal case review, yes, that would be the
10 first question.

11 Q And then if it's reportable, a second question
12 would be whether it's reportable as pay rate or special
13 compensation; is that correct?

14 A Yes.

15 Q And so when Mr. Johnson is referring in Exhibit 9
16 to which bucket it falls into, is it safe to assume that
17 he has already determined that it's reportable
18 compensation?

19 A Without seeing any other documentation regarding
20 this review, other than a fax cover with a copy of this
21 letter and the Settlement Agreement, I'm not sure what
22 kind of determination Carlous made. I know in this letter
23 he's specifically addressing a question, and that is
24 should it be reported as regular base pay or special
25 compensation, so I can't assume what he was doing.

1 Q So here's another way of asking it differently:
2 Is there any way that it could be special compensation or
3 pay rate if it hasn't already been determined to be
4 reportable?

5 A As far as the settlement payments?

6 Q Just can you skip over the steps of being
7 reportable and just determine that it's special
8 compensation or pay rate?

9 A It happens often an employer can call, I'm
10 reporting something and I need -- I don't know which
11 bucket to put it in, pay rate or special compensation.
12 Again, it goes to employers are responsible for reporting
13 compensation in the system, but all compensation reported
14 into the system isn't necessarily compensation earnable to
15 be used in the calculation of a retirement benefit.

16 Q Okay. So let me just turn your attention back to
17 Exhibit 14, the third page, and then that second note down
18 that's attributed to June 8th, 2007?

19 A You mean the second page?

20 Q On the third page.

21 A Third page? There is nothing on the third page.

22 THE COURT: Exhibit 14.

23 MR. JENSEN: Exhibit 14.

24 THE WITNESS: I'm in 14.

25 THE COURT: The second page.

1 THE WITNESS: I'm sorry, I'm looking at the numbers
2 at the top. I apologize.

3 MR. JENSEN: Oh, oh, oh, those are --

4 THE WITNESS: I apologize. Yes, I see the third
5 page.

6 BY MR. JENSEN:

7 Q Okay. Can you just take a moment to look at
8 that?

9 A (Witness complies)

10 Q Do you know who is Velina Jones?

11 A I'm not familiar with that name.

12 THE COURT: For the record, it's V-E-L-I-N-A, Jones.

13 BY MR. JENSEN:

14 Q And did you take this notation into account when
15 you made a determination in this matter?

16 A It doesn't change my determination.

17 Q And when the -- what's ER?

18 A That's an acronym we use for employer.

19 Q So it's first and last letter?

20 A Yes.

21 Q And when it says "ER wants to know if this
22 settlement is PERS-able," does that mean anything to you?

23 A Yes.

24 Q What does it mean?

25 A The employer would like to know if this item can

1 be reported to the system.

2 Q And then it says second, continuing that
3 sentence, and how to report it?

4 A Correct.

5 Q So is that the two-part inquiry that we talked
6 about?

7 A Yes.

8 Q So first is establishing whether it's reportable;
9 is that correct?

10 A Yes.

11 Q And then if it's reportable, how to report it?

12 A Correct.

13 MR. JENSEN: And then -- okay.

14 I'd like to enter into evidence Exhibit 14,
15 Your Honor.

16 THE COURT: Any objection to Respondent's Exhibit 14?

17 MR. KENNEDY: I have objections to any entry other
18 than the two we spoke of.

19 MR. JENSEN: And, Your Honor, she's authenticated
20 these as documents --

21 MR. KENNEDY: Relevancy? I'd be happy to make a
22 redacted copy for the Court and Counsel.

23 MR. JENSEN: No, actually, Your Honor, I don't think
24 that's appropriate because --

25 THE COURT: Overruled. Exhibit 14 will be received.

1 (Respondent's Exhibit 14 was received
2 in evidence by the Court.)

3 MR. JENSEN: Thank you, Your Honor.

4 BY MR. JENSEN:

5 Q Just to sort of follow up on that, I'd just like
6 to turn your attention to the second page, the note that
7 is June 23rd, 2011?

8 A Yes.

9 Q Take a moment to review that.

10 A (Witness complies)

11 Q Do you know who Karin Zimmerman is?

12 A Yes.

13 Q Who is she?

14 A She is an analyst within the Compensation Review
15 Unit.

16 Q And who was she trained by?

17 A She was there prior to me, so I'm not sure.

18 Q And can you read the note text?

19 A Sure. The note text says, "Spoke to member and
20 assured that all of his special compensation is allowed to
21 be used in his retirement calculation."

22 Q And is that meaningful to you in any way?

23 A It says what it says, special compensation is
24 allowed to be used in the retirement calculation.

25 Q And do you often -- or how often do you get calls

1 by members individually inquiring about their benefits?

2 A Often.

3 Q And what is your process for processing those
4 inquiries from members?

5 A We would gather the information needed on our
6 behalf to make an educated answer to their inquiry.

7 MR. KENNEDY: I'm sorry, could you speak up?

8 THE COURT: Keep your voice up, ma'am, please.

9 BY MR. JENSEN:

10 Q And so what would be your process if someone
11 calls and asks about whether their special comp. is
12 PERS-able?

13 A My normal process would be to complete a review,
14 a normal review of compensation reported and gather all
15 the documentation needed to support it.

16 Q And is Karin Zimmerman a competent employee --

17 MR. KENNEDY: Objection --

18 THE COURT: Wait, wait. Overruled. I need you to
19 let him finish his whole question, please.

20 MR. KENNEDY: -- vague.

21 THE COURT: Start again.

22 BY MR. JENSEN:

23 Q Are you familiar with the work of
24 Karin Zimmerman?

25 A Yes.

1 Q Is she a competent employee?

2 MR. KENNEDY: Objection, vague.

3 THE COURT: Sustained. Karin, for the record, is
4 K-A-R-I-N.

5 BY MR. JENSEN:

6 Q When you see this note that she reassured or
7 assured the member that all of his special compensation is
8 allowed, would you have expected her to do a review
9 like -- of the special compensation prior to giving that
10 assurance?

11 A I didn't see any documentation that a review was
12 conducted by Ms. Zimmerman at any time in the file that
13 was housed in the Compensation Review or in the electronic
14 file, so I'm not sure what she reviewed when she made that
15 assertion.

16 Q And would an inquiry from a member get the same
17 kind of attention as a flag from the computer database?

18 A Possibly, depending on the nature of the inquiry.

19 Q And so previously Carlous Johnson made a review
20 of this and indicated that the special compensation --
21 that the payments pursuant to the settlement were
22 appropriate special compensation; is that your
23 understanding?

24 A He did tell the City to report it as special
25 compensation.

1 Q And did he previously make a determination that
2 it was reportable?

3 MR. KENNEDY: Asked and answered.

4 THE COURT: Sustained.

5 BY MR. JENSEN:

6 Q And did Ms. Zimmerman also make an inquiry, to
7 the best of your understanding, of the policies and
8 procedures that the --

9 MR. KENNEDY: Objection.

10 THE COURT: Sustained. I hear stuff the first time,
11 Counsel.

12 MR. JENSEN: Yeah, yeah, yeah, well, I was just
13 trying to -- I'm not trying to belabor it, Your Honor, I'm
14 trying to clarify it.

15 BY MR. JENSEN:

16 Q So I just want to turn your attention to what's
17 labeled as page 5 of this document.

18 A The same Exhibit 14?

19 Q Yes.

20 A Okay.

21 MR. KENNEDY: L-5?

22 MR. JENSEN: LEW14-5.

23 BY MR. JENSEN:

24 Q Is there an indication of who made this note?

25 A On this document, I do not see who entered this

1 note.

2 Q And I just want to -- as far as timing, I just
3 want to indicate that this note is three days prior to the
4 communication from Karin Zimmerman on the second page.
5 Would there be any importance to the timing of this being
6 three days prior to Ms. Zimmerman's assurance that this
7 special compensation is allowed?

8 A I'm not sure.

9 Q What would prompt, in your experience, someone to
10 review payroll reported through 5111 service period at
11 this point one month later?

12 A Sorry, ask your question again?

13 Q I'm just trying to understand why there would be
14 a review of payroll on June 20th, 2011?

15 A I would assume there was some sort of inquiry or
16 finding in the system that needed to be addressed.

17 Q And so can you just explain to us what these
18 acronyms mean on page 5?

19 A Which acronym?

20 Q Just if you can tell us your understanding,
21 there's terms in this which are maybe difficult to know
22 what they mean?

23 A Sure. I'll read it in laymen's terms, if you
24 will. So special compensation is Fair Labor Standards
25 Act, chief officer pay, Employer-Paid Member Contribution,

1 and temporary upgrade pay or upgrade, okay to calc.,
2 calculate from transcripts.

3 Q What does that mean, "Okay to calc. from
4 transcripts"?

5 A Meaning whatever was reported in the system
6 should be used in the calculation.

7 Q And what process does someone go through to say,
8 "Okay to calculate from transcripts"?

9 A Typically they should review all relevant
10 documentation to the compensation that was reported in the
11 system to ensure that it is compensation earnable.

12 Q And is this equivalent to a review that
13 Mr. Johnson undertook, in your understanding?

14 MR. KENNEDY: Objection, calls for speculation.

15 THE COURT: Sustained.

16 BY MR. JENSEN:

17 Q So I want to turn your attention to page 8 of the
18 same document 14.

19 A (Witness complies)

20 MR. KENNEDY: And, Your Honor, at this time I'd like
21 to clarify what precisely we admitted as 14. These are no
22 longer what we called CTP notes, these are separate
23 documents.

24 THE COURT: Well, your witness was asked at the very
25 beginning to look at all of 14 and what it was, and she

1 said it was the CalPERS' Touch Point documents.

2 MR. KENNEDY: That's true. Okay. Thank you.

3 THE COURT: All of 14 is in.

4 MR. KENNEDY: Thank you.

5 MR. JENSEN: Thank you.

6 BY MR. JENSEN:

7 Q So, Ms. Lueras, if I can turn your attention to
8 page 8?

9 A (Witness complies)

10 Q Can you tell me what this means in laymen's
11 terms?

12 A Sure. I wrote -- it's a note authored by myself
13 on January 19th, 2013, and it says, in laymen's terms,
14 "Compensation review pending business partner response to
15 inquiry sent January 19th, 2013 requested documentation
16 for temporary upgrade pay."

17 Q Can you explain what a pending BP response is?

18 A Sure. When we switched over from the old system
19 to the new My CalPERS System, we had a switch in
20 terminology from employer to business partner, so that's
21 what the business partner is referring to. And at this
22 point, I reached out to the employer, which was the
23 City of San Bernardino, to acquire documentation regarding
24 temporary upgrade pay.

25 Q And so I guess my question for you is: What

1 changed between the time where -- I'm referencing
2 page 5 -- that CalPERS determined it was okay to calc.
3 from transcripts on June 20th, 2011 to January 19th, 2013?

4 MR. KENNEDY: Same objection as far as speculation.

5 THE COURT: Overruled.

6 THE WITNESS: The question was what changed?

7 MR. JENSEN: Yes.

8 MR. KENNEDY: Objection, vague.

9 THE COURT: Overruled.

10 Do you understand? He's just pointing out to you
11 notes where they said it's okay to use to calc. your time
12 and now there's a determination that it's not, so why?

13 THE WITNESS: Right. The notes on page 5 dated
14 June 20th, 2011, I'm not sure what analyst made that
15 determination or what documents they reviewed. However,
16 on my own review, and that's page 8 dated
17 January 19th, 2013, I didn't feel I had the documentation
18 readily available to me to determine whether the temporary
19 upgrade pay was reportable as compensation earnable.

20 BY MR. JENSEN:

21 Q And what documents were you looking for?

22 A I reached out to the agency and asked for any
23 documents relevant to the temporary upgrade pay. Earlier
24 I alluded to we look for human resource documents showing
25 that there was a change in pay, whether it be pay rate or

1 special compensation, and we look to the MOU or labor
2 policy or agreement that stipulates how temporary upgrade
3 positions are paid out or handled.

4 Q And you also mentioned that you were inquiring
5 into whether Mr. Lewis performed, regularly performed the
6 duties of the battalion chief; is that correct?

7 A That wasn't my specific inquiry, no.

8 Q Would that have been part of your inquiry?

9 A My inquiry simply was, provide me all
10 documentation you have relevant to this payment; that was
11 my inquiry.

12 Q And previously we talked about whether -- you
13 mentioned that one of the main reasons that you were
14 disallowing the pay was because it was not for Mr. Lewis
15 to regularly perform the duties of the battalion chief; is
16 that correct?

17 A That's one of the reasons why, yes.

18 Q And what were the other reasons?

19 A Because the payments were stipulated strictly in
20 a Settlement Agreement, it removed him from a group or
21 class. There's no Settlement Agreement clause in the
22 written labor policy or MOU that says if you have a
23 Settlement Agreement situation, this is what we're going
24 to pay you. So this was a payment that was negotiated
25 specifically for one person, and one person cannot be a

1 group or class.

2 Q Even if they performed special duties that nobody
3 else performed?

4 A Again, going back to the requirements of special
5 compensation, it must be available to an entire group or
6 class. So even if it does meet all other criteria but it
7 does not meet group or class, it cannot be compensation
8 earnable. It has to meet every single requirement of
9 special compensation in the statute and the regulations.

10 Q But one of the issues here is that the employer
11 asked CalPERS how to report it. Do you understand that?

12 A I do.

13 Q And CalPERS said report it as special
14 compensation?

15 MR. KENNEDY: Objection --

16 THE COURT: Overruled. Go ahead.

17 THE WITNESS: Say it again.

18 BY MR. JENSEN:

19 Q And your understanding is CalPERS told the
20 employer to report it as special compensation?

21 A That is true.

22 Q And the employer followed what CalPERS said; is
23 that your understanding?

24 A That is my understanding, yes.

25 Q And trying to make it PERS-able; correct?

1 A Trying to make it PERS-able, it either is or it
2 is not.

3 Q But if there is a direction by CalPERS to report
4 it a certain way, can you subsequently hold that type,
5 that type of reporting against CalPERS, against --

6 MR. KENNEDY: Objection, vague. Sorry.

7 MR. JENSEN: -- against -- let me rephrase the
8 question.

9 BY MR. JENSEN:

10 Q Since CalPERS specifically instructed the
11 employer to report it as special compensation, how can you
12 blame the reporting employer for reporting it as special
13 compensation?

14 MR. KENNEDY: Objection, vague and irrelevant.

15 THE COURT: And I don't think there's any inference
16 they're blaming the employer.

17 MR. JENSEN: I'm sorry?

18 THE COURT: I don't see any evidence they're blaming
19 the employer.

20 MR. JENSEN: Oh, okay.

21 BY MR. JENSEN:

22 Q How can you say they're denying the employer the
23 ability to characterize it in a different way than would
24 make it PERS-able?

25 A I don't think I'm following your question.

1 Q So let me just step back a little bit. Did you
2 inquire into the basis or reason for the litigation of the
3 Settlement Agreement?

4 A No.

5 Q And what is the practice of CalPERS when an
6 employer is seeking to change an employment status that it
7 incorrectly characterized?

8 MR. KENNEDY: Vague, relevance.

9 THE COURT: Do you understand the question?

10 THE WITNESS: I don't.

11 THE COURT: Okay. Sustained.

12 BY MR. JENSEN:

13 Q Do employers ever come to you and say, "We've
14 made an error or omission," to Comp. Review Unit?

15 A There may be instances where an inquiry will come
16 through where an agency either misreported or did not
17 report an item and they inquire on how to fix it.

18 Q And what is -- is there a statute, specifically
19 21060, that requires an employer to correct its errors or
20 omissions?

21 MR. KENNEDY: Argumentative.

22 THE COURT: Overruled.

23 THE WITNESS: You cited 21060?

24 BY MR. JENSEN:

25 Q Yes. Are you familiar with that statute?

1 A It's not a statute that we use often.

2 Q So what do you do if an employer says, "We made
3 an error, how do we fix it?"

4 A Depending on the error, yeah, it would be
5 depending on the error on what we do.

6 Q So what type of errors can -- are examples, in
7 your experience, errors that the Comp. Review Unit has
8 given advice to employers on how to fix?

9 A Let's say, for example, a retro or a salary
10 increase wasn't reported timely so they need to go back
11 and capture when that salary increase began or was earned.

12 Q And was there an element in this case about
13 Mr. Johnson instructing the employer to report back pay
14 from Mr. Lewis in Exhibit 9?

15 A In his July 5th, 2007 letter, it does give
16 direction to report it retroactive back to
17 October 2nd, 2004.

18 Q So are you aware that in the substance of this
19 case, the City settled the matter where they failed to
20 properly promote Mr. Lewis to battalion chief?

21 MR. KENNEDY: It's been asked and answered.

22 THE COURT: That part overruled.

23 THE WITNESS: So am I aware of why the settlement
24 happened?

25 THE COURT: What do you know about the lawsuit?

1 THE WITNESS: Nothing, other than I had the
2 Settlement Agreement that was in front of me.

3 BY MR. JENSEN:

4 Q And so was this a type of problem that CalPERS is
5 supposed to allow the employer to fix?

6 A Typically only -- CalPERS only follows settlement
7 agreements if they're a party in the settlement.

8 Q And that wasn't my question. Is this the type of
9 dispute that CalPERS allows an employer to fix?

10 A CalPERS has no say in how they handle -- how the
11 City handles disputes with their employees.

12 Q Does CalPERS allow employers to fix errors?

13 MR. KENNEDY: Asked and answered.

14 THE COURT: Sustained.

15 BY MR. JENSEN:

16 Q In your review of this case, is there a way, a
17 PERS-able way of achieving a battalion chief pension based
18 on a battalion chief salary for Mr. Lewis?

19 MR. KENNEDY: I apologize, Counsel, you trailed off
20 at the end there.

21 THE WITNESS: Is there a way for Mr. Lewis to receive
22 credit for the battalion chief pay; is that your question?

23 BY MR. JENSEN:

24 Q My question was: Is there a way that CalPERS
25 could instruct the employer to create, to allow Mr. Lewis

1 to retire at the battalion chief salary and benefits?

2 A No.

3 Q And why not?

4 A Because he was not actively performing the duties
5 of a battalion chief; the City did not indicate that his
6 regular position was battalion chief; it was a payment
7 only afforded to Mr. Lewis; it was not pursuant to a
8 written labor policy or agreement; there was no work
9 performed during normal working hours.

10 Q Okay. Are those the five reasons?

11 A There are others, I mean, I can go through the
12 entire statute.

13 Q Let's keep going.

14 MR. KENNEDY: Your Honor, at this point I'd object as
15 asked and answered.

16 THE COURT: Sustained.

17 Can I ask you a question? Looking at Exhibit 9,
18 Mr. Johnson's letter, let's say he answered -- I want you
19 to assume that his answer back to Ms. King was that record
20 it as regular base pay earnings or he said record it as
21 special compensation, would that have changed your
22 analysis?

23 THE WITNESS: Not at all.

24 THE COURT: Thank you. So the words that he used or
25 what they were called in parts of the Settlement Agreement

1 doesn't change your analysis for all the reasons why
2 you've given you came to your determination?

3 THE WITNESS: Correct.

4 THE COURT: Thank you.

5 MR. JENSEN: And, Your Honor, I have in front of me
6 the duty statements of the fire chief and the battalion
7 chief from the City of San Bernardino pulled off their
8 website today. I just want to -- oh, there's only two
9 copies, unfortunately.

10 MR. KENNEDY: I can make another copy.

11 MR. JENSEN: Can you make a copy, okay. And this is
12 the fire chief.

13 MR. KENNEDY: How many copies do you want?

14 MR. JENSEN: Well, we're going to need -- yeah, if
15 you can just give me, I don't know --

16 MR. KENNEDY: Your Honor, while I'm making the
17 copies, I do anticipate making the 405 and a relevancy
18 objection without any foundation to the relevancy of these
19 documents, these duty statements.

20 MR. JENSEN: And, Your Honor, may I approach and give
21 you this copy?

22 THE COURT: Yes.

23 MR. JENSEN: Thank you. And these documents are just
24 documents just pulled off the website.

25 THE COURT: Okay. We'll go off the record.

1 (Recess)

2 THE COURT: Back on the record.

3 I've marked as Exhibit 33 the duty statements of
4 fire captain. I've marked as Exhibit 34 the duty
5 statements of a battalion chief.

6 (Respondent's Exhibits 33 and 34 were marked
7 for identification by the Court.)

8 MR. JENSEN: So these are your copies?

9 MR. KENNEDY: Yes. So 33 is?

10 THE COURT: The fire captain.

11 MR. JENSEN: So, Your Honor, I'm going to put my mark
12 for identification, fire captain is 33 and put a square
13 around it, and marked for identification the battalion
14 chief is 34, the 34 is in the upper right-hand corner of
15 each. May I approach the witness?

16 THE COURT: Yes, you may.

17 BY MR. JENSEN:

18 Q Ms. Lueras, may I approach?

19 A Yes.

20 Q Ms. Lueras, just an initial question: Have you
21 seen these documents before?

22 A Not for these specific titles, but it's common
23 for us to bring these up because the way the City
24 publishes their salaries, to print these pages to capture
25 the salary range for that position.

1 Q Okay. So do you often work with duty statements
2 in your position in the Compensation Review Unit?

3 A Duty statements, no.

4 Q Can you take a moment to review both of these
5 documents, please?

6 MR. KENNEDY: Could I ask for a relevance here on
7 405?

8 THE COURT: Yeah, what's the relevancy? They are
9 2014 documents.

10 MR. JENSEN: And, Your Honor, these were the
11 documents that we could pull down immediately. My
12 understanding is that they are substantially similar to
13 the duty statements, if not identical to the duty
14 statements that were in effect when Mr. Lewis was employed
15 with the City.

16 THE COURT: What's the relevance? She already told
17 us she doesn't know either of the duties of the battalion
18 chief or fire captain.

19 MR. JENSEN: So the relevance of it are that
20 Ms. Lueras was testifying that he did not perform the
21 duties of the battalion chief, and with an informed
22 understanding, there is a great deal of overlap in between
23 the two of these, and it's probably --

24 THE COURT: This is not the witness to do that
25 through. If you want to put that in and make a record,

1 this witness said she didn't know the duty and her
2 determination was that he wasn't doing the duties based on
3 the documents she got from the City.

4 MR. JENSEN: And so but the relevance to this witness
5 is that she was indicating that he was not performing the
6 duties and responsibilities of the battalion chief, and my
7 question to her was if -- or will be: If indeed in
8 Mr. Lewis's work he was performing on a regular basis
9 80 percent of the duties of the battalion chief, or
10 sometimes more, would that be sufficient to be performing
11 regularly --

12 THE COURT: So ask her that question.

13 MR. JENSEN: Okay. But I want to inform her --

14 THE COURT: No, no, I'm not going to have her review
15 these documents because she's never seen them before and
16 then testify on the fly.

17 So I want you to assume that the duties of a fire
18 captain are substantially the same as those of a battalion
19 chief, would that have changed your analysis?

20 THE WITNESS: Not with the documents I had in front
21 of me because it said that he was not performing duties as
22 a battalion chief.

23 THE COURT: Right, but now I want you to assume that
24 there is new evidence that it's the same duties or
25 substantially similar, would that change your analysis?

1 THE WITNESS: Again, no, because I didn't have any
2 documentation that said the member would be performing the
3 duties and be compensated under a temporary upgrade pay
4 circumstance.

5 BY MR. JENSEN:

6 Q Okay. And my follow-up question is: If from the
7 factual evidence it's determined that he was regularly
8 performing 80 percent of the battalion chief duties on a
9 regular basis, would that change your interpretation of
10 this case?

11 A Again, I would have to have documentation from
12 the City like an HR document showing that he would be paid
13 at a higher level as a result of the temporary upgrade pay
14 position that he was being put in.

15 We at CalPERS, if I may take a step back, CalPERS
16 is simply ensuring that the public understand what is
17 being paid to public employees. We follow the guidelines
18 of a written labor policy or agreement or pay schedule and
19 apply whatever payments are paid to the PERL to ensure
20 they can be used in the calculation of retirement
21 benefits. So we hold, in essence, CalPERS holds the
22 employer to the documentation they have available.

23 Q And to just sort of specifically drill down on
24 what was the determining factor in your determination, was
25 it that he was labeled as fire captain instead of

1 battalion chief?

2 A The Settlement Agreement is by far the most
3 important document in my determination because a
4 Settlement Agreement was provided to me when I asked how
5 or why were these temporary upgrade payments paid, and
6 that was the only documentation given to me with
7 accompanying memorandums that were referred to earlier.
8 That's what was given to me to substantiate the payments.
9 There was no other documentation given to me saying we
10 assigned him to an upgraded position, he was performing
11 the duties, and we paid him X amount of dollars pursuant
12 to this written labor policy or agreement.

13 Q Did you ask them if he was performing the duties
14 of a battalion chief?

15 A Again, I asked for documentation that would
16 substantiate why the payments were made. I need
17 documentation showing that they told Mr. Lewis you are
18 going to be in an upgraded position and we're going to
19 compensate you at this.

20 Q Okay. And when you asked, didn't they send you
21 back Carlous Johnson's letter to you?

22 A They did.

23 Q And weren't they saying this is why we reported
24 this temporary upgrade pay because you told us that?

25 A It was in the package that they provided to me.

1 Q And the other documents in that package were?
2 Can you identify which those documents were?

3 A Sure.

4 THE COURT: She already did that this morning when
5 she went through all the different documents.

6 MR. JENSEN: Okay. Then I'll just ask the other
7 questions I have.

8 BY MR. JENSEN:

9 Q You testified that you reviewed the payroll
10 history as well in Exhibit 8?

11 A That is correct.

12 Q And do you recall when the special compensation
13 increased in your review of this? Or, actually, let me
14 just turn your attention to page 7 of Exhibit 8 and
15 approximately halfway down --

16 MR. KENNEDY: Respondent's 8?

17 MR. JENSEN: This would be, yes, our page 8. Or,
18 sorry, our Exhibit 8, page 7.

19 THE WITNESS: Yes.

20 BY MR. JENSEN:

21 Q There's a payment, appears to be, of \$68,562. Do
22 you see that, retroactive salary adjustment?

23 A I do. It's reflected in earnings.

24 Q In earnings?

25 A Correct.

1 Q And is that special compensation?

2 A No.

3 Q And is that payment retroactive salary
4 adjustment, is that considered to be pay rate or special
5 compensation?

6 A It looks as though the line is adjusting the pay
7 rate upward from \$7,844 to \$8,107, that's what's
8 accomplished by that line.

9 MR. KENNEDY: May I -- I'm sorry for interrupting,
10 but what line are we on?

11 MR. JENSEN: Oh, it's about, it's on page 7, it's
12 about --

13 THE COURT: It's halfway down.

14 MR. JENSEN: A little more than halfway down.

15 THE COURT: It's got an effective date of
16 October 15th, 2004.

17 MR. KENNEDY: Thank you.

18 BY MR. JENSEN:

19 Q And so what is your understanding of what this
20 lump sum or this retroactive salary adjustment is?

21 A Again, just increasing the pay rate from \$7,844
22 to \$8,107.

23 Q Did you inquire as to what those numbers were?

24 A I did not because that did not concern me in the
25 final compensation period.

1 Q Is it at this time your understanding that they
2 reported the battalion chief salary or the difference
3 between the fire captain and the battalion chief salary as
4 pay rate?

5 A I'm not sure what these pay rates correlate to.

6 Q Can you make retroactive salary adjustments with
7 special compensation?

8 A It would be a retroactive special compensation
9 adjustment.

10 Q So this retroactive salary adjustment would have
11 to be a pay rate adjustment; is that correct?

12 A Yes.

13 Q And at this moment -- at this point in time,
14 then, CalPERS accepted a battalion chief salary as pay
15 rate for Mr. Lewis; is that correct?

16 MR. KENNEDY: Vague as to the term "accepted."

17 THE COURT: Sustained on the term "accepted."

18 BY MR. JENSEN:

19 Q Characterized this retroactive salary adjustment,
20 a difference between Mr. Lewis's fire captain pay and his
21 battalion chief pay was characterized as pay rate?

22 MR. KENNEDY: Vague as to the term "characterize."

23 THE COURT: Overruled.

24 THE WITNESS: I'm not sure what these pay rates
25 correlate to again.

1 BY MR. JENSEN:

2 Q But they can't be special compensation?

3 A So there's a retroactive salary adjustment that
4 we're referring to, that's the code that was used for that
5 particular line.

