

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. )

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TRANSCRIPT OF PROCEEDINGS  
San Bernardino, California  
Tuesday, October 14, 2014

Reported by:  
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CSR No. 12080  
  
Job No.:  
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20 Also Present: Mrs. Richard Lewis

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I N D E X

RESPONDENT'S Witnesses:	Direct	Cross	Redirect	Recross
Helen Tran	10	48	58 65	62
Laura Yavornicky	68	127	147 155	154 156
Richard Lewis	159			

E X H I B I T S

RESPONDENT'S:	Marked for Identification	Received in Evidence
2 - Cover letter with Settlement Agreement and handwriting		94
3 - Finance Interoffice Memo		83
6 - Letter from Ms. Chamberlin		84
10 - Mr. Lewis's Retirement Request and CalPERS reply		217
11 - Finding of fact/law		207
12 - CalPERS letter to Respondent		223
13 - Respondent's Retirement Application		222

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E X H I B I T S (Continued)

RESPONDENT'S:	Marked for Identification	Received in Evidence
18 - Resolution 1999-235		20
19 - Police and fire Safety MOU Resolution 1999-236		21
20 - Police and fire Safety MOU Resolution 1999-252		23
21 - Resolution 1999-253		25
22 - Management Confidential Resolution 2000-13		32
23 - Resolution 2000-333		26
24 - Fire Safety MOU Resolution 2000-251		28
25 - Safety Management Resolution 1999-242		34
26 - Rank and File Fire Safety Resolution 2006-66		36
27 - City Council's Resolution 2005-454		40
30 - Pay stubs		47
33 - Duty Statement of Fire Captain		46
34 - Duty Statement of Battalion Chief		46

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E X H I B I T S (Continued)

RESPONDENT'S:	Marked for Identification	Received in Evidence
35 - Fire Safety MOU	16	17
36 - 2011 changes to fire safety MOU Resolution 2011-33	17	18
37 - Official Exhibit 26 MOU with red cover	39	39
38 - Subpoena for Ms. Tran	48	48
39 - Fax cover sheet with handwriting	88	89

1 San Bernardino, California, Tuesday, October 14, 2014,  
2 9:12 a.m.

3  
4  
5 THE COURT: On the record in the matter of the  
6 accusation brought by CalPERS, appealed by  
7 John Michael Jensen (sic), OAH Case Number 2014040945,  
8 Case Number 2014-0256.

9 We're at day two of the hearing at the CalPERS'  
10 office in San Bernardino. The record will reflect that  
11 both counsel are present as is Mr. Jensen (sic), and this  
12 morning we have witnesses subpoenaed from the City of  
13 San Bernardino and the City Attorney from the City is  
14 present to assist them. There's been a request by CalPERS  
15 to exclude her from the courtroom, and I'm denying that  
16 request and allowing her to assist the witnesses who have  
17 been subpoenaed.

18 Your first witness, Mr. Jensen?

19 MR. KENNEDY: And, Your Honor --

20 THE COURT: Go ahead, Mr. Kennedy.

21 MR. KENNEDY: Wesley Kennedy, Senior Staff Counsel,  
22 California Public Employees' Retirement System, and beside  
23 me again is Ms. Lolita Lueras.

24 THE COURT: You don't need to -- I already said  
25 everybody is present, but maybe I didn't.

1 MR. JENSEN: Your Honor, I need to make a correction.  
2 Richard Lewis, if I might make a correction, you mentioned  
3 it was the appeal of me.

4 THE COURT: Oh, I'm sorry, sorry, my bad. Appealed  
5 by Mr. Lewis, my fault.

6 MR. JENSEN: And, Your Honor --

7 THE COURT: And I'm granting the request to call  
8 witnesses out of order.

9 MR. JENSEN: Great.

10 MR. KENNEDY: And, Your Honor, only concerning  
11 Ms. Daube, since Ms. Daube is here in the capacity as the  
12 counsel for the witnesses from the City, that there be an  
13 admonition as to the factual -- obviously advise her not  
14 to have factual discussion with them as far as the  
15 testimony that is undertaken in their absence, otherwise  
16 it would defeat the absence.

17 THE COURT: I'm going to exclude witnesses until they  
18 testify, but I'm not going to admonish the attorney what  
19 she can and cannot say to her clients. That request will  
20 be denied.

21 Your first witness, Mr. Jensen?

22 MR. KENNEDY: Your Honor?

23 THE COURT: I'm sorry.

24 MR. KENNEDY: We had left last night with CalPERS on  
25 redirect for Mr. Lueras, and before -- I think we're not

1 going to call Ms. Lueras on redirect; however, I would  
2 like to ask the Court for one clarification from  
3 yesterday.

4 THE COURT: Okay.

5 MR. KENNEDY: It indicated that it felt there was --  
6 it was going to allow some testimony subject to further  
7 objection, some testimony concerning what duties Mr. Lewis  
8 may or may not have actually performed during some periods  
9 of his employment with the City of San Bernardino, and  
10 just for clarification's sake, the Court felt this was  
11 relevant for what purpose?

12 THE COURT: One of the bases of Ms. Lueras's opinions  
13 as to why she drew the conclusions that she did was that  
14 he didn't -- he never even performed the duties of a  
15 battalion chief, so I'm going to allow Respondent to  
16 refute that factual assumption.

17 MR. KENNEDY: If I can just make a proffer? If  
18 Ms. Lueras was asked the question of whether or not he did  
19 on occasion perform such duties, would it make a  
20 difference in her determination or pursuant to the PERL,  
21 unless there was some kind of, you know, official  
22 promotion or official, you know, acting document under  
23 which he acted, and she would say no, it wouldn't. So I  
24 would just ask that you listen to the testimony. I will  
25 ask you to call Ms. Lueras on rebuttal after his

1 testimony.

2 THE COURT: Okay. That request will be granted, sir.  
3 Mr. Jensen?

4 MR. JENSEN: Your Honor, may I call one of the  
5 witnesses out of order?

6 THE COURT: Yes.

7 MR. JENSEN: I'm going to call Helen Tran,  
8 Your Honor. Excuse me for a moment.

9 (Pause in the proceedings)

10 THE COURT: Can you raise your right hand?  
11

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

15 THE WITNESS: Yes.

16 THE COURT: Can you state your full name, please, and  
17 spell your last name for the record?

18 THE WITNESS: Helen Tran, T-R-A-N.

19 THE COURT: Thank you. Have a seat.

20 Mr. Jensen?

21 MR. JENSEN: Thank you, Your Honor.  
22

23 DIRECT EXAMINATION

24 BY MR. JENSEN:

25 Q Good morning, Ms. Tran. Can you briefly tell us

1 a little bit about your educational background?

2 A I went to school at U.C. Santa Cruz. I graduated  
3 there with a bachelor's degree in market studies, emphasis  
4 in political science. Then I studied abroad for a year in  
5 Italy, learned the language or language and culture, so I  
6 speak Italian, and that's pretty much -- oh, and then I  
7 went to Cal State San Bernardino and got HR management  
8 certificates, that's when I started with the City in 2006.

9 Q And in what position did you start? Well, first  
10 of all, which city are you employed by?

11 A City of San Bernardino.

12 Q And what was your first position with the City of  
13 San Bernardino?

14 A Executive assistant to the director of HR.

15 Q And what was your duties as executive director --  
16 I'm sorry, executive assistant to the HR director?

17 A It was a wide variety of duties because I always  
18 do more than what is typically expected to do, so I worked  
19 with all the managers there, which were the risk manager,  
20 HR manager, the workers' comp. manager, and the director  
21 of HR, so I worked on a wide variety of reports and all  
22 aspects in HR, so that's how I started.

23 Q And was it -- in your position, did you review  
24 memorandums of understanding, MOUs?

25 A Yes, for the director, yes.

1 THE COURT: What's your title in the City?

2 THE WITNESS: Currently?

3 THE COURT: Yes.

4 THE WITNESS: HR division manager.

5 THE COURT: Thank you.

6 BY MR. JENSEN:

7 Q So let me ask you, what was your position after  
8 executive assistant to HR?

9 A From there I moved into the senior HR tech, and  
10 then the HR analyst, and currently the HR division  
11 manager.

12 Q And how long have you been employed at the City?

13 A Over eight years.

14 MR. KENNEDY: Your Honor, as far as the projection  
15 volume --

16 THE COURT: Can you keep your voice up?

17 THE WITNESS: Okay. Sorry.

18 BY MR. JENSEN:

19 Q And in your current position as -- I'm sorry,  
20 what was the title, your current position?

21 A Current position is HR division manager.

22 Q And as HR division manager, were you involved in  
23 any negotiations of the MOU with the rank and file of the  
24 fire department?

25 A For the fire safety department?

1 Q Yes.

2 A Safety employees, we actually have our legal  
3 handling that piece currently.

4 Q And do you review the MOUs as a regular part of  
5 your job?

6 A I do work with the legal team to look at the MOUs  
7 for my understanding when we implement.

8 Q And does the City of San Bernardino have an MOU  
9 with the managers of the safety employees?

10 A You're talking about the fire management  
11 association?

12 Q Yes.

13 A There is an agreement, I believe it's the MOU,  
14 it's more of a resolution.

15 Q And so are you familiar with the City of  
16 San Bernardino's policies of using some employees to work  
17 in an acting class, an acting position?

18 MR. KENNEDY: Vague, lack of foundation.

19 THE COURT: Sustained.

20 BY MR. JENSEN:

21 Q Does the City of San Bernardino have a policy of  
22 using employees to work in a higher upgraded class?

23 MR. KENNEDY: Relevancy.

24 THE COURT: Overruled.

25 THE WITNESS: It should be in, I believe, the charter

1 that talks about the higher-acting pay as far as in the  
2 MOU or any resolution that's applicable to the employee  
3 code.

4 BY MR. JENSEN:

5 Q And what is your understanding of the City's  
6 policies and procedures regarding this acting designation?

7 A I'm not -- are you asking if I understand the  
8 policy?

9 Q Yes. Well, tell us how you would -- well, does  
10 the City have written guidelines and procedures for  
11 determining whether someone is in an acting position?

12 A If they meet the criteria in the MOU or policies  
13 regarding higher acting.

14 Q And is there any documentation that the City  
15 undertakes when someone is in an acting position?

16 A Can you say that again?

17 Q Does the City formalize in writing when someone  
18 is in an acting position?

19 A There would be a Personnel Action Form generated  
20 by the department to prove by the City manager and HR and  
21 finance.

22 Q And does that occur in all cases the same  
23 procedure?

24 A It should be the same procedure for any  
25 higher-acting pay.

1 Q And when does the higher-acting pay, in your  
2 experience, start?

3 A It depends on what's the criteria that are in the  
4 MOUs or resolution.

5 Q Okay. And are you familiar -- do you have any  
6 personal knowledge of the treatment of Mr. Lewis's pay as  
7 far as his reporting it to CalPERS?

8 A No, I do not.

9 Q Okay. And the reason that we subpoenaed you here  
10 today was for your knowledge of the City's resolutions  
11 regarding employer-paid member contributions, and did you  
12 bring some documents with you that are -- or can you  
13 authenticate the documents regarding employer-paid member  
14 contributions?

15 A Yes. If you are referring to fire safety  
16 employees, I did bring with me at the time of Mr. Lewis's  
17 retirement, this is the fire safety's MOU provisions  
18 regarding the retirement plan and EPMC, so I do have that.

19 MR. JENSEN: And, Your Honor, if I may approach the  
20 witness?

21 THE COURT: Yes.

22 MR. JENSEN: And, Ms. Tran, may I approach?

23 THE WITNESS: Yes.

24 MR. JENSEN: So --

25 THE WITNESS: I also do have -- so at the time of his

1 retirement, that's what was employed, and then in 2011  
2 there was a change.

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

4 THE WITNESS: There was the position --

5 MR. JENSEN: That was 2, okay, great.

6 THE COURT: Yeah.

7 MR. JENSEN: Ms. Daube? Thank you, Ms. Tran.

8 Your Honor, if I may mark for identification?

9 THE COURT: Sure, 35.

10 MR. JENSEN: Safety MOU is 35.

11 (Respondent's Exhibit 35 was marked for  
12 identification by the Court.)

13 BY MR. JENSEN:

14 Q And then, Ms. Tran?

15 A The following is the -- oh.

16 MR. JENSEN: Your Honor, I'd like to offer 35 into  
17 evidence.

18 MR. KENNEDY: Your Honor, I think 35 is a portion of  
19 what's already in evidence as 13, it's pages 23 and 24 of  
20 13.

21 THE COURT: Correct.

22 MR. JENSEN: And, Your Honor, I have --

23 THE COURT: I'm going to receive 35 and note that  
24 it's already in as Exhibit 13.

25 MR. JENSEN: Thank you, Your Honor.

1                   (Respondent's Exhibit 35 was received  
2                   in evidence by the Court.)

3                   MR. JENSEN: Your Honor, Ms. Tran handed me  
4                   Resolution 2011-33, and I'm handing a copy to Counsel.  
5                   Your Honor, may I approach?

6                   THE COURT: Yes.

7                   MR. JENSEN: With your permission, I'd like to mark  
8                   this document as Exhibit 36 and offer it into evidence.  
9                   Ms. Daube?

10                  MR. KENNEDY: Other than the fact that Ms. Tran  
11                  handed him a document, there's been no testimony --

12                  MR. JENSEN: I'm just --

13                  THE COURT: Everybody stop one second, please.

14                  And just so the record is clear, Respondent's  
15                  Exhibits 12 and 13 -- strike that sentence.

16                  So you want to mark as Exhibit 36  
17                  Resolution 2011-33? It will be so marked.

18                  (Respondent's Exhibit 36 was marked for  
19                  identification by the Court.)

20                  MR. JENSEN: I'm sorry, Your Honor, this is marked as  
21                  36?

22                  THE COURT: Yes.

23                  BY MR. JENSEN:

24                  Q Ms. Tran, looking at the document you just handed  
25                  me, what is this document?

1 MR. KENNEDY: I'm sorry, for the record, is that 36?

2 THE WITNESS: 36.

3 MR. JENSEN: 36.

4 THE WITNESS: Can I speak?

5 BY MR. JENSEN:

6 Q Yes.

7 A This document is the resolution of Council of the  
8 City of San Bernardino adopting the terms and conditions  
9 of employment for the fire safety employees. So I believe  
10 these were imposed on the fire safety employees, so this  
11 does mention the EPMC as well, so this is after the  
12 document I handed to you, the MOU.

13 THE COURT: So 36 were the 2011 changes made to 35?

14 THE WITNESS: Correct.

15 MR. JENSEN: Your Honor, I'd like to offer 36 into  
16 evidence.

17 MR. KENNEDY: No objection.

18 THE COURT: Okay. Exhibit 36 will be received.

19 (Respondent's Exhibit 36 was received  
20 in evidence by the Court.)

21 BY MR. JENSEN:

22 Q Ms. Tran, can I turn your attention to Exhibit 18  
23 in the binder with the blue front?

24 A (Witness complies)

25 Q Do you recognize this document?

1 THE COURT: Which number, Counsel?

2 MR. JENSEN: I'm sorry, Exhibit 18 in the blue  
3 binder.

4 THE COURT: Well, colors don't work.

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

6 THE COURT: Eighteen of your documents?

7 MR. JENSEN: Yes, 18 of mine.

8 THE COURT: Okay. Thank you. Referring to yours or  
9 mine will help for the record.

10 MR. JENSEN: You're right.

11 BY MR. JENSEN:

12 Q Ms. Tran, do you recognize this document?

13 A I think this document goes with the MOU that was  
14 adopted, the one that's current prior to the position.

15 MR. KENNEDY: We have an excerpt that's 35, but I  
16 believe it's the excerpt on, just for the record, the  
17 excerpt from 13. Is that the MOU that you're referring  
18 to?

19 THE COURT: Correct, 35 is Complainant's 13.

20 MR. KENNEDY: Okay.

21 THE COURT: So your testimony is that Exhibit 18 in  
22 the Respondent's notebook is the resolution that goes with  
23 the MOU that's Exhibit 13 in Complainant's and partial 35.  
24 Is that my understanding of your testimony?

25 THE WITNESS: Correct.

1 MR. JENSEN: Thank you. Your Honor, I'd like to  
2 offer 18 into evidence.

3 THE COURT: Any objection to my receiving Exhibit 18?

4 MR. KENNEDY: If I could just voir dire just one or  
5 two questions?

6 THE COURT: Go ahead.

7 MR. KENNEDY: Ms. Tran, was this Respondent's  
8 Exhibit 18, this resolution, was it still in force and  
9 effect in 2007?

10 THE WITNESS: I would believe so.

11 MR. KENNEDY: Okay. And does this relate to the MOU  
12 for the rank and file?

13 THE WITNESS: Based on what I'm seeing here, yes.

14 MR. KENNEDY: Okay. No further objection,  
15 Your Honor.

16 THE COURT: Exhibit 18 of Respondent's will be  
17 received.

18 (Respondent's Exhibit 18 was received  
19 in evidence by the Court.)

20 BY MR. JENSEN:

21 Q And, Ms. Tran, can I ask you to turn to the next  
22 exhibit, Exhibit 19 in Respondent's exhibit book?

23 A (Witness complies)

24 Q Do you recognize this document?

25 A It looks like it came after the previous document

1 that I just looked at, but, I mean, these went -- well, I  
2 wasn't around when these were adopted, so if you're asking  
3 me if I recognize it, I would say no. But as I'm looking  
4 at it, it looks like it's tied to the MOU.

5 Q And is this for management in Exhibit 19 of  
6 Respondent's exhibit book?

7 A I'm seeing a police safety MOU and a fire safety  
8 MOU. They're both rank and file documents, so based on  
9 what I'm seeing, it looks like this applies to the rank  
10 and file safety employees both for police and fire.

11 MR. JENSEN: Your Honor, I'd like to offer 19 into  
12 evidence.

13 MR. KENNEDY: No objection, Your Honor.

14 THE COURT: Exhibit 19 will be received.

15 (Respondent's Exhibit 19 was received  
16 in evidence by the Court.)