6 THE COURT: If you look at Exhibit 9, Mr. Johnson's
7 letter, he directed the City to retroactively report it
8 back to October 2004. So would this be --

9 THE WITNESS: It's not reflective of that
10 instruction.

11 THE COURT: Okay. Why not?

12 THE WITNESS: So when I look at this, you have such
13 information that are pertinent to reporting an item. In
14 this case, we have the pay rate, which is above what was
15 actually reported, which was 7,844 was reported, and they
16 were correcting that to be 8,107.

17 You then have your earnings that are attributed
18 to that position. In this instance, it looks as though
19 there was an error in reporting these earnings because the
20 pay rate and the earnings are what is used to derive
21 service credit. The earnings do not have any weight on
22 the pay rate or the special compensation. The earnings
23 are simply there to calculate how much service should be
24 given for that period of time.

25 In this instance, it would give over -- it would

1 overstate the service because the earnings, obviously, are
2 well above the reported pay rate. So the earnings have no
3 bearing on special compensation or pay rate. Those are
4 the two things that drive compensation earnable, the
5 earnings that are there just to calculate service.

6 BY MR. JENSEN:

7 Q Let me just draw your attention to the end of
8 that line, there is no service credit attached to that
9 retroactive salary adjustment in the second column from
10 the right-hand side?

11 A Right, because it's a retroactive salary
12 adjustment so there would be no service attached to that,
13 it goes to whatever service was posted with the regular
14 post date.

15 Q But didn't you just say that earnings are
16 associated with service credit?

17 MR. KENNEDY: Objection, relevancy on this line of
18 questioning. It's outside of the final comp. period and
19 now we're getting into service credit.

20 THE COURT: But he's trying to follow up on
21 Exhibit 9, how it was implemented. Overruled.

22 THE WITNESS: So if the attempt was to retroactively
23 report special compensation, it was not captured in this
24 line.

25 ///

1 BY MR. JENSEN:

2 Q If the attempt was to retroactively increase the
3 pay rate, would that be reflected in this line?

4 A Only to the pay rate of \$8,107.

5 Q And are you aware what the pay rate of battalion
6 chief was in 2007?

7 A No.

8 Q So it could very well have been that this
9 increase in -- for that three years of back pay was
10 reported as pay rate for the battalion chief; is that
11 correct?

12 A I'm not sure, I don't know what the pay rate is
13 attributed to.

14 Q Did you ever inquire into it?

15 A No, because it was not within the final
16 compensation period.

17 Q Would it make a difference to you if in this
18 matter the City had reported Mr. Lewis's pay as pay rate
19 instead of special compensation?

20 A I'm sorry, repeat your question.

21 Q In this matter, if the City had consistently
22 reported Mr. Lewis's compensation as pay rate instead of
23 special compensation, would that make any difference in
24 your determination in this matter?

25 A As to --

1 MR. KENNEDY: Objection, calls for speculation. Are
2 we questioning now whether it's now a pay rate? That's
3 not the issue.

4 MR. JENSEN: Your Honor, may I make an offer of
5 proof?

6 THE COURT: Go ahead.

7 MR. JENSEN: It appears that as a result of this
8 issue, this problem between Mr. Lewis and the City that
9 was resolved, initially the back pay was reported as
10 increased pay rate at battalion chief salary, it was not
11 described as special compensation. And when I was asking
12 the witness if the City had continued to report that funds
13 as pay rate all the way through until his retirement,
14 whether that would have made a difference in Ms. Lueras's
15 determination.

16 THE COURT: Objection is overruled.

17 You can answer that question.

18 THE WITNESS: So when we --

19 MR. KENNEDY: May I, Your Honor, be heard?

20 THE COURT: Sure.

21 MR. KENNEDY: The determination that was made was
22 that it wasn't special compensation, and we're basically
23 being asked now, you know, if it had been reported as pay
24 rate, would it have changed her determination as to
25 whether it was special compensation. That are two

1 different animals.

2 If the question is whether or not this is a valid
3 pay rate, then I would -- there's a foundational question
4 I can simply ask the witness that would cut right to the
5 chase of the question.

6 THE COURT: Counsel, correct me if I'm wrong, the
7 argument I'm hearing from Mr. Lewis's Counsel is that the
8 City was told to report it one way by CalPERS and did so,
9 but also they're reporting pay rate. She gave me all the
10 reasons why she made the determination she did, he's just
11 saying if the City had done this and you knew that, would
12 that change your determination.

13 MR. KENNEDY: Okay.

14 MR. JENSEN: And there is one sort of important
15 tie-in in this matter is that they're arguing specific
16 reasons why it's not special comp., but that's the way
17 they told the staff to report it.

18 MR. KENNEDY: Well, I understand. I understand what
19 Counsel is trying to argue on this thing.

20 THE COURT: I get it.

21 MR. KENNEDY: But the question is -- the question is:
22 Let's swap it and say that instead of being in special
23 comp., this additional 3,000 or \$4,000 a month, or
24 whatever was reported as pay rate for a fire captain,
25 would that have been recognized as compensation earnable

1 in this case?

2 MR. JENSEN: But that's assuming different facts.

3 THE COURT: Right, and I understand. What I'm
4 hearing is the witness has given me all the reasons why
5 she made her determination. Counsel is going through the
6 different documents and pointing out different things how
7 they are interpreting the document saying if my
8 interpretation is correct and this was a fact, would that
9 change your analysis.

10 MR. JENSEN: Right, Your Honor. And I have to just
11 say one underlying fact: I don't think Mr. Lewis cares
12 how it's characterized, he just is entitled to the money.

13 THE COURT: I understand that argument.

14 So basically what Counsel is asking you, ma'am,
15 is: Assuming that starting back in 2004 until he retired
16 that the City kept reporting it at the battalion chief pay
17 rate, and let's say you're looking at that rate and you're
18 saying, oh, they reported it at the battalion chief pay
19 rate, would that change your analysis?

20 THE WITNESS: Oh, what I was getting at before is
21 when a Retirement Application is entered into the system,
22 that's when, at that point, that's when a finding is
23 triggered and that's when it comes to the Compensation
24 Review Unit. So our initial documents that we have in
25 front of us is the Actual Retirement Application.

1 And if I can direct you to your Exhibit 13, it
2 says, "Actual Retirement Application." He indicates his
3 position is a fire captain, so that tells me his position
4 is that of a fire captain and I have to validate that
5 position and that pay rate associated to a fire captain.

6 If there was any discrepancy and it was being
7 reported as a battalion chief, I would ask the agency, "It
8 indicated his position is fire captain, why are you
9 reporting battalion chief?" And then documentation would
10 then be provided to support that.

11 THE COURT: And at that time when the application is
12 coming in and all that analysis is starting, is that a
13 time also where CalPERS may discover that the employer
14 reported things incorrectly and so then makes an
15 adjustment?

16 THE WITNESS: Very true, yes.

17 THE COURT: Okay. Thank you.

18 BY MR. JENSEN:

19 Q And just one more hypothetical, or not even
20 hypothetical, reality. If the City had reported Mr. Lewis
21 at the pay rate of a battalion chief, had given him the
22 title of a battalion chief but had him perform the duties
23 of a fire captain, would that change your analysis?

24 A What the City pays their employees is their
25 business. All I need is documentation to support any

1 payments that are reported to the system and to ensure
2 that they are compensation earnable. That is my job. I
3 have to make them stay true to public documents.

4 Q So essentially --

5 THE COURT: So in English basically is -- sorry.
6 What you're saying is if they are telling the public that
7 we pay crossing guards \$10,000 a month, you better see
8 that in the documentation and not \$20,000 a month that
9 this person got for being a crossing guard?

10 THE WITNESS: Exactly.

11 THE COURT: Or \$5,000?

12 THE WITNESS: Exactly.

13 THE COURT: Great. Thank you.

14 BY MR. JENSEN:

15 Q And did you ever inquire into whether there was a
16 publicly available salary schedule for the battalion
17 chief?

18 A There was a publicly available pay schedule for
19 all positions within the City, yes.

20 Q And did you inquire into whether Mr. Lewis was
21 paid according to the publicly available pay schedule for
22 the battalion chief?

23 A No, because my question was regarding the
24 temporary upgrade payment. Again, I'm going off of
25 whatever was reported in the highest final compensation

1 period, which is the consecutive 12 or 36 months of a
2 member's employment. The highest 12 or 36 consecutive
3 months, that's what I'm referring to, so that's what's
4 going to be used for the calculation of the member's
5 retirement benefit.

6 In this case, the period that -- the highest
7 12 months for Mr. Lewis was, I believe, July 2010 through
8 June 2011, I think. I was reviewing that period to
9 determine all the compensation reported within that period
10 was in fact compensation earnable and could be used in the
11 calculation of his benefit.

12 In that period, there was special compensation of
13 temporary upgrade pay reported. I had questions about it.
14 The City provided documentation. I rendered my
15 determination.

16 Q And essentially what you were doing was matching
17 the words in the title that he was reported with to his
18 publicly available salary schedule that contained the
19 words in the title; is that correct?

20 A I was validating that the position he indicated
21 on his Retirement Application matched the pay rate that
22 was allowed for that position and reported to the system.
23 And in this case, he indicated fire captain, the pay rate
24 of fire captain was paid pursuant to the publicly
25 available pay schedule and reported to the system.

1 Q And then your next step was you looked at the
2 special comp.?

3 A Correct.

4 Q And you determined that the special comp. did not
5 qualify?

6 A Correct. After review of all the documentation
7 made available to me, I made the determination that there
8 were items that were not reportable to CalPERS.

9 Q And just we were touching on this, but we didn't
10 get a real answer to it. There is this issue about what
11 you learned in your inquiry, which was different than the
12 two prior determinations by CalPERS, first from the
13 transcripts and then Mr. Johnson. So can you tell us what
14 you learned in your inquiry that was materially different
15 than what they learned?

16 MR. KENNEDY: Lack of foundation.

17 THE COURT: Overruled.

18 THE WITNESS: Again, I don't know what documentation
19 was made available to any of the analysts that may have
20 reviewed Mr. Lewis's account prior to myself, but I know
21 the documentation that was provided to me and that was the
22 determination that I would make pursuant to the PERL.

23 BY MR. JENSEN:

24 Q And you said -- well, your testimony just
25 recently was that you looked at the Settlement Agreement

1 for that?

2 A Correct.

3 MR. KENNEDY: Asked and answered.

4 THE COURT: Sustained.

5 BY MR. JENSEN:

6 Q And was it the same Settlement Agreement that you
7 received, the same Settlement Agreement that was in
8 Mr. Johnson's folder?

9 A Yes.

10 Q Any other facts that you learned that were
11 different?

12 A That was the only document that I found in
13 Mr. Johnson's file other than a fax cover sheet with a
14 copy of the letter that he provided to the City.

15 Q Now, let's just address, you mentioned that you
16 determined that it was not temporary upgrade pay?

17 A Yes.

18 Q And are there any -- or how did you apply the
19 term "temporary upgrade pay"? Is there a written --

20 MR. KENNEDY: I have --

21 MR. JENSEN: I'll ask her.

22 BY MR. JENSEN:

23 Q Were there any written policies and procedures
24 for implementing temporary upgrade pay?

25 A Other than the PERL, no.

1 Q So let's just take a look at temporary upgrade
2 pay in the PERL for a moment. And is there any statutory
3 definition in the PERL about temporary, the word
4 "temporary"?

5 A No, not that I'm aware of.

6 Q And so are there any guidelines for what is
7 temporary?

8 A Not that I'm aware of.

9 Q So what is your definition of temporary?

10 MR. KENNEDY: Relevance.

11 THE COURT: Sustained.

12 What did you use to make a determination of
13 temporary upgrade pay? You're saying in the PERL, what
14 specifically, what code sections?

15 THE WITNESS: Right. So the item of temporary
16 upgrade pay is specifically defined in the
17 Regulations 571(A). I believe I read it earlier.

18 THE COURT: You did. Thank you.

19 THE WITNESS: But those aren't the only requirements
20 of an item being reportable to the system, and that goes
21 for every item in 571(A). It has to make all the
22 statutory requirements as well as the rest of the
23 regulations in 571(B) that gives criteria.

24 BY MR. JENSEN:

25 Q So my question was just within the terminology

1 "temporary upgrade pay," is there a limit on how long
2 someone can hold a position in a temporary capacity?

3 A There is not an implicit limit, no.

4 Q And so what do you consider to be nontemporary,
5 then, when you're applying this temporary upgrade pay?

6 A How would I define the term "temporary;" is that
7 what you're getting at?

8 Q Well, just in -- you have made a finding that
9 he's not entitled to temporary upgrade pay, and I'm just
10 wondering why, with respect to this definition, you've
11 decided that it's not applicable in this case?

12 A Because it specifically says, "Compensation to
13 employees who are required by their employer or governing
14 body to work in an upgraded position classification of
15 limited duration."

16 Q And you emphasized the word "work"?

17 A Yes.

18 Q And why did you emphasize the word "work"?

19 A Because an item of special compensation, again,
20 is for special skills, knowledge, work ability, work
21 assignment, and the definition of compensation earnable is
22 for special compensation, again, payment received for a
23 member for special skills, knowledge, work ability, work
24 assignment. And it goes on to say, "The Board shall
25 promulgate regulations set to delineate more specifically

1 and exclusively what constitutes special compensation."

2 So what I'm getting at is, any item that is paid
3 to a member is for the work that they are performing. So
4 if an agency would like to make an additional payment as
5 special compensation, it has to meet all the criteria in
6 the PERL. I don't know how else I can say it.

7 Q But you're basically saying it has to be
8 associated with work, as you say, and some different work
9 that's required by the employer; is that correct?

10 A So, yes, for services rendered.

11 Q So basically you're looking at the relationship
12 between the employer and the employee in order to
13 determine whether it's temporary upgrade pay?

14 A I don't think I'm understanding your question.

15 Q You're inquiring as to what the employer is
16 requiring the employee to do in order to determine whether
17 it's temporary upgrade pay?

18 A No, I don't ask specific questions on what was
19 the employee specifically doing. If the payment was made,
20 I ask for documentation, give me documentation to support
21 this payment. I need, again, HR documents to show that
22 there was an increase or additional payments made and
23 point to me in the written labor policy or agreement that
24 shows if a person is assigned to a temporary upgraded
25 position how they will be compensated for that.

1 So, again, the employer has to take the
2 initiative to provide additional compensation to an
3 employee and then make that payment.

4 Q So were you -- were you swayed in any manner by
5 the employer's representations that Mr. Lewis would retain
6 the work in the position as fire captain?

7 A I read the Settlement Agreement, which
8 specifically stated that he would remain working in the
9 capacity of a fire chief -- or fire captain, excuse me,
10 however, be compensated at a higher level as a battalion
11 chief. That's what I had given to me to substantiate the
12 payment made.

13 Q And so because there was no indication in those
14 documents that were provided to you that there was any
15 upgraded or different position that he was holding, you
16 determined that he had maintained his work as a fire
17 captain; is that correct?

18 A Yes.

19 Q Okay. And had they said he was a battalion
20 chief, you would have given him or you would have
21 determined that he was entitled to the compensation as a
22 battalion chief?

23 A Yes. If that was the City's determination that
24 he was in fact a battalion chief, then that's what I have
25 to go off of.

1 Q And so when we had this previous discussion about
2 performing the duties of a position, it's really not
3 performing the duties of the position, you were relying on
4 the title of the position that was documented by the City?

5 MR. KENNEDY: Asked and answered.

6 THE COURT: Sustained. She was relying on what she
7 read in the documents.

8 MR. JENSEN: Right, I was just trying to get clarity
9 on it.

10 BY MR. JENSEN:

11 Q And you have several times emphasized the idea
12 that it's work in the position --

13 MR. KENNEDY: Asked and answered.

14 THE COURT: Let him ask his question, Counsel.

15 BY MR. JENSEN:

16 Q And when there's this idea about special
17 compensation when someone is on 4850 time where there is
18 no work required, how does CalPERS deal with that
19 situation?

20 MR. KENNEDY: It's been asked and answered.

21 THE COURT: I don't think that's considered temporary
22 upgrade pay if you're on 4850; correct?

23 THE WITNESS: Correct.

24 THE COURT: So you're mixing apples and oranges.

25 MR. JENSEN: I'm sorry, say that again.

1 THE COURT: You're mixing apples and oranges.

2 BY MR. JENSEN:

3 Q So someone can't receive special comp. when
4 they're on 4850 pay?

5 A I believe the labor code, 4850 is a labor code, I
6 believe it says, again I'm not 100 percent familiar with
7 that code, but it says that the member should be made
8 whole, the safety member should be made whole, whatever
9 that means.

10 Q So I'm just curious, then, I mean, were you aware
11 that Mr. Lewis was receiving basically the pay rate of the
12 battalion chief for that year when he was on 4850 time?

13 A Again, all I can go off of was what was reported
14 in the system and how it was reflected. I seen it, it was
15 that of a fire captain, he had special compensation, one
16 of which was temporary upgrade pay, and it seemed to be
17 the difference between the pay rate of fire captain and
18 battalion chief.

19 Q But what I'm trying to get your attention to, and
20 maybe I'm -- is that within that last year of his
21 employment, there were payments made from the City at the
22 battalion chief pay rate while he was on disability and
23 the compensation definition says that those are included
24 in compensation. So how does the Compensation Review Unit
25 deal with a situation like that?

1 MR. KENNEDY: Vague, and also it's been asked and
2 answered.

3 THE COURT: Not in that form.

4 Do you understand the question?

5 THE WITNESS: Kind of. Can you repeat it one more
6 time?

7 BY MR. JENSEN:

8 Q I'll just get to the -- so Mr. Lewis's employer
9 reported the battalion chief pay rate to CalPERS for a
10 year when Mr. Lewis was on 4850 time. How does the
11 Compensation Review Unit deal with that situation?

12 A I think you're asking me if there's any
13 differentiation between 4850 time reported and, let's say,
14 regular compensation reported, if that alters Compensation
15 Review's determination? The answer is no, it does not.

16 Q My question was a little different.

17 A Okay.

18 Q Because since there's no special compensation
19 reported when somebody is on disability; is that correct?

20 A No, I don't think that's what I said.

21 THE COURT: He's asking, is that a fact? If you're
22 on disability, is any special compensation reported?

23 THE WITNESS: I believe in 4850 situations, which is
24 for safety, there are special compensation payments
25 reported that would, let's say, for instance, educational

1 incentive, work isn't necessarily being performed to
2 receive the payment for educational incentive, it's simply
3 because you received a degree of some sort, so you don't
4 actually have to perform any duties to get that payment,
5 it just came with it.

6 THE COURT: Well, I want you to assume that when he
7 was on disability he got 4850 payments, that he's getting
8 those at a battalion chief rate, so I want you to assume
9 that's one of the facts that you've seen as you're making
10 your evaluation. Would that affect your determination?

11 THE WITNESS: So 4850 he was receiving all
12 compensation associated with a battalion chief?

13 THE COURT: Correct.

14 THE WITNESS: Would that change my determination?

15 THE COURT: Correct.

16 THE WITNESS: Again, going back to the --

17 THE COURT: I don't want -- I know why you made your
18 determination. He's giving you new facts. If you find
19 these new facts, which he'll have to prove, would those
20 have affected your decision-making?

21 THE WITNESS: So if a pay rate was reported for
22 battalion chief and he just so happened to be on 4850
23 time, there would be no change in how I conducted my
24 review.

25 THE COURT: But now you have a fact in front of you

1 that he was paid at battalion chief --

2 MR. KENNEDY: I'm sorry, Your Honor, I can't hear.

3 THE COURT: Sorry. So, I mean, I understand, I read
4 the documents too, so I understand why you made your
5 decision, what they say. But let's say they don't say
6 that at all, let's just say as you're doing your review,
7 now you have the fact that on disability he's being paid
8 at a battalion chief rate. Does that affect your
9 decision-making, and if so, how?

10 THE WITNESS: I don't know how that would come into
11 play, honestly, because typically when we see 4850 time,
12 it's seamless, if you will, there's no change in pay rate,
13 there's no change in special compensation. It's pretty
14 much seamless, so you can't even tell the person is not
15 performing any duties.

16 So if a situation were to come up where the 4850
17 time was higher than that -- than what was reported when
18 the person was actually performing duties, I'm not sure
19 how that would play out actually. I don't think we've
20 ever had that situation.

21 THE COURT: Okay. While we're looking at this code
22 section, the premium payment, the Regulation 571, if you
23 look on Subsection 3, which is defining premium pay, and
24 then down to Number 8 it says -- it's listing, isn't it,
25 not special compensation, it says not final settlement

1 pay. What is final settlement pay?

2 THE WITNESS: Final settlement pay is actually
3 defined in California Code of Regulations 570, so we can
4 look at that quickly. If I can read it?

5 THE COURT: Yes.

6 THE WITNESS: "Final settlement pay means any pay or
7 cash conversions of employee benefits in excess of
8 compensation earnable that are granted or awarded to a
9 member in connection with or in anticipation of separation
10 from employment. Final settlement pay is excluded from
11 any reporting to PERS in either a pay rate or compensation
12 earnable."

13 THE COURT: Thank you.

14 BY MR. JENSEN:

15 Q Just while we're on the special compensation, did
16 you test Mr. Lewis's compensation under any other special
17 compensation provisions?

18 MR. KENNEDY: That's been asked and answered.

19 THE COURT: Overruled.

20 THE WITNESS: There didn't seem to be any other item
21 in 571(A) that would fit the particular payments that were
22 afforded to Mr. Lewis.

23 BY MR. JENSEN:

24 Q And did you look at off salary schedule pay,
25 those kind of issues?

1 A Off salary schedule pay is something that is,
2 again, given to an entire group or class. It's bargained
3 for for a group to have a one-time payment rather than a
4 pay rate increase or a salary schedule increase, excuse
5 me.

6 Q And let me just turn your attention to the
7 special assignment page, there's confidential premium,
8 which is compensation to rank and file members who are
9 routinely and consistently assigned to sensitive positions
10 regarding trust and discretion?

11 A Yes.

12 Q And did you seek to apply that to this case?

13 A That does not seem to fit the nature of the
14 payments.

15 Q And why not?

16 A The definition is pretty clear that,
17 "Compensation to rank and file employees who are routinely
18 and consistently assigned to sensitive positions requiring
19 trust and discretion," so that's a payment that is made to
20 a person, most commonly we see like an administrative
21 assistant, they may work in a legal office where they hear
22 a lot of confidential information and they are given an
23 additional payment for keeping those matters confidential.

24 Q I'm just going to suggest one more on the next
25 page, "Fire staff premium compensation to rank and file

1 fire fighters who are routinely and consistently assigned
2 to administrative work during normal hours of employment."
3 Did you test that on a possible special compensation
4 premium?

5 A Again, the nature of the payments did not fit
6 that either. Fire staff premium is given to fire fighters
7 that aren't necessarily in the field fighting fires,
8 they're assigned more clerical or administrative work and
9 provided an additional amount of money.

10 Q Now, I want to just move to this EPMC issue --

11 MR. KENNEDY: Your Honor, could I ask if the Court
12 could take a break?

13 THE COURT: Yes. We'll be in recess for 15 minutes.

14 (Recess)

15 THE COURT: Back on the record.

16 Ma'am, I remind you that you're still under oath.
17 Counsel?

18 MR. JENSEN: Thank you, Your Honor. I'd like to just
19 go through the documents, make sure that they're in
20 evidence. One through 3 are in evidence, I believe?

21 THE COURT: Your exhibits or his?

22 MR. JENSEN: His exhibits.

23 THE COURT: The only thing not in evidence of CalPERS
24 is Exhibit 10, 11 and 16.

25 MR. JENSEN: I believe 4.

1 THE COURT: Four was withdrawn.

2 MR. JENSEN: And so I'd like to just turn
3 Ms. Lueras's attention to Exhibit 4 in CalPERS' binder.

4 MR. KENNEDY: I'm sorry, Your Honor, 16 is not?

5 MR. JENSEN: I'm sorry, which ones weren't?

6 MR. KENNEDY: Ten, 11 and 16?

7 THE COURT: Ten, 11, 16, and 4 was withdrawn.

8 MR. JENSEN: And so I'd just like to move,
9 unwithdraw 4, or just move it into evidence.

10 BY MR. JENSEN:

11 Q Ms. Lueras, did you review the document behind
12 Exhibit 4 in your determination of this matter?

13 A This is in response to my determination.

14 Q Did you review this in response to your
15 determination?

16 A At one point I believe I did.

17 MR. JENSEN: Your Honor, I'd like to admit Exhibit 4
18 into evidence.

19 MR. KENNEDY: Relevancy?

20 THE COURT: What's the relevancy of taking a default
21 for the City of San Bernardino?

22 MR. JENSEN: It's relevant because these are the
23 arguments the City's made and it's the City's position in
24 the matter, and I think it's relevant. I think a default
25 is relevant beyond the -- this is, I mean --

1 MR. KENNEDY: These are essentially legal arguments
2 concerning -- posed by the City.

3 MR. JENSEN: It says in the Statement of Facts that
4 the City --

5 THE COURT: I'm going to reserve on 4 and I'll read
6 it tonight.

7 MR. JENSEN: Okay.

8 MR. KENNEDY: I would also just raise the issue and
9 say in connection as far as Statement of Facts, it's
10 hearsay, there's no foundation, and it's just simply a
11 legal brief.

12 MR. JENSEN: This was the City's position at that
13 time in response to Ms. Lueras --

14 THE COURT: Move on.

15 MR. JENSEN: Okay.

16 BY MR. JENSEN:

17 Q Turn your attention to Exhibit 10, Ms. Lueras, in
18 the CalPERS' binder. Do you recognize this document?

19 A I do.

20 Q What is that document?

21 A This e-mail was provided to me by
22 Georgia Chamberlin. When I asked her for confirmation,
23 this was one of the things that was attached.

24 MR. JENSEN: Your Honor, offer 10 into evidence.

25 THE COURT: You said Georgia Chamberlin, but I'm not

1 seeing her name anywhere on the document.

2 MR. JENSEN: Are you looking at the same --

3 THE WITNESS: Yeah, her name is not on the document,
4 it was just included in the papers that were provided to
5 me by her.

6 THE COURT: Oh, when you got that packet from her?

7 THE WITNESS: Right.

8 THE COURT: Any objection to my receiving Exhibit 10?

9 MR. KENNEDY: No.

10 THE COURT: Exhibit 10 will be received.

11 (Complainant's Exhibit 10 was received
12 in evidence by the Court.)

13 MR. JENSEN: Your Honor, I'd like to offer
14 Exhibit 11.

15 MR. KENNEDY: The one thing I have to say, except as
16 to the hearsay. As a document she reviewed, I have no
17 objection.

18 MR. JENSEN: What are we talking about?

19 THE COURT: I'm going to receive Exhibit 10 as
20 administrative hearsay.

21 MR. KENNEDY: Thank you.

22 BY MR. JENSEN:

23 Q I'd like to turn your attention to Exhibit 11 in
24 the CalPERS' binder. Did you review this document in the
25 course of your determination of this matter?

1 A Yes.

2 MR. JENSEN: Your Honor, I'd like to offer Exhibit 11
3 into evidence.

4 THE COURT: Any objection to my receiving the
5 application, Mr. Kennedy?

6 MR. KENNEDY: No objection.

7 THE COURT: Exhibit 11 will be received.

8 (Complainant's Exhibit 11 was received
9 in evidence by the Court.)

10 BY MR. JENSEN:

11 Q I'd like to turn your attention to Exhibit 16 in
12 the CalPERS' binder. Did you use this as part of your
13 determination in this matter?

14 A I did not.

15 Q Do you recognize what this document is?

16 A Yes, it looks to be the contract between the City
17 and CalPERS.

18 Q Can you briefly check it over and see if it is
19 the contract between the two?

20 MR. KENNEDY: I'm sorry, did you move it?

21 MR. JENSEN: Not yet, she hasn't authenticated it.

22 THE WITNESS: Yes, it looks like the contract in
23 2008.

24 MR. JENSEN: So I'd like to move 16 into evidence.

25 MR. KENNEDY: If there's a request for official

1 notice, I wouldn't object.

2 THE COURT: I'm going to take official notice of it.

3 (Complainant's Exhibit 16 was received
4 in evidence by the Court.)

5 BY MR. JENSEN:

6 Q And turning your attention to the exhibits in our
7 binder, Mr. Lewis's binder, some of these are potentially
8 duplicates, although I don't know about the writing on
9 them. So if you can turn your attention to --

10 MR. KENNEDY: I'm sorry, you're going to have to
11 speak up and slow down, Counsel. I apologize.

12 BY MR. JENSEN:

13 Q Can I turn your attention to Exhibit 1 in Lewis's
14 binder?

15 A Yes.

16 Q Did you utilize Exhibit 1 in your determination
17 of this matter?

18 MR. KENNEDY: And for the record, Your Honor,
19 Exhibit 1 is identical to CalPERS' Exhibit 6.

20 THE COURT: Right, it's the release agreement
21 Settlement Agreement, she's already talked about it at
22 length and we looked at it.

23 MR. JENSEN: And, Your Honor, the only thing I didn't
24 know is whether the handwritten delineations within it are
25 the same, so that's the reason why, just in case they're

1 different, admit them both.

2 THE COURT: The only handwriting I see is this
3 signature at the bottom.

4 MR. JENSEN: On Exhibit 2, page 2 --

5 MR. KENNEDY: Your Honor, if I -- there seems to be a
6 distinction between the two documents, between Exhibit 1
7 and Exhibit 6, and exhibit -- well, that's interesting.
8 Yeah, there's multi- -- there's --

9 THE COURT: Hang on a second.

10 MR. KENNEDY: There's handwriting all over, there's
11 no foundation for the handwriting.

12 THE COURT: I haven't received Exhibit 1 from
13 Respondents yet. So I don't know whose handwriting is on
14 page 2, I'm not going to receive both of them unless I get
15 some foundation. I've got 6 in evidence.

16 MR. JENSEN: Right.

17 BY MR. JENSEN:

18 Q Ms. Lueras, can I direct your attention to the
19 second page of Exhibit 1?

20 A Okay.

21 Q Have you seen this document with handwriting on
22 it before?

23 A To be completely honest, I don't remember if it
24 had handwriting on it or not, the specific document that I
25 received.

1 Q Do you recognize any of this handwriting itself?

2 A No.

3 Q And do you recall whether the documents that you
4 received from the City had handwriting on them?

5 A Again, at this time, I just honestly can't
6 remember if they did or not. I have the actual e-mail at
7 work, so if I refer to it, it would refresh my memory.
8 But today, as I sit, no.

9 MR. JENSEN: So, Your Honor, I guess that's why I'll
10 reserve Exhibit 1 for future witnesses. I guess if I
11 conditionally admit it except for the handwriting, would
12 that be --

13 THE COURT: I'm not going to admit anything just
14 right now on Exhibit 1.

15 MR. JENSEN: Okay.

16 BY MR. JENSEN:

17 Q Can I turn your attention to Exhibit 2,
18 Ms. Lueras?

19 A (Witness complies)

20 Q Do you recognize this document?

21 A I do.

22 Q And what is this document?

23 A This was provided to me, it looks like a cover
24 letter to the Settlement Agreement as well as the
25 Settlement Agreement.

1 Q And I just want to turn your attention to the
2 handwriting on the third page of this exhibit as well,
3 which I guess is identical to the first one. So you do
4 recall receiving this document?

5 A The first page, yes.

6 Q Okay. Any other page in this Exhibit 2?

7 A I mean, it's a Settlement Agreement which we've
8 gone over a couple times.

9 Q Right. Do you recognize the handwriting in
10 context with the --

11 MR. KENNEDY: Is the witness being asked to compare
12 the handwriting?

13 THE COURT: No. What he said was: The Settlement
14 Agreement that's attached to Exhibit 2 has handwriting
15 which is the same page as Exhibit 1 handwriting.

16 MR. KENNEDY: Oh, is it similar to the page 1?

17 THE COURT: No. He's just saying there's not a third
18 copy of the Agreement, basically the same thing in
19 Number 2 is the same thing as in Number 1, it's just each
20 of them have handwriting --

21 MR. KENNEDY: Oh, I'm sorry, she's being asked to
22 compare the two documents?

23 THE COURT: He's not asking her to do a handwriting
24 analysis, they both have the same handwriting.

25 ///

1 BY MR. JENSEN:

2 Q You do recognize the front page of Exhibit 2?

3 A I do, yes.

4 Q Any other page in Exhibit 2?

5 A The second page, the third page I vaguely recall,
6 but I can't say for certainty that that was the same one
7 with the handwriting that I received, four, five, I
8 believe the rest of the documents were the
9 Settlement Agreement.

10 MR. JENSEN: So, Your Honor, I offer Exhibit 2 into
11 evidence.

12 MR. KENNEDY: Again, lack of foundation. All we've
13 had testimony -- we have all this writing, we have no
14 foundation as to who's authored it. It's the same as
15 Exhibit 1 except --

16 THE COURT: I'll take page 1 of Exhibit 2 as
17 administrative hearsay for the limited purposes this is a
18 piece of paper that she got from the City.

19 (Respondent's Exhibit 2 was received
20 in evidence by the Court.)

21 BY MR. JENSEN:

22 Q And did you review any of these notations on
23 page 1 in the course of your review of this matter?

24 A It looks to me like they were trying to figure
25 out how to capture the payments.

1 Q Is any of the markings on this page your
2 handwriting?

3 A No.

4 Q I'd like to move to Exhibit 3 in Respondent's
5 binder. Do you recognize Exhibit 3?

6 A I received a similar document. The document that
7 I had had extensive handwriting on it, I believe.

8 Q And let me just turn your attention to Exhibit 6,
9 then?

10 A Yes, that looks to be the copy that I received.

11 MR. KENNEDY: I would just point out --

12 THE COURT: It's Exhibit 8 already in evidence.

13 MR. JENSEN: Exhibit 6 is in as 8?

14 THE COURT: Eight is what you have as Exhibit 6 but
15 with handwriting all over it, which is what you also have
16 as 6.

17 MR. KENNEDY: Your Honor, just point out to the
18 Court, there are different dates on these documents, I
19 mean, if we're looking at Exhibit 3.

20 THE COURT: Let's start over. Respondent's 6 is
21 already in evidence as Complainant's 8.

22 MR. KENNEDY: Yes. Yes, correct, except for --

23 THE COURT: And Respondent's Exhibit 4 is a
24 similar-looking document but a different date, it doesn't
25 have any handwriting on it.

1 MR. JENSEN: Respondent's 4 is similar to?

2 THE COURT: I'm sorry, Respondent's 3 is the same.

3 MR. KENNEDY: It's not a similar document. It looks
4 like a similar document, but --

5 THE COURT: I didn't say similar, I said it looks
6 like but it's not. It's a different date.

7 MR. KENNEDY: Correct.

8 MR. JENSEN: And, Your Honor, these are the way we
9 got the documents.

10 THE COURT: That's fine. Just because you got them,
11 they're not coming into evidence unless you lay some
12 foundation.

13 MR. JENSEN: And that's why I was asking the witness
14 whether she used them in part in coming to her
15 determination.

16 BY MR. JENSEN:

17 Q And, Ms. Lueras, so let's look at Exhibit 3. Did
18 you use Exhibit 3 within your determination?

19 A No.

20 Q Okay. Let's turn to Exhibit 4. Do you recognize
21 Exhibit 4?

22 A Yes.

23 Q Did you use it as part of your determination in
24 this matter?

25 A It was another supporting document to the

1 Settlement Agreement.

2 MR. JENSEN: Your Honor, I'd like to offer Exhibit 4
3 into evidence.

4 MR. KENNEDY: It's already in evidence as, I believe,
5 Exhibit 7 in CalPERS.

6 MR. JENSEN: There's a different handwriting on it
7 with PERS at the top, but otherwise it --

8 THE COURT: And Exhibit 7 has a highlight mark on it.
9 I'm going to receive Exhibit 4.

10 MR. JENSEN: You will receive it?

11 THE COURT: Yes.

12 MR. JENSEN: Okay. Thank you, Your Honor.

13 (Respondent's Exhibit 4 was received
14 in evidence by the Court.)

15 MR. JENSEN: And Exhibit 5 is the same as CalPERS'
16 Exhibit 7, so I'd like to turn to now we're back at
17 Exhibit 6, which is in the same as Exhibit 8; is that
18 correct?

19 THE COURT: Six is in as 8, yes.

20 MR. JENSEN: Okay. Thank you, Your Honor. And I'd
21 like to turn -- so Exhibit 7 is identical to -- oh, it's
22 not identical to Exhibit 9.

23 BY MR. JENSEN:

24 Q So if I could turn your attention to Exhibit 7,
25 there's a date stamp on it?

1 A (Witness complies)

2 MR. JENSEN: So I'd like to offer Exhibit 7 into
3 evidence.

4 MR. KENNEDY: Lack of foundation as the date stamp.

5 THE COURT: It's the same thing as 8. It's the same
6 thing as Complainant's 9 except for the date stamp on it,
7 so I'm going to receive it.

8 MR. JENSEN: You will receive it?

9 THE COURT: Yes.

10 (Respondent's Exhibit 7 was received
11 in evidence by the Court.)

12 MR. JENSEN: Thank you, Your Honor. And I believe
13 Exhibit 8 is the same as CalPERS' 14, but let me take a
14 moment to compare. Exhibit 8 is a -- doesn't have the
15 page cut off on it and there's some different markings, so
16 I'd like to offer Exhibit 8 into evidence.

17 THE COURT: I'll receive Exhibit 8.

18 (Respondent's Exhibit 8 was received
19 in evidence by the Court.)

20 MR. KENNEDY: Is it being received the same as
21 CalPERS' Exhibit 14?

22 THE COURT: It's similar, it's just that some of
23 CalPERS' columns are cut off, like the far left column on
24 the CalPERS' 14 document is gone.

25 MR. KENNEDY: I understand, okay.

1 BY MR. JENSEN:

2 Q Ms. Lueras, I'd like to turn your attention to
3 Exhibit 9 in Respondent's binder. Have you seen this
4 document before?

5 A I'm familiar with this kind of document, but I
6 don't think I've seen this specific one.

7 Q Did you review this document in determination of
8 this matter?

9 A No.

10 Q Is this a document that you recognize as a
11 document of CalPERS?

12 A Yes.

13 MR. JENSEN: Your Honor, I'd like to offer Exhibit 9
14 into evidence.

15 MR. KENNEDY: Relevancy? There's no testimony on the
16 document.

17 MR. JENSEN: So --

18 THE COURT: It's a CalPERS document, it was sent to
19 him in response to his Disability Application. I'm going
20 to receive it.

21 MR. KENNEDY: I'm sorry, what did you take it as,
22 Your Honor?

23 THE COURT: It's a CalPERS document that was sent to
24 Mr. Lewis in response to his Disability Retirement
25 Application.

1 MR. KENNEDY: That's not correct, that's not what
2 this document is.

3 MR. JENSEN: What is this document? It says, "Dear
4 Mr. Richard Lewis, this is an estimate of your industrial
5 disability retirement."

6 THE COURT: Industrial disability retirement.

7 MR. JENSEN: Is 9 in?

8 THE COURT: I'm going to receive 9.

9 MR. JENSEN: Thank you, Your Honor.

10 (Respondent's Exhibit 9 was received
11 in evidence by the Court.)

12 MR. JENSEN: I believe Exhibit 10 is similar to
13 CalPERS' Exhibit 11.

14 MR. KENNEDY: Are we intending to finish with
15 Ms. Lueras on direct -- or, excuse me, on cross today?

16 MR. JENSEN: Yes, Your Honor, I just --

17 THE WITNESS: Can I just interject? Exhibit 10,
18 Mr. Lewis's Exhibit 10 is not the same as CalPERS'
19 Exhibit 11.

20 MR. JENSEN: Okay. Yeah, I'd like to offer
21 exhibit -- Respondent's Exhibit 10 into evidence.

22 MR. KENNEDY: I'm sorry?

23 THE COURT: This is Mr. Lewis's Retirement Allowance
24 Estimate Request, not his application.

25 MR. KENNEDY: I'm sorry?

1 THE COURT: So any objection to my receiving
2 Exhibit 10?

3 MR. KENNEDY: As a Retirement Allowance Estimate
4 Request? Has there been any foundation that the witness
5 has seen this document before, looked at this document
6 before?

7 THE COURT: I'm going to reserve on 10 until we get
8 some testimony from Mr. Lewis.

9 BY MR. JENSEN:

10 Q Okay. I'd like to turn the witness's attention
11 to Exhibit 11. Have you seen Exhibit 11, or did you use
12 it in this matter?

13 MR. KENNEDY: That's been asked and answered. She
14 testified she used many other documents in --

15 THE COURT: I know, but she's pointed out a couple of
16 documents in this notebook that she didn't see that aren't
17 in your notebook, so that objection is overruled.

18 MR. KENNEDY: She specifically testified about the
19 underlying lawsuit that Mr. Lewis --

20 THE COURT: His question is to her: Did she rely on
21 Exhibit 11 in making her determinations.

22 MR. KENNEDY: I'm sorry, what?

23 THE COURT: In making your determinations, did you
24 rely on 11 at all?

25 THE WITNESS: No.

1 BY MR. JENSEN:

2 Q And I'd like to turn your attention to
3 Exhibit 12. Do you recognize Exhibit 12?

4 A No.

5 Q Is this the type of document that CalPERS sends
6 out -- well, you mentioned -- is this a CalPERS document?

7 A It looks to be, it has our letterhead.

8 MR. JENSEN: Your Honor, I'd like to offer 12 into
9 evidence.

10 MR. KENNEDY: Relevancy?

11 THE COURT: I'm not going to receive it at this
12 point.

13 MR. JENSEN: Okay. Let's move on to 13. Thirteen is
14 the same as which one? Maybe not.

15 THE COURT: Eleven.

16 MR. JENSEN: The same as 11?

17 MR. KENNEDY: Not really, there's additional pages,
18 there's the direct deposit authorization sheet, there's
19 a -- actually, there's a void check with the member's
20 numbers, bank number as well as his address on it.

21 THE COURT: There's also birth and marriage
22 certificates attached.

23 MR. JENSEN: Well, I would like to offer this, but
24 strike the --

25 THE COURT: In any event, in any event, wait until he

1 testifies about it.

2 MR. JENSEN: Okay. That's great. And, Your Honor,
3 is 14 in, I believe?

4 THE COURT: Yes.

5 MR. JENSEN: And I'd like to turn Ms. Lueras's
6 attention to Exhibit 15, I think this is in.

7 MR. KENNEDY: Three.

8 MR. JENSEN: Three?

9 THE COURT: Same as 3?

10 MR. KENNEDY: It will be supplemented.

11 BY MR. JENSEN:

12 Q And may I turn your attention to Exhibit 16,
13 Ms. Lueras?

14 A (Witness complies)

15 Q Do you recognize --

16 MR. KENNEDY: Actually, this is -- 16 is actually 3,
17 I believe, because there is -- 15 is the one that was sent
18 directly to Chamberlin, copy to Mr. Lewis, the other one
19 was sent to Mr. Lewis with copies to Ms. Chamberlin.

20 MR. JENSEN: So then I'd like to offer 15 into
21 evidence then.

22 THE COURT: Any objection to my receiving 15?

23 MR. JENSEN: Wes, any objections to 15?

24 MR. KENNEDY: No.

25 THE COURT: Fifteen will be received.

1 (Respondent's Exhibit 15 was received
2 in evidence by the Court.)

3 MR. KENNEDY: The same admonition as to
4 supplementation.

5 MR. JENSEN: Sixteen is in.

6 BY MR. JENSEN:

7 Q And, Ms. Lueras, can I direct your attention
8 to 17. Do you recognize this document?

9 A Yes.

10 Q And is this another part of -- what is this
11 document?

12 A So this is a print of another section of the
13 My CalPERS System. This particular screen has to do with
14 the detail of a special compensation payment made.

15 Q And is CalPERS in this matter challenging the
16 educational incentive as special compensation?

17 A No.

18 Q And is CalPERS challenging the EPMC payment?

19 A Yes.

20 Q And CalPERS is challenging temporary upgrade pay?

21 A Yes.

22 Q Can you review these two pages and tell me if you
23 used them in this matter as part of the determination?

24 A Yes.

25 MR. JENSEN: Your Honor, I'd like to offer 17 into

1 evidence.

2 MR. KENNEDY: May I just ask a question?

3 THE COURT: Go ahead.

4 MR. KENNEDY: The handwriting?

5 THE WITNESS: It is mine.

6 THE COURT: On both documents?

7 THE WITNESS: Yes.

8 THE COURT: Okay.

9 BY MR. JENSEN:

10 Q And I'd like to return to 17 in a moment, but
11 let's quickly move through the rest of them. Can I turn
12 your attention to Exhibit 18?

13 A (Witness complies)

14 Q Did you review Exhibit 18 as part of your
15 determination in this matter?

16 A No.

17 Q You did not?

18 A No.

19 Q Can I turn your attention to Exhibit 19? Did you
20 review 19 as part of your determination in this matter?

21 A No, I don't believe I reviewed any of the
22 resolutions.

23 Q So you didn't review any of the resolutions?

24 A (No audible response)

25 MR. KENNEDY: Could the witness be asked to answer

1 the questions?

2 BY MR. JENSEN:

3 Q Let me just turn your attention to 20, 21, 22,
4 the rest of the exhibits are resolutions. It would
5 expedite it if you could just tell us if these are the
6 resolutions you're referring to you did not review?

7 A I did not review 19, 20, 21 or 22.

8 Q And can you just briefly look at 23, 24, 25, 26
9 and 27 and tell us if you've reviewed any of those?

10 A No to 23, no to 24, no to 25, and 26 the first
11 two pages no; however, the remaining I believe are the
12 same as CalPERS' 13.

13 MR. JENSEN: So, Your Honor, I'd like to offer the
14 remaining all pages in Exhibit 26 except for the first two
15 pages, I don't know if they're different or not, and the
16 one in our binder is striked through on page like 24, so
17 they're not identical.

18 THE COURT: There's nothing struck through on my 24.

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

20 THE COURT: Uh-huh.

21 MR. JENSEN: Mr. Kennedy, may I look at your
22 Exhibit 24?

23 MR. KENNEDY: I have a page --

24 THE COURT: Oh, I understand. He's talking about his
25 LEW-26, 27.

1 MR. JENSEN: Yes, that would be 27.

2 THE COURT: And 26 is also which document?

3 MR. JENSEN: Twenty-six would be not identical to
4 Exhibit 13, but it's similar but not identical.

5 MR. KENNEDY: We seem to have several format changes
6 to it, and there's some parts bolded, some parts stricken
7 out. There's no foundation laid.

8 THE COURT: I'm not going to receive 26. I've
9 already got 13 in evidence, which the witness testified
10 she did look at and rely on.

11 BY MR. JENSEN:

12 Q Okay. Can you look at Exhibit 26? Did you maybe
13 look at page 27 of Exhibit 26?

14 A That does not look familiar, no.

15 Q Okay. And what about 27, did you review that as
16 part of this matter?

17 A No.

18 Q So I just want to turn your attention back to 17.

19 MR. KENNEDY: Is that --

20 MR. JENSEN: In our binder, 17.

21 BY MR. JENSEN:

22 Q And, Ms. Lueras, you testified this was your
23 handwriting on here?

24 A Correct.

25 Q And with respect to EPMC, is it your position

1 that Mr. Lewis is not entitled to the EPMC under either
2 the management contract or under the rank and file
3 contract?

4 A I established that Mr. Lewis was in the group of
5 fire rank and file, and that written labor policy or
6 agreement did not stipulate for the paying and reporting
7 as special compensation of employer-paid member
8 contributions.

9 Q So according to the MOU for the rank and file,
10 how should the EPMC have been reported?

11 A I'm looking at CalPERS' Exhibit 13 because that
12 was the document that I reviewed.

13 MR. KENNEDY: If I can direct the witness's
14 attention, I think she's looking for page 24.

15 BY MR. JENSEN:

16 Q Twenty-four of Exhibit 13?

17 A Yes. CalPERS' Exhibit 13, page 24, it's under
18 Section 7, Retirement Plan F, it says:

19 "The City will increase the base
20 pay -- or base salary of all employees
21 covered by this agreement by converting
22 the 9 percent employer-paid member
23 contributions to base salary. The base
24 salary is compensation earnable as
25 defined in Government Code Section

1 20636(C) of the California Government
2 Code and shall be reported to the Public
3 Employees' Retirement System."

4 "Employees will then assume
5 responsibility for payment of the 9
6 percent employer retirement contributions
7 to PERS and all associated costs for
8 conversion of the EPMC to base salary.
9 The City shall designate such payment as
10 an employer pickup as defined under the
11 provisions of Section 414(H)2 of the
12 Internal Revenue Code. The employee
13 contribution to PERS shall be made
14 through automatic payroll deductions from
15 the base salary in accordance with PERS
16 regulations."

17 Q And did you review the EPMC provisions of the
18 management contract?

19 A I did.

20 Q And did the City process it, the EPMC, correctly
21 under the management contract for Mr. Lewis?

22 MR. KENNEDY: I'm sorry, what was the question again?

23 BY MR. JENSEN:

24 Q Did the City process the EPMC correctly under the
25 management contract?

1 MR. KENNEDY: That's vague, calls for speculation.

2 THE COURT: Overruled.

3 THE WITNESS: By saying "correctly," what are you
4 referring to?

5 THE COURT: Well, he's just asking, when the City
6 submitted it, did they do -- you pointed out in Exhibit 13
7 why you don't think it would qualify, where you have your
8 handwritten notes on this one 17, but looking at the
9 management MOU, did the City submit it that way as though
10 he was a management employee?

11 BY MR. JENSEN:

12 Q And if you could tells us which --

13 MR. KENNEDY: Is the question, did the City report
14 the EPMC?

15 THE COURT: Did the City what?

16 MR. KENNEDY: Did they report it to CalPERS under --
17 I mean, I don't know how the City -- my concern is the
18 question is generically, did the City implement the
19 provision of the MOU correctly? I don't know how this
20 witness can answer.

21 THE COURT: I'm just asking how it's reported because
22 as I understand the argument from Mr. Lewis's attorney is
23 that that's saying it's reported pursuant to the
24 management contract and that's what he's just asking her,
25 is that how they reported it?

1 MR. KENNEDY: Okay. Thank you.

2 THE WITNESS: I'm looking at CalPERS' 12, pages
3 marked 6, page 6, provision 5 I guess that would be, the
4 City adopted Resolution Number 2000351 with the
5 implementation date of January 1st, 2000 for paying and
6 reporting the value of the Employee-Paid Member
7 Contribution for EPMC under the guidelines of Government
8 Code Section 20636(C)4 pursuant to Section 20691, "The
9 City will report the 9 percent employee contribution as
10 special compensation to PERS." So, yes, they did report
11 it reflective of the management agreement.

12 BY MR. JENSEN:

13 Q And so why, if they reported it correctly under
14 the management agreement, did you not give Mr. Lewis the
15 benefit or determine that he was entitled to the benefit?

16 A Again, because he was covered under the rank and
17 file MOU with his position as fire captain.

18 Q So basically you're not giving him either way, he
19 doesn't qualify under either of the EPMC provisions?

20 A He does qualify for the conversion of EPMC in pay
21 rate in the final year as was stipulated in the rank and
22 file MOU.

23 Q He does qualify for that?

24 A Yes.

25 Q Was that benefit provided to him in this

1 determination?

2 A In the calculation, I don't believe so.

3 Q And why was it not?

4 A The EPMC that was reported as special
5 compensation was calculated based on all compensation
6 reported to the system, so it did include items that I
7 considered to be not compensation earnable. Only the
8 portion of compensation earnable can be used to calculate
9 the amount of employer-paid member contributions.

10 Q So for these purposes, you're conceding that
11 Mr. Lewis is at least entitled to the rank and file
12 9 percent EPMC that increased his pension?

13 A Possibly, yes.

14 Q And what is the caveat about possibly?

15 A Because it's the contract provision to increase
16 the pay rate in the final year, that's the employer's duty
17 to process those adjustments.

18 Q And so if the employer doesn't do it, he's not
19 entitled to it?

20 A We can only use the compensation reported to the
21 system in the calculation of a benefit, we can't increase
22 or say there is additional compensation out there, we just
23 don't have any record of it.

24 Q Well, but they actually reported the higher
25 compensation in any case?

1 MR. KENNEDY: Objection, mischaracterizes the
2 witness's testimony.

3 THE COURT: Well, he's asking -- that's why he's
4 asking what the City did with their document, so
5 overruled.

6 MR. KENNEDY: I'm sorry?

7 THE COURT: He's not asking her testimony, he's
8 asking about how the City reported it on their documents.

9 MR. KENNEDY: Yes, and I understand, and he indicated
10 that the compensation was reported by the City as
11 special -- I mean, the EPMC that the City reported was as
12 special compensation. The EPMC that we're speaking of now
13 is reported, needs to be reported, if at all, as an
14 addition to pay rate in the final year and that did not
15 occur.

16 THE COURT: Right. His question was about how the
17 City reported it.

18 THE WITNESS: So the City reported it as special
19 compensation, but again, it goes back to it was calculated
20 using items that were not deemed compensation earnable.

21 BY MR. JENSEN:

22 Q So let me just turn your attention to the second
23 page of 17. Is that your handwriting on the bottom?

24 A Yes, it is.

25 Q And so is this language not covered by

1 management, and what's that last word there?

2 A It says "reso," which is short for resolution.

3 Q And what does that mean?

4 A It was a question that -- typically when I do a
5 review, if I have any questions while I'm going through
6 the documentation that I can gather on my own, I'll write
7 the question down and then go ahead and ask that question
8 to the employer. At this point, I believe I asked what
9 resolution that he was covered under, and in the e-mail --
10 I don't remember what exhibit that was, let me get that.

11 THE COURT: 17.

12 THE WITNESS: Can I see that? In 17 they responded
13 and said, "Fire captain is covered under fire MOU;
14 however, the position of fire battalion chief is covered
15 under fire management." So I suppose I posed the question
16 as what MOU are each of the positions under.

17 BY MR. JENSEN:

18 Q So with respect to 17 --

19 MR. KENNEDY: That's CalPERS' 17; right?

20 THE COURT: Yes.

21 BY MR. JENSEN:

22 Q With respect to CalPERS' 17, it's missing the
23 e-mail that you sent?

24 A Yes.

25 Q And what was the reason for not providing the

1 e-mail you sent?

2 A I'm not sure.

3 Q Do you recall what the e-mail you sent said?

4 A I believe it was just the typical e-mail
5 introducing myself saying I'm reviewing this account, I
6 notice X, Y and Z, can you provide me documentation.

7 Q And did you have any follow-up e-mails with her?

8 A I believe this was the last e-mail that I
9 received.

10 Q So you just sent one e-mail to her?

11 A I believe so.

12 Q And she gave you one response?

13 A Yes.

14 Q And did you follow up with any more questions to
15 her afterwards?

16 A I do not believe so.

17 Q And was this the sole basis, the information you
18 received the sole basis of your denial?

19 MR. KENNEDY: Objection.

20 THE COURT: Asked and answered. Sustained.

21 BY MR. JENSEN:

22 Q So let me just turn your attention to the
23 exhibits, the second page of Exhibit 17. You have, it
24 appears, like some starred questions on the bottom?

25 A Yes.

1 Q Did you ask them about uniform allowance?

2 A I do not believe I did.

3 Q And why would you not?

4 A To be completely honest, I'm not sure.

5 Q And would a uniform allowance increase the
6 pension benefit?

7 A Yes.

8 Q And if there was information about a uniform
9 allowance, would you expect them to be provided under
10 special compensation?

11 A Say it again.

12 Q If there was payments for special uniform
13 allowance, would it be included as special compensation?

14 A Say it again.

15 Q Would any monies for uniform allowance be
16 characterized as special compensation?

17 A Yes.

18 Q And it appears here, it says, "Needs docs to
19 substantiate 738." What does that mean, \$738?

20 A I think it's 735.

21 Q 735, so where did you get that number 735?

22 A That was the amount that was reported.

23 Q And where do you see that reported?

24 THE COURT: Right next to the uniform allowance. If
25 you look above, it lists the four types of compensation.

1 BY MR. JENSEN:

2 Q And so why wasn't uniform allowance listed on the
3 first page?

4 A It's a different reporting period, it wasn't
5 reported in that period.

6 Q And were you challenging Mr. Lewis's uniform
7 allowance?

8 A No.

9 Q And is his pension based on including a uniform
10 allowance?

11 A Yes.

12 Q And let me draw your attention down to the third
13 star which is "acting pay" in quotes?

14 A Yes.

15 Q What is acting pay?

16 A Acting pay is also known as temporary upgrade
17 pay.

18 Q Is it a term of art?

19 A Is it what?

20 Q A term of art? I'm sorry, is it a defined term
21 in the -- in the public employees retirement law?

22 A No.

23 Q Is it a defined term in the regulations?

24 A No.

25 Q And is it a type of special compensation?

1 A We typically characterize it as temporary upgrade
2 pay.

3 Q And where do you see the phrase -- why did you
4 use the phrase "acting pay" in quotes?

5 A Why did I use that? I have no idea.

6 Q Have you seen the term "acting pay" used in other
7 parts of your work?

8 A It is actually defined in CalPERS' Exhibit 12,
9 the management resolution, it does have a stipulation for
10 acting pay.