17 BY MR. JENSEN:

18 Q Ms. Tran, can I turn your attention to  
19 Exhibit 20?

20 A (Witness complies)

21 Q Twenty in Respondent's notebook. Do you  
22 recognize Exhibit 20?

23 A It looks like these are coming from the police  
24 and fire safety MOU.

25 Q And is this the -- is this the document with the

1 City of San Bernardino?

2 A It's from their MOU, so it is a document from the  
3 City of San Bernardino.

4 MR. JENSEN: Your Honor, I'd like to offer 20 into  
5 evidence.

6 MR. KENNEDY: If I may, Your Honor, one question?

7 THE COURT: Okay.

8 MR. KENNEDY: Ms. Tran, I notice if you look at the  
9 document, Exhibit 20, and it indicates at the bottom  
10 that -- if you turn to the next page, I should say, it's  
11 on Section 1, this document purports to rescind entirely  
12 as of the date of its implementation, which I think looks  
13 like what, like October of 1999, Exhibit 18; is that  
14 correct?

15 THE WITNESS: That's correct.

16 MR. KENNEDY: So your testimony previously would  
17 be -- your testimony would be Exhibit 18 as of 1999 no  
18 longer was in force and effect?

19 THE WITNESS: If this came after that, then that  
20 piece would be rescinded.

21 MR. KENNEDY: And that would be true of Exhibit 19 as  
22 well?

23 MR. JENSEN: So I'd like to --

24 THE COURT: Wait, she didn't answer the question.

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

1 THE WITNESS: Well, it's just referring to the  
2 resolution that's in Exhibit 18.

3 MR. KENNEDY: Okay.

4 THE WITNESS: It's not referring to --

5 MR. KENNEDY: Could I ask if the witness could  
6 possibly -- if we could skip through some of the  
7 resolutions and see which one was in force actually  
8 because 18 I'm going to move to strike unless there's some  
9 other grounds for it to be relevant.

10 THE COURT: I'm going to overrule that objection  
11 because it just gives historically a perspective as to how  
12 things work.

13 MR. JENSEN: And Mr. Lewis worked during all of these  
14 periods, so he'd be entitled to EPMC over these periods in  
15 any case. So, Your Honor, is 20 in?

16 THE COURT: Any objection to my receiving 20?

17 MR. KENNEDY: Nineteen and 20?

18 THE COURT: Nineteen is already in, 20 you asked for  
19 questions.

20 MR. KENNEDY: I know. No, I have no other questions,  
21 Your Honor.

22 THE COURT: Okay. Exhibit 20 will be received.

23 (Respondent's Exhibit 20 was received  
24 in evidence by the Court.)

25 MR. KENNEDY: Subject to a relevancy objection as to

1 18, 19 and 20 because they predate 2004 even.

2 THE COURT: I'll consider that when I review all the  
3 documents.

4 MR. JENSEN: And, Your Honor, we're just trying to  
5 put these into evidence that do reflect the payments in  
6 his period of time. So is 20 in evidence?

7 THE COURT: Twenty is in.

8 BY MR. JENSEN:

9 Q Ms. Tran, can I direct your attention to 21?

10 A Yes.

11 Q Do you recognize this document?

12 A Part is for the fire safety MOU and police  
13 safety.

14 MR. JENSEN: And, Your Honor, I'd just like to offer  
15 21 into evidence.

16 MR. KENNEDY: May I ask a question of the witness,  
17 Your Honor?

18 THE COURT: Yes.

19 MR. KENNEDY: Ms. Tran --

20 THE COURT: Wait, hang on a second.

21 MR. KENNEDY: Sure.

22 THE COURT: I'm looking at Exhibit 21, and on the  
23 second page if you look at the bottom and you see the  
24 LEW-21-2, Exhibit 21 rescinded Exhibit 19; correct?

25 THE WITNESS: Correct.

1 MR. KENNEDY: For the record, Your Honor, the  
2 relevancy, and recognize the Court's prior statement,  
3 prior ruling.

4 THE COURT: It puts them all in historical  
5 perspective. How they relate to any of the issues, I  
6 guess we'll all find out. Exhibit 21 is received.

7 (Respondent's Exhibit 21 was received  
8 in evidence by the Court.)

9 BY MR. JENSEN:

10 Q Twenty-one is received, and can I turn your  
11 attention to Exhibit 22?

12 A (Witness complies)

13 Q Do you recognize Exhibit 22?

14 A This is the management confidential resolution  
15 for management confidential employees.

16 Q So what is the City's practice regarding EPMC, do  
17 they do it annually?

18 A I don't have knowledge on that piece for the  
19 EPMC.

20 Q And what does the City do? Are all these  
21 documents available on the City's website?

22 A If they're current MOUs or resolutions that's  
23 applicable to current employees, yes, we would try to have  
24 the most updated documents online.

25 Q And can I -- so I'm going to withdraw 22 and turn

1 your attention to document 23 in the exhibit binder,  
2 please?

3 THE COURT: Exhibit 22 is withdrawn.

4 BY MR. JENSEN:

5 Q Do you recognize 23?

6 A It looks like a document our council approved for  
7 EPMC, but again, I don't really see these documents, it's  
8 pre my time.

9 MR. JENSEN: Okay. Your Honor, I'd like to offer 23  
10 into evidence.

11 MR. KENNEDY: Lack of foundation.

12 BY MR. JENSEN:

13 Q Is this a document of the City of San Bernardino?

14 A Yes, this is a document of the City of  
15 San Bernardino.

16 THE COURT: Well, it's just page 1 of a resolution,  
17 so that's not correct. Or is this the entire resolution?

18 THE WITNESS: It looks like the entire resolution.

19 THE COURT: I'm going to receive Exhibit 23.

20 (Respondent's Exhibit 23 was received  
21 in evidence by the Court.)

22 MR. JENSEN: And, Your Honor, there is apparently one  
23 MOU from management that we had intended to put in this  
24 exhibit book that is not here, so it's the fire management  
25 resolution, so it'll qualify as an official document.

1 What I will try to do is copy it and make a motion for  
2 official notice of that document.

3 MR. KENNEDY: If --

4 THE COURT: We'll cross that bridge when we get to  
5 it.

6 MR. JENSEN: So is 23 in?

7 THE COURT: Yes, 23 is in.

8 BY MR. JENSEN:

9 Q Okay. May I turn your attention to Exhibit 24?

10 A (Witness complies)

11 MR. KENNEDY: If I may, Your Honor, just one question  
12 on 23?

13 THE COURT: Okay.

14 MR. KENNEDY: Ms. Tran, did you indicate whether 23  
15 was -- is this provision for this resolution applicable to  
16 the rank and file or to the management confidential class?

17 THE WITNESS: This would apply to the rank and file  
18 for police and fire.

19 MR. KENNEDY: Okay. Thank you.

20 MR. JENSEN: Twenty-three is in, Your Honor?

21 THE COURT: Yes.

22 BY MR. JENSEN:

23 Q Can I turn your attention to Exhibit 24?

24 A (Witness complies)

25 Q Do you recognize this document?

1           A    It is the City's document implementing MOU for  
2 fire safety side letter.

3           MR. JENSEN:  And, Your Honor, I'd like to offer 24  
4 into evidence.

5           THE COURT:  Counsel?

6           MR. KENNEDY:  Can I have a moment, Your Honor?

7           THE COURT:  Yes.

8           MR. KENNEDY:  Ms. Tran, does this resolution pertain  
9 to rank and file or to the management confidential?

10          THE WITNESS:  This is for fire safety employees.

11          MR. KENNEDY:  Okay.  Would that be --

12          THE WITNESS:  Are you referring to Exhibit 24?

13          MR. KENNEDY:  Yes.

14          THE COURT:  It's fire safety, so is it rank and file  
15 or management?

16          THE WITNESS:  Rank and file.

17          MR. KENNEDY:  Thank you.  No objection.

18          THE COURT:  Exhibit 24 will be received.

19                   (Respondent's Exhibit 24 was received  
20 in evidence by the Court.)

21          MR. JENSEN:  And, Your Honor, I just want to note for  
22 the record that we did under an STT request documents from  
23 the City and we received just the documents in 35 and 36,  
24 so these documents that are going into our exhibit book  
25 are documents that we found on the website.

1 MR. KENNEDY: Well, Counsel can testify to that. We  
2 haven't even seen the subpoena yet, Your Honor.

3 THE COURT: Just ask questions of the witness.

4 MR. JENSEN: Yes.

5 BY MR. JENSEN:

6 Q Can I turn your attention to Exhibit 25?

7 A This resolution is management confidential, but  
8 there is a provision in that resolution that applies to  
9 safety management employees, not rank and file.

10 Q And this is in Exhibit 25?

11 A Yes. That would also apply to Exhibit 22, so  
12 there is a provision in there in the resolution for safety  
13 management employees, so it's not rank and file employees.

14 MR. KENNEDY: So we're going back to 22 now?

15 MR. JENSEN: Twenty-two?

16 MR. KENNEDY: Twenty-two was withdrawn.

17 THE WITNESS: I just wanted to clarify that.

18 MR. KENNEDY: Okay.

19 MR. JENSEN: So, actually, now I'm going to  
20 unwithdraw 22 and ask the witness to clarify where in  
21 Exhibit 22 it mentions --

22 THE WITNESS: In Exhibit 22, page 5, there's a  
23 heading there called "Safety Employees" that applies to  
24 management safety employees.

25 MR. JENSEN: Great. Thank you.

1 MR. KENNEDY: Ms. Tran, one question. This entire  
2 MOU applies to management confidential, correct, in 22?

3 THE WITNESS: It applies to management and  
4 confidential employees, all management, yes.

5 MR. KENNEDY: Not rank and file?

6 THE WITNESS: Not rank and file.

7 MR. KENNEDY: And that's the --

8 THE WITNESS: Rank and file and confidential, yes.

9 MR. KENNEDY: Rank and file and confidential?

10 THE WITNESS: Yes.

11 MR. KENNEDY: But this is superceded by then 25;  
12 correct?

13 THE WITNESS: Correct.

14 MR. KENNEDY: Okay.

15 MR. JENSEN: Your Honor, I'd like to offer 22 into  
16 evidence.

17 THE COURT: I need some clarification because I heard  
18 testimony just now. So 22 applies to management and not  
19 rank and file?

20 THE WITNESS: It does apply to management safety  
21 employees, so police management, fire management that's  
22 applicable to them, but when you say rank and file, that's  
23 confidential employees, not rank and file safety.

24 MR. JENSEN: Thank you.

25 THE COURT: So what does 22 apply to as far as just

1 fire department?

2 THE WITNESS: Fire management employees. There is a  
3 provision that talks about the retirement PERS and EPMC.

4 THE COURT: So it doesn't apply to fire rank and  
5 file?

6 THE WITNESS: Does not.

7 THE COURT: And then is Exhibit 25 the same thing  
8 as --

9 THE WITNESS: Same thing.

10 THE COURT: You need to let me finish my sentences.

11 THE WITNESS: Okay. Sorry.

12 THE COURT: Twenty-five applies to fire management,  
13 not fire rank and file?

14 THE WITNESS: Correct.

15 THE COURT: Thank you.

16 MR. JENSEN: Your Honor, can I unwithdraw 22 and  
17 offer it in evidence?

18 THE COURT: Any objection to my receiving 22?

19 MR. KENNEDY: Relevance.

20 THE COURT: What's the relevance, Counsel?

21 MR. JENSEN: Would you like me to make an offer of  
22 proof? In this case, Mr. Lewis was treated as a  
23 management fire safety employee. I'm not sure exactly  
24 what the name of the group is, but as battalion chief, he  
25 was treated by the City as in the group of fire safety

1 management.

2 THE COURT: So you're saying it supports your  
3 argument that he's battalion chief, not fire captain?

4 MR. JENSEN: It does and --

5 THE COURT: Okay. Exhibit 22 is received.

6 MR. JENSEN: Thank you, Your Honor.

7 (Respondent's Exhibit 22 was received  
8 in evidence by the Court.)

9 THE COURT: Are you offering 25?

10 MR. JENSEN: Yes, Your Honor.

11 THE COURT: Mr. Kennedy, any objection to my  
12 receiving Exhibit 25? Mr. Kennedy, any objection to my  
13 receiving --

14 MR. KENNEDY: No, just relevancy and one question for  
15 the witness.

16 Are you aware, Ms. Tran, if Mr. Lewis was ever  
17 appointed or promoted to the position of battalion chief  
18 by the City of San Bernardino?

19 THE WITNESS: I don't have knowledge of that because  
20 I was not around when that occurred.

21 MR. KENNEDY: Well, did you have a chance to look at  
22 your records before you came to court today?

23 THE WITNESS: His personnel file, no.

24 MR. KENNEDY: Okay. And if there was a promotion  
25 to -- of Mr. Lewis from fire captain to a battalion chief,

1 that would be set forth in a Personnel Action Form signed  
2 off by the City; correct?

3 MR. JENSEN: Objection, calls for speculation.

4 THE COURT: Overruled. He's just asking, she can say  
5 she doesn't know.

6 MR. KENNEDY: Correct.

7 THE WITNESS: If there is a higher-acting pay for an  
8 employee, there would be a document in the file.

9 MR. KENNEDY: Okay. And regardless of what his  
10 promotion was, even if it was an acting position; correct?

11 THE WITNESS: Yes.

12 MR. KENNEDY: Okay. And are you aware of any such  
13 document within the City of San Bernardino regarding  
14 Mr. Lewis?

15 THE WITNESS: Again, that's before my time, so I  
16 wasn't around when that occurred.

17 MR. KENNEDY: All right. Your Honor, I would -- I'll  
18 take it up in cross, but I will be asking Ms. Tran for the  
19 contact with the City before she leaves today to determine  
20 whether such a document exists.

21 THE COURT: Well, I don't know what the scope of her  
22 subpoena was for here today.

23 MR. KENNEDY: I haven't seen it either.

24 THE COURT: I haven't either, but I am going to  
25 receive 25.

1 MR. JENSEN: Thank you, Your Honor.

2 (Respondent's Exhibit 25 was received  
3 in evidence by the Court.)

4 BY MR. JENSEN:

5 Q And, Ms. Tran, just to clarify Mr. Kennedy's  
6 question to you, are you familiar with the policies and  
7 practices of the HR department regarding acting pay prior  
8 to your coming in?

9 A Prior to me coming on board with the City, was I  
10 aware of it?

11 Q Are you aware of what the policies and practices  
12 of the City were?

13 A No.

14 MR. JENSEN: Your Honor, is 25 in?

15 THE COURT: Yes.

16 BY MR. JENSEN:

17 Q Ms. Tran, can I direct your attention to  
18 Exhibit 26?

19 A (Witness complies)

20 Q Do you recognize that document?

21 A This is the City's document that applies to the  
22 rank and file for fire safety.

23 MR. JENSEN: Your Honor, I'd like to offer 26 into  
24 evidence.

25 THE COURT: Mr. Kennedy?

1 MR. KENNEDY: Ms. Tran, could you please look at  
2 page 7 of the attached MOU?

3 THE WITNESS: (Witness complies)

4 MR. KENNEDY: On the bottom it's LEW-26-20. Let me  
5 know when you're there.

6 THE WITNESS: I'm here.

7 MR. KENNEDY: Okay. There's some interlineations.  
8 Do you see some strikeouts?

9 THE WITNESS: Yes.

10 MR. KENNEDY: Okay. Do you know if those are -- if  
11 those strikeouts and changes are existing in the official  
12 document maintained by the City?

13 THE WITNESS: Official document currently that's in  
14 place? That's currently in place or --

15 MR. KENNEDY: Well, is this document -- what period  
16 does this document cover, 2003 through 2009? And you're  
17 referencing another document, Ms. Tran. What is that  
18 document?

19 THE WITNESS: This is the fire safety MOU that was  
20 official for that period that you just had mentioned, so  
21 I'm just trying to compare, if that's okay?

22 MR. KENNEDY: Please do, that's fine.

23 THE COURT: And I'm just going to note that  
24 Exhibit 13 in Complainant's notebook, the knockout  
25 provisions are not in there in the bolded edition. In the

1     bolded, it's just the paragraph has been amended.  It's  
2     the third paragraph on page 7; is that correct, ma'am?

3             THE WITNESS:  Correct.

4             MR. JENSEN:  And, Ms. Tran, is there any chance we  
5     can have that copy of the official document there?

6             THE WITNESS:  Sure.

7             MR. JENSEN:  Your Honor, do you mind?

8             THE COURT:  Yeah, you can approach her.  I don't  
9     think that's any different from Exhibit 13, but if it is,  
10    you can point it out to me.

11            MR. JENSEN:  Okay.

12            THE COURT:  I'm going to receive Exhibit 26.

13            MR. JENSEN:  Thank you, Your Honor.

14                    (Respondent's Exhibit 26 was received  
15     in evidence by the Court.)

16            MR. KENNEDY:  As of the -- the only qualification I  
17     have, Your Honor, is I think that the strikeouts, it looks  
18     like the strikeouts were probably -- this is probably a  
19     version that was sort of interim in time, that there are  
20     intermediary changes that were made and it was readopted  
21     from time to time.  Is that correct, Ms. Tran?

22            THE WITNESS:  If there's a knockout, I would assume  
23     this is a draft until they finalize it.

24            MR. KENNEDY:  So the red one in front of you, though,  
25     is the official --

1 THE WITNESS: Correct.

2 MR. KENNEDY: -- official one for that period?

3 THE WITNESS: Correct.

4 MR. KENNEDY: And maybe, I think Counsel asked, but  
5 may we take a copy of that before you leave today?

6 THE WITNESS: Sure.

7 MR. KENNEDY: Thank you.

8 MR. JENSEN: Your Honor, may I just enter it into  
9 evidence?

10 MR. KENNEDY: I would object to 26, then, as not  
11 being what it purports to be.

12 THE COURT: Overruled. The objection to the  
13 resolution attaches it to this part of what the --

14 MR. KENNEDY: As to the resolution, Your Honor, but  
15 there's no -- this witness can't testify that --

16 Well, Ms. Tran, is the copy that's in 26, is that  
17 the document being reflected by the resolution in the  
18 first two pages of 26, if you know? Look at 26 and see  
19 the first two pages of the resolution? It may not be  
20 terribly, terribly relevant, I just want to know we have  
21 the right document and not just a draft because I haven't  
22 gone through every page and line and sentence?