11 Q Can you draw my attention to where that is?

12 THE COURT: What page are you on?

13 THE WITNESS: It is 7, Section M.

14 THE COURT: It's a similar definition to temporary
15 upgrade; correct?

16 THE WITNESS: Correct.

17 THE COURT: Thank you.

18 THE WITNESS: And if I can say that these bullet
19 points that I marked down were preliminary questions that
20 I had.

21 BY MR. JENSEN:

22 Q And did you follow up to see whether the City had
23 designated it as acting pay?

24 A That's when I reached out to the City and asked
25 if the reported temporary upgrade pay was pursuant to the

1 management definition of acting pay or why the payment was
2 made.

3 Q And did the City respond about acting pay?

4 A They responded with Exhibit 17.

5 Q Did they respond specifically to -- did you
6 specifically use the term "acting pay"?

7 A I do not have my e-mail in front of me so I'm not
8 100 percent sure how I characterized it in my initial
9 e-mail.

10 Q Well, that would be kind of important the
11 questions that you were asking?

12 MR. KENNEDY: Improper question.

13 THE COURT: It's argumentative, Counsel.

14 BY MR. JENSEN:

15 Q Okay. And so let's look at your last star here,
16 it says, "No holiday pay reported." Did you follow up on
17 that as well?

18 A That was just an observation that I made.

19 Q Did you follow up on it?

20 A No, I don't believe I asked questions about it.

21 Q And let me ask you: What is the percentage of
22 safety employees that is the -- is the work of the
23 Compensation Review Unit?

24 A I could not give you a percentage.

25 Q So approximately in your work, is half of it

1 safety officers?

2 A I can say that there's a higher volume of safety
3 over miscellaneous reviews.

4 Q So meaning more than half?

5 A On a given day.

6 Q And what are the primary points of inquiry when
7 you're looking at a safety officer's --

8 MR. KENNEDY: Is there a relevancy to this?

9 THE COURT: Sustained.

10 BY MR. JENSEN:

11 Q So I just have a couple sort of follow-up
12 questions. So do you have -- the Compensation Review
13 Unit, when it writes answers to letters, do you have
14 specific forms that you pull up and use?

15 A I'm sorry, I'm not sure what you're asking me.

16 Q Do you have like form letters that you send out
17 from the Compensation Review Unit?

18 A We have generic salutations on a letter in the
19 letterhead, but the content typically changes based on the
20 review itself.

21 MR. JENSEN: Okay. I have no further questions of
22 this witness.

23 THE COURT: Redirect?

24 MR. KENNEDY: Your Honor, given the hour, it's 4:15
25 and I'm sure there's going to probably be re-cross, could

1 we reserve that for tomorrow and do some housekeeping?

2 THE COURT: That's fine.

3 MR. KENNEDY: Thank you.

4 MR. JENSEN: So what is our day typically?

5 THE COURT: Well, he's asking to stop, so I'm not
6 going to -- anytime an attorney says he's tired, I'm not
7 going to force him to keep going.

8 MR. KENNEDY: The witness has been on the stand all
9 day.

10 THE COURT: Right. So let's go off the record so the
11 court reporter can take a break too.

12 (Discussion off the record)

13 (Hearing adjourned at 4:41 p.m.)

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REPORTER'S CERTIFICATE

I, Heidi Bamber, Hearing Reporter, do hereby
certify:

That the foregoing transcript of proceedings was
taken before me on October 13, 2014, at the time and
place therein set forth, was taken down by me in
shorthand, and thereafter transcribed into typewriting
under my direction and supervision.

I hereby certify that the foregoing transcript of
proceedings is a full, true, and correct transcript of
my shorthand notes so taken.

I further certify that I am neither counsel for nor
related to any party to said action, nor in anywise
interested in the outcome thereof.

In witness thereof, I have hereunto subscribed my
name this 13th day of November, 2014.



HEIDI BAMBER, CSR No. 12080
Certified Shorthand Reporter
For The State Of California

A	achieving	114:11 143:22	9:9	199:15,24
\$10,000 153:7	135:17	144:4,20 145:9	ago 78:1	200:2,7,10
\$2,000 72:20	acquire 128:23	145:10,11,19	agree 17:10	allowed 88:5,15
\$20,000 73:11	acronym 120:18	146:3 147:9,12	agreed 94:15	90:16 122:20
153:8	126:19	152:15	agreement 4:17	122:24 124:8
\$4,000 72:21	acronyms	adjustments	5:16,18 40:12	126:7 154:22
150:23	126:18	59:7 145:6	40:13 43:17	allows 90:23
\$5,000 153:11	Act 126:25	195:17	44:16 48:3,9	135:9
\$68,562 143:21	acting 102:10	ADMINISTR...	48:10,12 52:3	alluded 129:24
\$7,844 144:7,21	200:13,15,16	1:2 2:1	55:21,24 56:1	alters 163:14
\$738 199:19	201:4,6,10,23	administrative	56:5,6,7,16	ambiguous 62:1
\$8,107 144:7,22	202:1,3,6	1:5 2:4,21 9:10	57:24,25 60:3	Amended 4:10
148:4	action 15:19	13:4,7 167:20	60:19,19,21	16:7
\$9,037 68:8	75:19 101:2	168:2,8 171:20	61:3,7 65:24	amount 29:2,15
\$9,075 68:7	114:6	177:17	68:25 75:15	30:10 42:20
a.m. 2:19 9:2	actively 136:4	admit 27:16	86:10,12,20	49:8 63:12,13
abilities 54:8,16	actual 94:19	38:23 169:17	93:8,15,19	71:8,20,21,22
55:4	97:21 98:20,22	174:1 175:11	94:8,10 96:19	72:11,19,23,24
ability 99:20	151:25 152:2	175:13	98:15 101:8	73:2,11,14
132:23 158:20	175:6	admitted 39:2	105:3 112:7,20	88:4 90:1,21
158:23	addition 18:15	127:21	114:14,23	91:21 101:10
able 30:8,16	18:20 20:2	admonished	118:21 130:2	118:8 142:11
40:6 57:3	57:7,11,25	112:3	130:20,21,23	168:9 195:9
73:25 100:1	196:14	admonition	133:3 135:2	199:22
absence 90:15	additional 15:1	187:3	136:8,25	amounts 90:24
93:5 102:11,13	40:19 52:2,8	adopt 63:14	141:18 142:2,4	analysis 55:11
102:19	55:24 106:25	adopted 194:4	142:12 155:25	76:2 79:21
absences 92:23	150:23 159:4	advice 35:11	156:6,7 159:23	94:11 136:22
92:23	159:22 160:2	134:8	160:7 173:20	137:1 140:19
accepted 145:14	167:23 168:9	affect 91:13	173:21 175:24	140:25 151:9
145:16,17	185:17 195:22	164:10 165:8	175:25 176:7	151:19 152:12
access 42:13,14	address 156:15	affirm 15:8 85:2	176:14,18	152:23 176:24
accessed 42:16	185:20	affirmative	177:9 180:1	analyst 34:15
accompanying	addressed 38:6	20:10	191:6,21	77:20 79:24
142:7	126:16	afforded 65:23	194:11,14	116:2 122:14
accomplished	addressing	96:18 100:19	agreements	129:14
144:8	118:23	136:7 166:22	59:18 135:7	analysts 77:16
account 62:6	adhere 15:4	agencies 28:20	ahead 23:25	78:4,15 80:1
79:18 104:18	adjourned	agency 3:3 9:8	108:25 131:16	81:19 106:11
104:20,21	204:13	9:14,17 19:1	149:6 188:3	155:19
110:5 111:13	adjust 65:13	44:24 60:1	197:7	and/or 95:2,21
114:7 120:14	adjusting 33:4	63:14 64:20	allow 13:22	Angel 78:3,16
155:20 198:5	144:6	104:13 106:20	15:14,18 26:13	Angeles 3:13
accumulation	adjustment	129:22 133:16	135:5,12,25	animals 150:1
72:15	32:21 33:3,24	152:7 159:4	allowance	annually 30:5
Aces 28:22	60:8,9 67:22	AGENCY'S 4:2	183:23 184:3	73:11
	68:3,4,6	Agnes 1:5 2:4,20	199:1,5,9,13	anomalies 70:21

answer 30:12,17 31:24 32:1 52:15 62:5 79:6,10,11,11 79:13 92:14 112:16 115:22 117:21 123:6 136:19 149:17 155:10 163:15 188:25 193:20	appearances 3:1 9:13 appears 113:16 143:21 149:7 198:24 199:18 apples 161:24 162:1 applicable 158:11 application 5:3 6:18 48:4 61:17 151:21 151:25 152:2 152:11 154:21 172:5 182:19 182:25 183:24 applied 47:2,10 apply 30:3 62:10 77:17 141:19 156:18 167:12 applying 77:22 158:5 appreciate 19:23 31:23 approach 21:24 107:8,13 108:13 137:20 138:15,18 189:19 approaches 104:13 appropriate 17:25 19:25,25 121:24 124:22 approvable 51:21 approximately 143:15 202:25 April 16:5 area 30:16 61:23 81:12 argue 150:19 arguing 150:15 argument 10:11 10:18 14:13,23 15:22 20:24 31:23 43:9	150:7 151:13 193:22 argument's 21:2 argumentative 133:21 202:13 arguments 10:2 13:5 169:23 170:1 art 200:18,20 articulated 53:11 92:16 ascertain 40:7 57:3 asked 28:10 29:25 78:24 79:3,5 90:2 92:16 125:3 127:24 129:22 131:11 134:21 135:13 136:15 142:4,15,20 149:23 156:3 161:5,13,20 163:1 166:18 170:22 176:11 176:21 184:13 188:25 197:8 198:20 201:24 202:20 asking 31:11,18 37:6 54:20 76:13 79:10 81:2 95:23 106:21 112:13 115:3 119:1 149:11 151:14 163:12,21 176:23 179:13 193:5,21,24 196:3,4,7,8 202:11 203:15 204:5 asks 123:11 assertion 20:17 124:15 assign 99:18,21 100:1,3	assigned 9:10 70:12,13,14 97:5,7 142:10 159:24 167:9 167:18 168:1,8 assigning 100:8 assignment 54:9 54:16 55:6 100:10 158:21 158:24 167:7 assist 30:8 assistant 167:21 associated 28:8 43:19 73:4 93:16 98:6 100:23 110:23 147:16 152:5 159:8 164:12 192:7 assume 98:10 105:2 118:16 118:25 126:15 136:19 140:17 140:23 164:6,8 192:4 assuming 98:5,8 98:11,13 151:2 151:15 assurance 124:10 126:6 assured 122:20 124:7 attach 18:11 21:7 attached 17:24 18:6,14 19:1 38:20 41:18,20 147:8,12 170:23 176:14 185:22 attachment 8:5 16:10,13 19:7 attempt 40:19 61:21 147:22 148:2 attempting 52:9 115:20	attention 27:1 34:3 36:24 40:14 42:6,8 44:5 49:17 58:2,17 66:3 67:1 70:11 72:18 73:18 89:3 92:2 93:15,21 94:4 94:20 95:15 103:11 107:6 108:5 111:15 112:18 119:16 122:6 124:17 125:16 127:17 128:7 143:14 147:7 162:19 167:6 169:3 170:17 171:23 172:11 173:6,9 173:13 174:18 175:17 176:1 178:8 180:24 182:2 184:10 185:2 186:6,12 187:7 188:12 188:19 189:3 190:18 191:14 196:22 198:22 200:12 201:11 attorney 16:18 53:20 193:22 204:6 Attorney's 60:2 ATTORNEYS 3:11 attributed 119:18 146:17 148:13 audible 188:24 augment 18:1,18 authenticated 121:19 172:21 author 36:13 authored 113:9 128:12 177:14 authority 90:23
--	--	--	--	--

99:4 100:7 authorization 185:18 authorized 69:3 automatic 192:14 automatically 71:13 autonomy 14:1 14:11 available 42:24 43:5 73:22 91:17 117:18 129:18 131:5 141:22 153:16 153:18,21 154:18,25 155:7,19 awarded 166:8 aware 25:24 50:17,20 68:22 71:17 87:9 97:4 99:12,15 99:17 104:24 106:11,24 107:2 109:15 110:18 113:2 134:18,23 148:5 157:5,8 162:10	141:15 142:21 146:8 148:9 149:9 151:15 164:16 168:15 180:16 190:18 196:19 background 36:16 76:6 Bamber 1:23 2:22 bank 185:20 bar 13:24 bargained 167:2 bargaining 46:22 barred 14:10 base 35:14 48:24 49:21 65:2 104:20 118:24 136:20 191:19 191:20,23,23 192:8,15 based 34:24 63:10 96:24 135:17 140:2 195:5 200:9 203:19 basically 35:16 35:17 49:7 83:20 149:22 151:14 153:5 159:7,11 162:11 176:18 194:18 basis 92:5,10 97:22 133:2 140:8 141:9 198:17,18 Bates 108:6 111:16 battalion 5:4 8:9 13:20 14:3,9 44:7,9,10,24 47:24 48:2,11 48:13,14,17,20 49:1,9 57:23 58:8 59:9,10	60:15 68:22 93:10,13 94:16 95:3,6,17,22 96:4,6,16,18 96:21 98:9,12 98:14,17,18,23 99:18 100:4,9 101:5 103:4 130:6,15 134:20 135:17 135:18,22 136:1,5,6 137:6 138:5,13 139:17,21 140:6,9,18,22 141:8 142:1,14 145:2,3,14,21 148:5,10 149:10 151:16 151:18 152:7,9 152:21,22 153:16,22 160:10,19,22 160:24 162:12 162:18,22 163:9 164:8,12 164:22 165:1,8 197:14 bearing 90:10 95:25 147:3 began 134:11 beginning 9:13 33:16 127:25 begins 111:25 begs 83:23 behalf 17:4 31:16 37:20 41:16 63:16,18 63:21 64:25 69:3 70:8 77:22 82:15 111:6 117:24 123:6 belabor 125:13 believe 12:8,11 13:8,12,21 14:10,20,24	15:11,18 16:11 17:25 18:3,5 18:14 26:24 28:20 32:23 43:19 44:1 48:4 58:23 68:24 71:8 78:1 79:5 87:18 89:4 92:15 94:7 105:17 113:21 113:24 114:16 154:7 157:17 162:5,6 163:23 168:20,25 169:16 177:8 178:7 180:4 181:12 183:12 186:3,17 188:21 189:11 195:2 197:8 198:4,8,11,16 199:2 202:20 benefit 63:20 65:23 68:21 69:1 91:23 95:7,8,16 96:18 100:19 100:22 101:7 104:14 116:8 119:15 154:5 154:11 194:15 194:15,25 195:21 199:6 benefits 9:6 24:19,24 43:19 70:10,25 93:10 93:16 95:3,6 95:10,21 96:16 98:18 123:1 136:1 141:21 166:7 Bernardino 1:13 1:18 2:12,18 9:1,7,11 14:8 14:17 16:18,23 16:25 17:12	38:5 45:3 47:11,19 49:22 58:6 75:4 82:20 97:3 99:5,9 128:23 137:7 169:21 best 71:6 125:7 better 153:7 beyond 169:25 binder 13:18 27:2 37:8 72:2 72:4 94:5 107:7 169:3 170:18 171:24 172:12 173:7,7 173:14 178:5 182:3 189:16 190:20 binding 13:13 14:7 birth 185:21 bit 23:24 26:13 26:15 29:22 105:8 133:1 blame 132:12 blaming 132:16 132:18 board 1:2 2:1 46:11 158:24 body 46:11,12 158:14 bolded 190:6 bonus 36:4 bottom 111:17 113:5 174:3 196:23 198:24 Boulevard 3:12 Box 3:7 BP 128:17 break 69:16 102:5,25 105:4 105:17 168:12 204:11 brief 13:6 170:11 briefly 67:2 118:4 172:18
B B 4:6 5:1 6:1 7:1 8:1 11:10 94:20 B)1 92:4 back 24:8 49:13 51:18 62:21 67:2 69:20 82:3,7 91:16 91:19 103:3 104:8,11 105:11 116:21 119:16 131:4 133:1 134:10 134:13,16 136:19 138:2				

189:8 bring 13:7,10 138:23 bringing 13:4 broken 44:19,20 brought 13:22 73:17 95:15 bucket 35:17 115:1,21 117:1 118:16 119:11 bullet 201:18 bunch 86:16 business 107:22 128:14,20,21 152:25	110:5 111:12 119:9 called 22:9 23:1 28:22 70:12,16 107:19 109:8 110:19 113:3 127:22 136:25 calling 111:6 calls 29:5 35:3 60:25 61:12 94:18 96:7 99:22 103:8 111:11 114:18 115:2 122:25 123:11 127:14 149:1 193:1 CalPERS 5:11 6:13,16,19,23 6:24 9:11 10:4 13:3,9,12,18 13:19 14:3,6 15:17,18 16:3 16:14 18:6,10 18:13,17 20:14 21:21 22:24 23:7,17 25:11 25:15,18,25 26:3,10,18,19 26:23 27:2 28:13,14,18,19 29:11,17 30:7 30:20 31:16 34:7,17,25 37:2,3,7 38:24 40:24 41:21 42:3 44:6 45:7 49:18 60:3 64:23,24 65:3 65:9 70:3 71:23 72:3 73:12 75:9,12 77:19 94:4 95:9,16 103:15 104:5 105:22 106:14 107:4 107:18,21,22 109:6,11,23,23	110:3 117:11 117:25 128:1 128:19 129:2 131:11,13,19 131:22 132:3,5 132:10 133:5 135:4,6,9,10 135:12,24 141:15,15,21 145:14 150:8 152:13 155:8 155:12 161:18 163:9 168:23 169:3 170:18 171:24 172:12 172:17 173:19 180:5,15 181:13,21,23 181:24 182:11 182:18,23 183:13,18 185:5,6 187:13 187:15,18,20 189:12 191:11 191:17 193:16 194:2 197:19 197:22 201:8 capable 31:3 capacity 57:23 58:11 59:10 158:2 160:9 captain 5:6,9 8:7 43:18 44:2,4 44:12,23 47:18 48:2,5,25,25 49:9,15,21 56:22 58:12 63:24 94:19 98:9 100:4,8 101:5 138:4,10 138:12 139:18 140:18 141:25 145:3,20 150:24 152:3,4 152:5,8,23 154:23,24 160:6,9,17	162:15,17 194:17 197:13 captain's 60:14 captains 56:25 capture 78:22 114:8,9 134:11 138:24 177:25 captured 111:9 111:14 147:23 captures 109:21 cares 151:11 Carlous 4:22 6:7 6:10 13:17 34:8,12 75:14 78:2,9,11,16 81:10 113:9 118:22 124:19 142:21 Carlous's 39:7 case 9:7 12:12 14:20 15:7 18:5 20:7,8,12 21:11,11 22:3 34:2 36:18 45:3 51:19 61:21 62:10,16 63:23 69:4 70:11 73:10,17 74:3 82:24 83:15 90:25 92:22 103:2 104:9 118:9 134:12,19 135:16 141:10 146:14 151:1 154:6,23 158:11 167:12 173:25 195:25 case-by-case 79:16 cases 19:2 cash 166:7 cat 54:6 catches 101:24 categories 27:15 35:20 category 45:20	67:11 69:5 108:10 109:3 cause 72:12,12 73:14 caveat 195:14 cease 64:25 65:9 65:12 66:20 center 30:6 certain 13:21 42:22,25 90:19 132:4 certainly 79:16 82:9 92:9 certainty 177:6 certificates 185:22 Certified 2:22 challenge 20:19 20:20,21 21:4 challenges 13:3 13:9 20:4 challenging 187:15,18,20 200:6 Chamberlin 4:20,24 6:5 38:4 43:13 58:23 170:22 170:25 186:18 186:19 chance 34:21 39:18 40:3 101:16 107:24 change 13:14,23 14:9,18 88:19 90:12,13 93:3 96:22,23 100:4 101:4 112:22 120:16 129:25 133:6 137:1 140:25 141:9 150:12 151:9 151:19 152:23 164:14,23 165:12,13 changed 129:1,6 136:21 140:19
C				
C-A-R-L-O-U-S 34:12 Cal 113:2 calc 127:1,3 129:2,11 calculate 127:2 127:8 146:23 147:5 195:8 calculated 94:18 101:14 195:5 196:19 calculating 45:16 calculation 1:8 2:7 9:6 11:23 24:18,24 32:25 70:10,24 90:8 91:24 116:7,10 119:15 122:21 122:24 127:6 141:20 154:4 154:11 195:2 195:21 California 1:3,4 1:18 2:2,3,18 2:24 3:3,8,13 9:1,16 35:25 45:21 116:11 166:3 192:1 call 21:22 30:6				

149:24 changes 14:4 29:21 30:2 190:5 203:19 characterizati... 84:14 characterize 35:11 37:14 89:25 132:23 145:22 201:1 characterized 106:4 133:7 145:19,21 151:12 199:16 202:8 charter 13:1 14:1,5,11,19 20:4,19 21:1 chase 150:5 check 33:16 73:7 172:18 185:19 checks 10:24 11:10 chief 5:5 8:9 13:20 14:3,3,9 20:7,13 38:3 44:7,9,10,24 47:24 48:2,11 48:13,15,17,21 49:1,9 57:23 58:8 59:9,10 60:15 68:22 93:10,13 94:16 95:6,17 96:4,6 96:16,18,22 97:25 98:2,9 98:12,14,17,18 98:23 99:4,18 99:18,20,25 100:3,4,7,9 101:5 103:4 126:25 130:6 130:15 134:20 135:17,18,22 136:1,5,6 137:6,7,12 138:5,14	139:18,21 140:6,9,19,22 141:8 142:1,14 145:2,3,14,21 148:6,10 149:10 151:16 151:18 152:7,9 152:21,22 153:17,22 160:9,11,20,22 160:24 162:12 162:18,22 163:9 164:8,12 164:22 165:1,8 197:14 chiefs 95:3,22 chose 43:9 chosen 42:22 circular 29:20 30:1 circumstance 141:4 cited 133:23 city 1:13 2:12 4:14 5:11 6:11 6:23 9:7 13:1 13:20 14:1,5,8 14:17,19 16:17 16:18,24 17:11 20:4,19 21:1 38:5 40:21 41:15 42:21 44:21,22 45:3 47:11,19 49:21 52:9 59:17 60:2 61:7 66:11 75:4 82:19 93:9,12 94:15 95:15 97:6,24 99:5,9 100:6 124:24 128:23 134:19 135:11 136:5 137:7 138:23 139:15 140:3 141:12 146:7 148:18,21	149:8,12 150:8 150:11 151:16 152:20,24 153:19 154:14 156:14 161:4 162:21 169:21 170:2,4 172:16 175:4 177:18 191:19 192:9 192:20,24 193:5,9,13,15 193:17,18 194:4,9 196:4 196:8,10,11,17 196:18 201:22 201:24 202:3 city's 14:11 41:17 66:12 73:24 160:23 169:23,23 170:12 claim 51:19 Clarification 11:9 clarify 125:14 127:21 clarity 11:15 161:8 class 46:15,15,17 46:24 47:4,6 47:10 56:8,14 56:19,21 57:6 66:24 69:6,10 130:21 131:1,6 131:7 167:2 classes 44:20,22 classification 46:4,12 47:17 47:18 100:17 158:14 classified 47:18 clause 130:21 clear 11:19,20 12:24 37:1 82:18 167:16 clerical 168:8 code 24:23 35:25	45:21 46:18 54:6 59:6,7 60:6,7,8 64:10 89:12 116:11 146:4 157:14 162:5,5,7 165:21 166:3 191:25 192:2 192:12 194:8 collateral 7:19 10:12 12:25 13:5,11,23 15:12 20:20 collective 46:22 column 147:9 181:23 columns 181:23 come 30:14 70:11 79:17,25 133:13,15 165:10,16 comes 19:21 87:3 151:23 coming 21:15 79:22 152:12 179:11,14 commencing 2:18 common 28:21 33:8 80:15,21 97:6 106:13 138:22 commonly 101:10 167:20 communication 126:4 communicatio... 110:1 comp 52:19 63:22 67:14 72:12,13 73:2 73:6,14 106:18 110:16 117:5 123:11 133:14 134:7 147:18 150:16,23 155:2,4 162:3	compare 176:11 176:22 181:14 compared 74:4 comparing 38:9 compen 35:19 compensate 142:19 compensated 141:3 159:25 160:10 compensation 1:9 2:8 3:6 11:23 13:20 14:2,9 23:20 24:13,14,17,17 24:21,22 25:10 25:18 26:1,5 26:11,17 28:2 28:3,6,7,9,24 29:3,3,10,10 29:15,16 30:3 30:10,24 31:9 31:10,17 32:24 33:3,24 34:16 35:2,9,15,20 35:21,23,25 36:2 37:20 38:12 39:21 41:16 45:10,15 45:20 46:10 48:17,23 49:2 49:8 51:21 52:10 53:5,10 53:23 54:4,5,7 55:12,18,20 57:1,13 60:10 60:16 61:19,24 62:8,9,14 63:6 63:10,19 64:12 65:1,8 68:19 69:2 70:5,8,9 70:15,17,23 71:9,16,19,22 72:16,20,22,23 73:19,20 74:5 74:8,11,20 75:17 76:6,7
--	--	---	--	--

76:11,17,22,25	158:12,19,21	27:4 34:5	72:23	contracted
77:10,14,18,21	158:22 159:1,5	36:25 40:15	considered	65:15
78:8,20,22,25	160:2,21	41:22 42:2,9	46:21,24 87:9	contracts 64:20
79:4,23 80:18	161:17 162:15	49:19 58:3,18	117:20 144:4	64:22 67:8
81:11,19 87:3	162:23,24,24	62:22 66:5	161:21 195:7	contribution
87:7,7,13,17	163:11,14,14	111:19,21	consistently	63:15 64:21
87:17,20 88:3	163:18,22,24	120:9 122:10	72:19 148:21	126:25 192:13
88:6,7,13,24	164:12 165:13	127:19 128:9	167:9,18 168:1	194:7,9
89:4,9,12,13	165:25 166:8	175:19 181:1	constituted 53:4	contributions
89:20 90:10,12	166:11,15,16	186:14 188:13	constitutes	11:22 63:8
90:12,14,17	166:17 167:8	comply 91:22	29:10 159:1	64:11 65:5,10
91:5,7,18,20	167:17,25	93:1	consult 76:16	65:13 66:1,19
91:22,22 92:3	168:3 187:14	compound 28:16	contact 29:20	66:20 191:8,23
92:3,11,21,22	187:16 191:7	computer 71:13	30:6,11,15	192:6 195:9
92:25 93:3	191:24 194:10	124:17	38:5 114:6,11	conversation
96:4 103:23	195:5,5,7,8,20	conceding	contacted 31:1	75:3 109:21
104:7,10,22	195:22,25	195:10	41:15 110:16	conversion 64:5
106:9,12 112:9	196:10,12,19	concept 24:25	contacting	64:8 66:18
114:24 115:9	196:20 199:10	concern 88:2	109:23	67:10 109:3,6
115:13,19,20	199:13,16,25	144:24 193:17	contacts 30:20	192:8 194:20
115:22,23,25	200:25 202:23	concerning	106:25	conversions
116:1,2,4,13	203:12,17	39:20 61:8,24	contained 65:23	166:7
116:16,17,23	competent	170:2	154:18	convert 63:20,21
117:2,10,23,24	123:16 124:1	conclusion	contemporane...	65:1 66:20
118:1,13,18,25	Complainant's	45:14 53:7	26:4	converted 64:12
119:2,8,11,13	4:7 5:2 10:6	62:12 79:25	contemporane...	109:10
119:13,14	11:16 17:15,17	conditionally	27:10	converting
122:14,20,23	21:19 27:23	175:11	content 203:19	191:21
123:14 124:7,9	39:4,12 41:2	conditions 54:9	context 41:11	converts 72:21
124:13,20,22	50:9 51:10	54:17	116:24 176:10	copies 19:14
124:25 126:7	63:3 171:11	conduct 76:14	continually 95:6	42:23 137:9,13
126:24 127:10	172:8 173:3	conducted	continue 58:10	137:17 138:8
127:11 128:14	178:21 181:6	124:12 164:23	90:14	186:19
129:19 130:1	Complainants	confidential	continued 5:1	copy 19:12,13
131:5,7,9,14	27:22	43:22 167:7,22	6:1 7:1 8:1	22:3 41:4
131:20 132:11	complete 18:11	167:23	149:12	75:14 118:20
132:13 136:21	43:1 123:13	confirmation	continues	121:22 137:10
139:2 143:12	completely	170:22	111:17	137:11,21
144:1,5,25	174:23 199:4	confirmed 82:16	continuing	156:14 176:18
145:7,8 146:2	completeness	confusion 19:16	53:15 121:2	178:10 186:18
146:22 147:3,4	43:3	connection	contract 5:10	corner 138:14
147:23 148:16	compliance	166:9 170:9	6:22 14:17	correct 11:24
148:19,22,23	80:20	consecutive	63:20 64:23,24	12:1 18:8 21:9
149:11,22,25	compliant 91:19	154:1,2	172:16,19,22	22:21,25 25:1
150:25 151:23	complicated	consider 15:22	191:2,3 192:18	28:25 32:18
153:2,25 154:9	80:17	31:6 158:4	192:21,25	34:20 35:18
154:10,12	complies 22:1	considerable	193:24 195:15	36:10,11 38:7

38:12,16,20	75:19	34:12 35:5,22	127:15,24	183:6,8,11,23
43:14,23,25	costs 192:7	36:6,18 37:1	128:3 129:5,9	184:1,7,15,20
44:10 45:10	counsel 3:5 9:16	37:10,18 38:15	131:16 132:15	184:23 185:11
46:8,9 49:3	14:12 23:4	38:25 39:2,5,6	132:18 133:9	185:15,21,25
51:3,17,22	26:7 37:10	39:9,11,13,23	133:11,22	186:4,9,22,25
52:3,10 53:8,9	41:4 45:5	41:1,3,14 43:6	134:22,25	187:2 188:3,6
55:15 56:12,20	50:11 51:8	44:17 45:1,5	135:14 136:16	188:8 189:18
56:23 57:2,10	74:12 81:1	46:19 47:13,23	136:24 137:4	189:20,24
57:14,17 58:23	86:13 91:11	48:1,6 49:25	137:22,25	190:2,8 193:2
58:24 60:17	92:19 93:20,25	50:6,8,10,11	138:2,7,10,16	193:5,15,21
61:19,20 64:6	105:5 108:16	50:14,16,19,22	139:8,16,24	196:3,7,16
64:24 65:6,22	121:22 125:11	51:3,6,8,11,24	140:12,14,23	197:11,20
65:24 66:24,25	135:19 150:6,7	52:5,12,22,25	143:4 144:13	198:20 199:24
67:12,13,15	150:19 151:5	53:16,19 54:19	144:15 145:17	201:12,14,17
68:15,20 69:11	151:14 161:14	58:15,19 59:22	145:23 146:6	202:13 203:9
73:15 79:21	168:17 173:11	60:25 61:14	146:11 147:20	203:23 204:2,5
80:2 82:12,13	202:13	62:2,19,23	149:6,16,20	204:10,11
83:25 88:25	couple 78:3	63:2,4 64:14	150:6,20 151:3	Court's 13:6
91:3,10 98:3,4	176:8 184:15	64:18 65:21	151:13 152:11	21:3 46:5
102:14 104:16	203:11	66:14 67:20	152:17 153:5	47:21 69:16
111:11 112:15	course 91:16	68:2,9,13,16	153:11,13	courtroom 9:24
112:16 113:22	98:7 171:25	69:14,18,20	155:17 156:4	12:17
117:7 118:13	177:23	74:14 76:19	157:11,18	cover 5:17
121:4,9,12	court 7:24 9:5	77:2 79:8 81:3	161:6,14,21,24	118:20 156:13
130:6,16	9:21,25 10:7,9	81:7 82:2	162:1 163:3,21	175:23
131:25 133:19	10:10,15,17,21	84:19,22 85:5	164:6,13,15,17	covered 68:22
137:3 143:11	10:23 11:2,3,7	85:8,11 86:12	164:25 165:3	191:21 194:16
143:25 145:11	11:11,13 12:1	86:15 87:23,25	165:21 166:5	196:25 197:9
145:15 148:11	12:3,9,19,23	88:9,13,17,23	166:13,19	197:13,14
150:6 151:8	13:6 14:14,22	89:1 90:3 91:1	168:11,13,15	create 135:25
154:19 155:3,6	14:24 15:1,3,6	91:11 92:18	168:21,23	creation 109:12
156:2 159:9	15:8 16:2,24	93:20,25 94:8	169:1,7,20	credit 88:14,21
160:17 161:22	17:2,3,5,13,15	96:8 99:2,11	170:5,14,25	135:22 146:21
161:23 163:19	17:19 18:3,10	99:23 102:2	171:6,8,10,12	147:8,16,19
164:13,15	18:16,24 19:9	103:8,17 105:5	171:19 172:4,7	criteria 45:23
178:22 179:7	19:17 20:11,23	105:9,11,23	172:9 173:2,4	92:13 131:6
180:18 183:1	21:5,8,9,11,16	107:9,11	173:20 174:2,9	157:23 159:5
190:24 201:15	21:20,24 22:5	108:14,22,25	174:12 175:13	cross 4:2 183:15
201:16	22:10,12,16	110:24 112:5	176:13,17,23	cross-examina...
correcting	23:4,12,14,25	113:13 114:19	177:16,20	20:13 69:14
146:16	24:3,6,8 25:4,6	115:3 117:10	178:12,14,18	70:1
correctly 192:20	25:13,20 26:7	117:13 119:22	178:20,23	cross-examine
192:24 193:3	26:13,17 27:12	119:25 120:12	179:2,5,10	43:6
193:19 194:13	27:17,21,24	121:16,22,25	180:8,11,14,19	crossing 153:7,9
correlate 145:5	28:16 29:6	122:2 123:8,18	181:5,9,11,17	CSR 1:23 2:22
145:25	31:23 32:3,6	123:21 124:3	181:19,22	CTP 127:22
correspondence	33:7,17,19	125:4,10	182:18,23	curious 162:10

current 95:2,21	decrease 67:24	derive 146:20	155:7,22	91:8,12 98:8
currently 22:23	68:8	describe 63:9	157:12 160:23	114:25 115:12
25:15	deduct 74:5	77:19	163:15 164:10	115:15 117:25
customer 76:3	deductions	described 90:7	164:14,18	132:23 143:5
107:19 109:8	192:14	97:2 149:11	169:12,13,15	150:1 151:2,6
cut 150:4 181:15	deemed 196:20	designate 192:9	171:25 172:13	151:6 155:11
181:23	default 17:1,4,9	designated	173:16 179:15	155:14 156:11
	169:20,24	201:23	179:18,23	159:8 160:15
D	Defense 8:4	designations	182:7 187:23	163:16 174:1
D 4:1	18:14,18,19,21	14:4	188:15,20	178:18,24
database 108:3	18:24 19:6,22	desk 23:24 109:8	195:1	179:6 180:6
110:23 113:3,7	20:1	detail 5:7 64:7	determinations	181:15 189:15
113:19 114:2,5	defenses 20:9,10	67:2,17 71:10	31:7,7,8 78:23	200:4
124:17	deferred 117:23	71:15 187:14	155:12 184:21	differentiation
date 109:12	117:23	determination	184:23	163:13
144:15 147:14	define 33:15	4:11,21 6:6,21	determine 14:2	differently
178:24 179:6	57:12 158:6	13:13,15,17	24:20 29:13	119:1
180:25 181:4,6	defined 24:22	15:12,20 16:8	43:19 47:6,24	difficult 126:21
194:5	46:1,2,10,18	16:14 31:15,20	48:1 53:3	difficulty 24:2
dated 5:12,23	54:5 91:5	31:22,25 32:2	61:22 62:7	direct 4:2 22:19
6:8,11 7:21	157:16 166:3	32:5,7,10 33:4	78:21 117:14	27:1 34:3
10:24,25 16:4	191:25 192:10	34:25 36:13,14	119:7 129:18	36:24 40:14
16:15 40:25	200:20,23	36:21 37:19	154:9 159:13	42:6,8 44:5
59:12 61:4	201:8	38:11,23,24	159:16 194:15	49:17 52:25
129:13,16	defining 165:23	39:3 47:13	determined 45:8	58:1,17 66:3
dates 178:18	definition 62:8	51:16 54:1,14	63:12 87:8	67:1 70:17
day 61:5 203:5	89:3,13 92:21	54:20,21 59:4	118:17 119:3	73:9 92:2
204:4,9	157:3,9 158:10	69:8 70:9 77:4	129:2 141:7	93:15,21 94:4
days 54:9,16	158:21 162:23	82:8 83:2,4,18	155:4 156:16	103:11 104:8
55:8 113:10	167:16 201:14	83:19,20,24	160:16,21	152:1 174:18
126:3,6	202:1	84:4,6,10,12	determines 29:9	183:15 185:18
deal 87:4 139:22	definitions 54:3	84:13,17 85:21	determining	187:7 191:13
161:18 162:25	degree 164:3	91:6,14 96:1	79:23 90:21	directed 37:6
163:11	delineate 158:25	100:5 106:4,21	91:20 141:24	146:7
Dear 183:3	delineations	112:8,12,15,20	difference 60:13	directing 108:15
decide 83:9,12	173:24	112:23,25	78:15 87:6,8	direction 132:3
decided 96:15	denial 19:21	114:15,23,25	91:6 100:24	134:16
158:11	198:18	116:22 117:19	101:12 106:3	directly 42:12
deciding 97:22	deny 13:9 15:3,9	118:22 120:15	145:2,20	61:16 65:9
decision 13:14	denying 132:22	120:16 125:1	148:17,23	92:12 186:18
15:6,16,17	department 4:19	129:12,15	149:14 162:17	directs 13:19
59:25 165:5	5:23 58:5 70:3	137:2 140:2	differences	disability 86:25
decision-maki...	70:25 97:3	141:24 142:3	98:10	87:5 92:23
164:20 165:9	99:9 102:10	148:24 149:15	different 28:21	162:22 163:19
decisions 14:8	depending 80:3	149:21,24	44:8 64:2	163:22 164:7
14:18	124:18 134:4,5	150:10,12	78:15 79:20,20	165:7 182:19
declined 16:25	deposit 185:18	151:5 154:15	80:1,1 90:22	182:24 183:5,6

disallowing 130:14	127:18 141:12 142:3 151:7	59:21 73:24 75:18,25 76:24	duly 22:9	115:17 117:17
disclaimer 116:5	156:12 169:11	77:3 79:24	duplicates 173:8	129:23 142:7
discover 152:13	170:18,20	80:2,5,14,24	duration 46:4,13	157:17
discrepancy 152:6	171:1,3,16,24	81:25 82:6,7,8	158:15	earnable 24:17
discretion 167:10,19	172:15 174:21	83:3,10,13,21	duties 14:2	24:21,22 25:10
discussed 35:1	174:24 175:20	83:24 84:3,4,9	24:15 46:4,21	29:4,10 30:3
discussion 10:1	175:22 176:4	84:12,16,21,22	48:14 70:7	31:10,17 32:24
24:7 38:19	178:6,6,24	84:24,24 85:11	93:2 96:3,5,11	33:25 35:2
161:1 204:12	179:3,4,25	85:19,20,23	96:17,21,24,25	38:12 39:21
discussions 10:19	181:24 182:4,5	86:3,5,8,9,16	97:2,4,18,21	52:10 61:24
dispute 86:10	182:7,10,11,16	86:18,21,24	97:23 98:5,8	62:8 63:10
103:1 135:9	182:18,23	100:16 101:1	98:12,14,16,20	70:9 73:20
disputes 135:11	183:2,3 184:5	101:15 105:18	98:23 99:13,18	78:22 79:23
distinction 88:21 106:2	184:5 185:5,6	121:20 127:23	99:19,21 100:1	87:7 89:21
174:6	187:8,11 190:2	128:1 129:15	100:4 130:6,15	91:7,20,23
distinguishing 117:5	191:12 196:4	129:21,23,24	131:2 136:4	92:3,4,25 93:3
distributed 19:14	documentation 36:20 40:19,22	137:19,23,24	139:17,21	96:4 116:1,2,4
division 38:3	41:18 54:13	138:21 139:5,9	140:2,6,9,17	116:13 118:2
docs 199:18	57:5 74:2,9	139:11 140:3	140:21,24	119:14 127:11
document 17:22	78:21 79:16	140:15,20	141:3,8 142:11	129:19 131:8
17:23 18:1,15	82:5 83:17,19	143:1,2,5	142:13 152:22	147:4 150:25
18:22,25 21:6	85:17 98:15	151:6,24 153:3	161:2,3 164:4	153:2 154:10
21:15 26:4	100:6,10,13	159:21 160:14	165:15,18	158:21 166:8
27:5,9,19,22	118:19 123:15	161:7 165:4	duty 8:6,8 24:16	166:12 191:24
37:12,14,16,23	124:11 127:10	168:19 174:6	97:5,6,9,14,16	195:7,8 196:20
38:10 40:16	128:15,23	175:3 176:22	137:6,19 138:3	earned 104:23
41:8,23 42:3,7	129:17 130:10	177:8 178:18	138:4 139:1,3	134:11
42:22 43:8,9	141:2,11,22	179:9 184:14	139:13,13	earnings 28:7
58:7,10,13,22	142:6,9,15,17	184:16 188:6	140:1 195:16	87:23 91:8
59:3,5,6,12,19	152:9,25 153:8	196:8	E	136:20 143:23
59:25 60:20,23	154:14 155:6	doing 14:14 85:5	E 3:4 4:1,6 5:1	143:24 146:17
61:12 66:11	155:18,21	118:25 140:2	6:1 7:1 8:1	146:19,20,21
68:9 71:25	159:20,20	154:16 159:19	102:3,8	146:22 147:1,2
72:3,8,17	197:6 198:6	165:6	E-A-S-L-A-N-D	147:5,15
73:17 82:22,25	documented 90:25 161:4	dollars 142:11	58:20	easily 80:19
83:1,15 84:8	documents 6:20	drafted 40:9	e-mail 4:23 5:12	Easland 4:18
93:18,20	10:3 11:15	58:4	32:17 40:25	5:22 6:4 58:5
103:20 107:15	15:10 16:1	drafting 37:23	62:19 75:3	58:19
107:17,25	17:20 18:19	39:16 54:1,13	106:20 170:21	East 2:17
125:17,25	19:1 20:6,16	draw 94:20	175:6 197:9,23	educated 123:6
	20:18 21:6,7,9	147:7 200:12	198:1,3,4,8,10	education 29:17
	21:17 42:21	201:11	202:7,9	117:18
	43:4 50:25	drill 141:23	e-mails 198:7	educational 30:4
	51:7,14 55:23	drive 147:4	earlier 29:25	30:5 163:25
		dropping 74:15	106:3 110:9	164:2 187:16
		due 46:2	112:14 115:7	effect 139:14
				effective 61:5

144:15 Eight 178:14 either 13:1 29:2 29:15 33:2 62:13 85:2 132:1 133:16 139:17 166:11 168:6 191:1 194:18,19 electronic 25:23 28:23 75:18,21 75:22,24 124:13 electronically 18:4 25:14 26:19 element 134:12 elevated 48:20 48:22 Eleven 185:15 emphasize 158:18 emphasized 158:16 161:11 employed 139:14 employee 46:23 47:3 65:8,17 117:10 123:16 124:1 159:12 159:16,19 160:3 166:7 192:12 193:10 194:9 employee's 65:4 65:4,10,10 Employee-Paid 194:6 employees 1:3 2:2 3:3 9:16 25:18 26:1 46:3,10,20 74:21 76:9,23 77:9 79:14 135:11 141:17 152:24 158:13 167:17 191:20	192:3,4 200:21 202:22 employer 28:2 29:1 30:6,9 31:25 32:3,4 32:23 33:1 46:3,11 65:3,9 65:12,25 67:8 74:2,7 85:18 104:11 109:24 110:2,5,14,16 110:19,23 111:5,5,6,12 113:1 117:14 117:17,18,23 119:9 120:18 120:25 128:20 128:22 131:10 131:20,22 132:11,12,16 132:19,22 133:6,19 134:2 134:13 135:5,9 135:25 141:22 152:13 158:13 159:9,12,15 160:1 163:8 192:6,10 195:18 197:8 employer's 110:8 160:5 195:16 employer-paid 11:22 63:8 64:11 66:18 126:25 191:7 191:22 195:9 employers 25:11 25:17,25 26:11 26:17 27:10 28:10,11,12,24 29:13,18,20 30:2,20 31:2 32:19 104:8 106:17,19 119:12 133:13 134:8 135:12	employment 29:11 46:15,16 65:4 70:20 88:11 133:6 154:2 162:21 166:10 168:2 English 153:5 ensure 24:17 91:18 127:11 141:19 153:1 ensuring 141:16 enter 17:4 84:9 114:10 121:14 entered 25:15 60:22 61:3,7 103:1 113:18 125:25 151:21 entire 48:16 51:1 56:8 59:5 75:24 131:5 136:12 167:2 entirely 109:14 entirety 108:1 entitled 96:16 151:12 158:9 160:21 191:1 194:15 195:11 195:19 entry 68:10 121:17 EPMC 63:7,7,12 63:24 64:1,1,2 64:19 66:9 67:10 68:18 168:10 187:18 190:25 191:1 191:10 192:8 192:17,20,24 193:14 194:7 194:19,20 195:4,12 196:11,12 equivalent 20:21 127:12 ER 120:17,21 error 133:14 134:3,4,5	146:19 errors 133:19 134:6,7 135:12 ESQ 3:4,11 essence 141:21 essentially 30:23 153:4 154:16 170:1 establish 89:23 89:24 established 76:7 191:4 establishes 19:4 establishing 90:1 121:8 estimate 183:4 183:24 184:3 estoppel 7:19 10:12 12:25 13:5,11,23 15:12 20:20 evaluation 164:10 event 185:25,25 evidence 4:7 5:2 6:2 7:2 8:2 10:16,22 11:8 13:15,16,22 15:11,14 19:10 21:20 27:24 39:5,7,13 50:10,17,19 51:11 63:4 103:6 121:14 122:2 132:18 140:24 141:7 168:20,20,23 169:9,18 170:24 171:12 172:3,9,24 173:4 174:15 177:11,20 178:12,21 179:11 180:3,4 180:14 181:3 181:11,16,19 182:14 183:11	183:21 185:9 186:21 187:2 188:1 190:9 exact 81:20 exactly 78:19 88:12 153:10 153:12 EXAMINATI... 22:19 examined 22:10 example 36:3 117:22 134:9 examples 134:6 excess 166:7 excluded 166:10 exclusion 12:14 exclusive 36:1 exclusively 159:1 excuse 9:18 10:25 24:13 77:25 160:9 167:4 183:15 excused 89:15 90:15 92:22,23 93:5 96:11 excuses 89:16 executed 60:21 exhaustive 36:1 exhibit 10:10,14 10:18,20,23 11:1,4,6,14 13:18 16:3,6,8 16:17,19 17:5 17:7,11,13,14 17:15,17,21,22 17:23 18:8,11 18:13 19:5,8 19:16,17 20:24 21:2,14 27:2,3 27:16,17,22,23 34:3 36:24 38:23 39:2,4,6 39:8,9,11,12 40:9,14,24 41:1,2,21 42:1 42:8 43:2,12
---	---	---	---	--

43:16 44:6	181:21 182:3	fact 29:1 31:9	Fifteen 50:8	194:21 195:16
45:7,12 47:10	182:13 183:10	58:10 151:8,11	186:25	196:14
48:8 49:18,24	183:12,13,17	154:10 160:24	fighters 168:1,6	Finance 4:19
49:25 50:3,5,6	183:18,19,21	163:21 164:25	fighting 14:6	5:20,23 58:5
50:9 51:10	183:21 184:2	165:7	168:7	find 57:5 64:10
58:2,17 60:20	184:11,11,21	fact/law 6:15	figure 100:7	73:25 75:11
62:20 63:2,3	185:3,3 186:6	factor 141:24	177:24	84:5,24 85:11
66:4 67:2 68:2	186:12 187:1	facts 15:2 151:2	file 36:9 39:19	85:13,23 86:9
68:13 72:1	188:12,14,19	156:10 164:9	40:3 44:23	164:18
74:23,24,25	189:14,22	164:18,19	47:8,14,19,24	finding 6:14
94:5 101:17	190:4,12,13	170:3,9	48:2 56:17,22	70:16,19 71:3
103:12,14	191:11,16,17	factual 90:18	56:25 65:25	85:9 86:25
105:18,22	193:6 197:10	141:7	66:23 69:6	126:16 151:22
107:6 108:21	198:23 201:8	factually 96:20	75:6,8,9,11,13	158:8
112:15,23	202:4	failed 134:19	75:16,18,21,22	findings 71:11
113:11 115:8	exhibits 10:2,4,6	fair 84:13 97:20	75:25 77:14	fine 19:15 22:5
118:15 119:17	10:8 16:3	116:14,21	80:7,25 81:25	24:1 179:10
119:22,23	17:20 21:19	126:24	82:24 83:8,14	204:2
121:14,16,25	27:2 37:2,7	fall 44:24 69:5	85:8,13,16	finish 93:23,25
122:1 125:18	51:8 138:6	115:21 118:1	101:17 114:12	123:19 183:14
134:14 136:17	168:21,22	falling 45:23	124:12,14	fire 5:6,9 8:7
138:3,4 143:10	173:6 189:4	falls 56:15 115:1	156:13 167:8	14:3,6 43:18
143:14,18	198:23	118:16	167:17,25	44:2,4,12,23
146:6 147:21	exists 99:13	familiar 44:21	191:2,5,9	47:8,18 48:2,5
152:1 168:24	expect 199:9	87:11 88:3	194:17,22	48:25,25 49:8
169:3,12,17	expected 124:8	89:6 107:3	195:11	49:15,21 56:22
170:17 171:8	expedite 189:5	108:2 120:11	filed 10:13 15:11	56:25 58:11
171:10,11,14	experience	123:23 133:25	18:4,6 19:20	60:14 63:24
171:19,23	30:19 33:10,23	162:6 182:5	files 18:5 39:24	69:6 74:21
172:2,7,8,11	34:24 104:8	190:14	73:25 80:4,15	97:3,24 98:2,9
173:3,13,16,19	126:9 134:7	far 15:19 27:18	filing 15:20	99:4,9,18,20
173:19 174:4,6	explain 43:15	48:17 49:4	21:11	99:25 100:3,3
174:7,7,12,19	57:19 64:7,18	53:10 59:24	filter 25:25	100:7,8 101:5
175:10,14,17	92:14,19	60:20 69:16	final 1:8 2:7 9:6	102:10 137:6
176:2,6,14,15	100:21,23,25	80:12 101:6	11:23 13:14	137:12 138:4
177:2,4,10,15	103:4 113:6	106:17 115:24	15:17,21 16:8	138:10,12
177:16,19	115:15 126:17	117:24 119:5	16:14 24:13	139:18 140:17
178:4,5,8,12	128:17	126:2 129:4	31:7,15,19	141:25 145:3
178:13,14,19	explained 90:11	142:2 170:9	32:2,5,7 36:13	145:20 150:24
178:23 179:17	extensive 80:16	181:23	39:2 63:22,22	152:3,4,5,8,23
179:18,20,21	83:17 178:7	fax 118:20	64:12 65:1,7,7	154:23,24
180:2,5,8,9,13	extent 62:25	156:13	66:20 72:16	160:6,9,9,16
180:15,16,17	82:3	feel 20:14 74:1	87:6,17,20	162:15,17
180:17,21,22	eye 101:24	83:7 129:17	106:3 144:25	167:25 168:1,6
180:24 181:2		fell 44:23	147:18 148:15	168:6 191:5
181:10,13,14	F	felt 57:19	153:25 165:25	194:17 197:13
181:16,17,18	F 66:6,15 191:18	field 168:7	166:1,2,6,10	197:13,14,15

fires 168:7	36:21 37:19	full-time 92:4,10	15:23 23:25	158:13
first 22:9,13,14	38:10,24	funds 149:12	24:4 37:7	government
42:19 52:22	106:21,22	further 10:19	69:18 70:24	24:22 44:22
59:11 63:25	format 32:8	69:12 74:1	72:12 82:19	46:18 54:6
69:15 73:16,22	190:5	94:17 203:21	90:20 91:16	64:10 191:25
106:18 108:6	formatted 99:14	future 95:2,21	101:21 106:22	192:1 194:7
116:15,22	forms 101:2	175:10	108:22,25	granted 95:3,22
117:6,13	203:14		116:21 127:7	166:8
118:10 120:19	forth 11:17 13:4	G	131:16 134:10	great 36:6 89:1
121:8 125:10	13:7,22 16:13	gather 73:23	136:11 137:25	139:22 153:13
155:12 176:3,5	19:18 25:2,8	76:1 78:21	149:6 160:25	186:2
189:10,14	forum 30:5	123:5,14 197:6	162:13 168:19	gross 73:13
200:3	forward 13:10	gathered 85:17	188:3 197:7	ground 81:9
fit 62:13 166:21	15:20,23 78:23	gathering 84:5	204:10	grounds 14:1
167:13 168:5	forwarded 71:2	general 73:10	goes 54:10 75:19	group 46:14,15
fits 62:8	found 45:2	110:19 111:5	77:21 82:3	46:17,24 47:4
five 78:7 136:10	50:25 74:4	generally 108:2	117:1 119:12	47:6,10 56:8
177:7	85:18 156:12	generated 71:12	147:13 157:20	56:14,19,21
fix 133:17 134:3	foundation	generic 71:11	158:24 196:19	57:6 69:6,10
134:8 135:5,9	25:12 27:11,18	203:18	going 10:10,17	130:20 131:1,5
135:12	27:20 28:15	generically	11:3,13 12:14	131:7 167:2,3
flag 70:22 71:12	33:6 41:13	193:18	15:8,11,15,22	191:4
71:19,23 72:12	54:18 66:13	Georgia 38:4	19:4 20:11	grouping 46:23
72:25 124:17	76:18 82:1	170:22,25	21:4,16 26:13	groups 44:20,21
flagged 72:18	84:18 99:10	getting 26:7 77:5	33:12,18 36:12	guarantee 32:24
73:3	103:5 137:18	147:19 151:20	43:2 46:17	guard 153:9
flags 73:7	155:16 170:10	158:7 159:2	68:9 91:19	guards 153:7
flat 101:9,10	174:11,15	164:7	92:18 101:12	guess 17:1 20:25
flow 70:13,13,16	177:12,14	give 11:18 18:10	101:14 108:18	128:25 175:9
fly 140:16	179:12 181:4	116:5 134:15	111:4 116:7	175:10 176:3
folder 156:8	184:4 190:7	137:15,20	130:23 131:4	194:3
follow 79:15	foundational	146:25 159:20	136:13 137:14	guidance 106:17
118:4 122:5	36:16 150:3	194:14 202:24	138:11 140:14	106:19
141:17 147:20	four 23:21 78:6	given 10:3 88:14	142:18,18	guidelines
198:14 201:22	108:23 169:1	134:8 137:2	151:5 153:24	141:17 157:6
202:16,19	177:7 199:25	142:6,8,9	154:4 164:16	194:7
follow-up 141:6	Fourteen 72:5	146:24 151:4	167:24 170:5	guise 31:19
198:7 203:11	fourth 104:2	152:21 160:11	171:19 173:2	Guitarrez 78:3
followed 131:22	frame 81:12	160:20 167:2	173:10 174:14	78:16
following 132:25	Frank 38:2,2,3	167:22 168:6	175:13 180:9	
follows 22:10	free 20:14	203:5,24	181:7 182:19	H
80:9 135:6	Friday 11:4 15:9	gives 19:2 31:24	183:8 184:7	H 4:6 5:1 6:1 7:1
force 204:7	front 40:8 84:9	36:1 157:23	185:11 190:8	8:1
form 163:3	86:22 135:2	giving 31:14	197:5 203:25	half 104:9
203:16	137:5 140:20	35:12 124:9	204:6,7,7	202:25 203:4
formal 4:11 6:21	151:25 164:25	164:18 194:18	Good 9:22,25	halfway 59:11
32:14 34:25	177:2 202:7	go 10:4,5 15:17	governing 46:11	143:15 144:13