23 THE WITNESS: From just looking at this, I think when  
24 you take -- when we take an MOU to Council, it shows  
25 strikeouts or any bolded that's going to be added to the

1 MOU, so it looks like this document -- it does -- it was  
2 an attachment to the resolution.

3 THE COURT: And my understanding from having -- I've  
4 done draft legislation in my career. My understanding is  
5 they do that so when you're asking the deciding body to  
6 look at it, they can see what you're proposing to take out  
7 and what you're proposing to add, it makes it easier for  
8 them to make their votes; correct?

9 THE WITNESS: Correct.

10 MR. KENNEDY: And then what's in the red folder she  
11 has at her desk is the smooth copy version of that, okay.  
12 I understand. I don't have any objections to 26.

13 THE COURT: Okay. I'm going to receive 26.

14 BY MR. JENSEN:

15 Q And, Ms. Tran, can I turn your attention to  
16 Exhibit --

17 THE COURT: Can I stop you one second. I'm going to  
18 mark as Exhibit 37 the official one with the red cover  
19 that the witness brought today.

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

21 THE COURT: Yes.

22 MR. JENSEN: So I'm going to mark for identification  
23 in the upper left-hand corner --

24 THE COURT: No, you're not. You're going to give it  
25 to me because I've already marked it.

1 MR. JENSEN: Sorry.

2 THE COURT: And I'm going to receive 37.

3 MR. JENSEN: Thank you, Your Honor.

4 (Respondent's Exhibit 37 was marked for  
5 identification by the Court and  
6 received in evidence.)

7 THE COURT: Do you have a question about 27, Counsel?

8 MR. JENSEN: I'm just learning, 26 is in?

9 THE COURT: Yes.

10 BY MR. JENSEN:

11 Q And, Ms. Tran, just want to turn your attention  
12 to Exhibit 27. Do you recognize this document?

13 A This is the City's document approved by Council  
14 for reporting EPMC to PERS.

15 THE COURT: Is it for fire safety rank and file or  
16 fire safety management?

17 THE WITNESS: To all employees of safety, so this  
18 would include management and rank and file.

19 THE COURT: Thank you.

20 THE WITNESS: You're welcome.

21 BY MR. JENSEN:

22 Q And does this document reflect that both rank and  
23 file and management would be paid in the same -- paid EPMC  
24 in the same procedure or under the same -- in the same  
25 manner?

1 MR. KENNEDY: Competency and also the document speaks  
2 for itself.

3 THE COURT: Sustained.

4 MR. JENSEN: So I'd like to offer 27 into evidence.

5 THE COURT: Mr. Kennedy?

6 MR. KENNEDY: No objection.

7 THE COURT: Exhibit 27 will be received.

8 (Respondent's Exhibit 27 was received  
9 in evidence by the Court.)

10 BY MR. JENSEN:

11 Q Ms. Tran, are you familiar with the different  
12 manners of calculating EPMC?

13 A No.

14 Q Okay. And I just want to turn your attention to  
15 the management confidential.

16 A (Witness complies)

17 Q So is the battalion chief in the fire department  
18 a management position?

19 A Yes.

20 Q And is there an established management group or  
21 class in which the battalion chief falls for CalPERS  
22 purposes?

23 MR. KENNEDY: Objection, foundation.

24 THE COURT: Sustained.

25 ///

1 BY MR. JENSEN:

2 Q In your position, do you establish groups or  
3 classes for CalPERS' purposes?

4 A I'm not -- I'm unclear about that.

5 Q In your position, do you establish groups or  
6 classes of employees for the City of San Bernardino?

7 A Yes.

8 Q And do you report to CalPERS' employees in those  
9 groups in the same manner?

10 MR. KENNEDY: Vague.

11 THE COURT: Same manner as what, Counsel?

12 BY MR. JENSEN:

13 Q All of the employees within one group, do you  
14 report their compensation to CalPERS with the same coding  
15 method?

16 A The reporting --

17 MR. KENNEDY: Objection, lack of foundation.

18 THE COURT: Overruled.

19 MR. KENNEDY: The coding method?

20 THE WITNESS: Well, coding is completed by the  
21 finance department, so I would leave that to payroll to  
22 answer.

23 MR. JENSEN: Great. I don't think I have any further  
24 questions for this witness.

25 THE COURT: I'm just going to point out to you, sir,

1 that exhibits, before you release her, Exhibits 3, 12, 30,  
2 33 and 34 of your exhibits are not in evidence, if you  
3 want to take a moment to look at those?

4 MR. JENSEN: Yes.

5 THE COURT: I don't know if this witness was here to  
6 authenticate those.

7 MR. JENSEN: Yes.

8 BY MR. JENSEN:

9 Q Actually, Ms. Tran, can I turn your attention to  
10 Exhibits 3, 12 --

11 THE COURT: Three, 12, 30, which were the two pay  
12 stubs, and 33 and 34, which were the duty statements of  
13 the chief and the captain.

14 MR. JENSEN: Oh, yes, the duty statements.

15 BY MR. JENSEN:

16 Q Ms. Tran, are you familiar with duty statements  
17 established for the City of San Bernardino?

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

19 THE COURT: Yes.

20 MR. JENSEN: Thank you.

21 BY MR. JENSEN:

22 Q Do you recognize these documents?

23 A These are job specs in our NeoGov System.

24 MR. KENNEDY: Please speak up, I'm sorry.

25 THE WITNESS: These are job specs from our

1 NeoGov System, NeoGov, our application system, and it also  
2 houses the job descriptions.

3 BY MR. JENSEN:

4 Q And are these -- are these copies of the official  
5 documents of the City of San Bernardino?

6 A Yes.

7 Q And does the City, when it is creating duty  
8 statements, describe the regular duties of a certain  
9 position?

10 A Yes.

11 Q And can you tell us what is the purpose of the  
12 duty statement?

13 A It's to provide parameters for employees to know  
14 what duties they would have to complete based on that  
15 position.

16 Q And does a person have to do all of those duties  
17 all of the time to be in that position?

18 MR. KENNEDY: Vague.

19 THE COURT: Overruled.

20 MR. KENNEDY: Calls for speculation.

21 THE COURT: Overruled.

22 BY MR. JENSEN:

23 Q You may answer.

24 A Okay. It gives, again, a duty job spec or duty  
25 statement gives an employee parameters to work within,

1 that parameter for, you know, for that position.

2 Q And so is it possible -- or not is it possible.

3 When the HR department writes a duty statement,  
4 does it include some duties that may be very rarely  
5 performed?

6 A It may, it depends.

7 Q And is that especially true with a safety  
8 position?

9 MR. KENNEDY: Leading.

10 THE COURT: Overruled.

11 THE WITNESS: It may, depends.

12 MR. JENSEN: Okay. Your Honor, I'd like to offer the  
13 two duty statements into evidence, 33 and 34.

14 THE COURT: Thirty-three and 34. Any objection to my  
15 receiving 33 and 34, duty statements?

16 MR. KENNEDY: Question, if I may?

17 Ms. Tran, are these duty statements?

18 THE WITNESS: You're saying duty statements, I'm  
19 saying job specs or job descriptions, so I'm assuming  
20 that's related.

21 MR. KENNEDY: Okay. And the two you have in front of  
22 you, one is for battalion chief and the other is for fire  
23 captain; right?

24 THE COURT: Yes.

25 THE WITNESS: Yes.

1 MR. KENNEDY: And are those two distinct positions  
2 within the San Bernardino Fire Department?

3 THE WITNESS: Yes.

4 MR. KENNEDY: And are they in two different boots and  
5 classes?

6 THE WITNESS: Battalion chief is fire management,  
7 fire captain is fire safety, which is rank and file.

8 MR. KENNEDY: And there's always, if you're familiar  
9 with duty statements, there's always going to be some  
10 overlap of duties, correct, between different positions in  
11 the descriptions, the job descriptions?

12 MR. JENSEN: Objection, vague.

13 THE COURT: Overruled.

14 MR. KENNEDY: Is that correct?

15 THE WITNESS: What do you mean?

16 MR. KENNEDY: In other words, there might be some  
17 overlap in some of the duties between one job description  
18 and the next in the same -- let's say a fire engineer may  
19 have duties that are similar to what a fire captain might  
20 have, similar, and there might be some overlap in duties  
21 between a battalion chief?

22 THE WITNESS: It could, it depends.

23 MR. KENNEDY: Okay. Then I don't want you to guess.  
24 What distinguishes, in your mind, the category of a  
25 battalion chief from a fire chief? What is the

1 distinguishing characteristic?

2 MR. JENSEN: Objection, lacks foundation.

3 THE COURT: Overruled.

4 THE WITNESS: A fire chief has a bigger --

5 MR. KENNEDY: I'm sorry, did I say fire chief? I  
6 meant fire captain.

7 THE WITNESS: The battalion chief supervises the rank  
8 and file overall. The fire captain is, I would assume, is  
9 the lead of -- top of the rank and file of fire safety,  
10 paramedics and so forth.

11 MR. KENNEDY: Okay. Thank you. Before this witness  
12 is released, Your Honor, I would --

13 THE COURT: I'm not releasing her. You just wanted  
14 to ask some questions about 33 and 34.

15 MR. KENNEDY: No objection.

16 THE COURT: I'm going to receive 33 and 34.

17 (Respondent's Exhibits 33 and 34 were  
18 received in evidence by the Court.)

19 THE COURT: Just so you know, Mr. Kennedy, I haven't  
20 gotten to your cross-exam of her yet, so just let you ask  
21 questions about the documents as we've gone through it.

22 MR. KENNEDY: Certainly.

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

24 THE COURT: Yes. Can I have 33 and 34, please?

25 THE WITNESS: (Witness complies)

1 THE COURT: Thank you.

2 BY MR. JENSEN:

3 Q I'm handing you Exhibit 30. Do you recognize  
4 this document?

5 A These are pay stubs from the City.

6 Q And who are they pay stubs for?

7 A Richard Lewis.

8 Q And this is -- is this the way the City documents  
9 pay for its employees?

10 A This is a copy that's provided to the employees  
11 each pay period.

12 MR. JENSEN: Thank you.

13 Your Honor, I'd like to admit the document, the  
14 two pages in the document, Exhibit 30 of the Respondent's  
15 binder?

16 THE COURT: Mr. Kennedy, any objection to my  
17 receiving Exhibit 30, the two pay stubs?

18 MR. KENNEDY: Subject to my examining the witness on  
19 it, no.

20 THE COURT: Okay. Exhibit 30 will be received.

21 (Respondent's Exhibit 30 was received  
22 in evidence by the Court.)

23 BY MR. JENSEN:

24 Q Ms. Tran, can I turn your -- let's see, I believe  
25 I have no further questions of Ms. Tran.

1 THE COURT: Cross-examination?

2 MR. KENNEDY: Yes.

3

4 CROSS-EXAMINATION

5 BY MR. KENNEDY:

6 Q Ms. Tran, can I see the subpoena, please, that  
7 was served on you?

8 A (Witness complies)

9 MR. JENSEN: Can I see it too, Wes, when you're done?

10 MR. KENNEDY: No, yeah, it's all right.

11 MR. JENSEN: And, Your Honor, if I just may, this is  
12 now a point of testimony, if I may offer this into  
13 evidence?

14 THE COURT: Mr. Kennedy, any objection to my  
15 receiving the subpoena?

16 MR. KENNEDY: I'm sorry?

17 THE COURT: Any objection to my receiving the  
18 subpoena?

19 MR. KENNEDY: Yes, I have objections to relevancy as  
20 far as being in evidence. As far as for identification, I  
21 have no problem for the record identifying it as such.

22 THE COURT: I'm going to mark it Exhibit 38 and  
23 receive it as a subpoena that went out to the witness.

24 MR. JENSEN: Thank you.

25 (Respondent's Exhibit 38 was marked for

1 identification by the Court and  
2 received in evidence.)

3 BY MR. KENNEDY:

4 Q Ms. Tran, when did you receive this exhibit?  
5 When did you receive Exhibit 38?

6 MS. DAUBE: If I may?

7 THE COURT: Just identify yourself for the record.

8 MS. DAUBE: Oh, I'm Linda Daube representing the City  
9 Attorney's Office.

10 I believe that those cities went -- or the  
11 subpoenas went to the City Attorney's Office, and,  
12 accordingly, then were presented to Ms. Tran and the other  
13 witness we have here today.

14 MR. KENNEDY: Do we know when they were served on the  
15 City?

16 MS. DAUBE: I do not.

17 BY MR. KENNEDY:

18 Q Do you know when you became first aware of your  
19 appearance here today, Ms. Tran?

20 A Last week, sometime last week. I can't remember  
21 the day, the exact date.

22 Q Other than 33 I think it was, there were two  
23 documents provided -- other than 35 and 36, did you bring  
24 any other documents today?

25 A No.

1 Q Okay. Did you have a chance to refer to any  
2 other documents today in preparation for your appearing?

3 A Did I have a chance to review any other documents  
4 other than what I brought or --

5 Q Right. Did you look at any other documents other  
6 than what you brought?

7 A No.

8 Q Did you have a chance to discuss your testimony  
9 today with anyone besides your attorney?

10 A I talked to Linda and also Laura Yavornicky, who  
11 is our payroll manager.

12 Q And speaking to Laura Yavornicky, can you tell me  
13 what was the import of that conversation?

14 A That was just more between Linda and Laura, I was  
15 just sitting in and just listening and hearing between  
16 their conversations.

17 Q All right. Did you have a chance to talk to  
18 Mr. Jensen before you testified today?

19 A No.

20 Q Did you talk to him in the hallway here?

21 A Yes.

22 Q Okay. And did he discuss with you your  
23 testimony?

24 A It's more of the payroll, pay stub, that's for  
25 the payroll manager.

1 Q So, I'm sorry, did he have any -- I'm having  
2 difficulty with the air conditioning unit going off. I'm  
3 going to step in the middle.

4 THE COURT: Go ahead.

5 BY MR. KENNEDY:

6 Q Did you have any discussion in the hallway --  
7 when you were talking to Mr. Jensen in the hallway, did  
8 you have an opportunity to discuss the EPMC issues?

9 A Their discussion of EPMC, but it was more for our  
10 payroll manager.

11 Q And did you have a chance to overhear the  
12 discussion -- you were standing right next to the payroll  
13 manager; correct?

14 A Correct.

15 Q And that's when Mr. Jensen was talking to her;  
16 right?

17 A Correct.

18 Q Okay. And do you recall whether or not -- well,  
19 do you recall anything about that conversation?

20 A It's just clarification on the -- well, actually,  
21 it's more clarification on EPMC and the pay stub.

22 Q Okay.

23 A But I wasn't knowledgeable about that document,  
24 so I'm not really fully paying attention.

25 Q Now, you mentioned about the process of when

1 somebody is acting in an upgraded capacity, they're asked  
2 to act in an upgraded capacity, can you just tell me,  
3 especially if there's no difference, if there's something  
4 different specific to a fire department let me know, but  
5 as it would apply to the fire department, how is that  
6 process undertaken? In other words, how does someone come  
7 into an acting position and get paid for that?

8 A Typically higher acting it's based on the  
9 provisions in the MOU or resolutions in the charter, and  
10 the process to go by is a document for higher acting,  
11 complete a Personnel Action Form and it's generated by the  
12 department and it gets approved.

13 Q The department, you're talking about the fire  
14 department?

15 A It starts from the department, so in this case if  
16 it's fire, then it's the fire department.

17 Q Would generate a Personnel Action Form?

18 A Correct.

19 Q And what would they do then? And that would set  
20 forth what?

21 A Request to put the employee in higher-acting pay,  
22 receive higher-acting pay and the higher-acting position.

23 Q So request -- there would be a request. Is that  
24 what the Personnel Action Form is?

25 A It's a request, but then it gets submitted to HR

1 for review.

2 Q And the request specifies the position of the  
3 person acting, what their current position is; correct?

4 A It provides the person higher acting -- well, it  
5 provides a higher-acting position pay, so it's just a  
6 higher-acting position, but whatever the pay is.

7 Q So it specifies both the position you're going to  
8 have and it also specifies what the pay rate they're going  
9 to be paid at in the higher position; correct?

10 A Correct.

11 Q And then they submit that to HR?

12 A Correct.

13 Q And this is for approval for this person to get  
14 paid in that position?

15 A Well, HR would review it to make sure it  
16 complies -- it meets the criteria for higher acting, then  
17 it goes up to the manager's office and the finance  
18 department for final approval.

19 Q Okay. And the City manager and finance office  
20 sign off on it?

21 A Correct.

22 Q And then that is kept in the person's permanent  
23 file?

24 A Correct.

25 Q And the City still maintains a permanent file of

1 Mr. Lewis; right?

2 A I would believe so, yes.

3 Q May I ask that if the witness be ordered back as  
4 a rebuttal, the witness be asked to look at the personnel  
5 file and see if there is an acting document? I mean,  
6 quite frankly, if there is a document, that document, that  
7 would be something we would be very interested in seeing.

8 THE COURT: When the other witnesses testify, just to  
9 save time for this witness, I'll allow her to call her  
10 office and have them look at the file and let her know if  
11 there is any such document.

12 Can you do that for us, ma'am?

13 THE WITNESS: Yes.

14 THE COURT: Thank you.

15 MR. JENSEN: I just want to make this continuing  
16 observation that she's testifying about her personal  
17 knowledge about the process and procedures that occurred  
18 after this occurred, and so her -- this whole issue, while  
19 it's interesting, is not relevant to what happened when  
20 Mr. Lewis was there. And so, I mean, I think it's --

21 THE COURT: Well, if there was a different process in  
22 place, she can tell me that.

23 MR. JENSEN: But she wasn't there.

24 BY MR. KENNEDY:

25 Q You started 2006; right?

1           A    Correct.

2           Q    And when you make the call today, could you  
3 inquire whether that process changed at any time, let's  
4 say, between 2004 and -- well, I mean, actually, that's  
5 Mr. Jensen's representation because the acting would have  
6 occurred much later than the time she came to work.

7                    So could you turn to the white book there, the  
8 CalPERS' exhibits, and I just want to direct your  
9 attention to Exhibit 13, I believe.

10          A    (Witness complies)

11          Q    If you could turn, please, to -- well, first turn  
12 to page 24.

13          A    (Witness complies)

14          Q    And this is identical -- this is identical, is it  
15 not, it's identical to your Exhibit 35, pages 23 and 24?  
16 Let me show you Exhibit 35. I think we've established  
17 that already, it's an excerpt from that; right?

18          MR. JENSEN: They're not the same in my book, at  
19 least 24 is paginated differently.

20          THE COURT: It is paginated differently.

21          MR. KENNEDY: Hum?

22          THE COURT: It is paginated differently, 35 and --

23          MR. KENNEDY: Okay. We'll stick with that.

24          THE COURT: Which one do you want us to look at?

25          MR. KENNEDY: Thirteen.

1 BY MR. KENNEDY:

2 Q And I want to show you also what's been marked as  
3 37. I just want to make sure that what we have in 13 is  
4 reflective of what the smooth minutes -- I mean the smooth  
5 MOU says.

6 A It looks like it's just formatting is a little  
7 different.

8 Q Text?

9 A The text seems like it's the same.

10 Q Okay. That's your copy, okay.

11 MR. JENSEN: Your Honor, we're going to use the  
12 documents that she brought with her as the final version  
13 in whatever that is, 30 --

14 MR. KENNEDY: I think we have three versions in there  
15 now.

16 THE COURT: Right.

17 BY MR. KENNEDY:

18 Q Could you please turn to page 22?

19 A (Witness complies)

20 Q Oh, no, I take that back. Turn to page 21,  
21 sorry, 21.

22 THE COURT: We're looking at your Exhibit 13?

23 MR. KENNEDY: Yes, 13.

24 BY MR. KENNEDY:

25 Q And you have 37 in front of you, so if you need

1 to refer to that to make sure it's the same, let me know  
2 if there's any distinction between the two?

3 MR. JENSEN: Your Honor, may I approach just to --

4 THE COURT: Yes, okay.

5 MR. JENSEN: Ms. Tran, may I approach?

6 THE WITNESS: Yes.

7 MR. JENSEN: Ms. Daube, is that okay?

8 MS. DAUBE: Yes.

9 BY MR. KENNEDY:

10 Q And under E, Subcategory E, is that the provision  
11 in the rank and file that provides for acting, it  
12 authorizes acting pay?

13 A Yes.

14 Q So if a person in the rank and file were being,  
15 you know, approved for acting pay, you know, you talked  
16 about the process before with the POA, Personnel Action  
17 Form, PAF, they would be pursuant to this authority;  
18 right?

19 A Correct.

20 Q So they would submit the documentation, cite to  
21 this, send it up for approval?

22 A If the process is that's the process, but at that  
23 time I wasn't there, so I'm not sure. I would have to  
24 check in the file and make sure.

25 THE COURT: When you're saying "at that time," what

1 time are you referring to?

2 THE WITNESS: Whenever he was higher acting.

3 BY MR. KENNEDY:

4 Q Is there -- and this is two copies --

5 THE COURT: Let me stop both of you just so I  
6 understand. The Settlement Agreement was 2007; correct?

7 MR. KENNEDY: That's correct, it was March, I think,  
8 March 23rd, 2007.

9 THE COURT: So she was employed there at the time?

10 MR. JENSEN: I apologize, Your Honor.

11 MR. KENNEDY: And that MOU covers the span between  
12 2003 and 2009. Thank you. I have no other questions of  
13 this witness.

14 THE COURT: Redirect?

15

16 REDIRECT EXAMINATION

17 BY MR. JENSEN:

18 Q Ms. Tran, I just want to direct your attention to  
19 this higher acting. Is that a permanent higher acting?

20 A Typically higher acting should be a temporary  
21 period, but with the approval of the manager, it could be  
22 extended; that's up to the City manager to make.

23 MR. KENNEDY: I really can't hear.

24 MR. JENSEN: Are you standing there --

25 MR. KENNEDY: I'm standing here because I can't hear.

1 I'm underneath the air vent and it's blowing on me and I  
2 can't hear.

3 BY MR. JENSEN:

4 Q So is higher acting a status that occurs when  
5 there is a vacancy that is not yet filled in the higher  
6 position?

7 A Correct.

8 Q And so if both in this case battalion chief  
9 positions were filled, would this provision of the MOU  
10 apply?

11 MR. KENNEDY: Which provision?

12 THE WITNESS: If there's a --

13 THE COURT: Either one we're talking about.

14 THE WITNESS: If there's no vacancy, you can't higher  
15 act.

16 BY MR. JENSEN:

17 Q So the provisions in the MOU for higher acting  
18 would only apply if there was a vacancy?

19 A Right, a vacancy to higher act.

20 Q And are you aware that in this case there was the  
21 situation where Mr. Lewis was inappropriately passed over  
22 for that --

23 MR. KENNEDY: Objection --

24 BY MR. JENSEN:

25 Q -- battalion chief position?

1 THE COURT: Overruled except as to the term  
2 "inappropriately."

3 MR. JENSEN: Excuse me, Your Honor?

4 THE COURT: I said I'm just sustaining the objection  
5 as to use of the word "inappropriate."

6 MR. JENSEN: Oh.

7 BY MR. JENSEN:

8 Q Mr. Lewis brought a lawsuit that was settled  
9 alleging that he was inappropriately passed over for being  
10 promoted to the battalion chief --

11 MR. KENNEDY: Leading, and also it's an incomplete  
12 hypothetical.

13 THE COURT: Sustained.

14 BY MR. JENSEN:

15 Q And so in Mr. Lewis's position, how would the  
16 human resources department process paperwork such that it  
17 would provide Mr. Lewis the battalion chief pay but not  
18 give him the formal title of battalion chief?

19 MR. KENNEDY: Vague, calls for speculation, lack of  
20 foundation, incomplete hypothetical.

21 THE COURT: Overruled.

22 THE WITNESS: In his case, again, I was not involved  
23 and there was a settlement, I don't recall what was being  
24 done or was processed. Again, I have to check in the file  
25 to see.

1 BY MR. JENSEN:

2 Q And have you had a chance to review the  
3 Settlement Agreement?

4 A Not thoroughly, it was just more of a side  
5 discussion with the legal.

6 Q I'm not inquiring as to your attorney-client  
7 privilege, but are there other documents which can satisfy  
8 the substance of what would be in a Personnel Action  
9 Request Form but not on that form itself?

10 A I don't know what to --

11 Q Is there any -- does the City only use Personnel  
12 Action Request Forms, or does it also sometimes use other  
13 documents in order to satisfy the documentation  
14 requirements?

15 MR. KENNEDY: Calls for speculation, vague.

16 THE COURT: Overruled.

17 THE WITNESS: It could, but again, I wasn't involved.  
18 I've never really had involvement with settlements that  
19 call for certain provisions that need to be done, so I  
20 don't know how to --

21 MR. KENNEDY: I'd also argue relevancy, Your Honor,  
22 as to this is a one-off settlement and its only  
23 development was something that was used in this case.

24 THE COURT: He's just asking if there's any such  
25 thing. I mean, his argument is that there may not be this

1 document saying -- documentation, Personnel Action, I  
2 understand the argument, and so would there be something  
3 else, so I'll allow it.

4 BY MR. JENSEN:

5 Q And so the question is: If there isn't a  
6 Personnel Action Request Form in the file, are there cases  
7 when the human resources department still processes those  
8 items that would otherwise be part of the Personnel Action  
9 Request Form?

10 A There could be, but I don't know. I haven't been  
11 exposed to those instances to really confirm that, but  
12 there could be.

13 MR. JENSEN: Great. Thank you, Ms. Tran. I have no  
14 further questions.

15 THE COURT: Recross?

16 MR. KENNEDY: Yes.

17

18 RE-CROSS-EXAMINATION

19 BY MR. KENNEDY:

20 Q Now, Ms. Tran, the City of San Bernardino has  
21 rules and procedures for processing its civil service  
22 system; doesn't it?

23 A Yes.

24 Q And those rules and procedures in this case  
25 require that if someone is going to be acting, in other

1 words assuming, and it's not just the pay, it is also  
2 they're being placed in a position of assuming that  
3 authority; right?

4 MR. JENSEN: Objection, lacks foundation.

5 MR. KENNEDY: Is that correct?

6 THE COURT: Stop. Overruled.

7 THE WITNESS: Typically, yes, that's the process.

8 BY MR. KENNEDY:

9 Q And if you were to follow the rules and  
10 procedures attendant to the San Bernardino City's civil  
11 service process, then there would be a Personnel Action  
12 Form in the file authorizing and that's signed off by the  
13 City manager; correct?

14 A Yes.

15 Q Okay. When you indicated before that there might  
16 possibly be some other documentation, but you said it  
17 might indicate that somebody was in an acting role, you  
18 have no idea what that kind of documentation might be?

19 A I would only assume it would come from the  
20 legal's office for a settlement.

21 Q And if there was a legal document that stated  
22 that, when you make your call, I want you to ask the  
23 question: Did any legal document that specifies that  
24 Mr. Lewis particularly was serving in the capacity of a  
25 battalion chief, acting in the capacity of a battalion

1 chief as a result of any documentation in the file, not  
2 pay, but acting in that capacity; can you do that?

3 A I'm sorry, to go back and check if there's  
4 documents?

5 Q Well, you were going to make a phone call and you  
6 were going to ask, is there anything in Mr. Lewis's  
7 personnel file that indicates that for any period of time,  
8 say since there was a legal document in there that said he  
9 was acting, not just getting paid, but acting in the  
10 capacity because that's what we understand to be acting;  
11 right? He has to be acting in the capacity of a battalion  
12 chief, right, doing the work of a battalion chief; right?  
13 So you're going to check and you're going to ask whether  
14 there's a Personnel Action Form --

15 MR. JENSEN: Objection, he's berating the witness.

16 THE COURT: Yes. Yes. Counsel, direct the request  
17 to me and I'll order her, not you.

18 MR. KENNEDY: I think the Court understands what I'm  
19 asking.

20 THE COURT: Ma'am, what I want you to do is when you  
21 make the phone call, find out what documents are in there,  
22 if there are any documents relating to what his work  
23 duties were after the lawsuit was settled.

24 THE WITNESS: Okay.

25 MR. JENSEN: Your Honor, follow-up?

1 THE COURT: Uh-huh.

2

3

REDIRECT EXAMINATION

4 BY MR. JENSEN:

5 Q Are you familiar with the fire department's rules  
6 regarding -- or, actually, human resources' rules  
7 regarding if the Personnel Action Request Form applies  
8 only if there's a certain amount of shifts that are  
9 related to the Action Form?

10 A I'm sorry?

11 Q Are you aware of whether the Personnel Action  
12 Request Form for an upgrade is only applicable if there's  
13 10 or more shifts acting in that upgrade position?

14 A I'm not sure. I don't know how to answer that.

15 MR. JENSEN: Your Honor, if I can just clarify? So  
16 you've directed the witness to look in Mr. Lewis's  
17 personnel file?

18 THE COURT: Um-hum. I understand I've got a whole  
19 bunch of documents in front me that Respondents -- your  
20 client's position is that they support his position.  
21 We're now just asking as CalPERS is trying to refute that  
22 position, whether or not there's any documentation  
23 regarding his duties in the file, whether he was acting  
24 as -- if there's any MOUs.

25 MR. JENSEN: And, Your Honor, if we are requesting

1 documents from his personnel file, I believe some of those  
2 documents would be privileged to Mr. Lewis.

3 THE COURT: I'm asking at the recess, she's going to  
4 make a phone call and see if there's anything in there,  
5 which we've been talking about at length this morning,  
6 about the type of documentation that went for  
7 acting-higher pay.

8 MR. JENSEN: And if we can just expand that to beyond  
9 Mr. Lewis's personnel file, there's other documents that  
10 could be relevant to the position of which Mr. Lewis  
11 acted, and that can include fire incident reports where he  
12 might be acting as a battalion chief.

13 THE COURT: I don't know if those would be in his  
14 personnel file. This is your case to prove, sir.

15 MR. JENSEN: And Ms. Daube is here.

16 MS. DAUBE: Just for purposes of clarification, human  
17 resources would only have a certain official personnel  
18 file, we would not have access to anything that is kept in  
19 the fire department at this point, or I think there may be  
20 some records in finance, which may also be responsive. So  
21 when we're talking about personnel file, let's all know  
22 that this is just what human resources has access to.

23 MR. KENNEDY: And if I could, I just want to -- if I  
24 understand correctly, in the OPF, the OPF would have  
25 all -- any documents that related to his acting in an

1 upgraded capacity; right?

2 THE WITNESS: It would have a Personnel Action Form.

3 THE COURT: And what does OPF stand for?

4 MR. KENNEDY: Official personnel file.

5 MR. JENSEN: And, Your Honor, I just want to point  
6 out, I think the focus on the personnel file may be too  
7 narrow of a scope in which to address these issues,  
8 especially if it's not the fire department. So if  
9 Mr. Kennedy is seeking personnel files, I don't know  
10 what's in there, but I would like to be able to see the  
11 documents of the fire department regarding his position.

12 THE COURT: You subpoenaed this witness and she came  
13 and she answered your questions about documents that she  
14 has. It's your appeal, your case to prove, so you're  
15 either going to give me documents or you're not, but right  
16 now I'm going to grant his request that she make that  
17 call.

18 MR. JENSEN: And, Your Honor, just to clarify, I  
19 believe the burden of proof is on CalPERS.

20 THE COURT: But you're raising the argument, the  
21 affirmative defense that he was in an acting position, and  
22 that's your affirmative defense to demonstrate.

23 MR. JENSEN: Yes, it's my affirmative defense to  
24 prove.

25 MR. KENNEDY: Ms. Tran, there was one question you

1 were asked about vacancies, and when someone is -- I'll  
2 withdraw the question. Let the witness make the call. No  
3 other questions.

4 MR. JENSEN: I have no further questions either.

5 THE COURT: I'm not going to release the witness.  
6 We're going to be in recess for 15 minutes. Off the  
7 record.

8 (Recess)

9 THE COURT: Back on the record.

10 Raise your right hand, ma'am.

11

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

15 THE WITNESS: I do.

16 THE COURT: Thank you. Can you please state your  
17 full name and spell your last name for the record.

18 THE WITNESS: My name is Laura Yavornicky, L-A-U-R-A,  
19 last name spelled, Y-A-V-O-R-N-I-C-K-Y.

20 THE COURT: Mr. Jensen?

21 MR. JENSEN: Thank you.

22

23 DIRECT EXAMINATION

24 BY MR. JENSEN:

25 Q Thank you, Ms. Yavornicky, for coming today. And

1 can I ask what your maiden name was?

2 A My maiden name? Well, it's not my maiden name,  
3 but, yeah, I changed my name in 2009 from Laura King,  
4 K-I-N-G, to Laura Yavornicky.

5 Q And so previously when you were working at the  
6 City of San Bernardino, did you use the name Laura King?

7 A Yeah, during my initial employment with the City,  
8 I was Laura King and then I became Laura Yavornicky.

9 Q And the only reason I ask is the name appears on  
10 some of the documents.

11 A Yes.

12 Q Briefly, can you give us -- tell us a little  
13 about your educational background?

14 A My educational background, not with the City?

15 Q Prior to your working with the City?

16 A I have an associate's degree in business. I  
17 basically was a housewife until I began employment with  
18 the City of San Bernardino in 1996.

19 Q And what was your first position with the City of  
20 San Bernardino?

21 A In 1996 I was hired in the City clerk's office as  
22 an account clerk one.

23 Q And when did you begin work in the human  
24 resources department?

25 A I'm in the finance department.

1 Q I'm sorry.

2 A So in August of 1998, I began in the finance  
3 department. I transferred from the City clerk's office to  
4 the finance department as an account clerk one, so I  
5 retained the same position.

6 Q And did you have additional positions in the  
7 finance department after being an accountant?

8 A Yes.

9 MR. KENNEDY: I'm sorry, can I ask Counsel, it's  
10 Counsel primarily, his right hand is up.

11 THE COURT: If you can just keep your voice up so  
12 Mr. Kennedy can hear.

13 MR. KENNEDY: Thank you.

14 THE WITNESS: Can you hear me?

15 THE COURT: He's under the AC so it's difficult.

16 MR. JENSEN: Oh, he's asking me to speak louder?

17 MR. KENNEDY: Asking the Court, please.

18 BY MR. JENSEN:

19 Q Let me say the question again. What were the  
20 duties of the account clerk in the finance department at  
21 the City of San Bernardino?

22 A When I began in the finance department, a lateral  
23 position to the clerk's office, but I went to the payroll  
24 division of the finance department upon that transfer.

25 Initially I entered time sheets for employees at

1 that time. I made fairly simple changes like updating  
2 W-4s, changing employees' deductions, dues, which would  
3 have been dues, those types of things while I was the  
4 account clerk one.

5 Q And you mentioned entering information, does the  
6 City --

7 MR. KENNEDY: Sorry, Counsel, if you could, please?

8 BY MR. JENSEN:

9 Q Does the City of San Bernardino have a  
10 computerized system for payroll?

11 A Yes, it does.

12 Q And what system does it use?

13 A It's provided, our vendor is Harris, S.B. Client  
14 is the application, we call it Linus.

15 Q Has it been the same program for processing  
16 payroll as you used since 1998?

17 A Yes.

18 Q And did you have another position after account  
19 clerk in the payroll division?

20 A Yes. In 1999, I was promoted to account clerk  
21 two. In 2000, I was the accounting technician. In 2005,  
22 I was the payroll supervisor; 2007, the payroll manager,  
23 and I've remained payroll manager since 2007.

24 Q And what are the duties of a payroll supervisor  
25 that you held in 2005?

1           A    They're primarily two positions in the payroll  
2 division, one is a technician and the other one is a  
3 supervisor or manager. And as the supervisor, you  
4 primarily deal with negotiated items, items that have been  
5 negotiated through the council, anything that's been  
6 negotiated that way more on a city level versus the  
7 technician, which deals more with employee detail, changes  
8 of employee detail versus the Citywide negotiated changes.

9           Q    And what are some of the matters that are  
10 negotiated items?

11          A    The retirement rates, essentially any benefit  
12 that could be negotiated through the council. It could be  
13 incentive pays, which all these items are included within  
14 the MOUs for any of the bargaining units or bargaining  
15 groups, so most of them are coming through the MOUs like  
16 that.

17          Q    And were you involved in negotiating the MOUs?

18          A    At that time, no, I wouldn't have been.  
19 Honestly, up until recently, I had never been involved in  
20 sitting in any negotiations.