144:14 hand 21:25 22:6 handle 135:10 handled 78:17 78:19 130:3 handles 135:11 handwriting 5:16,19 59:1 174:2,10,11,13 174:21,24 175:1,4,11 176:2,9,12,14 176:15,20,23 176:24 177:7 178:2,7,15,25 180:6 188:4 190:23 196:23 handwritten 173:24 193:8 Hang 88:9 174:9 happened 100:10 134:24 164:22 happens 119:9 happy 121:21 hard 79:17 he'll 164:19 head 45:2 71:4 hear 9:10 11:9 125:10 165:2 167:21 heard 2:20 42:19 149:19 hearing 4:10 12:7 13:4,8,10 13:14,24 15:14 15:15,19 16:7 19:3,3 24:2 150:7 151:4 204:13 hearsay 170:10 171:16,20 177:17 Heidi 1:23 2:22 held 34:19 60:14 hierarchy 99:8 99:13,13	high 71:22 73:3 higher 46:4 100:9,17 102:11 141:13 160:10 165:17 195:24 203:2 highest 153:25 154:2,6 highlight 180:8 historical 83:14 114:12 history 6:9 143:10 hold 46:19 132:4 141:21 158:2 holding 160:15 holds 141:21 holiday 202:16 honest 95:25 174:23 199:4 honestly 165:11 175:5 Honor 9:22 11:25 12:2,5 12:13,20 15:25 16:22 18:21 19:16 20:2,7 20:15,25 21:12 21:21,22 22:2 23:22 24:5 27:16 31:11,18 31:21 33:5 37:16 38:22 39:8,10,22 40:23 42:18 47:17 50:4,15 51:23 52:11 53:14 58:13 59:19 60:23 61:10,25 62:16 62:24 65:19 66:10 68:1 69:12,15,23 87:21 92:15 102:4 103:16 105:15 107:8 108:13 121:15	121:19,23 122:3 125:13 127:20 136:14 137:5,16,20 138:11 139:10 149:4,19 151:10 165:2 168:11,18 169:4,17 170:24 171:13 172:2 173:18 173:23 174:5 175:9 177:10 178:17 179:8 180:2,12,20 181:12 182:13 182:22 183:9 183:16 185:8 186:2 187:25 189:13,19 203:24 Hospitality 2:17 hour 105:9 203:24 hours 54:9,16 55:8 89:14 92:5 136:9 168:2 house 73:24 housed 75:17,18 75:20 109:9 124:13 housekeeping 204:1 houses 101:1 HR 101:3 141:12 159:21 huge 42:20 human 100:16 100:24 101:1,3 101:15 129:24 hypothetical 152:19,20 <hr/> I <hr/> idea 117:1 161:11,16	201:5 identical 139:13 173:19 176:3 180:21,22 189:17 190:3,4 identifiable 80:20 identification 4:7 5:2 6:2 7:2 8:2 10:7,9,15 10:21 11:2,7 19:9 40:24 41:3 138:7,12 138:13 identified 44:20 44:22,25 64:17 97:24 identify 27:5 46:6 63:15 70:23 74:8,11 79:24 91:17 143:2 II 23:2,8,10,11 23:12 27:8 III 38:1 immediately 139:11 implement 193:18 implementation 194:5 implemented 147:21 implementing 156:24 implicit 158:3 implicitly 95:18 importance 126:5 important 12:17 84:6 142:3 150:14 202:10 Improper 202:12 incentive 164:1 164:2 187:16 includable 57:13	87:17,20 include 20:1,3 92:23 109:24 195:6 included 11:22 18:17,23 20:23 35:22 41:23 42:4,10,12 83:8 85:16 86:3 118:7 162:23 171:4 199:13 includes 54:7 including 19:24 51:15 81:22,23 95:2,21 200:9 incorrectly 133:7 152:14 increase 48:24 65:10 66:21 67:18 95:7 134:10,11 148:2,9 159:22 167:4,4 191:19 195:15,21 199:5 increased 49:8 143:13 149:10 195:12 increases 67:9 95:8 increasing 144:21 incumbent 102:13,19 indicate 18:12 32:22 37:8 72:11,17 126:3 136:5 indicated 16:24 32:13 45:7 46:7 56:18 57:7,15 59:6 60:5 70:14 103:3 104:25 124:20 152:8 154:20,23
---	--	--	---	--

196:9 indicates 58:7 112:19 152:2 indicating 95:14 108:18 109:9 140:5 indication 17:24 55:1 60:6 104:19 125:24 160:13 individual 56:7 57:6 99:8 individually 123:1 individuals 77:12 industrial 86:25 87:5 92:23 183:4,6 inference 132:15 inform 140:13 informal 32:12 32:15,16 information 27:19 42:13,14 42:16 73:23,25 74:1 76:1 84:5 104:24 123:5 146:13 167:22 198:17 199:8 informed 96:20 139:21 informing 32:19 initial 117:3 118:6 138:20 151:24 202:8 initially 149:9 initiated 82:11 initiative 160:2 input 28:24 inquire 31:2 133:2,17 144:23 148:14 153:15,20 inquiries 123:4 inquiring 31:9 123:1 130:4	159:15 inquiry 12:6 63:1 89:17 115:12,16 116:1,15 118:5 121:5 123:6 124:16,18 125:6 126:15 128:15 130:7,8 130:9,11 133:15 155:11 155:14 203:6 inside 34:15 73:24 instance 56:15 56:17 68:7 146:18,25 163:25 instances 133:15 instruct 48:10 104:10 135:25 instructed 101:4 132:10 instructing 134:13 instruction 146:10 instructions 114:4 integrated 93:19 intended 93:9 95:10,16 intending 12:7 183:14 intends 94:14 interesting 77:5 174:7 interject 183:17 Internal 192:12 Internet 82:19 Interoffice 5:20 interpret 66:15 interpretation 61:17 141:9 151:8 interpreting 61:12 151:7	interrupt 11:17 14:12,18 interrupting 144:9 intervene 14:4 14:18 introducing 198:5 invalidates 84:7 investigate 100:11 investigation 98:19,22 investigations 98:25 involved 82:4 involvement 36:18 irrelevant 132:14 issue 11:20 20:19,24 21:1 62:15 63:6 71:18 84:11 90:18 117:5 149:3,8 155:10 168:10 170:8 issued 11:4 15:9 15:13 16:4 17:8 38:19 issues 4:9 10:3 12:21,25 13:1 15:5,13,16 16:4 19:21,23 63:6 69:17 86:10 92:3 131:10 166:25 it'd 118:1 item 29:2,14 30:10,18,21 31:2,16 32:9 33:2 35:8 38:11 44:5 45:9,21,24 49:18 55:17 62:6,7 106:21 115:19,20,24	116:1 117:20 120:25 133:17 146:13 157:15 157:20,21 158:19 159:2 166:20 items 29:18 35:1 35:24 36:2,4 74:6 75:16 89:16 117:22 155:8 195:6 196:20 <hr/> J <hr/> J 27:8 J-I-M-E-N-E-S 16:16 janitorial 99:19 January 40:25 128:13,15 129:3,17 194:5 Jensen 3:10,11 7:21 9:22,22 10:19 12:1,2,8 12:10,16,24 14:16 17:19,21 18:12,17 19:6 19:11,13,20 20:15,25 21:12 21:14 25:3,5 25:12,19 26:6 26:12 27:11,18 28:15 29:5 31:11,18 33:5 35:3 36:15 37:16 38:13,25 39:1,10,22 41:5,13 42:18 43:10 50:7,24 51:4,23 52:4 52:11,20 53:14 53:17 54:18 58:13 59:19 60:23 61:10,25 62:18,24 65:19 66:10 69:15,22 69:23 70:2	74:16,18 76:20 77:5,7 79:10 79:19 81:4,8 82:10 85:22 86:14,23 88:8 89:2 90:5 92:1 93:6,22 94:3,9 96:13 99:3,16 100:2 102:4,6 103:10,14,16 103:18,19 105:7,14,15,16 105:24 106:1 107:10,12 108:13,17 109:2 111:1,2 112:10 113:14 114:20 115:6 118:3 119:23 120:3,6,13 121:13,19,23 122:3,4 123:9 123:22 124:5 125:5,12,15,22 125:23 127:16 128:5,6 129:7 129:20 131:18 132:7,9,17,20 132:21 133:12 133:24 135:3 135:15,23 137:5,11,14,20 137:23 138:8 138:11,17 139:10,19 140:4,13 141:5 143:6,8,17,20 144:11,14,18 145:18 146:1 147:6 148:1 149:4,7 150:14 151:2,10 152:18 153:14 155:23 156:5 156:21,22 157:24 161:8 161:10,15,25
---	---	---	--	--

162:2 163:7 166:14,23 168:18,22,25 169:2,5,8,10 169:17,22 170:3,7,12,15 170:16,24 171:2,13,18,22 172:2,10,21,24 173:5,12,23 174:4,16,17 175:9,15,16 177:1,10,21 178:13 179:1,8 179:13,16 180:2,6,10,12 180:15,20,23 181:2,8,12 182:1,13,17 183:3,7,9,12 183:16,20 184:9 185:1,8 185:13,16,23 186:2,5,8,11 186:20,23 187:5,6,25 188:9 189:2,13 189:19,21 190:1,3,11,20 190:21 191:15 192:23 193:11 194:12 196:21 197:17,21 198:21 200:1 201:21 202:14 203:10,21 204:4 Jimenes 16:15 37:25 38:1 job 1:24 14:2 46:21 99:9 153:2 John 3:10,11 9:22 Johnson 4:22 6:7,10 13:17 34:8,9,11,14	34:15 35:7,12 35:13 36:9 40:7 75:14 78:2,9,11,16 80:23 81:10 103:3,22 104:25 106:25 113:9,18 114:1 114:13,22 115:4 118:5,15 124:19 127:13 134:13 155:13 Johnson's 81:24 112:14 115:7 115:18 136:18 142:21 146:6 156:8,13 joined 106:18 Jones 120:10,12 judge 1:5 2:4,21 9:10 90:11 judicata 7:19 10:12 13:12,24 15:13 July 10:25,25 13:18 113:11 134:15 154:7 June 10:24 34:6 58:6 59:13 113:9 114:14 119:18 122:7 126:14 129:3 129:14 154:8 jurisdiction 19:4 20:17,22 21:7 jurisdictional 13:3,8 16:1 17:20,22,23 18:1,15,19,22 18:25 19:1 20:4,6,12,17 21:6,6,15,17 jury 26:14 <hr/> K <hr/> K-A-R-I-N 124:4	Karen 38:2,2,3 Karin 122:11 123:16,24 124:3 126:4 keep 11:19 17:7 53:17 74:13,14 80:7,15,24 81:1,25 83:14 123:8 136:13 204:7 keeping 167:23 Kennedy 3:4 9:15,15 11:9 11:12,24,25 12:3,5,13,19 12:20 14:12,23 14:24 15:24,25 16:3 17:10,14 17:18 18:8,9 18:21 19:12,15 20:6 21:3,13 21:21 22:2,17 22:20 23:6,15 23:22 24:1,4 24:11 25:7,16 25:22 26:9,16 26:21 27:14 28:1,17 29:8 31:12,13 32:11 33:9,18,21,22 34:13 35:10 36:8,23 37:3,4 37:11,21 38:17 38:22 39:8,14 40:1,23 41:4,6 41:7,19 43:11 45:6 47:1,16 47:21 48:7 50:1,4,13,15 50:18,21 51:7 51:12,13 52:1 52:7,14,24 53:2,21 54:22 58:16,21 59:23 61:1,15 62:3 63:5 64:16 66:2,22 68:1	68:17 69:12 74:12 76:18 77:1 79:7 81:1 81:6 82:1 84:18 86:11 87:21 88:1 90:2 92:15 93:18 94:2 96:7 99:1,10 99:22 103:5,13 103:15 105:4 105:21 108:15 108:20 112:3 114:18 115:2 117:8 121:17 121:21 123:7 123:17,20 124:2 125:3,9 125:21 127:14 127:20 128:2,4 129:4,8 131:15 132:6,14 133:8 133:21 134:21 135:13,19 136:14 137:10 137:13,16 138:9 139:6 143:16 144:9 144:17 145:16 145:22 147:17 149:1,19,21 150:13,18,21 155:16 156:3 156:20 157:10 161:5,13,20 163:1 165:2 166:18 168:11 169:4,6,19 170:1,8 171:9 171:15,21 172:5,6,20,25 173:10,18 174:5,10 176:11,16,21 177:12 178:11 178:17,22 179:3,7 180:4	181:4,20,25 182:15,21 183:1,14,22,25 184:3,13,18,22 185:10,17 186:7,10,16,24 187:3 188:2,4 188:25 189:21 189:23 190:5 190:19 191:13 192:22 193:1 193:13,16 194:1 196:1,6 196:9 197:19 198:19 202:12 203:8,24 204:3 204:8 Kennedy's 19:24 93:23 kept 26:20 80:14 80:22 82:9 107:21 151:16 kind 25:24 38:9 55:2 68:5,6 73:8 77:12 79:17 118:22 124:17 163:5 166:25 182:5 202:10 King 136:19 knew 44:22 150:11 know 16:24 17:2 29:21 31:3 32:3,4 33:11 34:8 48:18 49:5 50:12 53:19 59:15 60:7,21 62:25 67:22 68:10 91:7 94:23 97:12,13,14,16 97:18,20 99:13 105:7 108:15 110:24 111:3 118:22 119:10 120:10,21,25
---	---	---	---	---

122:11 126:21	laid 190:7	156:15 157:1	48:10 51:20	105:5 144:6,8
134:25 137:15	Lane 2:17	163:13,25	52:2,9 54:15	144:10 146:5
139:17 140:1	language 94:23	165:5,6 178:20	55:23 56:21	147:8,17,24
148:12 149:23	196:25	179:17,20	57:20 58:7	148:3
155:18,20	Laura 112:2,7	185:13 188:11	59:8 60:4,14	lines 67:21 68:3
159:6 164:17	law 1:5 2:4,21	202:15 204:10	66:24 69:3	108:23
165:10 173:8	3:10,11 9:10	letter 4:12,18,20	82:16 87:19	list 36:2 49:18
173:24 174:13	13:22 14:10	4:22 5:17,22	89:17 90:19	listed 36:5 45:21
184:15 189:15	15:2,18 29:12	6:3,5,7,10,16	93:9,13 94:16	48:5 200:2
193:17,19	76:9,23 77:9	7:20 10:18	95:11,15,16	listing 165:24
knowledge	79:14 200:21	13:15,17 16:8	96:3,5,15,21	lists 42:24
12:11 45:1	lawsuit 134:25	16:12 19:21	97:19 98:11,20	199:25
54:8,16 55:2	184:19	32:8 34:6,22	130:5,14	litigation 86:6
61:11 80:9	lay 27:20 32:9	35:6 36:21	134:14,20	103:9 133:2
96:9 97:1	66:12 81:9	38:24 39:7,16	135:18,21,25	little 23:24 26:13
99:24 158:20	179:11	40:4,6 54:1	136:7 139:14	26:15 27:20
158:23	laymen's 126:23	58:4 59:12	142:17 145:15	29:22 81:3
known 63:7	128:10,13	75:13 106:4,14	149:8 151:11	105:8 133:1
200:16	leading 25:5,19	112:14,23,25	152:20 153:20	144:14 163:16
knows 80:8	26:6,7,12	113:10 115:4,7	154:7 160:5	live 109:7
	36:15 38:13	115:18 118:21	162:11 163:10	loathe 14:12
	39:22 51:23	118:22 120:19	166:22 182:24	local 102:9
L	52:4,11,21	134:15 136:18	183:4 184:8,19	locations 46:22
L-5 125:21	53:15 61:10	142:21 146:7	186:18,19	log 26:3 76:3
L-O-L-I-T-A	62:1 65:19	156:14 175:24	191:1,4 192:21	logical 30:14
22:14	learned 155:11	203:18	194:14 195:11	46:23
L-U-E-R-A-S	155:14,15	letterhead 34:7	Lewis's 6:12	Lolita 3:6 4:3
9:18 22:15	156:10	106:14 185:7	11:23 12:6	9:18 21:22,22
L-U-R-E 9:18	leave 92:24	203:19	14:8 39:20	22:8,14
labeled 101:25	led 86:10 108:8	letters 29:20	45:16 67:6,16	long 23:9 78:9
125:17 141:25	LED141 108:6	30:1 106:8,12	69:10 72:9	103:25 158:1
labor 55:21,24	leeway 26:13	203:13,16	75:6,9,11	longer 127:22
56:5,7,10,16	left 112:1,6	level 13:21 23:11	86:15,25 90:9	longevity 36:3
65:24 68:25	181:23	48:13 100:8,9	107:7 140:8	look 37:8 39:19
89:12 101:8	legal 31:19,20	103:4 141:13	145:20 148:18	41:21 42:1
126:24 130:1	35:3 167:21	160:10	148:22 150:7	74:10,19 75:2
130:22 136:8	170:1,11	LEW 108:8	155:20 163:8	76:2 80:1 86:9
141:18 142:12	length 173:22	LEW-26 189:25	166:16 173:7	86:24 100:18
159:23 162:5,5	lengthy 10:1	LEW14-5	173:13 183:18	110:11 117:13
191:5	let's 30:11 34:7	125:22	183:23 193:22	120:7 127:25
lack 33:5 76:18	69:18 72:15	LEW142 111:16	200:6	129:24 130:1
82:1 84:18	73:11 80:18	Lewis 1:10 2:9	limit 158:1,3	146:6,12 157:1
99:10 103:5	81:9 82:7	3:15 9:6,23,23	limited 46:4,13	165:23 166:4
155:16 177:12	101:5,9 117:13	9:25 16:20	55:20 158:15	166:24 179:17
181:4	117:22 134:9	19:19 27:8	177:17	189:8,21
lacks 25:12	136:13,18	38:6 41:17	Lincoln 3:4	190:10,12,13
27:11,18 28:15	150:22 151:17	45:9 47:6	line 35:4 71:10	190:14 199:25
41:13 54:18				

202:15 looked 44:17 75:23 77:3 82:15 155:1,25 173:22 184:5 looking 17:5 18:3 43:16 44:13 56:24 67:20 98:3 100:14 105:17 108:20 120:1 129:21 136:17 151:17 159:11 165:21 171:2 178:19 191:11 191:14 193:8 194:2 203:7 looks 60:1 67:24 68:7 99:14 144:6 146:18 172:16,22 175:23 177:24 178:10 179:3,5 185:7 Los 3:13 lot 29:17 79:20 82:11 167:22 louder 81:3 Lueras 3:6 4:3 5:12 9:18 21:23 22:3,8 22:14,15,21,22 22:23,23 37:5 40:25 41:9 70:3 74:19 107:13 128:7 138:18,20 139:20 169:11 170:13,17 174:18 175:18 179:17 182:2 183:15 186:13 187:7 190:22 Lueras's 149:14 169:3 186:5 lump 144:20 lunch 69:16	105:4,8,10 <hr/> M M 201:13 ma'am 21:24 24:9 62:21 66:15 69:21 105:12 123:8 151:14 168:16 main 24:16 78:4 130:13 maintain 26:3 maintained 26:10 39:20 160:16 making 31:15 137:16,17 164:9 184:21 184:23 management 43:22 44:24 48:2 56:17 68:23,24 69:6 75:4 86:1 106:23 191:2 192:18,21,25 193:9,10,24 194:11,14 197:1,15 201:9 202:1 manager 36:22 38:1 106:15 manner 13:21 160:4 March 61:4 mark 10:17 11:3 11:10 19:5 138:11 180:8 marked 4:7 5:2 6:2 7:2 8:2 10:7,9,10,14 10:20,23 11:1 11:6 19:8 40:24 41:1,2,4 138:3,4,6,13 194:3 201:19 markings 178:1	181:15 marriage 185:21 Mary 1:5 2:4,20 9:9 matched 98:1 154:21 matching 154:16 material 59:4,25 80:22 materially 155:14 math 113:12 matter 1:8 2:7 9:5,10 13:11 13:13,19 14:4 15:19 16:4,20 18:22 36:14 38:24 73:7 75:23 77:10 78:17 83:16 85:23 89:19,23 90:18 97:10 100:5 107:1 120:15 134:19 148:18,21,24 150:15 169:12 169:24 171:25 172:13 173:17 177:23 179:24 182:8 184:12 187:15,23 188:15,20 190:16 matters 14:19 76:11 81:18 87:4 167:23 Matyszewski 1:5 2:4,20 9:9 mean 24:20 25:11 28:10 30:23 33:14 36:17 55:10 59:15 62:24 63:9,25 64:7 68:5 71:21 77:2 87:22 109:13,18	114:9 116:7 117:9 119:19 120:22,24 126:18,22 127:3 136:11 162:10 165:3 169:25 176:7 178:19 193:17 196:11 197:3 199:19 meaning 66:19 109:6 127:5 203:4 meaningful 112:12 122:22 means 33:12 43:1 95:20 109:16 128:10 162:9 166:6 meet 89:13 116:9,12 131:6 131:7,8 159:5 meeting 92:12 member 11:22 26:20 27:8 33:15 37:20 39:24 54:7 55:21 56:13,19 63:6,8,15,16 63:18,21 64:11 64:21,25 65:12 65:23 66:18,19 70:8 75:19,21 77:22 80:7,25 81:25 82:4 83:8 87:4,13 88:5,19,20 89:15 90:13,15 90:17 93:1,3 96:11 100:19 102:10 104:15 109:25 110:5 111:8,9,11,13 113:1 114:6,11 117:24 122:19 124:7,16 126:25 141:2	158:23 159:3 162:7,8 166:9 191:7,22 194:6 195:9 member's 24:24 32:25 33:24 62:6 63:22 70:20 114:7 154:2,4 185:19 members 69:9 75:20 80:16 123:1,4 167:8 Memo 5:21 Memorandum 43:20 memorandums 142:7 memory 101:22 175:7 mentioned 28:18 42:7 45:18 64:4 68:18 82:11 105:20 107:3 110:9 112:14 115:8 115:17 117:17 130:4,13 156:15 185:6 mentions 42:7 merits 15:6 message 112:2,6 method 70:24 MICHAEL 3:10 3:11 mind 30:15 56:4 mine 188:5 minutes 168:13 miscellaneous 203:3 mischaracteri... 79:7 117:8 196:1 misreported 133:16 missing 197:22 misstates 52:20 mixing 161:24
--	---	--	---	--

162:1 moment 16:21 36:12 51:18 111:18 120:7 122:9 139:4 145:13 157:2 181:14 188:10 Monday 1:19 2:19 9:1 money 91:7 116:25 151:12 168:9 monies 199:15 month 72:22 113:15,15 126:11 150:23 153:7,8 months 61:6 88:14 154:1,3 154:7 moral 12:9,10 morning 9:22,25 143:4 motion 7:18 10:11,19 14:14 15:2,9 20:5,23 21:1 motions 13:2 15:10 MOU 5:4,6 44:1 65:16 68:14 74:6,10,19,21 74:22 75:5 86:1 100:18 101:8,13,16 130:1,22 191:9 193:9,19 194:17,22 197:13,16 MOUs 42:7,23 43:4 44:18,19 75:2 101:6 move 16:1 39:6 39:8 50:4,21 62:16 78:23 168:10 169:8,9 170:14 172:20	172:24 178:4 185:13 188:11 moving 15:20 multi 174:8 multiply 72:22 <hr/> N N 4:1 name 9:9 22:12 22:13,14,15 26:22 120:11 171:1,3 named 34:8 nature 70:21 71:18 75:20 79:15 124:18 167:13 168:5 necessarily 68:5 72:14 73:5 116:7 119:14 164:1 168:7 necessary 22:3 need 73:25 74:1 93:15 119:10 123:18 134:10 137:14 142:16 152:25 159:21 needed 78:21 79:17,24 82:7 83:8 100:1 117:19 123:5 123:15 126:16 needs 65:25 117:3 196:13 199:18 negate 19:18 negotiated 130:24 neither 92:9 never 104:15 140:15 new 13:22,22 109:11 128:19 140:24 164:18 164:19 nine 81:21 nontemporary	158:4 normal 32:22 89:14 92:5 118:9 123:13 123:14 136:9 168:2 normally 87:24 92:9 North 3:4 notation 13:25 21:17 56:10 59:8 113:22 120:14 notations 177:22 note 20:18 43:13 109:19,20 110:7,8 111:23 112:1,6,19 113:7,8,18 114:8,22 119:17 122:6 122:18,19 124:6 125:24 126:1,3 128:12 notebook 18:8 184:16,17 notebooks 10:4 noted 44:15 48:4 60:5 notes 107:19 108:10,17,21 108:22 110:17 111:5,6,9,13 127:22 129:11 129:13 193:8 notice 4:10 8:4 16:10,11,14 18:14,18,19,21 18:23,24 19:6 19:18,20,22 20:1,8 78:15 173:1,2 198:6 noticed 17:6,18 59:5 Notices 16:7 notify 30:1 number 9:7,8	11:16,17,18 16:6,22 18:10 44:5 46:20 47:10 81:20 165:24 176:19 176:19 185:20 194:4 199:21 numbered 11:15 numbers 11:14 120:1 144:23 185:20 numeral 23:12 23:13 numeric 23:12 <hr/> O OAH 1:10 2:9 9:7 oath 24:10 69:21 105:13 168:16 object 136:14 173:1 objection 17:19 17:21,22 25:3 25:4,12,19 26:6,12 27:11 27:17 28:15 29:5 31:11,18 33:5 35:3 36:15 37:16 38:13 39:1,9 39:10,22 41:13 42:19 50:6,7 50:22 51:23 52:4,11,20 53:15 54:18 58:13 59:19 60:23 61:10,25 62:19,24 65:19 66:10 92:18 94:1 103:5 117:9 121:16 123:17 124:2 125:9 127:14 129:4,8 131:15 132:6,14 137:18 147:17	149:1,16 171:8 171:17 172:4,6 184:1,17 186:22 196:1 198:19 objections 50:24 51:4 77:6 121:17 186:23 objects 93:24 observation 202:18 obtained 82:5 obviously 147:1 occur 196:15 October 1:19 2:19 9:1,12 10:11,18 11:5 105:1 134:17 144:16 146:8 offer 20:13 21:2 43:3 50:12 149:4 170:24 171:13 172:2 177:10 180:2 181:2,16 182:13 183:20 185:8,23 186:20 187:25 189:13 offered 13:16 43:2 offers 29:17 office 9:11 15:14 16:17 18:7 30:11,12,14 38:20 39:20 60:2 101:3,3 167:21 officer 126:25 officer's 203:7 officers 203:1 offices 3:10 14:6 official 32:8 172:25 173:2 oh 81:4 108:20 109:1 120:3,3 120:3 132:20
--	--	---	---	---