21          Q    And so when you talk about processing the  
22 negotiated items, can you tell us what you did?

23          A    Once they had gone through the council, then I  
24 would implement whatever was agreed to in those MOUs or  
25 resolutions.

1 Q And when you say "gone through the council," you  
2 mean council approved the items?

3 A Yes, once the negotiations were completed and  
4 then the council approved whatever was negotiated and put  
5 into those resolutions and MOUs.

6 Q And in these negotiated items, did you have to  
7 have a knowledge of the public employees retirement law?

8 A Not in its entirety, of course, but researching  
9 specific things, I think, if there was a question with  
10 something, I think I probably have a general idea how  
11 we're supposed to implement that through the payroll and  
12 the CalPERS reporting.

13 Q And so can you step us through your process of  
14 what you did after the City Council approved a negotiated  
15 item and presented it to you that involved CalPERS'  
16 benefits?

17 A For CalPERS' benefits initially -- I mean, for  
18 years we didn't really have a whole lot of changes that  
19 were coming through there with the exception of the  
20 employer rates which would change on the fiscal year.

21 So on the fiscal year, we would receive an  
22 actuarial and the actuarial would give the new rate that  
23 had been provided by PERS, and so we would update -- I  
24 would update the payroll system for whatever the new rate  
25 was, and that was basically what occurred for most of the

1 years prior to the recent one with all the random changes,  
2 I don't know about the changes, but, I mean, changes that  
3 were anything outside of the regular employer rate change.

4 So that's basically what would occur every year,  
5 it's just that rate change. I don't recall any other  
6 changes prior to -- yeah, the cost sharing, I can't recall  
7 anything right now.

8 Q And then let me take you to in 2007 you became  
9 the payroll manager?

10 A Correct.

11 Q And what are the duties of the payroll manager?

12 A They're essentially the same, it's just I was  
13 reclassified from the supervisor to the manager because we  
14 had a class and comp. study, and the class and comp. study  
15 had reviewed my duties at that time and they had said that  
16 they encompass what a manager would be versus a  
17 supervisor. So the job description didn't change, just  
18 the title.

19 So basically my duties have been the same from  
20 the supervisor to the manager, the only thing that I've  
21 incurred in the last few years is that as the manager, if  
22 the director is gone or absent, we haven't had one for  
23 periods of time, then I might have to go to a duty that  
24 would be the responsibility of the director in the absence  
25 of an accounting manager. But other than that, all the

1 other payroll duties would remain the same.

2 Q And just out of curiosity, when you do the duties  
3 of the -- what is the position?

4 A The director of finance.

5 Q Director of finance, do you initiate a Payroll  
6 Action Report?

7 A No.

8 Q And do you do any other paperwork when you're  
9 performing the duties of the division --

10 A Director of finance.

11 Q -- director of finance?

12 A No.

13 Q And are you paid temporary upgrade pay when  
14 you're performing those duties?

15 A No.

16 Q And is it the practice of the finance department  
17 to initiate Payroll Action Reports whenever you're  
18 performing the duties of a higher position?

19 MR. KENNEDY: Asked and answered.

20 THE WITNESS: Pardon me?

21 THE COURT: Sustained.

22 MR. JENSEN: Your Honor, may I ask a policy question  
23 of the department or division of finance rather than her  
24 particular?

25 THE COURT: Okay. Go ahead.

1 BY MR. JENSEN:

2 Q I asked is there a policy or practice in the  
3 finance department of initiating a Payroll Action Report  
4 whenever you perform the duties of a higher position?

5 A I can only speak of my position. I did have a  
6 position when I was the accounting technician, the payroll  
7 supervisor left the finance department and during that  
8 period I was receiving acting pay as the accounting -- I  
9 was the accounting technician receiving acting pay as the  
10 payroll supervisor until I was promoted into the position.  
11 So I did there under my MOU, I believe that if I had  
12 served in the position for a period of time, then I was  
13 entitled to acting pay.

14 Q And how was that set of circumstances different  
15 than your most recent circumstances when you were acting  
16 in a higher position?

17 A I'm not really acting full-time for them in the  
18 director of finance position, I just randomly might have  
19 to be in a meeting. They're very sporadic, they're  
20 infrequent, they're for very short periods of time. When  
21 the payroll supervisor had left, I assumed all the duties  
22 of a payroll supervisor in addition to my duties as  
23 accounting technician.

24 Q And how long was that period of time when you  
25 assumed working like that?

1           A    I believe it's less than a year, but it's more  
2 than a couple of months.

3           Q    And you mentioned the job and comp. study?

4           A    Classification and compensation study.

5           Q    I'm sorry. What is a classification and  
6 compensation study?

7           A    I'm not sure on the one specifically, I can only  
8 give perspective as an employee. Human resources did the  
9 classification and compensation study, so during that, we  
10 had to complete a form that we provided all of our current  
11 tasks, duties, responsibilities, and it was evaluated by,  
12 I believe, a consultant through the human resources  
13 department, and they determined that my position was in  
14 fact a payroll manager versus the payroll supervisor. But  
15 other than providing information and I was interviewed on  
16 my duties, but I didn't have anything to do with that as  
17 part of the finance department's payroll division. So we  
18 had other people that also were reclassified throughout  
19 the City based on the same circumstances.

20          Q    And how long have you worked at the City?

21          A    More than 17 years, just shy of 18.

22          Q    And, to your knowledge, how many times has there  
23 been a classification and compensation -- classification  
24 and compensation study?

25          MR. KENNEDY: This time I'll argue relevancy.

1 THE COURT: Sustained. I mean, what's the relevance?

2 MR. JENSEN: Well, the reason it's relevant is that  
3 the City redesignates positions based on duties and  
4 responsibilities, and one of CalPERS' arguments here is  
5 basically they're holding the job title assigned to  
6 Mr. Lewis in his pay specific to that job title when he  
7 was performing different duties and assert --

8 THE COURT: You want to tie it to the roll into the  
9 fire department, I mean, what the finance department got  
10 reclassified --

11 MR. JENSEN: Well, it was brought up in this  
12 testimony. I withdraw that question.

13 BY MR. JENSEN:

14 Q So let me direct your attention to some of the  
15 documents in this case. Ms. Yavornicky, let me draw your  
16 attention to Exhibit 3 in, excuse me, in Respondent's  
17 binder, which has a blue cover on it.

18 A I'm assuming these are -- Number 3 is 3?

19 THE COURT: Yes. Yes.

20 BY MR. JENSEN:

21 Q Would you take a moment and review this document?

22 A (Witness complies)

23 Q And let me know when you've read it.

24 A Okay. I'm done.

25 Q Did you write this letter?

1           A    Yes, I did.

2           Q    And can you tell us the circumstances? Do you  
3 recall the circumstances that led you to write this  
4 document?

5           A    From what I recall, the City, my boss, who was  
6 Barbara Pachon, the director of finance at the time,  
7 received the Settlement Agreement for Mr. Lewis and we had  
8 some questions regarding implementation, so she directed  
9 me to contact the City Attorney's Office to request  
10 clarification on the items that we had questions on how to  
11 implement.

12          Q    And with respect to this Subsection A, the  
13 paragraph underneath there, is this language that you drew  
14 directly from the Settlement Agreement?

15          A    Yes, this would have been word for word.

16          Q    And then you asked underneath this, "Please  
17 clarify the following: Shall the back pay be reportable  
18 to CalPERS or non-reportable to CalPERS?" Was that the  
19 question that you raised?

20          A    I don't recall if I specifically raised this  
21 question or, like I said, the Agreement would have been  
22 given to the director of finance, and at the time we also  
23 had a deputy director, I believe was her title, and so  
24 they might have reviewed this prior and had posed  
25 questions. I don't know if I was involved in that or not,

1 I don't really recall what had occurred between receiving  
2 the Agreement and me actually requesting these things. So  
3 I don't know who specifically questioned these, but this  
4 would have -- for me for payroll, this would have been  
5 needed to know so we would know how to do any reporting on  
6 Mr. Lewis.

7 Q And let me just also direct you to the second  
8 question there it says, "Should back pay for regular hours  
9 earned while on industrial disability leave, 4850 leave,  
10 be excluded from tax withholdings?" Was this a question  
11 that you were asking regarding how to deduct taxes on the  
12 payroll?

13 A Yes. This wouldn't have had anything to do with  
14 the PERS reporting.

15 Q And so let me turn your attention to the top of  
16 the second page.

17 A (Witness complies)

18 Q And the issue about the difference between the  
19 captain and the battalion chief pay, do you recall how  
20 that was -- how that issue was raised at this time?

21 A I believe the Agreement says that he will be  
22 compensated as the battalion chief but will retain the  
23 position of the captain, so I guess there would have been  
24 a question between if he should have been changed to a  
25 battalion chief or remained as a captain with an acting

1 pay, which is what we call the difference between two  
2 positions. And so there would have been a question there  
3 because I would have needed to know for implementation  
4 purposes if the employee would have been changed to a  
5 battalion chief or would have remained as a captain and  
6 receive acting pay as a battalion chief.

7 Q And did you send this -- or was this message --  
8 this memo sent to Ms. Easland?

9 A Yes.

10 Q And I want to turn your attention to exhibit --

11 THE COURT: Counsel, before you move away from this  
12 exhibit, it's not in evidence yet, just so you know.

13 MR. JENSEN: Oh, it's not in evidence?

14 THE COURT: No.

15 MR. JENSEN: Oh, I'm sorry, I thought it was in  
16 evidence. Your Honor, I would like to move Exhibit 3 in  
17 evidence.

18 THE COURT: Any objection to my receiving Exhibit 3?

19 MR. KENNEDY: No, but I have one question for the  
20 witness, Your Honor.

21 THE COURT: Okay.

22 MR. KENNEDY: I'm sorry, I forgot how to pronounce  
23 your last name, I apologize.

24 THE WITNESS: It's easy, Yavornicky.

25 MR. KENNEDY: Yavornicky?

1 THE WITNESS: Yavornicky.

2 MR. KENNEDY: Yavornicky, thank you. Ms. Yavornicky,  
3 you have Exhibit 3, Respondent's Exhibit 3 open in front  
4 of you; right?

5 THE WITNESS: Yes.

6 MR. KENNEDY: And there's a white binder there with  
7 an index on the cover. I want you to go to tab 8, if you  
8 could.

9 THE WITNESS: Tab?

10 MR. KENNEDY: Eight.

11 THE WITNESS: Yes.

12 MR. KENNEDY: One quick question is: The dates on  
13 the documents are different, do you see that?

14 THE WITNESS: Yes.

15 MR. KENNEDY: Is this the same document?

16 THE WITNESS: This is the same document. This  
17 particular document -- the documents that I would have  
18 created at that time would have had dates update.

19 MR. KENNEDY: Would have what?

20 THE WITNESS: Where it automatically updates the  
21 date.

22 MR. KENNEDY: Oh, I see, okay.

23 THE WITNESS: So this probably was reprinted at a  
24 later time.

25 THE COURT: When you're saying "this," can you tell

1 me what you are looking at?

2 THE WITNESS: Oh, Exhibit 8.

3 THE COURT: Thank you.

4 MR. KENNEDY: So Exhibit 8 is the more -- is the  
5 latest printing, all right. Thank you. I have no  
6 objections to Exhibit 3.

7 THE COURT: Exhibit 3 will be received.

8 (Respondent's Exhibit 3 was received  
9 in evidence by the Court.)

10 BY MR. JENSEN:

11 Q And so let me ask you to turn your attention to  
12 Exhibit 4 in the Respondent's binder.

13 A (Witness complies)

14 Q Do you recognize this document?

15 A Yes.

16 Q And did you receive this document?

17 A Yes.

18 MR. JENSEN: Your Honor, I'd like to offer Exhibit 4  
19 into evidence.

20 THE COURT: It's already in evidence.

21 MR. JENSEN: It is?

22 THE COURT: Um-hum.

23 BY MR. JENSEN:

24 Q Did you utilize this memo when you were  
25 implementing the payroll and compensation for Mr. Lewis?

1 A Yes.

2 Q And may I turn your attention to Exhibit 6 in the  
3 Respondent's binder?

4 A (Witness complies)

5 Q Do you recognize Exhibit 6?

6 A Yes.

7 Q Do you recognize that handwriting on Exhibit 6?

8 A Yes.

9 Q And whose handwriting is that?

10 A It's mine.

11 MR. JENSEN: Your Honor, I'd like to offer Exhibit 6  
12 into evidence with the handwriting.

13 THE COURT: Any objection to my receiving Exhibit 6?

14 MR. KENNEDY: No.

15 THE COURT: Exhibit 6 will be received.

16 (Respondent's Exhibit 6 was received  
17 in evidence by the Court.)

18 BY MR. JENSEN:

19 Q And so you have in the left-hand column you have  
20 numbers, it says number 11 and then there's a date,  
21 6/15/07. What does that correspond to?

22 A I would use this document for implementation, and  
23 this is a notation of the payroll that the implementation  
24 would have taken place on, implementation meaning payment  
25 changes. So this is payroll 11. We have 24 pay cycles in

1 a year. Number 11 would have been the payroll date of  
2 6/15/07.

3 Q And I --

4 THE COURT: Hang on a second. And so number 11  
5 because this is happening in 2007, that's how you know  
6 it's 2007?

7 THE WITNESS: Well, every year we start over, so  
8 there are 1 to 24, we number the payrolls 1 to 24 every  
9 year. And then so you don't have to figure out what 11  
10 is, it is the June 15th one, I usually will note the  
11 actual date and then the year.

12 THE COURT: Great. Thank you.

13 BY MR. JENSEN:

14 Q And, Ms. Yavornicky, did you communicate to  
15 CalPERS at this time regarding reporting Mr. Lewis's  
16 payroll?

17 A I did contact CalPERS prior to implementation,  
18 and I have a document -- can I provide this? I have a  
19 document that is not one of your --

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

21 THE COURT: Yes.

22 MR. JENSEN: Ms. Yavornicky, may I approach?

23 THE WITNESS: Sure.

24 THE COURT: Can you tell us what the document is?

25 THE WITNESS: Oh, the document is a faxed

1 confirmation of the correspondence sent to a CalPERS'  
2 representative.

3 BY MR. JENSEN:

4 Q And whose handwriting is that on there?

5 A That is mine.

6 Q And when did you make this -- tell me the  
7 sequence of events in which you received that document?

8 A I don't recall the specific circumstances of why  
9 CalPERS was contacted at the direction of I don't know.  
10 This is prior to receiving the response from Ms. Easland  
11 dated June 17th.

12 THE COURT: And that's the City Attorney's response  
13 back to you in response to your memo to them?

14 THE WITNESS: Yes. So I had not received the  
15 response. We didn't have any clarification at that time,  
16 so CalPERS was contacted regarding reporting of  
17 Mr. Lewis's compensation to them. So the notation I have  
18 says, "No final determination made by CalPERS," so this  
19 was sent prior to the response from Stephanie Easland for  
20 clarification.

21 BY MR. JENSEN:

22 Q And let me just direct your attention to the  
23 second notice there, it says -- well, what does this --

24 A "To call me with final," this one?

25 Q Yeah.

1 A "To call me with final answer on 6/25."

2 Q So, to the best of your recollection, what is  
3 this? What do those markings, your handwriting on that  
4 mean?

5 A It's not clear as I would have liked, but it  
6 looks like we didn't have any determination by CalPERS as  
7 of the date of this fax, which was June 11th. Carlous was  
8 going to contact me with a final answer on 6/25 following  
9 a review of the documentation provided, and then I would  
10 have left a message on 6/26 because I hadn't received any  
11 response.

12 Q But he was making a representation to you that he  
13 would come back with a final answer?

14 MR. KENNEDY: Objection, hearsay.

15 THE COURT: Overruled. I'll receive it as  
16 administrative hearsay.

17 MR. KENNEDY: Vague as to the term "final."

18 THE COURT: I don't think the document -- I don't see  
19 where the word "final" is written in the document.

20 THE WITNESS: "To call me with final answer."

21 THE COURT: Thank you.

22 MR. JENSEN: And, Your Honor, I would like to offer  
23 this into evidence.

24 MR. KENNEDY: Could I make a copy of this,  
25 Your Honor, after you mark it?

1 THE COURT: Yes. Why don't we go off the record.  
2 (Discussion off the record)  
3 THE COURT: Back on the record.  
4 Ma'am, I remind you, you're still under oath.  
5 I'm going to mark as Exhibit 39 this faxed cover  
6 sheet document with handwriting on it.  
7 And we're off the record again.  
8 (Respondent's Exhibit 39 was marked for  
9 identification by the Court.)  
10 (Recess)  
11 THE COURT: Back on the record.  
12 Ma'am, I remind you, you're still under oath.  
13 THE WITNESS: Yes.  
14 THE COURT: Counsel?  
15 BY MR. JENSEN:  
16 Q Do you recall which documents you sent or you  
17 faxed to CalPERS?  
18 MR. KENNEDY: Your Honor, could I ask again if the  
19 Court could ask Mr. Jensen to --  
20 THE COURT: You need to keep your voice up, Counsel.  
21 MR. JENSEN: I mean, it's -- maybe I'll stand back  
22 here.  
23 THE COURT: Right. Well, that would be great.  
24 MR. JENSEN: And I'll project.  
25 THE COURT: Feel free.

1 MR. JENSEN: I feel like a Shakespearean actor.

2 THE COURT: Are you offering 39, sir?

3 MR. JENSEN: Yes, Your Honor, I'd like to offer 39.

4 THE COURT: Any objection to my receiving Exhibit 39?

5 MR. KENNEDY: No.

6 THE COURT: Exhibit 39 will be received.

7 (Respondent's Exhibit 39 was received

8 in evidence by the Court.)

9 BY MR. JENSEN:

10 Q Ms. Yavornicky, do you recall which other  
11 documents you faxed to CalPERS at this date?

12 A I do not. The fax has what looks like a page of  
13 the Settlement and Release Agreement, so this would have  
14 been part of the fax. This is automatically generated as  
15 a receipt, but I don't know what other pages or if there  
16 were any other documents, but it had to have been part of  
17 the Settlement Agreement for Mr. Lewis.

18 THE COURT: And if you look, ma'am, it indicates on  
19 the fax that six pages were sent.

20 THE WITNESS: Oh, six pages?

21 THE COURT: I'll show you.

22 THE WITNESS: I believe the Agreement is longer than  
23 that; isn't it?

24 THE COURT: I'm just saying, see the fax cover sheet,  
25 it shows six pages?

1 THE WITNESS: Yeah, I see what you're saying.

2 THE COURT: But you don't know what six pages those  
3 were; is that correct? Ma'am, is that true?

4 THE WITNESS: That is correct, I do not know which  
5 six pages.

6 MR. JENSEN: And, Your Honor, the --

7 THE COURT: I'll just note for the record, the  
8 Settlement Agreement starts at page 1, ends at page 6, and  
9 then there's a page 7 with a signature on it. So it looks  
10 like the Settlement Agreement was seven pages.

11 MR. JENSEN: And the seventh page is a signature  
12 page, so the terms are in the first six pages.

13 THE COURT: Right, that's what I just said.

14 MR. JENSEN: Thank you.

15 BY MR. JENSEN:

16 Q And did you have a conversation with Carlous at  
17 this time?

18 A I must have had a conversation with him because  
19 he makes a response to me, but I don't recall what the  
20 conversation would have been when I contacted him. I know  
21 that I contacted him based on the notes.

22 Q Okay, great. And --

23 THE COURT: When you say he made a response to you,  
24 what are you referring to?

25 THE WITNESS: The Exhibit 7 in this (indicating). Is

1 this the Respondent's?

2 THE COURT: Yes.

3 THE WITNESS: Yes.

4 THE COURT: Thank you.

5 BY MR. JENSEN:

6 Q And did you consider this to be the final answer  
7 from CalPERS on this matter?

8 A Yes.

9 MR. KENNEDY: Objection as to the term "final." As  
10 to what -- I don't know what matter he's talking about.

11 THE COURT: There's only one matter in front of you,  
12 which is the interpretation of this Agreement, so the  
13 objection is overruled.

14 BY MR. JENSEN:

15 Q And did CalPERS request any other additional  
16 information from San Bernardino regarding Mr. Lewis's  
17 pension associated with this matter?

18 MR. KENNEDY: Vague as to time.

19 THE COURT: Anytime after you got Mr. Johnson's  
20 response or even before. From the time you first  
21 contacted them until you began implementing, did you get  
22 any request for additional documentation?

23 THE WITNESS: We did later receive the public records  
24 act request, but immediately following this letter, I did  
25 not receive anything else.

1 THE COURT: When did you get the public act request?

2 THE WITNESS: I believe that was 2013 --

3 MR. KENNEDY: Quickly, Your Honor, on the record,  
4 that was on mine.

5 THE WITNESS: I believe it was 2013, it was many  
6 years later.

7 THE COURT: Okay. Thank you.

8 BY MR. JENSEN:

9 Q So can I turn your attention to Exhibit 2 in our  
10 Respondent's binder?

11 THE COURT: Which one, Counsel?

12 MR. JENSEN: Exhibit 2.

13 BY MR. JENSEN:

14 Q Do you recognize this document?

15 A Yes.

16 Q Is your handwriting on this document?

17 A Yes, it is. It is not only mine, there is --  
18 it's not only my writing.

19 Q Who else's handwriting do you recognize on this?

20 A In the upper right-hand corner, that is the  
21 director of finance, Barbara Pachon.

22 THE COURT: Can you spell her last name, please?

23 THE WITNESS: P-A-C-H-O-N.

24 BY MR. JENSEN:

25 Q And do you recall any other -- well, do you

1 recognize any other handwriting on this, other than yours  
2 and Ms. Pachon's?

3 A No.

4 THE COURT: Just for clarity, is there other  
5 handwriting that's other than yours or Ms. Pachon's on  
6 here?

7 THE WITNESS: Other than the signature of  
8 James Augmund, no.

9 THE COURT: Okay. Thank you.

10 BY MR. JENSEN:

11 Q And may I turn your attention to page 3 of  
12 Exhibit 2?

13 A (Witness complies)

14 MR. KENNEDY: For the record, it's Bates stamped  
15 LEW-02-3.

16 BY MR. JENSEN:

17 Q Do you recognize the handwriting on this page?

18 A Yes.

19 Q And whose handwriting is it?

20 A It is all mine.

21 MR. JENSEN: Okay. Your Honor, I would like to offer  
22 Exhibit 2 into evidence with the handwriting.

23 MR. KENNEDY: Relevancy?

24 THE COURT: Well, it's the Settlement Agreement, it  
25 has her handwriting.

1           What did your handwriting symbolize, ma'am?

2           THE WITNESS: The handwriting on here would have been  
3 for internal payroll purposes only, notations for future  
4 reference by payroll staff only.

5           THE COURT: And what was it you were trying to  
6 communicate to payroll staff?

7           THE WITNESS: Well, me being the payroll staff. I  
8 mean, other payroll staff could have looked at it, but  
9 it's basically notations so that I will know when we  
10 implemented certain portions of the Agreement for ease of  
11 reference the changes that need to be made each year.

12          THE COURT: Exhibit 2 will be received. Page 1 was  
13 just received yesterday, but I'm now receiving the entire  
14 document.

15          MR. JENSEN: With the handwriting as well,  
16 Your Honor?

17          THE COURT: Yes.

18          MR. JENSEN: Thank you.

19                   (Respondent's Exhibit 2 was received  
20 in evidence by the Court.)

21 BY MR. JENSEN:

22          Q So just briefly, turning to the first page of  
23 Exhibit 2, if you can just explain to us what the  
24 handwriting means? At the very top there's "EID" and then  
25 there's a number after that?

1 A Which page are you --

2 Q Oh, I'm sorry, on page 1 of Exhibit 2.

3 MR. KENNEDY: Is that LEW-02-1?

4 THE WITNESS: Yes.

5 THE COURT: Yes.

6 THE WITNESS: Will you repeat the question?

7 BY MR. JENSEN:

8 Q Yes. There's a handwritten mark "EID" and then a  
9 number after?

10 A The EID is our employment identification numbers  
11 that are used internally by the City of San Bernardino for  
12 each employee, and Mr. Lewis's is 24678.

13 Q And in the middle of the page there's a star and  
14 it says "PE" something after it. Could you tell us what  
15 that means?

16 A Oh, PEHP, that's the post-employment health plan  
17 that the City has.

18 Q And what is the language after that?

19 A Payoff percent and requirements according to fire  
20 management.

21 Q And what does that mean?

22 A The City has a post-employment health plan with  
23 the fire management group. I don't know if they have one  
24 with the fire group at the same time, I only make a  
25 notation of the fire management, but post-employment

1 health plan is -- I'm not sure I'm the one to be able to  
2 speak on exactly what the post-employment health plan is,  
3 but from a payroll perspective, there is an agreement  
4 between the City and the groups that have this benefit  
5 that determine that a payoff of certain leave balances get  
6 deposited into an account, and this is really vague on the  
7 part of just from a payroll perspective, we would get the  
8 agreement from the group and HR that tells us the  
9 percentages for that year, and this is noting that I would  
10 use the fire management to determine that percentage.

11 Q And why would you use fire management to  
12 determine that percentage?

13 A That's a good question. Without looking through  
14 the documentation, I couldn't tell.

15 THE COURT: Why don't you take a moment and look  
16 through your documentation.

17 And do we have a better copy of page 1? The copy  
18 in my notebook, the corner is turned, so whatever  
19 handwriting by the director of finance, it's obscured.

20 MR. JENSEN: And, Your Honor, we have that same  
21 problem.

22 THE COURT: The witness had the original, but she's  
23 got the file in front of her from what I can tell.

24 MR. KENNEDY: I think there may be a copy in our  
25 exhibits, Your Honor.

1 THE WITNESS: I have the true and correct, but it is  
2 a copy, it is not the original that I had.

3 THE COURT: The corner is not folded?

4 THE WITNESS: Correct.

5 MR. JENSEN: And, Your Honor, there is one other  
6 issue about this document too, and I just want to bring it  
7 to your attention.

8 THE COURT: Go ahead.

9 MR. JENSEN: Is that on the front page of Exhibit 2,  
10 it is starred and it says, "CalPERS determination  
11 attached," and the exhibit that was -- the document that  
12 was provided to us, as we understood it, there was no  
13 CalPERS' determination attached to it.

14 THE COURT: Where does it say "CalPERS'  
15 determination"?

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

17 THE COURT: Yes. Oh, I see it. I see it. I see it.

18 MR. JENSEN: Oh, right.

19 THE COURT: Thank you. Does the document that the  
20 witness has in front of you, ma'am, does that have a  
21 "CalPERS' determination attached"?

22 THE WITNESS: No. No, it does not.

23 THE COURT: Okay.

24 MR. JENSEN: Your Honor, if you'd like, maybe if we  
25 have to go over lunch, I'll have copies made and

1 redistribute it?

2 THE COURT: Well, no, the witness right now is  
3 looking through it, but her answer was she doesn't know  
4 why she used that without looking at the documentation, so  
5 I asked her to look at the documentation to figure out why  
6 she looked at fire management for percentages of the PEHP.

7 THE WITNESS: On LEW-03-3, it looks like Section 2B  
8 it says, "Mr. Lewis will be compensated from the date of  
9 the Agreement forward as if he had been promoted to the  
10 position of battalion chief, including all current and/or  
11 future benefits granted to battalion chiefs." Battalion  
12 chief position is in the fire management.

13 THE COURT: Were you the one underlining the word  
14 "including"?

15 THE WITNESS: Yes.

16 THE COURT: See the handwriting there, it says, "He  
17 doesn't get only." What did you mean by that entry?

18 THE WITNESS: That he wouldn't get only the benefits  
19 of the battalion chief, that he would -- that these  
20 benefits would be included, not only because he was  
21 current -- he was in the fire safety group.

22 THE COURT: The rank and file group?

23 THE WITNESS: Yes.

24 THE COURT: So he could get those benefits as well?

25 THE WITNESS: That's what I understand from what I

1 wrote.

2 THE COURT: Okay.

3 BY MR. JENSEN:

4 Q Just for my purposes, can you restate what you  
5 just said?

6 A It looks like I was questioning the including,  
7 what including means, and so I clarified it on the right  
8 to say that he doesn't only get the benefits that a  
9 battalion chief would get, he would get those benefits in  
10 addition to the benefits he would receive under the rank  
11 and file group.

12 Q And so he would be entitled to two separate sets  
13 of benefits?

14 MR. KENNEDY: Objection, it's not this witness's  
15 testimony, she's only saying what she -- how she was  
16 interpreting the document.

17 THE COURT: Overruled.

18 Is that what your understanding was how you would  
19 implement it, he would get both sets of benefits?

20 THE WITNESS: I don't think it's that specific. I  
21 think it was more of a general statement just questioning  
22 the including so that I could understand how to implement.  
23 I would have to look at each sort of benefit and pay, so I  
24 couldn't say that it encompassed all or nothing.

25 THE COURT: And what sort of benefits would you be

1 looking at?

2 THE WITNESS: It could be anything from a pay benefit  
3 to a health insurance benefit to an educational benefit.

4 THE COURT: Okay. Thank you.

5 BY MR. JENSEN:

6 Q Did it include CalPERS' retirement benefits?

7 MR. KENNEDY: If she knows. Objection, vague as to  
8 what is CalPERS' retirement.

9 THE WITNESS: Yeah, I would assume that a pension  
10 benefit would be part of that.

11 MR. KENNEDY: Vague as to what pension benefit, both  
12 the captain and management.

13 BY MR. JENSEN:

14 Q To clarify, would he be entitled to the CalPERS'  
15 retirement benefits of the battalion chief?

16 MR. KENNEDY: Lack of -- well --

17 THE WITNESS: I don't know about if he would be  
18 entitled to the benefit, but for implementation purposes,  
19 I would have needed clarification to know which one he  
20 would have gotten because here when I say that it would be  
21 included, he can't receive both, so I would have needed  
22 clarification on which one I would need to implement.

23 THE COURT: Did you ever get that clarification?

24 THE WITNESS: I don't believe I requested that. The  
25 pay -- the member contributions and the employer

1 contributions are the same, so it wouldn't have made a  
2 difference from a payroll perspective.

3 BY MR. JENSEN:

4 Q And could I just turn your attention to  
5 Exhibit 4?

6 A (Witness complies).

7 Q And the third paragraph down, read that and  
8 refresh your recollection.

9 A This still wouldn't make a difference on what we  
10 would be reporting as far as the rate, as far as the  
11 member and employer contribution rate. This only has to  
12 do with the employee's compensation. The employee's  
13 compensation is being defined here, but what I consider is  
14 the benefit of reporting the member's contribution and the  
15 employer's contribution, that remains the same regardless  
16 of which group you're in.

17 Q And I think one of the issues --

18 MR. KENNEDY: I'm sorry, Your Honor, it's gone to a  
19 whisper almost.

20 THE COURT: I don't really think so because I can  
21 hear him and I'm sitting further away, but --

22 MR. JENSEN: I'm certainly not trying to --

23 THE COURT: Right, I understand.

24 MR. KENNEDY: Thank you.

25 THE COURT: Just so the record is clear, I don't find

1 anything you're doing intentional, sir, because I can hear  
2 you fine.

3 MR. KENNEDY: I don't either, and I have indicated at  
4 the beginning I have a tinnitus.

5 BY MR. JENSEN:

6 Q So, Ms. Yavornicky, I just want to read this  
7 sentence to you, it says, "All future monthly pay rates  
8 will be at the rate of the battalion chief and shall be  
9 CalPERS reportable compensation."

10 And the question to you earlier was whether, when  
11 you were implementing this Agreement, whether you had to  
12 make a determination whether Mr. Lewis's retirement  
13 benefits for CalPERS would be based on his battalion chief  
14 pay rate?

15 MR. KENNEDY: Objection, mischaracterizes the  
16 testimony and is vague as to the term "benefits."

17 THE COURT: Overruled.

18 THE WITNESS: Yeah, I don't determine the  
19 compensation that an employee is getting for retirement, I  
20 only report to CalPERS what is required according to the  
21 payroll manual on the compensation, on if it's reportable  
22 or it's not.

23 So I asked the City Attorney's Office if it was  
24 reportable and they responded that it was. I asked if the  
25 additional rate, the additional amount under battalion

1 chief was reportable and they said it was. And then the  
2 member and employer contributions are unaffected, so I did  
3 not ask which group. And that's all I did as far as a  
4 determination, I didn't make any determination on the  
5 employee's retirement.

6 BY MR. JENSEN:

7 Q And I guess the question I was asking was: Based  
8 on your work in these several sheets, you reported to  
9 CalPERS for Mr. Lewis a monthly salary at the battalion  
10 chief rate; is that correct?

11 A No, that is not correct. I reported a monthly  
12 salary of the captain rate, and I reported the difference  
13 between the captain and the battalion chief as special  
14 compensation.

15 Q And were you doing that pursuant to the CalPERS'  
16 direction in Exhibit 7?

17 A Yes.

18 Q And did you make any independent determinations  
19 of -- well, of whether it was monthly pay rate or special  
20 compensation?

21 A No.

22 Q And did you rely on any other sources of  
23 authority to report the compensation as you did other than  
24 the document in Exhibit 7?

25 A I'll need to review the document. I don't recall

1 if there were -- if there was additional direction by  
2 somebody who was over me or with the Attorney's Office, I  
3 couldn't say it was exclusively CalPERS.

4 Q And, well, let's keep going through this  
5 handwriting here in Exhibit 2. On the first page of  
6 Exhibit 2 --

7 MR. KENNEDY: It's Respondent's Exhibit 2?

8 THE COURT: Yes.

9 MR. JENSEN: Yes.

10 BY MR. JENSEN:

11 Q There's some handwriting on the bottom, it says  
12 "MOU concessions." Can you tell us what you were  
13 referring to in that -- or is this your handwriting?

14 A Yes, it is.

15 Q And tell us what you were referring to when you  
16 wrote that note?

17 A The City had MOU pay concessions, some sort of  
18 concession at that time, and it looks like I used the fire  
19 management concessions to implement those concessions with  
20 Mr. Lewis.

21 Q And why were you using fire management?

22 A I believe there's an opinion from the Attorney's  
23 Office that says that the benefits are under the fire  
24 management, but I don't know for sure.

25 Q And can you clarify what you mean by "the

1 benefits are under the fire management"?

2 A On one of the questions that we would have had.

3 THE COURT: If you look at Exhibit 4, the attorneys,  
4 you see the second to the last paragraph? Is that what  
5 you were relying on?

6 THE WITNESS: Yes. So this would have been the same  
7 as the ones under -- the comment under PEHP.

8 MR. JENSEN: And, I'm sorry?

9 MR. KENNEDY: Under what?

10 THE COURT: Under PEHP, P-E-H-P.

11 THE WITNESS: On the same page.

12 MR. KENNEDY: I'm sorry, I'm not --

13 THE COURT: She's saying that she used, and correct  
14 me if I'm wrong, ma'am, she used the MOU concessions to  
15 fire management just like she did her PEHP because the  
16 City Attorney, in its response to her, said benefits are  
17 to be at battalion chief level.

18 MR. KENNEDY: Okay. Thank you.

19 THE WITNESS: That's correct.

20 MR. KENNEDY: That's set forth in Exhibit 4?

21 THE COURT: Exactly. Exhibit 4 was the City  
22 Attorney's answer to her.

23 MR. KENNEDY: That's 5 and 6, Respondent's 5 and 6.

24 BY MR. JENSEN:

25 Q And there's some language here, it says, "in lieu

1 of" and then "in place of instead." Do you recall --

2 A Oh, that's just my -- that's my definition of  
3 what's in lieu of.

4 Q And is that a term in the Settlement Agreement  
5 that you were --

6 A I must have clarified.

7 THE COURT: Well, I'm looking at the City Attorney,  
8 the same paragraph I just read to you says, "In lieu of  
9 those granted to captains."

10 THE WITNESS: Yes, then it would be defining in lieu  
11 of in Exhibit 4.

12 BY MR. JENSEN:

13 Q And does that clarify your prior understanding  
14 whether Mr. Lewis received both benefits of the rank and  
15 file and of the management?

16 A Yes. I don't know if it would have been for  
17 every single thing, but as far as her response here to me,  
18 it would have said that the future benefits are in lieu  
19 of, so it was just for clarification.

20 Q And it would be fair to say that he did not  
21 receive the fire captain benefits but did receive the  
22 battalion chief benefits in lieu of or in place of?