137:8 144:11 151:18,20 171:6 176:16 176:21 180:21 189:24 okay 11:12 12:23 16:2 17:15,18 18:16 23:22 25:10,23 26:3 27:1,9,15 29:1 30:9,19 31:1,6 34:2,21 34:24 37:8,9 37:22 38:4,6,9 39:18 40:6,18 44:11 45:18 49:4 50:14 51:6,18 52:17 53:7,10,19 55:1,16,22 56:9,13,18,24 57:18 58:25 59:3,11 60:5 60:12,18 62:15 63:12 64:4 66:7 67:1 69:1 69:7,12 72:7 81:18 87:25 94:2 100:21 101:25 102:16 102:24 105:9 108:20 109:1 111:1 112:18 113:17 114:13 114:21 115:15 116:25 119:16 120:7 121:13 125:20 127:1,3 127:8 128:2 129:2,11 132:20 133:11 136:10 137:11 137:25 139:1 140:13 141:6 142:20 143:6 146:11 150:13 152:17 160:19	163:17 165:21 170:7,15 174:20 175:15 176:6 179:20 180:12,20 181:25 183:20 184:10 185:13 186:2 188:8 190:12,15 194:1 202:15 203:21 old 128:18 older 109:10 Olympic 3:12 omission 133:14 omissions 133:20 one-time 167:3 one-year 72:16 ones 42:25 169:5 online 74:4 85:18 open 46:6 opening 14:13 operates 64:19 opinion 31:19 35:3,16 96:22 96:23 112:22 116:3 opportunities 30:4 opposition 21:15 opt 65:17 option 65:15 66:18 67:5 options 63:17 oranges 161:24 162:1 order 7:23 10:2 11:4 15:8,13 112:7,11,20 114:15,23 117:4 159:12 159:16 original 16:6 20:4 outcome 15:21	outside 61:11 147:18 outstanding 74:6 overall 73:7 overlap 139:22 overrule 92:18 overruled 25:6 25:13,20 27:12 27:21 29:6 33:7 35:5 37:18 38:15 39:23 41:14 52:5,12 54:19 62:2 65:21 66:14 79:8 82:2 84:19 87:25 90:3 96:8 99:2,11 99:23 121:25 123:18 129:5,9 131:16 133:22 134:22 145:23 147:21 149:16 155:17 166:19 184:17 193:2 196:5 oversight 18:7 overstate 147:1 overtime 94:18	120:5 122:6 125:17 126:4 126:18 127:17 128:8 129:2,13 129:16 143:14 143:17,18 144:11 167:7 167:25 174:4 174:14,19 176:2,5,6,15 176:16 177:2,4 177:5,5,16,23 178:1 181:15 189:16,23 190:13 191:14 191:17 194:3 196:23 198:23 200:3 201:12 pages 10:23 110:10,20,22 138:24 185:17 187:22 189:11 189:14,15 194:2 paid 43:18 48:13 54:15,23 55:2 56:9 57:20 60:15 68:19 69:8,9 101:7,9 101:11 104:14 104:21 130:3 141:12,17,19 142:5,11 153:21 154:24 159:2 165:1,7 paper 177:18 papers 171:4 paragraph 66:15 101:24 104:2 Pardon 50:18 parenthesis 94:24 95:13,20 95:24 part 15:5 24:25 49:9 52:23 73:6 89:8 91:5	96:24 100:21 100:23 103:9 114:12 118:5 130:8 134:22 172:12 179:14 179:23 187:10 187:23 188:14 188:20 190:16 participant 107:19 109:15 109:19,20,22 109:24,25 110:6,7,12 111:10 participants 109:22 particular 45:19 94:21 113:8 146:5 166:21 187:13 parties 11:14 partner 128:14 128:20,21 parts 136:25 190:6,6 201:7 party 103:9 135:7 patient 93:22 pause 16:21 pay 5:9 7:22 11:21 14:9 28:7,8 29:2,2 29:15 30:24 33:2 35:2,9,14 35:21 36:3,4 43:18 45:8,15 45:19,24,25 46:1,2,7,9,10 48:16,20,22,24 49:5,13,20,21 51:21 55:24 57:19,21 59:9 60:11 62:9,13 63:16,17,18,21 64:12,20 65:2 65:10,13 66:19 67:6,7,10,11
---	---	---	--	---

67:19,25 68:6	161:22 162:4	142:5,8,16	164:1	personal 61:11
68:7,8 72:21	162:11,16,17	153:1 159:22	performing	Personnel 101:2
73:4,21,22	162:22 163:9	162:21 163:24	48:14 93:2	pertained 43:21
74:4 80:19,20	164:21 165:12	164:7 166:21	96:3,5,11,17	44:4
80:21 82:16	165:23 166:1,1	167:14 168:5	97:23 98:12,13	pertains 43:22
89:23,24 90:19	166:2,6,6,10	177:25 199:12	98:16 136:4	44:1
91:12,13,15,17	166:11,24	payroll 5:7 6:9	140:5,8,10,21	pertinent 146:13
91:17 93:10	167:1,4 187:20	10:24 11:10	141:2,8 142:10	phone 106:20,25
94:16 97:25	191:20 194:20	26:24 27:7	142:13 159:3	phrase 201:3,4
98:1,17 100:11	195:16 196:14	29:14 30:16	161:2,3 165:15	pickup 192:10
100:15,20,25	200:13,15,16	59:6 67:2,17	165:18	piece 177:18
101:4,6,11,12	200:17 201:2,4	82:15 126:10	period 64:13	place 41:11
101:20,25	201:6,10,23,25	126:14 143:9	65:1,8 72:16	77:15
102:16,18,21	202:1,3,6,16	192:14	72:21 81:10,16	placed 100:20
103:3 104:8,11	pay-and-conv...	pays 152:24	102:11,19,25	Plan 191:18
115:9,21	66:9	pending 128:14	104:20 126:10	platform 30:5
116:17 117:1,6	pay-rate 66:21	128:17	144:25 146:24	play 165:11,19
117:23 118:12	paying 49:7	pension 72:9	147:18 148:16	Plaza 3:4
118:24 119:3,8	64:25 65:3,9	90:1,9,21	154:1,6,8,9,12	pleadings 13:16
119:11 126:25	65:12,14 191:6	96:24 135:17	200:4,5	please 9:13
127:1 128:16	194:5	195:12 199:6	PERL 22:4	22:13 27:1
128:24 129:19	payment 46:2	200:9	29:18 45:20,25	34:4 40:14
129:23,25,25	54:7 65:22,25	pensionable	46:1,6,16,17	42:1 45:11
130:14,24	74:9 84:7,8	118:8	47:2 53:11,23	49:17 50:5
134:13 135:22	85:2 88:19	people 79:21	61:18 64:9,18	58:17 62:21
136:20 141:3	90:24 93:13	107:1	77:17,22 79:8	66:4 74:8 81:3
141:13,18	100:18 101:14	percent 66:19	89:4,8 91:19	90:4 93:25
142:24 144:4,6	104:17 116:9	67:18 68:14	141:19 155:22	95:1 101:23
144:21 145:4,5	116:12 130:10	73:10 101:10	156:25 157:2,3	112:5 123:8,19
145:11,14,20	130:24 136:6	140:9 141:8	157:13 159:6	139:5
145:21,21,24	143:21 144:3	162:6 191:22	PERS 60:6,6	point 6:20 12:7
146:14,20,22	153:24 158:22	192:6 194:9	166:11 180:7	15:1,25 38:23
147:2,3 148:3	159:4,19,21	195:12 202:8	192:7,13,15	55:10 76:2,3,4
148:4,5,9,10	160:3,12 164:2	percentage	194:10	93:7 107:4,19
148:12,18,18	164:4 165:22	63:10,24 65:14	PERS-ability	110:10,17,22
148:22 149:2,9	167:3,19,23	73:3,6,8,9	87:16	111:4 113:3
149:10,13,23	187:14,18	101:10 202:21	PERS-able	126:11 128:1
150:3,9,24	192:5,9 202:1	202:24	120:22 123:12	128:22 136:14
151:16,18	payments 51:20	percipient 12:11	131:25 132:1	145:13 151:22
152:5,21 153:7	52:2,8,18,19	perform 46:3	132:24 135:17	159:23 169:16
153:18,21	53:4 57:6,20	96:21 100:8	person 78:11	178:11,17
154:13,21,23	60:4,13 61:22	130:15 139:20	91:9 100:17	185:12 197:8
154:25 156:16	77:23 87:14	152:22 164:4	101:4 109:23	pointed 112:18
156:19,24	89:12,22	performed	130:25,25	184:15 193:6
157:2,13,16	104:17,19	57:22 89:14	153:9 159:24	pointing 129:10
158:1,5,9	119:5 124:21	130:5,5 131:2	165:14,18	151:6
159:13,17	130:19 141:19	131:3 136:9	167:20	points 14:25

109:9 201:19 203:6 policies 76:7,10 76:13,14,15,21 77:2,8 78:25 79:4,9 125:7 156:23 policy 55:21,24 56:5,7,10,16 65:24 68:25 80:8,11 101:8 130:2,22 136:8 141:18 142:12 159:23 191:5 portion 64:20,25 195:8 portrayed 44:3 pose 116:19,20 posed 35:7 60:1 115:18 116:18 170:2 197:15 position 14:7,7 23:1,7,16 24:12 34:19 43:18,20,21 44:9,20 46:12 48:5,11 58:8 59:20 60:14 63:24 93:11 94:19 97:6,7 97:23 102:11 102:14,22 106:8 136:6 138:25 139:2 141:14 142:10 142:18 146:18 152:3,3,5,8 154:20,22 158:2,14 159:25 160:6 160:15 161:2,3 161:4,12 169:23 170:12 190:25 194:17 197:14 positions 44:8 44:15,18	101:13 130:3 153:19 167:9 167:18 197:16 possible 23:22 23:23 168:3 possibly 32:16 118:7 124:18 195:13,14 post 147:14 posted 147:13 potentially 85:19 173:7 power 13:13 powering 99:4 practice 32:19 32:22 34:24 62:10 80:15,21 97:6 106:13 133:5 practices 81:24 97:2 106:16 precisely 127:21 preliminary 31:8 38:19 201:19 premium 46:7,9 165:22,23 167:7,25 168:4 168:6 preparation 39:16 prepared 27:9 preparing 51:15 present 3:15 9:24 presented 15:2 36:21 presently 106:8 pretty 44:21 165:13 167:16 previous 161:1 previously 15:13 45:18 46:14 56:18 81:13 124:19 125:1 130:12 primary 96:15	203:6 print 82:22 83:3 83:6,15,18,21 83:24 84:8,16 84:21,22 85:1 85:19 86:1,5,8 138:24 187:12 printed 84:12,23 86:13 printing 83:9,12 84:2,3 printout 27:7 107:18 110:2 printouts 108:3 prior 13:6,15 15:4 23:16 28:18,19 29:14 109:7 122:17 124:9 126:3,6 155:12,20 privacy 28:13 probably 139:23 203:25 problem 24:3 135:4 149:8 procedure 79:18 80:5 procedures 76:7 76:11,21 77:8 78:25 79:4,9 125:8 156:23 proceed 12:4,5 12:20 14:21 proceeding 17:6 PROCEEDIN... 1:17 2:16 process 70:12 89:20 106:22 123:3,10,13 127:7 192:20 192:24 195:17 processing 123:3 program 9:19 9:19 23:2,8,9 23:21 77:15 80:8 projecting 24:1	prolonged 105:8 promote 134:20 promoted 48:11 58:8 94:17 95:5,8 prompt 100:11 126:9 promulgate 158:25 pronunciation 22:21 proof 149:5 proper 87:23 properly 17:6 134:20 proposed 15:16 prove 164:19 proven 66:24 provide 19:5 20:5 74:2,8 93:13 100:6 106:19 112:25 130:9 160:2 198:6 provided 20:7 85:18 142:4,25 152:10 154:14 155:21 156:14 160:14 168:9 170:21 171:4 175:23 194:25 199:9 provides 25:24 providing 106:17 197:25 provision 63:20 67:9 193:19 194:3 195:15 provisions 53:11 53:22,25 57:8 57:9,11,12 61:18,18 166:17 192:11 192:17 194:19 public 1:3 2:2 3:3 9:16 29:11 76:9,23 77:9	79:14 141:16 141:17 153:3,6 192:2 200:21 publications 29:19 publicly 73:22 91:16 153:16 153:18,21 154:18,24 publishes 138:24 pull 23:23,23,24 139:11 203:14 pulled 43:12,20 137:7,24 purports 59:15 purposes 13:2 20:16 45:15 90:1 177:17 195:10 pursuant 52:3 55:21,24 56:1 73:21 82:17 89:11 93:8 105:2 124:21 136:7 142:11 154:24 155:22 193:23 194:8 201:25 put 15:15 35:17 40:9 85:12 117:16 119:11 138:11,12 139:25 141:14
---	---	--	---	--

Q

qualified 31:21
52:18,19
qualifies 87:16
112:8 114:24
qualify 31:17
49:4 56:4
57:21 61:23
116:2 155:5
193:7 194:19
194:20,23
qualifying 45:24

55:17	111:7,7,12	94:16 97:25	114:16 133:2	187:1 198:9,18
qualities 112:24	117:21 143:7	98:1 115:9,22	173:25 197:25	receiving 17:19
quarter 108:11	154:13 159:18	116:17 117:1,6	reasons 14:20	27:17 39:9
question 25:5	189:1 197:5	118:12 119:3,8	130:13,17,18	50:6,22 51:20
26:16 30:9,13	198:14,24	119:11 129:25	136:10 137:1	52:2 55:23
31:12,19,20	201:19 202:11	144:4,7,21	150:10,16	59:9 62:20
32:1 35:7,8,14	202:20 203:12	145:4,11,15,21	151:4	79:6 98:17
45:11 47:22,25	203:21	146:14,20,22	reassured 124:6	162:11 164:11
49:6 61:11	quickly 166:4	147:2,3 148:3	recall 42:10	171:8 172:4
62:1,4 66:15	188:11	148:4,5,10,12	60:18 63:23	176:4 184:1
71:16 76:15	quite 50:24 82:6	148:18,22	71:4 81:18,20	186:22
79:2 83:23	quote 70:19	149:2,10,13,24	81:24 106:5	recess 69:19
86:7 90:4,6,20	quotes 200:13	150:3,9,24	115:10 143:12	105:9,10 138:1
92:17 95:12	201:4	151:17,17,19	175:3 176:4	168:13,14
102:4,24		152:5,21	177:5 198:3	recognize 37:12
104:11 110:4,6	R	154:21,23	receive 10:11,17	103:20 107:15
112:17 114:21	R-O-L-L 33:19	162:11,17,22	11:3 20:12	170:18 172:15
115:8,17,19	33:21	163:9 164:8,21	21:16 33:16	175:1,20 176:9
117:2,3,3	raise 12:21	165:8,12	95:6 135:21	177:2 178:5
118:7,10,11,23	21:24 22:6	166:11 167:4	162:3 164:2	179:20 182:10
123:19 126:12	112:4 170:8	194:21 195:16	171:19 174:14	185:3 186:15
128:25 129:6	range 138:25	196:14	180:9,10 181:7	187:8
132:8,25 133:9	rank 44:23 47:8	rates 145:5,24	181:8,17	recognized
135:8,22,24	47:14,19,24	re-cross 203:25	182:20 183:8	38:12 45:9
136:17 138:20	48:1 56:17,22	reach 40:21 74:1	185:11 190:8	150:25
140:7,12 141:6	56:25 66:23	reached 74:7	received 4:7 5:2	recollection 71:6
148:20 149:17	69:6 101:17	128:22 129:22	6:2 7:2 8:2	93:17 111:4
150:2,3,5,21	102:11 167:8	201:24	10:16,22 11:8	reconsideration
150:21 153:23	167:17,25	read 47:15 55:19	19:10 21:20	13:2 14:15
157:25 159:14	191:2,5,9	64:18 94:10,17	27:22,23 30:20	15:3,4,9
161:14 163:4	194:16,21	95:1 111:23	39:4,11,12	record 4:15 9:5
163:16 184:20	195:11	113:8 122:18	50:8,9 51:9,11	10:1 11:15,19
188:2 192:22	rare 18:25	126:23 157:17	54:8 55:20	11:20 12:22
193:13,18	rate 5:9 28:7,8	160:7 161:7	56:25 57:6	14:1,16 16:23
196:16 197:4,7	29:3,15 30:24	165:3 166:4	58:22,25 63:2	17:11 20:3,18
197:7,15	33:2 35:9,14	170:5	63:3 79:11	21:3,10,10
202:12	35:21 48:20,22	readily 129:18	89:18 90:19	22:13 24:5,6,7
questioning	49:13,21 51:21	reading 35:6	121:25 122:1	24:8 26:10,20
59:17 105:6	60:11 62:9,13	48:3,12 66:17	156:7 158:22	26:22 34:12
147:18 149:2	63:15 64:12,21	102:9	164:3 171:10	37:1 58:19
questions 23:5	65:2,11,13	real 155:10	171:11 172:7,8	69:18,20 103:6
30:7,17 36:15	67:6,7,10,11	reality 152:20	173:3 174:12	105:11,21
37:6,6 38:13	67:19,25 68:6	really 116:10	174:25 175:4	120:12 124:3
52:25 53:15	68:7,8 73:4,21	161:2 185:17	177:7,19 178:6	136:19,20
60:1 65:19	80:19,20 82:16	reask 26:16 49:6	178:10 180:13	137:25 138:2
69:13 74:7	89:23,24 90:20	reason 96:14,15	181:10,18,20	139:25 168:15
93:23 108:18	91:12,13,15,17	113:21,24	183:10 186:25	173:18 195:23

204:10,12 recorded 110:17 records 107:21 Recross 4:2 redacted 121:22 Redirect 4:2 203:23 refer 11:16 22:4 43:12 46:17 58:11 175:7 reference 22:3 39:6 53:22 72:17 86:19 95:13 referenced 50:11 91:3 references 16:11 referencing 129:1 referred 58:1 101:2 142:7 referring 26:25 40:16 60:11 64:8 72:2,3 75:8 92:24 108:16 109:25 116:10 118:5 118:15 128:21 146:4 154:3 189:6 193:4 reflect 59:16 66:9 67:10 reflected 49:24 50:3 67:6,16 97:25 101:15 110:2,7 143:23 148:3 162:14 reflective 146:9 194:11 refresh 101:21 175:7 regarding 7:18 10:1,12,19 100:24 106:3 109:22 110:6 111:8,13 118:7 118:19 128:23	153:23 167:10 regards 41:15 regular 90:22 91:13,22 96:24 96:25 97:2,18 97:23 118:24 136:6,20 140:8 141:9 147:13 163:14 regularly 107:21 130:5,15 140:11 141:7 regulation 29:21 30:2 32:10 165:22 regulations 25:2 25:8 35:25 45:22 116:11 131:9 157:17 157:23 158:25 166:3 192:16 200:23 regulatory 57:8 57:12 61:18 reiterate 13:1 reject 14:7 related 44:9 61:16 88:10 92:12 relates 88:6 relating 61:19 relationship 159:11 release 173:20 relevance 133:8 139:6,16,19 140:4 157:10 relevancy 99:1 121:21 137:17 137:18 139:8 147:17 169:19 169:20 182:15 185:10 203:8 relevant 75:25 83:7 84:21 127:9 129:23 130:10 169:22	169:24,25 rely 184:20,24 190:10 relying 161:3,6 remain 160:8 remaining 189:11,14 remember 79:6 80:23 110:15 174:23 175:6 197:10 remind 24:9 69:21 105:12 168:16 remove 17:2,10 removed 130:20 render 29:3 rendered 92:4 154:14 159:10 reopen 13:14 repeat 45:11 62:4 79:2 86:7 100:22 148:20 163:5 rephrase 90:4 132:7 reply 6:13 report 5:8 13:20 25:17 26:17 30:10,17,21,23 35:20 52:10 59:18 61:8 63:18 67:3 90:16 103:3 104:8,11,16 115:21 117:11 121:3,11 124:24 131:11 131:13,20 132:3,11 133:17 134:13 134:16 146:7 147:23 149:12 150:8,17 193:13,16 194:9,10 reportable 32:9	32:23 85:3,3 87:18 92:25 112:9 114:24 115:13,24 116:15,16,22 117:4,6,15,20 118:6,11,12,17 119:4,7 121:8 121:11 125:2 129:19 155:8 157:20 reported 1:22 2:21 24:16 25:11,14,25 26:11,20 28:3 28:6,20 29:9 29:19 31:3,4 33:2 35:9,15 36:3 37:20 41:16 45:8,15 48:22,23 49:1 60:3,15 62:7,8 67:7 69:3 70:8 71:9,23 72:20 73:19 74:5,6 77:22 78:20 80:18,19,20 82:15,16 84:7 84:8 88:16 90:11,12,14 91:16,18,21 92:11 98:1 104:15,22,23 115:23 116:6 118:24 119:13 121:1 123:14 126:10 127:5 127:10 134:10 142:23 145:2 146:15,15 147:2 148:10 148:18,22 149:9,23 150:24 151:18 152:7,14,20 153:1,25 154:9 154:13,17,22	154:25 162:13 163:9,13,14,19 163:22,25 164:21 165:17 191:10 192:2 193:21,23,25 194:13 195:4,6 195:20,24 196:8,10,11,13 196:13,17,18 199:22,23 200:5 201:25 202:16 reporter 2:23 29:23 204:11 reporting 25:23 26:4 27:10 28:12,19,24 29:14 30:16 33:4 70:22 72:15 117:25 119:10,12 132:5,12,12 146:13,19 150:9 151:16 152:9 166:11 191:6 194:6 200:4 reports 28:2 29:2 representations 160:5 representative 9:14,17 30:7 represents 41:12 request 6:13 12:14 15:4 16:1,9 17:3,10 19:3 172:25 183:24 184:4 requested 79:11 128:15 requests 75:19 104:5 require 15:11 102:18,21 required 25:17
--	--	--	--	--

46:3,11 158:13 159:9 161:18 requirement 55:12 131:8 requirements 54:4 55:16 92:6 93:1 116:9,12,13 118:1 131:4 157:19,22 requires 133:19 requiring 159:16 167:18 res 7:19 10:12 13:12,24 15:13 research 9:19 37:22 39:15,19 40:18 45:2 82:4,12,14 85:6,17 researching 54:1 74:20 reserve 170:5 175:10 184:7 204:1 reserved 15:6 31:21 reso 197:2 resolution 7:3,5 7:6,8,9,11,12 7:14,15,17 63:14 65:16 103:2 194:4 197:2,9 201:9 resolutions 65:25 188:22 188:23 189:4,6 resolved 103:1 149:9 resource 100:16 129:24 resources 100:24 101:1,3 101:15 respect 12:24 14:5 17:23 18:13 21:14	71:25 110:20 110:21 114:22 158:10 190:25 197:18,22 respond 32:20 47:21 202:3,5 responded 36:10 40:8 197:12 202:4 Respondent 1:11,14 2:10 2:13 3:10 6:16 9:7 10:13 19:2 19:19 Respondent's 5:14 6:2,17 7:2 8:2,3 10:5,8,14 10:20 11:1,6 11:14,17 19:6 19:8 37:7,8 103:13 121:16 122:1 138:6 143:16 177:19 178:4,20,23 179:1,2 180:13 181:10,18 182:3 183:10 183:21 187:1 Respondents 174:13 response 19:23 32:14 41:17,24 42:4,11,12 104:16 128:14 128:17 169:13 169:14 170:13 182:19,24 188:24 198:12 responses 31:6,7 31:15 32:12,12 32:20 responsibilities 140:6 responsibility 117:16 192:5 responsible 119:12	responsive 20:16 42:22 rest 157:22 177:8 188:11 189:4 result 43:13 79:22 141:13 149:7 retain 160:5 retire 136:1 retired 151:15 retirement 1:3 2:2 3:3 6:13,18 9:16,19 23:2,8 23:9,20 24:18 24:24 29:11 33:16 45:16 48:4 70:10 73:7 76:9,23 77:9 79:14 87:5,6 91:23 95:10,16 116:8 119:15 122:21 122:24 141:20 149:13 151:21 151:25 152:2 154:5,21 182:24 183:5,6 183:23 184:3 191:18 192:3,6 200:21 retiring 87:4 retro 134:9 retroactive 59:7 60:8 67:9,21 68:3,4 104:17 104:25 134:16 143:22 144:3 144:20 145:6,8 145:10,19 146:3 147:9,11 retroactively 146:7 147:22 148:2 return 188:10 Revenue 192:12 review 3:6 15:16	23:20 24:14,16 34:16,21 40:3 49:20 52:17 53:3,25 54:13 62:5 70:5,7,15 70:18,23 71:23 72:8,13 73:12 73:14 75:6,17 75:22,24 76:3 76:4,6,8,12,14 76:16,17,22,25 77:10,10,13,14 78:8,20,25 79:4,15,16,18 80:4,6,15,16 80:17,17 81:11 81:19,25 82:4 82:6,19 83:13 83:16 84:20,21 87:3 88:3 89:9 89:20 91:15 95:24 97:9 101:16,18 103:24 104:7 104:10 106:9 106:12,18 107:24 110:12 110:14,16,21 110:23 111:18 112:7,20 114:14,23 118:9,20 122:9 122:14 123:13 123:14 124:8 124:11,13,19 126:10,14 127:9,12 128:14 129:16 133:14 134:7 135:16 139:2,4 140:14 143:13 151:24 155:6 162:24 163:11 164:24 165:6 169:11,14 171:24 177:22 177:23 182:7	187:22 188:14 188:20,23 189:6,7 190:15 192:17 197:5 202:23 203:12 203:17,20 Review's 163:15 reviewed 15:10 36:20 51:14 55:23 59:5 71:1 75:4 82:22,25 83:1 87:7 110:9 124:14 129:15 143:9 155:20 171:16 188:21 189:9 191:12 reviewing 18:5 40:6 51:15 61:21 76:11 77:18,21 154:8 198:5 reviews 203:3 Richard 1:10 2:9 3:15 9:6,23 27:8 183:4 right 12:19 13:9 17:5 19:3 20:11,23 21:25 33:21 35:20,21 38:22 43:7,13 43:15 49:10,11 51:16 52:19 54:11 61:9,16 64:2,3 65:11 65:18 74:14 81:7 85:8 95:13 109:4 112:21 129:13 140:23 147:11 150:4 151:3,10 157:15 161:8 171:7 173:20 174:16 175:14 176:9 196:16 197:19 199:24 204:10
--	---	---	--	---

right-hand 138:14 147:10	167:1,4 191:20	153:16,18,21	184:16 197:12	25:2,8 79:17
rights 16:10,12 16:13,14 17:24	191:23,24	154:18,25	199:23 201:3	117:25 158:25
18:2,6 38:20	192:8,15	166:24 167:1,4	201:22	sets 16:13
rigid 99:8	salutations 203:18	schedules 42:8	seeing 118:19	setting 28:13
roll 33:12,18,25	San 1:13,18 2:12	42:23 43:4	171:1	Settle 48:3
Roman 23:12,13	2:18 9:1,7,11	73:22 91:17	seek 14:9 167:12	settled 134:19
Room 3:7	14:8,17 16:18	screen 6:24	seeking 133:6	settlement 4:16
Roughly 104:1	16:23,25 17:12	28:12 187:13	seen 41:8 138:21	5:15,18 40:12
routinely 167:9	38:5 45:3	screened 28:11	140:15 162:14	40:13 43:17
167:17 168:1	47:11,19 49:22	se 77:15	164:9 174:21	44:16 48:9,10
RPS-II 23:2	58:6 75:4	seamless 165:12	182:3,6 184:5	48:12 49:9
24:12	82:20 97:3	165:14	184:11 201:6	51:20 52:3,19
rule 43:3	99:5,9 128:23	searching 51:1	selected 42:25	53:4 56:6
ruled 14:25	137:7 169:21	seasoned 77:16	semi-monthly	57:20,24,25
rules 79:14	sat 77:20,24,25	77:20 78:4	72:21	59:18 60:13,19
ruling 12:25	78:1,2,2	second 24:5 88:9	send 142:20	60:19,21 61:3
13:6,15 21:4	saw 68:14	111:15 116:16	203:16	61:7,22 75:15
ruulings 15:5	saying 19:17	117:5 118:11	sends 185:5	86:10,12,16,20
	47:23 53:17,18	119:17,19,25	senior 3:5 9:15	93:8,15 96:19
	84:22 88:10	121:2 122:6	sense 99:25	98:15 105:3
S	91:1,2,3 142:9	126:4 147:9	sensitive 167:9	114:14 118:21
S 4:6 5:1 6:1 7:1	142:23 150:11	174:9,19 177:5	167:18	119:5 120:22
8:1	151:7,18 153:6	196:22 198:23	sent 32:8 128:15	124:21 130:20
Sacramento 3:8	157:13 159:7	section 24:23	182:18,23	130:21,23
safe 118:16	176:17 193:3	36:1 46:18	186:17,19	133:3 134:23
safety 47:8	193:23 198:5	54:6 57:16	197:23 198:1,3	135:2,6,7
74:21 87:13	says 42:22,23	64:11 94:11,14	198:10	136:25 142:2,4
102:10 162:8	55:19 67:21	102:3 107:20	sentence 93:24	155:25 156:6,7
163:24 202:22	68:3 92:4	112:1 165:22	94:1 95:4	160:7 165:25
203:1,2,7	93:16,20 95:5	187:12 191:18	121:3	166:1,2,6,10
sake 21:2 46:5	104:13 108:10	191:25 192:11	separate 13:11	173:21 175:24
salaries 102:8	109:3 111:10	194:8,8 201:13	127:22	175:25 176:7
138:24	112:1,11 113:5	sections 61:23	separation 166:9	176:13 177:9
salary 42:7,23	120:21 121:2	62:1 157:14	September	180:1
43:4 59:7 60:8	122:19,23,23	see 18:25 34:7	109:7	shadowed 78:5
60:9,14 67:9	128:13 130:22	44:18 67:9,16	service 87:5 88:4	80:24 81:13
67:21 68:3,4	134:2 152:2	67:18 68:9,14	88:6 89:18	shadowing
98:2 134:9,11	158:12 162:6,7	70:25 94:23	126:10 146:21	77:16 81:10
135:18 136:1	162:23 165:24	95:7 100:18	146:23 147:1,5	sheet 110:3
138:25 143:22	165:25 170:3	101:10,19,21	147:8,12,13,16	156:13 185:18
144:3,20 145:2	183:3 191:18	104:2 108:10	147:19	short 197:2
145:3,6,10,14	197:2 199:18	109:1 111:22	services 38:1	Shorthand 2:23
145:19 146:3	202:16 204:6	120:4 124:6,11	57:22 70:25	shout 74:17
147:9,11	schedule 69:16	125:25 132:18	89:14 92:4	show 16:25 17:8
149:10 153:16	74:4 80:21	143:22 153:7	159:10	55:1 100:9
154:18 166:24	98:2 141:18	165:11 167:20	servng 58:11	101:3 159:21
		172:18 174:2	set 14:25 19:17	showing 100:16