23 A Probably. I couldn't say for every single  
24 benefit, there's a lot of benefits.

25 Q And it says in the bottom in your handwriting,

1 "fiscal year." What is that term?

2 A This is at the fiscal year, I will add 120 hours  
3 of admin hours to the employee's administrative leave  
4 bank.

5 Q And would that be pursuant to a management  
6 contract?

7 A That is contained in the fire management contract  
8 and not in the fire safety contract.

9 Q And next to it there's a 71XX and a series of  
10 numbers?

11 A This is my notation that July 1st of that year  
12 noted by the XX, and then on the far right -- I mean, to  
13 the right of that, this would have been when I posted  
14 these hours to Mr. Lewis's leave bank each fiscal year.

15 Q Great. And then on the next line down it says  
16 "186." Can you explain what that is, that whole line?

17 A 186 is a charter section of the City of  
18 San Bernardino's charter, which determines pay rates for  
19 the fire and police safety groups, including the fire and  
20 the police management.

21 Q Is it delineated in the charter as Number 186?

22 A Yes, it is charter section, I believe,  
23 Section 186.

24 Q And what's your understanding of that provision  
25 as it affects payroll?

1           A    That it's pay rate compensation, that it's  
2 determined each August 1st based on a salary survey of  
3 comparable cities.

4           Q    And are you aware of any more information about  
5 that salary survey or --

6           MR. KENNEDY:   Asked and answered.

7           THE COURT:   Overruled.

8           THE WITNESS:   I'm not involved in the actual survey  
9 itself, I only implement the changes once the salaries are  
10 determined.

11          BY MR. JENSEN:

12          Q    And is that, to your knowledge, is that performed  
13 by the fire department?

14          A    I believe it's the fire and the human resources  
15 department do the process together.

16          THE COURT:   Can you just read your whole note there  
17 after 186 and just tell me what that note meant?

18          THE WITNESS:   "186, adjust pay code 632, difference  
19 between captain and BC concession," and then I have like  
20 the negative bracket with "Code 051, the difference  
21 between 8.7 percent and 10 percent," and then "August 1st  
22 of each year."

23          THE COURT:   And what does that note mean?

24          THE WITNESS:   I'm making a note to adjust our pay  
25 code 632, which is a pay code that is the difference

1 between the captain and the battalion chief rate that  
2 would have been used in Mr. Lewis's master file that  
3 determines his pay rate.

4 And then we also would have had an MOU concession  
5 it looks like during that time. I don't specify what  
6 year, so I don't know what year this is. And the 051 is  
7 the offsetting MOU concession code that we used at the  
8 time, and this would have been the difference between the  
9 8.7 percent was the concession offset for the fire safety  
10 rank and file group and the 10 percent for fire  
11 management.

12 So I would have used this 051 offsetting MOU  
13 concession code in Mr. Lewis's master file which  
14 determines his pay, and it would have been a difference  
15 between the rank and file and the management group, he  
16 would have been paid that additional MOU concession.

17 THE COURT: Thank you.

18 BY MR. JENSEN:

19 Q And why did you write this sentence or this  
20 notation "186 adjust pay code 632"?

21 THE COURT: Counsel, she already read it.

22 MR. JENSEN: I asked her why.

23 THE COURT: Right, so stop.

24 Answer the question why.

25 THE WITNESS: I would have put this on the outside of

1 the contract, just like I did with the administrative  
2 leave, because this is a change that occurs every year.  
3 So this is my tickler to make the change when the 186 pay  
4 increases are approved, I would go in and change these pay  
5 codes to update the employee's pay rate based on the  
6 Agreement.

7 BY MR. JENSEN:

8 Q You used the phrase "outside the contract," what  
9 is that?

10 A Outside the contract?

11 Q You just used that phrase.

12 A Can you repeat it to me? I don't know what I  
13 used it in reference to.

14 THE COURT: I think she just meant on the outside of  
15 the doc because you said every --

16 THE WITNESS: Oh, yeah, on the outside, maybe on the  
17 outside here (indicating).

18 BY MR. JENSEN:

19 Q Oh, as a reminder?

20 A Yeah, as a reminder, a tickler that I would use  
21 so that I would know that I need to take a look at these  
22 things each year.

23 MR. KENNEDY: Need to take a look at what?

24 THE WITNESS: That I would need to take a look at the  
25 types of pay or benefits each year.

1 BY MR. JENSEN:

2 Q And I just want to turn your attention to page 3  
3 of this document, and again just --

4 THE COURT: Before you leave it, in the top right  
5 corner, can you just read me what your director wrote?

6 THE WITNESS: The 9/30/07 would have been the date  
7 that we received --

8 THE COURT: Isn't it 4/30?

9 THE WITNESS: Oh, 4/30, I'm sorry, 4/30/07 is the  
10 date that -- oh, she spoke, the date that she spoke.

11 THE COURT: I just need you to read me what she wrote  
12 right there.

13 THE WITNESS: "4/30/07, spoke to Stephanie Easland,  
14 she is going to get us a final copy signed" -- excuse me,  
15 "a final copy of signed Agreement and then we will wait --  
16 then we will want to get a memo."

17 THE COURT: Or is it "Wait for a"? Now you know my  
18 dilemma.

19 THE WITNESS: "Wait for a memo with our questions how  
20 to implement and budget for this." Yeah, I believe it  
21 says, "4/30/07, spoke to Stephanie Easland, she is going  
22 to get a final copy of signed Agreement and then we will  
23 wait for a memo with our questions how to implement and  
24 budget for this."

25 THE COURT: Okay. Thank you.

1 BY MR. JENSEN:

2 Q And may I ask you to turn to page 3 of this  
3 Agreement?

4 A (Witness complies)

5 MR. KENNEDY: Is that the end of the question?

6 MR. JENSEN: Ask you to turn to page 3 of this  
7 Agreement.

8 MR. KENNEDY: Which Agreement is that?

9 THE COURT: Same thing, Exhibit 2, page 3.

10 MR. KENNEDY: LEW-3.

11 THE COURT: Yeah, 023.

12 BY MR. JENSEN:

13 Q In the left-hand corner there's a mark that says  
14 PD by AP or that's --

15 A Yes.

16 Q What does that mean?

17 A The settlement payment of 75,000 was paid by our  
18 accounts payable division, not payroll.

19 Q And there's, if you can tell me what the next  
20 indication you have in the left-hand corner there, the  
21 date and the number?

22 A It would be PR number 11. Again, I used the PR,  
23 which means payroll to me, payroll number 11,  
24 June 15th, '07, that there was 68,562.26 that I calculated  
25 to be Mr. Lewis's back pay from the effective date of

1 10/5/04 to the June 15th, '07 date.

2 Q And do you recall offhand how you reported that  
3 compensation to CalPERS?

4 A This compensation would have been reported based  
5 on Ms. Easland's response.

6 Q And let me just direct your attention to  
7 Exhibit 8.

8 MR. KENNEDY: Eight in Respondent's?

9 MR. JENSEN: Eight in Respondent's, and I believe  
10 that it is on page 7 about two-thirds of the way down.

11 Your Honor, if I may approach the witness?

12 THE COURT: Yes.

13 MR. JENSEN: Ms. Yavornicky, may I approach?

14 THE COURT: Yes.

15 MR. JENSEN: No, I was just asking her.

16 THE COURT: You ask me.

17 MR. JENSEN: Okay. Well, I just didn't want --

18 BY MR. JENSEN:

19 Q I think that's the number there.

20 A Yes, that's the same.

21 Q Do you recall whether this was reported as pay  
22 rate or as special compensation?

23 A This would have been reported as special  
24 compensation based on the legal opinion.

25 Q And is there any indication that it's special

1 compensation?

2 A No.

3 Q And is there any way of determining from this  
4 document how it was -- what the characterization was for  
5 CalPERS' purposes?

6 MR. KENNEDY: I would just say vague as to  
7 CalPERS' purposes, how it's reflected in Exhibit 8  
8 as far as the payroll detail.

9 THE COURT: Sustained. And what page are you on in  
10 Exhibit 8, sir?

11 MR. JENSEN: Oh, it was page 7 of Exhibit 8.

12 THE WITNESS: There isn't anything in this document  
13 that says that it was reported as special compensation.

14 BY MR. JENSEN:

15 Q And turning back to your notation --

16 THE COURT: Wait, hang on.

17 MR. KENNEDY: For clarification of the record,  
18 Your Honor, the last question was read a specific entry on  
19 the page in Exhibit 8?

20 THE COURT: Correct.

21 MR. KENNEDY: And which entry was that?

22 THE COURT: The one that's the October 15, 2004, the  
23 68,562.26.

24 MR. KENNEDY: The one under the column earnings here?

25 THE COURT: It's about a third of the way up from the

1 bottom, it's retroactive salary adjustment,  
2 October 15, 2004.

3 MR. KENNEDY: Thank you.

4 THE COURT: Yep.

5 BY MR. JENSEN:

6 Q And continuing down on page -- on Exhibit 2 on  
7 page 3, there are other notations, including PR number 12  
8 and a date. Do you see that?

9 A Yes.

10 Q And do you recall what those -- there's several  
11 of those, what those meant?

12 A This is the detail for the comment that's written  
13 on the first page, the LEW-021, how I make the notation  
14 186 to adjust the pay codes, this is the detail of what is  
15 being adjusted for each year under that pay code 632,  
16 which is the difference between the captain and the BC  
17 rate.

18 Q Right. And then in the next column over there's  
19 a notation that says, "Prior year holiday payoff." Do you  
20 see that?

21 A Yes.

22 Q And what does that refer to?

23 A The fire safety group rank and file in their MOU  
24 have that at the end of each year, any unused holiday time  
25 left in their leave banks is cashed out. It is cashed out

1 on the payroll number 6, March 31st, '08 was this  
2 particular year it was paid off, but it was paid off every  
3 year, and that that payoff includes the additional BC pay,  
4 so it would have been paid at the pay rate which includes  
5 the battalion chief rate.

6 Q So does the management also have a prior year  
7 holiday payoff benefit?

8 A I don't believe so. They do not.

9 Q And on the next entry here, there's a PR  
10 number 9?

11 A Yes.

12 Q And there's some language there?

13 A So the payroll number 9 dated 5/15/09 in the fire  
14 management resolution, they were granted a vacation cap  
15 increase, 15 percent above what they had currently had, it  
16 was effective on April 1st, and I would have implemented  
17 that vacation cap or max increase in Mr. Lewis's employee  
18 master file on May 15th.

19 Q And was that only for management?

20 A Yes.

21 Q And are these, both of these terms on here  
22 similar? Is one of these for rank and file and one of  
23 these for management?

24 A I believe that's correct, but I can't say with  
25 100 percent certainty without an MOU.

1 Q And when we previously discussed this, you made  
2 this entry about in lieu of, meaning one or the other. Do  
3 you recall that?

4 A Yes.

5 Q And was this one of the instances where you were  
6 inquiring to in lieu of, one or the other of these two  
7 benefits?

8 A No, I don't -- I don't believe so because I have  
9 then the information on this particular page that says  
10 including, so each one of these benefits would have been  
11 looked at separately, and if interpretation was required,  
12 I would have gone to the City Attorney's Office for that.

13 Q Okay. And I just want to draw your attention  
14 to -- Your Honor, I think you have the exhibits?

15 THE COURT: Just a second. So the two entries that  
16 we were just talking about, the holiday and the vacation,  
17 your notation indicates that he got both of those benefits  
18 on those dates listed there?

19 THE WITNESS: Correct.

20 THE COURT: Okay. Thank you.

21 MR. JENSEN: And I just want, Your Honor, if I can  
22 use the -- maybe they're in front of the witness these  
23 payroll -- payroll slips.

24 THE COURT: Exhibit 30?

25 MR. JENSEN: Exhibit 30, and there's two of them.

1 BY MR. JENSEN:

2 Q Are there two documents there?

3 A Yes.

4 Q Do you recognize these documents?

5 A Yes, I do.

6 Q And what are these documents?

7 A These are payroll check stubs for an employee  
8 that has an auto deposit.

9 Q And how were these generated?

10 A Following inputting information into a payroll  
11 system, the payroll division processes the payroll and  
12 these checks are automatically generated during that  
13 process.

14 Q And let's look at the payroll check that is on  
15 the earlier one, which is June 30th, 2011. Do you have  
16 that one in front of you?

17 A Yes.

18 Q And are these -- how often are these checks  
19 written?

20 A The City has a semi-monthly payroll, so employees  
21 are paid twice a month on the 15th and on the last day of  
22 the month. There's 24 in a year.

23 Q And so maybe you can walk us through the current  
24 earnings, current earnings column first and tell us what  
25 this represents?

1           A    The line regular and the amount, as I said, the  
2 employees are paid semi-monthly. Employees have a monthly  
3 approved pay rate. This would be half of that monthly pay  
4 rate. Going on to the next one --

5           Q    Let me ask you a question first. Is that the pay  
6 rate of a fire captain, to the best of your recollection?

7           A    This would be the charter 186 approved pay rate  
8 for the fire captain.

9           Q    Okay. And what's the next entry on that?

10          A    It says, "Temporary adjust of \$716.44," so it was  
11 a negative offsetting entry for the MOU concession adjust  
12 of the same amount, \$716.44, so the two of these are  
13 negating each other.

14          Q    And why is that?

15          A    This had to have been an MOU concession that one  
16 of the groups would have, but I don't -- I don't know  
17 which group this is from.

18          Q    And by which group you mean whether it was the  
19 management group or the rank and file?

20          A    Correct.

21          Q    And were they similar percentages?

22          A    I don't recall for this year, this particular  
23 year.

24          Q    And then if you could just walk us through the  
25 rest of those earnings?

1           A    Sick leave, the employee used 12 hours from a  
2 sick bank. The chief officer certificate is an incentive  
3 pay that the employee receives per his MOU. I believe  
4 this one is in both of the groups for the same amount at  
5 that time, both groups meaning the rank and file and the  
6 management. The BC pay would be the battalion chief, the  
7 difference between the captain rate and the battalion  
8 chief rate for that charter 186 amount for the year that  
9 this check is from. And then the MOU incentive is the  
10 employer-paid member contribution benefit that the City  
11 had at that time to report the PERS member contribution as  
12 special compensation.

13           Q    Now, earlier today in the hall I asked you a  
14 couple of questions, and one of the questions I asked you  
15 was about performing duties or being assigned duties above  
16 an individual's rank. Do you recall that discussion?

17           A    Yes.

18           Q    And, actually, if you can tell the Court what the  
19 basic discussion was that we had out in the hall?

20           A    I believe you had asked me what determines an  
21 employee receiving the acting pay, but I said from a  
22 payroll perspective that I don't determine if the employee  
23 is entitled to the acting pay based on duties.

24           Q    Okay. Thank you. And for payroll purposes, how  
25 is acting pay reported?

1 A Reported to where?

2 Q How would it appear on a payroll check like this?

3 A It would be similar to this. It would be its own  
4 line item and it would say "acting pay."

5 Q And how different from BC pay would the acting  
6 pay line item be? I mean, could BC pay be the equivalent  
7 of acting pay?

8 A Yes.

9 Q I want to turn your attention to the second set  
10 of columns which says "Current Deductions"?

11 A Yes.

12 Q Can you just briefly walk us through that,  
13 starting with where it says "PERS"?

14 A The PERS deduction would be the employee's member  
15 contribution.

16 Q And let me ask you a question. Is the member  
17 contribution a percentage of the item that's considered to  
18 be regular on here?

19 A The member contribution would be a percentage of  
20 anything that's pensionable compensation, and that would  
21 include for this particular paycheck the regular pay, the  
22 chief officer's certificate, the BC pay and the MOU  
23 incentive pay.

24 Q Okay. Thank you. Sorry about that.

25 THE COURT: I'm trying -- you talked really fast.

1 The pensionable compensation would be the regular pay, the  
2 chief officer's and?

3 THE WITNESS: The BC pay and the MOU incentive.

4 THE COURT: So just those three?

5 MR. KENNEDY: And I would like to move to strike the  
6 vague term "pensionable".

7 THE WITNESS: Oh, PERS-able?

8 MR. KENNEDY: Again, PERS-able without further  
9 clarification.

10 THE COURT: Overruled.

11 So regular pay, BC pay and MOU incentive, those  
12 are the three?

13 THE WITNESS: The MOU concession adjust and the  
14 temporary adjust, those concessions would not have been  
15 used. So, yes, those are the four on this particular  
16 paycheck.

17 THE COURT: Okay. Now I'm totally confused. What  
18 would have been pensionable compensation for your  
19 reporting purposes? I don't have the document in front of  
20 me so I'm trying to, you know, as you're talking about it,  
21 so can you just repeat that?

22 THE WITNESS: What would have been?

23 THE COURT: Yes.

24 THE WITNESS: Oh, so the employee's pay.

25 THE COURT: Okay.

1 THE WITNESS: Do you want me to list them?

2 THE COURT: Yeah, just tell me -- no, just tell me --  
3 you read across the columns and I just can't write as fast  
4 as you're talking, so just repeat your answer, that's all  
5 I'm asking.

6 THE WITNESS: That the PERS deduction would have been  
7 the member's PERS-able compensation times the member rate.

8 THE COURT: You're not understanding my question.

9 THE WITNESS: Oh.

10 THE COURT: You answered a question, you went across  
11 the columns and listed regular pay, BC pay, and I just  
12 couldn't keep up with what you were saying, so I'm just  
13 asking you to just repeat your answer.

14 THE WITNESS: What I used to determine the PERS was  
15 the employee's PERS-able compensation, which was regular  
16 pay, chief officer's certificate, BC pay and MOU  
17 incentive.

18 THE COURT: Great, thank you.

19 MR. KENNEDY: And, Your Honor --

20 THE COURT: That was all my question was.

21 MR. KENNEDY: I'll ask --

22 BY MR. JENSEN:

23 Q I just direct your attention again to the current  
24 deductions, if you can just briefly tell us what those  
25 are?

1           A    So after the PERS, the additional state tax, the  
2 employee would have an additional amount on his W-4 that  
3 was submitted, that's what that amount would be. The  
4 federal tax would be, again, based on the employee's W-4  
5 on file, that one is a percentage that's calculated based  
6 on a tax table.

7           The PERS reimburse is for the benefit of the  
8 employer-paid member contribution, the EPMC benefit. My  
9 understanding is that the City was not to incur any  
10 additional cost, so this PERS reimburse is the employee  
11 reimbursing the City for that cost of that additional  
12 benefit of the EPMC.