129:24 141:12 142:17 shows 159:24 side 147:10 signature 106:14 106:23 174:3 signed 16:15 34:7 36:22 61:4 106:23 similar 34:19 54:17 56:11,13 57:1 139:12 140:25 176:16 178:6 179:1,3 179:4,5 181:22 183:12 190:4 201:14 similar-looking 178:24 similarities 46:21 similarly 69:9 simply 20:9 48:25 68:19 88:21 130:9 141:16 146:23 150:4 164:2 170:10 single 72:14 80:14 131:8 singular 72:14 Sir 9:21 sit 175:8 sitting 9:17 situated 56:11 56:13 69:9 situation 80:3 100:12,20 101:11 104:14 130:23 161:19 162:25 163:11 165:16,20 situations 100:15 163:23 six 88:14 180:19 Sixteen 50:1 187:5	skills 54:8,15,23 54:24 158:20 158:23 skip 119:6 slight 68:8 slightly 81:2 slim 75:13 slow 29:22 173:11 Smart 109:8 sole 198:17,18 solely 63:17 98:17 somebody 163:19 sorry 9:18 21:13 21:23 34:3 37:3 41:4 44:10 47:25 50:1,1,2 52:22 52:24 64:15 69:2 72:2 74:12 75:8 81:1,4 83:11 86:7 94:21 100:22 105:21 108:8 117:9 120:1 123:7 126:12 132:6 132:17 143:18 144:9 148:20 153:5 161:25 165:2,3 169:4 169:5 172:20 173:10 176:21 179:2 182:21 183:22,25 184:22 192:22 196:6 200:20 203:15 sort 35:22 70:17 76:5 93:7 100:13 122:5 126:15 141:23 150:14 164:3 203:11 sounded 66:17	sounds 35:6,13 48:13 84:11 102:9,17 source 91:8 speak 59:20 81:2 123:7 173:11 speaking 64:1 115:25 196:12 speaks 37:16 58:14 59:20 60:24 93:18 special 28:8 29:3 29:15 30:24 33:2 35:9,15 35:21,23,24 36:2 41:16 45:9,20 48:23 49:1,8 51:21 52:19 53:4,10 53:23 54:4,5,7 54:8,15,23,24 55:11,17,19 57:13 60:10,15 62:9,13 63:19 67:14 68:19 71:8,16,18,22 72:12,20,22,23 73:2,6,14,19 74:5,8,11,20 80:18 91:18 115:9,19,22,23 116:17 117:2,5 118:12,24 119:2,7,11 122:20,23 123:11 124:7,9 124:20,22,24 126:7,24 130:1 131:2,4,9,13 131:20 132:11 132:12 136:21 143:12 144:1,4 145:7,8 146:2 146:22 147:3 147:23 148:19 148:23 149:11 149:22,25	150:16,22 154:12 155:2,4 158:19,20,22 158:23 159:1,5 161:16 162:3 162:15 163:18 163:22,24 165:13,25 166:15,16 167:7 168:3 187:14,16 191:7 194:10 195:4 196:11 196:12,18 199:10,12,13 199:16 200:25 specialist 3:6 9:20 23:2,8,10 23:21 specific 29:2,14 30:10 34:2 35:7 43:21 44:12 55:2 56:6 76:10 82:5 90:8 97:4 99:8,12 110:4 111:8,13 112:16 130:7 138:22 150:15 159:18 174:24 182:6 203:14 specifically 27:3 44:13 46:6 68:12 94:18 98:16 99:14 118:23 130:25 132:10 133:18 141:23 157:14 157:16 158:12 158:25 159:19 160:8 184:18 202:5,6 specify 37:5 speculate 115:4 speculation 29:5 60:25 61:13 96:7 99:22	103:8 114:18 115:2 127:14 129:4 149:1 193:1 spell 22:12 spelled 58:20 spells 101:8 spoke 121:18 122:19 spouse 9:23 12:6 square 138:12 staff 3:5 9:15 38:1 150:17 167:25 168:6 stamp 180:25 181:4,6 stamped 108:6 111:16 stand 204:8 standard 80:17 Standards 126:24 star 200:13 202:15 starred 198:24 start 23:4 63:1 83:9,12 84:2,3 104:21 123:21 178:20 started 80:13 81:11 starting 151:15 152:12 starts 104:5 state 1:4 2:3,23 22:12 stated 59:8 98:16 100:7 160:8 Statement 4:8 8:6,8 16:4 19:21,23 170:3 170:9 statements 97:5 97:7,9,14,16 137:6,19 138:3 138:5 139:1,3
--	---	---	--	--

139:13,14 stating 14:16 status 133:6 statute 29:21 30:3 32:10 55:17 56:10 64:10,17 91:5 131:9 133:18 133:25 134:1 136:12 statutory 24:25 53:11,22,25 54:3 57:8,11 61:17 157:2,22 stay 153:3 step 49:13 116:15,16 133:1 141:15 155:1 step-by-step 79:18 Stephanie 58:5 58:19 steps 119:6 stick 62:6 75:25 stipulate 191:6 stipulated 68:24 101:13 130:19 194:21 stipulates 130:2 stipulation 201:9 stop 54:11 204:5 stopped 55:11 Street 3:7 stricken 190:6 strictly 62:6 130:19 strike 185:24 striked 189:16 struck 189:18 structure 14:6 stubs 7:22 stuff 125:10 subcategories 28:3,5 subgovernment	14:5 subject 32:20 submit 193:9 submitted 193:6 subparagraph 66:6,8 subsection 102:8 165:23 subsequent 19:22 subsequently 20:5 132:4 substance 134:18 substantial 82:7 substantially 139:12 140:18 140:25 substantiate 142:8,16 160:11 199:19 sufficient 140:10 suggest 167:24 Suite 2:17 3:12 sum 116:25 144:20 Summary 108:11,17,22 supplement 16:9 18:1 supplementati... 187:4 supplemented 4:12 21:18 186:10 supplementing 20:9 support 12:9,10 15:22 74:9 83:4,13,18,19 83:24 84:17,23 84:25 85:11,13 85:16,20,24 103:7 123:15 152:10,25 159:20 supported 83:1	84:13,24 supporting 32:10 65:16,17 85:3 179:25 supports 85:8 suppose 197:15 supposed 135:5 sure 23:25 24:6 50:25 54:12 74:16 94:22 95:2 97:5 108:12 109:14 112:6,13 118:21 122:17 122:19 124:14 126:8,23 128:12,18 129:14 143:3 145:5,24 148:12 149:20 165:18 168:19 198:2 199:4 202:8 203:15 203:25 surprise 99:17 sustained 26:8 28:16 36:19 51:24 52:22 58:15 59:22 60:25 61:14 76:19 103:9 114:19 115:3 124:3 125:4,10 127:15 133:11 135:14 136:16 145:17 156:4 157:11 161:6 198:20 203:9 swap 150:22 swayed 160:4 switch 128:19 switched 128:18 sworn 22:6,9 system 1:3 2:2 3:3 9:16 25:15 26:19 28:12,19 29:19 30:18	70:18,20 78:23 84:10 91:21 92:25 98:1 104:15,22 107:4,18 109:6 109:7,10,11 114:8,10 116:6 119:13,14 121:1 126:16 127:5,11 128:18,19 151:21 153:1 154:22,25 157:20 162:14 187:13 192:3 195:6,21 systems 28:21 <hr/> T <hr/> T 4:6 5:1 6:1 7:1 8:1 T-O-M-I 16:16 take 15:14,19 49:12 59:24 105:8 111:18 120:7,14 122:9 139:4 141:15 157:1 160:1 168:12 173:2 177:16 181:13 182:21 204:11 taken 2:16 114:7 talk 81:3 talked 121:5 130:12 173:21 talking 38:10 43:7 64:22 77:3 81:4 85:5 110:20 171:18 189:24 taught 80:23 106:17 technical 115:18 technically 30:17 tell 40:2 41:11 45:23 89:25	90:6 102:7 106:7,16 124:24 126:20 128:10 155:13 165:14 187:22 189:5,9 telling 35:17 153:6 tells 152:3 193:12 temporarily 102:10 temporary 11:21 35:1 36:3 43:17 45:8,14,19,24 45:25 46:1,2,9 49:5 57:18,21 100:11,15,20 100:24 101:6 101:11,19,25 102:16,18,21 127:1 128:16 128:24 129:18 129:23 130:2 141:3,13 142:5 142:24 153:24 154:13 156:16 156:19,24 157:1,3,4,7,9 157:13,15 158:1,2,5,6,9 159:13,17,24 161:21 162:16 187:20 200:16 201:1,14,25 Ten 169:6,7 term 33:11,15 33:17 46:14 87:11,21,23 88:4 115:25 145:16,17,22 156:19 158:6 200:18,20,20 200:23 201:6 202:6 terminology
---	---	---	---	---

128:20 157:25 terms 126:21,23 128:11,13 test 166:16 168:3 testified 22:10 50:25 110:21 110:22 115:7 143:9 184:14 184:18 190:9 190:22 testifies 186:1 testify 12:7,15 40:3 140:16 testifying 12:16 23:4 53:18,20 66:11 139:20 testimony 52:20 79:7 91:4 106:2 115:10 117:9 155:24 177:13 182:15 184:8 196:2,7 text 111:23 112:1,6 122:18 122:19 Thank 12:3 14:21,22 15:8 17:18 20:25 21:12,21 22:16 23:14 24:4 29:23 36:6 43:10 45:5,5 48:6 51:12 62:23 68:16 69:23 89:1 103:18 105:15 113:13 122:3 128:2,4,5 136:24 137:4 137:23 144:17 152:17 153:13 157:18 166:13 168:18 171:21 180:12,20 181:12 183:9 194:1 201:17	204:3 Thanks 37:10 thing 73:16 150:19 168:23 171:15 173:23 176:18,19 181:5,6 things 11:16 35:22 75:20 147:4 151:6 152:14 170:23 think 12:17 15:23 18:7,22 18:24 19:4,24 19:25 20:16 27:18 57:15 62:5 81:13 91:11 95:12,25 117:8 121:23 132:15,25 151:11 154:8 159:14 161:21 163:12,20 165:19 169:24 169:24 182:6 186:6 191:14 193:7 199:20 thinking 113:22 113:25 114:16 115:5 third 111:17,20 111:22,25 119:17,20,21 119:21 120:4 176:2,17 177:5 200:12 Thirteen 44:12 185:13 three 61:6 102:25 103:2,3 126:3,6 148:9 186:7,8 threshold 12:21 13:9 54:4 55:12 117:2 threw 85:12 tie-in 150:15	time 17:3 21:22 27:16 30:20,21 38:3 40:8 47:11 62:17 69:13 75:7 78:1 81:10,12 84:20 87:10,12 87:16,19,21,22 87:24 88:2,4 88:10,15,20 89:15,18,25 90:7,8,19 91:21 92:8,12 92:24 93:5 96:6,10 103:22 113:23 114:10 114:17 124:12 125:10 127:20 129:1,11 145:1 145:13 146:24 152:11,13 161:17 162:12 163:6,10,13 164:23 165:11 165:17 170:13 175:5 timely 134:10 times 68:10 92:16 96:21 117:12 161:11 176:8 timing 126:2,5 tired 204:6 title 152:22 154:17,19 161:4 titles 98:3,6 138:22 today 9:17 16:23 16:25 17:1 34:22 71:5,17 80:10 86:19 137:8 175:8 183:15 told 27:21 42:13 131:19 139:16 142:17,24	150:8,17 Tomi 16:15 tomorrow 19:14 204:1 tonight 170:6 top 71:4 108:22 108:24 111:20 111:22,25 112:19 120:2 180:7 total 73:9 78:7 Touch 6:20 76:2 76:3 107:4,19 109:9 110:10 110:17,22 113:3 128:1 touching 155:9 trailed 135:19 train 114:2 trained 77:13 78:11 114:1 122:16 training 77:12 77:15,19 TRANSCRIPT 1:17 2:16 transcripts 26:24 27:7 127:2,4,8 129:3 155:13 treat 90:21 tried 74:5 trigger 70:22 71:23 73:12 triggered 67:5 71:2 72:24,25 151:23 trolls 70:20 true 20:11 128:2 131:21 152:16 153:3 trust 167:10,19 try 73:22 75:25 trying 11:18 74:11 76:1 91:11 93:22 99:23 125:13	125:13,14 126:13 131:25 132:1 147:20 150:19 161:8 162:19 177:24 turn 66:4 89:3 107:6 108:5 111:15 119:16 122:6 125:16 127:17 128:7 143:14 167:6 169:2 170:17 171:23 172:11 173:9,13 175:17 176:1 178:8 179:20 180:16,21,24 182:2 184:10 185:2 186:5,12 188:11,19 189:3 190:18 196:22 198:22 turning 48:8 173:6 Twelve 43:24 Twenty-four 191:16 Twenty-six 190:3 two 10:4,23 11:9 12:21 16:6 28:6 35:19,19 44:7,14,15 78:4,15 101:12 104:1,9 121:18 137:8 139:23 147:4 149:25 155:12 172:19 174:6 176:22 187:22 189:11 189:14 two-part 121:5 two-step 116:14 type 63:25,25 64:1,5,8,19 66:9 68:18 100:18 106:13
--	---	---	--	---

109:15 132:4,5 134:6 135:4,8 185:5 200:25 types 28:6,21 35:19,20 64:2 199:25 typical 198:4 typically 44:19 67:8 75:24 100:15 101:2,8 106:20 111:11 127:9 135:6 165:11 197:4 201:1 203:19 204:4	91:2,4 92:6 93:9,12,14 94:13,15 95:4 95:9,12,19,23 96:10 99:7 102:7 113:6,17 124:23 125:7 126:20 127:13 131:19,23,24 139:12,22 144:19 145:1 159:14 Understood 53:16 undertake 49:20 53:3 82:14 undertaking 76:16 undertook 39:15 40:18 52:17 127:13 unfortunately 137:9 Unidentified 4:15 uniform 199:1,5 199:8,12,15,24 200:2,6,9 unit 23:20 24:13 24:14,15 34:16 46:22 70:5,6 70:15 76:6,8 76:12,17,22,25 77:10,14 78:8 79:1,4 87:3 88:3 89:9 104:7,10 106:9 106:12,18 122:15 133:14 134:7 139:2 151:24 162:24 163:11 202:23 203:13,17 unwithdraw 169:9 upgrade 11:21 35:2 36:4	43:18 45:8,14 45:19,25 46:1 46:2,10 49:5 57:19,21 100:11,15,20 100:25 101:6 101:11,19,25 102:16,18,21 127:1,1 128:16 128:24 129:19 129:23 130:2 141:3,13 142:5 142:24 153:24 154:13 156:16 156:19,24 157:1,13,16 158:1,5,9 159:13,17 161:22 162:16 187:20 200:16 201:1,15,25 upgraded 46:12 142:10,18 158:14 159:24 160:15 upper 138:14 upward 144:7 upwards 65:13 68:5 use 33:15 72:8 89:8 91:2 95:24 113:2 114:2,4 115:25 120:18 129:11 134:1 157:12 172:12 179:18 179:23 184:11 195:20 201:4,5 202:6 203:14 usually 16:12 71:11 101:1 utilize 30:5 82:18 90:24 173:16 utilized 32:25 76:24 90:7 91:23	V	94:20 108:5 113:12 125:16 126:2,3 127:17 136:18 137:8 137:13 139:25 140:13,17,23 164:6,8,17 168:10 176:1 190:18 wanted 13:1,25 93:12 wants 120:21 wasn't 80:21 96:15 97:23 103:1,9 114:16 130:7 134:10 135:8 140:2 149:22 200:2,4 watching 77:16 way 40:9 78:16 78:19 81:5 108:11 112:12 115:17 116:18 119:1,2 122:22 132:4,23 135:16,17,21 135:24 138:23 149:13 150:8 150:16 179:8 193:9 194:18 ways 79:20 we'll 11:16 39:8 105:9 137:25 168:13 we're 36:12 85:5 101:12 108:18 115:25 130:23 137:14 142:18 146:4 147:19 149:22 165:21 166:15 178:19 180:16 196:12 we've 9:25 57:18 86:18 133:13 165:19 176:7 177:12 website 42:21,24
U				
Uh-huh 189:20 Um-hum 32:6 36:7 uncommon 33:1 33:10,23 34:1 underlying 86:6 86:9 151:11 184:19 understand 19:17 29:18 36:16 43:9 47:3 51:19 60:2 74:16 77:21 92:8,19 95:14 126:13 129:10 131:11 133:9 141:16 150:18,18 151:3,13 163:4 165:3,4 181:25 189:24 193:22 196:9 understanding 15:5 31:14 42:20 43:21 47:9 54:14 55:22 59:16,24 60:12 61:2,5 66:12,14 73:13 77:17 87:12,15				
			W	
			wait 46:19,19 123:18,18 185:25 want 12:21,24 18:12 19:5 20:13 21:4 26:16 42:18 43:6 53:14 62:4 71:1 73:8 74:17 81:20	

42:24 43:5 44:17 51:1 73:24 82:19 137:8,24 weight 146:21 went 55:14 68:7 68:13 72:18 109:6 143:5 weren't 80:14 142:23 169:5 Wes 186:23 Wesley 3:4 9:15 West 3:12 white 27:2 whoa 64:14,14 64:14 wish 12:3 14:23 18:18 63:16 withdraw 17:14 31:12 117:9 withdrawing 17:13 withdrawn 4:13 17:16,17 18:13 88:1 169:1,7 witness 22:1,1,9 22:11,14 23:13 25:14,21 26:19 27:4,13 29:7 32:2,4,7 33:8 33:20 34:5 35:6,24 36:7 36:20,25 37:19 38:16 39:24 40:15 41:15,22 42:2,9 44:19 45:4 46:20 47:15,25 48:3 49:19 50:3 52:6,13 53:20 58:3,18 62:22 62:22 64:15 65:22 66:5,17 67:24 68:4,12 68:15 69:13 79:13 82:3 84:20 85:1,7	85:10,15 86:21 87:24 88:2,12 88:15,18,25 90:4 91:10,15 92:21 96:10 99:12,25 102:3 107:8 108:13 108:24 109:1 111:19,21 112:3,6 117:12 117:16 119:24 120:1,4,9 122:10 127:19 127:24 128:9 129:6,13 131:17 133:10 133:23 134:23 135:1,21 136:23 137:3 138:15 139:24 140:1,4,20 141:1 143:19 145:24 146:9 146:12 147:22 149:12,18 150:4 151:4,20 152:16 153:10 153:12 155:18 157:15,19 161:23 163:5 163:23 164:11 164:14,16,21 165:10 166:2,6 166:20 171:3,7 172:22 175:19 176:11 179:13 181:1 183:17 184:4,25 186:14 188:5,7 188:13,25 190:9 193:3,20 194:2 196:18 197:12 201:13 201:16,18 203:22 204:8 witness's 184:10 191:13 196:2	witnesses 4:2 10:2,2 20:14 175:10 wondering 158:10 word 157:3 158:16,18 197:1 words 45:25 64:1 136:24 154:17,19 work 22:23 34:17 43:8 46:12,22 54:8 54:9,9,16,16 55:6,8 61:16 70:4,13,13,16 77:17 78:9 80:13 81:9 89:15 90:16 96:12 103:22 123:23 136:8 139:1 140:8 158:14,16,18 158:20,20,23 158:23 159:3,8 159:8 160:6,16 161:12,18 164:1 167:21 168:2,8 175:7 201:7 202:22 202:25 work-related 46:23 worked 78:6,7 worker 89:16 workers 87:13 88:6,13,23 working 59:10 78:14 88:14,17 88:18,20,22 89:14 90:15,17 92:5,9 93:2,4,4 100:17 136:9 160:8 wouldn't 90:12 173:1	write 106:7,11 106:13 197:6 writes 203:13 writing 32:17 114:13,22 173:8 177:13 written 56:7,16 65:24 68:25 76:10,13 77:8 78:25 79:3 101:7 130:22 136:8 141:18 142:12 156:19 156:23 159:23 191:5 wrong 91:4 150:6 wrote 36:21 40:4 113:6 115:4 128:12	yep 24:6 50:16 <hr/> Z <hr/> Z 198:6 Zimmerman 122:11 123:16 123:24 124:12 125:6 126:4 Zimmerman's 126:6 <hr/> 0 <hr/> 1 <hr/> 1 4:8 5:15 10:4,5 10:6,8 11:16 11:17 16:3 17:20,21 21:16 21:19 54:6 68:2 173:13,16 173:19 174:6 174:12,19 175:10,14 176:15,16,19 177:15,16,23 1/22/13 5:13 10 4:8,10,11,13 4:15,16,18,20 4:21,23,23 5:3 5:4,6,7,9,10,15 5:17,20,22 6:3 6:5,6,9,10,12 6:12,14,16,17 6:19,21,22,24 7:3,5,6,8,9,11 7:12,14,15,17 7:18,18,20,20 7:22 68:2 102:12 168:24 170:17,24 171:8,10,11,19 183:12,17,18 183:21 184:2,7 10/06/14 7:21 10/10/14 7:24 10/26/12 6:11 10:28 2:19 9:2
---	---	--	---	---

100 162:6 202:8	128:3 181:13	1st 194:5	2014-0256 1:9	<u>3</u>
10th 11:5	181:21,24		2:8	3 4:11 5:20 16:8
11 5:3 6:14 7:23	186:3	<u>2</u>	20140256 9:8	17:20,23 18:11
7:23 113:9	15 5:9 6:21	2 4:10 5:17 9:20	2014040945 1:10	21:16,17 36:24
168:24 169:6,7	49:18,25 50:1	16:6 17:5,20	2:9 9:8	38:23 39:2,4
171:14,23	50:2,3,5,6,9	17:22 21:16,19	206 46:19	45:7,12 112:19
172:2,7,8	51:15 168:13	94:8,10 113:5	20630 89:4,6	165:23 168:20
183:13,19	186:6,17,20,22	174:4,4,14	91:3	178:4,5,19
184:11,11,21	186:23 187:1	175:17 176:6	20630(A)3 89:11	179:2,17,18
184:24 185:16	15th 144:16	176:14,19	20636 24:23	186:9,16
11500 3:12	16 5:10 6:22	177:2,4,10,16	92:6	3,000 150:23
12 5:4 6:16 42:8	10:4,6 74:23	177:19	20636(C) 54:6	30 7:22 10:23
42:16 43:2,12	168:24 169:4,6	2(B) 94:10	192:1	11:1,11,12,13
43:16 44:9	169:7 172:11	20 7:6 189:3,7	20636(C)2 55:19	30th 10:24
50:12,20,22,24	172:24 173:3	2000 194:5	20636(C)4 194:8	31 7:23 10:25
51:2,5,10	186:12,16	2000-13 7:10	20636(E)1 46:18	11:4,6,13
67:21 68:2	17 4:13 5:12	2000-251 7:13	20691 194:8	32 8:3 19:5,8
72:23 81:21	6:24 40:24	2000-333 7:11	20692 64:11	33 8:6 138:3,6,9
154:1,2,7	41:1,2,5,6	2000351 194:4	20th 126:14	138:12
185:3,3,8	62:16,18,20,21	2004 105:1	129:3,14	330 2:17
194:2 201:8	63:2,3 187:8	134:17 144:16	21 4:8,10,15 7:8	3340 3:7
12080 1:23 2:22	187:25 188:10	146:8 151:15	102:3 189:3,7	34 8:8 138:4,6
122 6:19	190:18,20	2005-454 7:17	21060 133:19,23	138:14,14
13 1:19 2:19 5:6	193:8 196:23	2006-66 7:16	22 4:3 7:9 189:3	36 154:1,2
6:17 9:1,12	197:11,12,18	2007 13:18 34:6	189:7	36(E)1 46:20
10:25 44:5,6	197:19,22	36:10 58:6	22nd 16:5 40:25	39 4:11,21
44:11 47:10	198:23 202:4	59:13 61:4	23 7:11 189:8,10	
49:24 50:15,16	171 4:23 6:12	113:9,11	23rd 122:7	<u>4</u>
50:20,23 51:5	172 5:3 6:14	119:18 134:15	24 7:12 66:4,8	4 4:13 5:22
51:10 66:4	173 5:10 6:22	148:6	66:16 189:8,10	16:17,22 17:7
74:24,25	177 5:17	2008 172:23	189:16,18,22	17:11,13,14,15
101:17 152:1	18 7:3 188:12,14	2009 81:11,19	191:14,17	17:17 18:13
185:13 189:12	180 5:22	2009-2010 81:16	25 7:14 189:8,10	168:25 169:3,7
190:4,9 191:11	181 6:6,9	2010 154:7	26 7:15 189:8,10	169:9,12,17
191:16,17	183 6:10	2011 10:24	189:14 190:2,8	170:5 178:23
193:6	187 6:21	109:7 122:7	190:12,13	179:1,20,21
138 8:6,8	197 5:8 8:3,3	126:14 129:3	27 5:7 7:17 10:5	180:2,9,13
13th 58:6	188:19,20	129:14 154:8	10:8 189:9,25	4/15/2012 67:22
14 5:7 6:19 27:3	189:7	2012 10:25	190:1,13,15	4:15 203:24
27:16,17,22,23	1999-235 7:4	2013 16:15	28 7:18 10:10,14	4:41 204:13
67:2,21 68:2	1999-236 7:5	40:25 128:13	11:13	400 3:7
68:13 72:1	1999-242 7:14	128:15 129:3	29 7:20 10:18,20	405 137:17
107:6 119:17	1999-252 7:7	129:17	11:13	139:7
119:22,23,24	1999-253 7:8	2014 1:19 2:19	2972OSD 1:25	41 5:12
121:14,16,25	19th 59:13	9:1,12 10:11	2nd 105:1	414(H)2 192:11
122:1 125:18	128:13,15	10:18 16:5	134:17	4850 87:10,12,16
127:18,21,25	129:3,17	139:9		87:19,23,24

88:2,4,15,20	174:15 178:8	103:12,14,16		
89:12,18,23,24	178:13,14,16	105:18,22		
89:25 90:7,8	178:20 180:17	112:15,23		
90:13,19,24	194:3,3	113:11 115:8		
91:2,4,12,21	6/13/07 5:23	118:15 134:14		
92:8,24 93:5	63 5:12	136:17 146:6		
96:6,10 161:17	650 2:17	147:21 180:22		
161:22 162:4,5	6th 61:4	181:6 182:3,13		
162:12 163:10	<u>7</u>	183:7,8,10		
163:13,23	7 4:18 6:6 41:21	191:22 192:5		
164:7,11,22	50:11,20,22	194:9 195:12		
165:11,16	51:5,10 58:2	90064 3:13		
<u>5</u>	143:14,18	94229-2707 3:8		
5 4:15 6:3 16:19	144:11 180:5,8	942707 3:7		
17:20 19:16,17	180:16,21,24			
21:14,16,19	181:2,10			
59:6 60:6,6	191:18 201:13			
101:10 125:17	7,844 146:15			
126:18 129:2	7/05/07 6:8			
129:13 180:15	70 4:3			
194:3	735 199:20,21,21			
50 5:9 73:10	738 199:19			
51 4:16,18,20	<u>8</u>			
5:4,6	8 4:20 6:9 16:15			
5111 126:10	42:1,3 50:11			
550 3:12	50:20,22 51:5			
570 166:3	51:10 58:17			
571 57:16	127:17 128:8			
165:22	129:16 143:10			
571(A) 36:1	143:14,16,17			
45:22 46:7	143:18 165:24			
157:17,21	178:12,13,21			
166:21	180:17,19			
571(A)3 46:9	181:5,13,14,16			
571(B) 116:11	181:17,18			
157:23	8,107 146:16			
5th 13:18 34:6	80 140:9 141:8			
113:11 134:15	8th 119:18			
<u>6</u>	<u>9</u>			
6 4:16 6:5 10:11	9 4:21 6:10			
10:18 40:14	13:18 34:3			
48:8 50:11,20	39:6,8,9,11,12			
50:22 51:4,10	40:9 66:19			
60:20 94:5	67:18 68:14			
173:19 174:7				