13           Q    Was that done pursuant to the management?

14           A    This is the same for both the rank and file and  
15 the management.

16           Q    And are there any other items that are listed on  
17 here that are related to PERS?

18           A    The survivor benefit is a PERS benefit that's in  
19 the City's PERS contract, that is for -- I don't recall  
20 which group, if both groups have that.

21           MR. JENSEN: Your Honor, I believe 30 is in evidence,  
22 according to my records?

23           THE COURT: Yes.

24           MR. JENSEN: Okay.

25           THE COURT: The only things not in evidence are 1,

1 11, 12, 13, 32 and your 5 and 16 are the same as 6 and 3.

2 BY MR. JENSEN:

3 Q Let's briefly look at this. Ms. Yavornicky, can  
4 you look at Exhibit 11?

5 A In the Respondent's?

6 Q Yes, in Respondent's.

7 A Yes.

8 Q Do you ever -- or do you recognize this document?

9 A I do not.

10 Q And Exhibit 32 is --

11 THE COURT: Your Notice of Defense with attachment  
12 that you were going to give me this morning, which you  
13 have not.

14 MR. JENSEN: I have not yet provided. And we have  
15 this 39 is in?

16 THE COURT: Yes.

17 MR. JENSEN: Just take a minute and I might --

18 BY MR. JENSEN:

19 Q So, Ms. Yavornicky, after you implemented this  
20 payroll, was it regularly reported to CalPERS?

21 A Yes.

22 Q And do you recall the codes under which it was  
23 reported, the different compensation?

24 A I don't believe there are specific codes. I  
25 don't know what the -- yeah, I couldn't tell you exactly

1 the actual file that's transmitted to CalPERS, I don't  
2 remember off the top of my head the codes, if there are  
3 codes, or the detail of that reporting.

4 Q And did you hear anything from CalPERS about  
5 its -- the City's designation or the City's reporting of  
6 this between 2007 and say 2012?

7 A I don't believe so.

8 MR. JENSEN: Your Honor, I have no further questions.

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

10 (Discussion off the record)

11 THE COURT: Back on the record.

12 We'll be off the record for an hour.

13 (Lunch recess)

14 THE COURT: Back on the record.

15 Ma'am, I remind you, you're still under oath.

16 MR. KENNEDY: And I think it's indicated that Counsel  
17 who is here assisting the witness for the City of  
18 San Bernardino has to leave in a short while. How much  
19 time do you have, Ms. Daube?

20 MS. DAUBE: I think half an hour is good, 45 minutes.

21 MR. KENNEDY: I will try to conclude in a half hour,  
22 Your Honor.

23 THE COURT: Okay. Let's get going.

24 Cross-examination?

25 THE WITNESS: Yavornicky.

1 CROSS-EXAMINATION

2 BY MR. KENNEDY:

3 Q Yavornicky, Yavornicky. Ms. Yavornicky,  
4 Mr. Lewis's case was sort of a bit of a one-off for you;  
5 isn't it?

6 MR. JENSEN: Vague, objection.

7 THE WITNESS: It was a challenge.

8 BY MR. KENNEDY:

9 Q And it was a challenge because it was unique in  
10 your payroll process and procedures; right?

11 MR. JENSEN: Objection, lacks foundation.

12 THE COURT: Overruled.

13 THE WITNESS: Can you repeat that last part?

14 BY MR. KENNEDY:

15 Q Is it unique? Is it a one-off because it's sort  
16 of a different hybrid than similar payroll situations for  
17 other people in, say, the rank and file? You don't  
18 have --

19 A In comparison to rank and file, yes.

20 Q And when you're in management, do you have  
21 one-offs like this where you have hybrids between their  
22 pay and some other position's pay?

23 A Sometimes there is acting pay, sometimes there  
24 are contracts.

25 Q And what is your understanding of acting pay? In

1 fact, you had acting pay for a while; right?

2 A Yes.

3 Q But from time to time, you would do some of the  
4 duties of the higher position, but you wouldn't -- I think  
5 your testimony was that you -- you didn't get compensated,  
6 it wasn't acting. It wasn't acting as an acting-pay  
7 situation; right?

8 A Yes, it was sporadic.

9 Q Occasional?

10 A Yes.

11 Q Okay. Is there anything particularly -- I mean,  
12 all the clarification and all the documentation and all  
13 the edits that you had to make in Mr. Lewis's situation --

14 MR. JENSEN: Objection, argumentative.

15 THE COURT: He's not done with his question. Both of  
16 you, I'm going to admonish you right now, you both have  
17 been really rude to each other throughout this,  
18 interrupting each other constantly and making this record  
19 a mess, so both of you need to please wait before you make  
20 your objections.

21 BY MR. KENNEDY:

22 Q Was it your understanding, Ms. Yavornicky, that  
23 Mr. Lewis was being paid this additional -- these  
24 settlement payments as compensation for acting in a  
25 position of battalion chief?

1 MR. JENSEN: Objection, Your Honor, as to settlement  
2 payments.

3 THE COURT: Sustained as to that term.

4 BY MR. KENNEDY:

5 Q What was the basis of the payments being made,  
6 the additional payments being made to Mr. Lewis? Was it  
7 pursuant to a salary schedule for a position that  
8 covered -- that straddled both fire chief and battalion  
9 chief, or was it pursuant to the Settlement Agreement that  
10 you were given?

11 A It was pursuant to a Settlement Agreement based  
12 on the salaries of --

13 Q The settlement basically said that he was going  
14 to be paid more money and the calculation of how much that  
15 was going to be, the difference between a fire captain and  
16 a battalion chief as salary; right?

17 MR. JENSEN: Objection as to characterization of the  
18 settlement.

19 THE COURT: Sustained.

20 BY MR. KENNEDY:

21 Q Is that correct?

22 THE COURT: No, no, I sustained the objection for  
23 that answer.

24 THE WITNESS: Oh, okay.

25 ///

1 BY MR. KENNEDY:

2 Q Is there -- can you -- are you aware how many  
3 other fire captains with the City of San Bernardino -- I  
4 mean, how long have you been in your position?

5 A Over 17 years. Oh, in my current position, not  
6 17 years, with the City for 17. I've been in my current  
7 position for seven.

8 Q Seven, and in your experience in that seven years  
9 and I guess in your knowledge based on that experience,  
10 how many fire captains with the City of San Bernardino are  
11 paid an additional compensation between the top of the  
12 captains's range and battalion chief?

13 MR. JENSEN: Objection as to the characterization of  
14 fire captain.

15 BY MR. KENNEDY:

16 Q Is Mr. Lewis an employed fire captain --

17 THE COURT: Wait, stop, stop. You need to wait for  
18 me, please. Thank you. Overruled.

19 You may answer the question.

20 BY MR. KENNEDY:

21 Q Was Mr. Lewis an employed --

22 THE COURT: So you're withdrawing your question?

23 MR. KENNEDY: No, I'm just asking a follow-up.

24 THE COURT: There's no answer.

25 ///

1 BY MR. KENNEDY:

2 Q Was it -- how many fire captains employed with  
3 the City of San Bernardino were paid this differential  
4 between fire captain and battalion chief?

5 A At the time Mr. Lewis was there, I don't believe  
6 any of them.

7 Q Okay. And was this a benefit or a premium type  
8 of pay that was -- well, can I direct your attention to  
9 what's been marked as Exhibit 8 in CalPERS', it's the  
10 white binder there?

11 A Yes.

12 Q And we previously discussed, this is your  
13 handwriting on this memo dated June 19th, 2007; right?

14 A That's correct.

15 Q Okay. And you wrote this memo in part because  
16 you had been given, I think you testified, a copy of the  
17 Settlement Agreement, and the Settlement Agreement was  
18 unclear to you as far as whether or not the amounts were  
19 to be reported to PERS and how they were reported to PERS;  
20 correct?

21 A That's correct.

22 Q Okay. And these notes were taken, I guess, were  
23 they taken as clarification as a result of a conversation  
24 or as a result of a correspondence from the City  
25 Attorney's Office?

1           A    My notes are made following the response from the  
2 City Attorney's Office clarifying the questions.

3           Q    And in my exhibit package, is that Exhibit 7?

4           A    That's correct.

5           Q    Okay. So you just took that correspondence and  
6 that's -- when you're referring, by the way, you referred  
7 your testimony to a legal opinion of the City Attorney's  
8 Office, this is the legal opinion?

9           A    Yes.

10          Q    And those notes were from your understanding of  
11 the documents you had in front of you, the  
12 Settlement Agreement and this legal opinion?

13          A    That's correct.

14          Q    And if you turn to page 2?

15          A    (Witness complies)

16          Q    And the last bullet has some handwriting and your  
17 question, it says, "Mr. Lewis will only be receiving the  
18 pay of battalion chief, he will not be working in the  
19 capacity of a battalion chief." Do you see that?

20          A    Yes.

21          Q    And that was your understanding from both the  
22 Settlement Agreement, the legal opinion and -- well, in  
23 your, basically, your experience and knowledge in your  
24 position; right?

25          A    This doesn't come from my opinion. My

1 recollection is that I believe it's the City Attorney's  
2 Office that had used this wording, but I couldn't tell you  
3 other than my recollection why I wrote this note or  
4 exactly where this came from.

5 Q And why would you have written it there? Was  
6 there a document with what is stated there?

7 A For clarification purposes on the overtime hours.

8 Q That he is not working in the capacity of a  
9 battalion chief?

10 A This could have been -- yeah, this could have  
11 been -- I believe this has to do just with overtime. This  
12 has to do with the clarification of this bullet point of  
13 overtime, and I believe this is a comment that  
14 Ms. Easland had made.

15 Q Oh, a comment that she made to you?

16 A I believe for clarification purposes.

17 Q Now, if a person is in an acting position, do  
18 they get the benefits of the position that they're acting  
19 in if they're formally acting in a formal acting capacity?

20 MR. JENSEN: Objection, vague.

21 BY MR. KENNEDY:

22 Q You were in an acting position -- I'll withdraw  
23 the question.

24 You were in an acting position; correct?

25 A Correct.

1 Q And did you get the pay of the acting position?

2 A Yes, I did.

3 Q The salary?

4 A Yes.

5 Q And did you get the benefits of the acting  
6 position?

7 A No, I did not.

8 Q Okay. So why in this case are we paying -- do  
9 you know why Mr. Lewis would be told -- why you were being  
10 told to -- why you were told to give Mr. Lewis the  
11 benefits of the higher position?

12 A No, I don't question, I just receive a document  
13 and I implement the document. I didn't pass judgment on  
14 the document itself.

15 Q Now, when you mentioned before the term  
16 "PERS-able" or "pensionable," and by that am I correct in  
17 understanding what you're saying, you're identifying those  
18 amounts to which it would be reported to PERS and that you  
19 would pay contributions on?

20 A That's correct.

21 Q Okay. That's not a characterization of it as  
22 being compensation earnable as defined under the PERL?

23 A I don't believe it's an official term, I don't  
24 know.

25 Q Now, in your experience, have you had occasions

1 to -- well, you spoke of benefits, the difference between  
2 benefits and basically contributions, and you mentioned  
3 that what you're referring to is you reported the payroll  
4 as contributions and that's the impact on it to you, but  
5 then when the benefits, that's something -- what  
6 somebody -- the conferred benefits is something somebody  
7 gets after they retire; right?

8 MR. JENSEN: Objection --

9 THE WITNESS: No. No, when I'm referring to  
10 benefits, I'm not referring to an employee's retirement at  
11 all.

12 BY MR. KENNEDY:

13 Q What are you referring to?

14 A Benefits that the employee is entitled to while  
15 they're working for the City, and I don't really know  
16 how --

17 Q And what are the benefits you're referring to?

18 A It could be the member's contributions to PERS  
19 and the employer's contributions, and I understand those  
20 things have an impact on an employee's retirement, but I'm  
21 not taking that into consideration, I'm strictly  
22 implementing an agreement that applies to that employee.

23 Q So when -- have you ever had an occasion where  
24 there's been compensation reported to CalPERS for a member  
25 and later on all of it wasn't used or allowed to be used

1 in the calculation of the member's retirement benefits?

2 A I don't know of a specific situation. I'm not  
3 really informed of a determination by CalPERS what's  
4 allowable and what isn't.

5 Q Has any former San Bernardino employee ever  
6 gotten back to you and said, you know, why didn't they  
7 allow, include this amount into my calculation of my  
8 pension?

9 A That I wouldn't know, we would only do response  
10 to CalPERS based on a question from somebody on the  
11 Compensation Review Panel for clarification of something  
12 that we had reported.

13 Q So you get from time to time questions from  
14 CalPERS after you've reported items to them seeking  
15 clarification as to how and why this amount or item was  
16 reported?

17 A Correct.

18 Q And Mr. Lewis's pay rate, salary, was  
19 consistently and always as a fire chief -- I mean fire  
20 captain; correct?

21 A Correct.

22 Q Okay. I just want to -- could I direct your  
23 attention to Exhibit 10, please, in CalPERS' exhibits?

24 A Yes.

25 Q And do you recognize that document?

1 A Yes, it's an e-mail to me.

2 Q And who's Fartus, F-A-R-T-U-S?

3 THE COURT: F-R-A-T-U-S.

4 THE WITNESS: Matt Fratus was a former deputy fire  
5 chief.

6 BY MR. KENNEDY:

7 Q And who is Alvarado, I'm sorry, Alvarado,  
8 A-L-V-A-R-A-D-O?

9 A Ann Alvarado was our human resources manager.

10 Q And do you know what the purpose of these e-mails  
11 were?

12 A I do not know what these are for.

13 Q Okay. So you have no idea why Mr. Alvarado would  
14 be commenting that because of the Prentice case that could  
15 cause difficulty for members of the fire department?

16 MR. JENSEN: Objection --

17 THE COURT: It's Ms. Alvarado.

18 MR. JENSEN: And she already said she doesn't know.  
19 It's asked and answered.

20 THE COURT: Sustained.

21 THE WITNESS: That means I have to answer or I don't?

22 THE COURT: The question for you: If you look at the  
23 top part, which is to you from Mr. Fratus, do you recall a  
24 discussion you had with him that references "as we  
25 discussed"?

1 THE WITNESS: I don't know why the deputy fire chief  
2 would be involved in something like this. My take at that  
3 time would have been the same as it is now that whether  
4 there's an opinion or there isn't from somebody outside of  
5 HR and payroll, I would have said that I will implement  
6 according to whatever the PERS rules are, we will process  
7 according to that to make sure that the reporting -- the  
8 payroll is reporting correctly. And as far as retirement,  
9 talks about being denied compensation, that would not be  
10 something that I would be concerned with or be discussing,  
11 because that's not my role.

12 BY MR. KENNEDY:

13 Q Do you recall reviewing the documents that are  
14 attached to this e-mail chain?

15 A I don't. When I was reading his e-mail here with  
16 the attachment, I don't know what these attachments are.

17 Q But you would have gotten them?

18 A I would have received them, yes, according to  
19 this printout, but I don't know what they would have been.

20 Q You mentioned before that occasionally CalPERS  
21 does an actuarial evaluation in San Bernardino?

22 A Yes.

23 Q And what's your understanding of the purpose of  
24 that actuarial evaluation?

25 A To determine the liability that the City has and

1 assess an employer rate that will cover that liability.

2 Q And that liability is premised on what, as far as  
3 you know?

4 A Retirements that would be owed to employees.

5 Q Would they -- when they're doing the evaluation,  
6 are they asking you for the salary schedules of certain  
7 positions within the City and the number of individuals  
8 that are occupying those positions?

9 A I assume that all that goes into it, but I  
10 personally do not provide that.

11 Q Just real quick, your special compensation  
12 provision, I mean not special but your -- yeah, I mean  
13 your EPMC, your EPMC for Mr. Lewis was paid at the end,  
14 was it -- is it the same now at that time for both  
15 classes?

16 A It's always been the same.

17 Q For rank and file and for management?

18 A I believe so. During my employment it has been.

19 Q Is there any distinction between, that you're  
20 aware of between -- at any point in time between what they  
21 called a pay-and-convert in the last year to versus a pay  
22 as part of special comp.?

23 A We do not have the pay-and-convert, we have the  
24 convert to special comp.

25 Q Could I direct your attention to the blue binder,

1 it's Exhibit 17?

2 A Yes.

3 THE COURT: And that's Respondent's 17, just so the  
4 record is clear?

5 MR. KENNEDY: It's Respondent's, excuse me,  
6 Respondent's 17.

7 THE WITNESS: Yes.

8 BY MR. KENNEDY:

9 Q And can you -- do you see down on both pages down  
10 at the bottom there's -- it says educational incentive,  
11 EPMC and temporary upgrade pay?

12 A Are you on the LEW17-1?

13 Q Yes, and also LEW17-2.

14 THE COURT: So in the bottom the typewritten part of  
15 the document, not the handwritten part.

16 THE WITNESS: So right before? Where am I looking  
17 at?

18 THE COURT: He's saying see where it says  
19 "educational" and "temporary upgrade" right before where  
20 your fingers are right there?

21 MR. JENSEN: Your Honor, lacks foundation that she  
22 knows what these are.

23 MR. KENNEDY: They're admitted into evidence as part  
24 of Respondent's case.

25 THE COURT: Overruled. But, I mean, I don't know,

1 this is a CalPERS' document, I don't know if this person  
2 has ever seen it.

3 Have you ever seen these documents, ma'am?

4 MR. KENNEDY: I'm just going to ask --

5 THE COURT: Wait a second.

6 Have you ever seen this document?

7 THE WITNESS: I have not seen this document. I have  
8 been onto this website, but I have not seen this specific  
9 document.

10 THE COURT: Okay. Go ahead with your question.

11 BY MR. KENNEDY:

12 Q Is educational pay -- educational incentive pay,  
13 is that a benefit to both rank and file in fire as well as  
14 management?

15 A If they have educational incentive for both of  
16 the groups?

17 Q Yes.

18 A Some of them are received by both groups,  
19 sometimes they're different. This education incentive is  
20 not just one type of incentive, I believe this is a  
21 CalPERS' category that can encompass many different types  
22 of benefits. It gets --

23 Q Well, I'm asking you, your office reports to  
24 CalPERS these amounts, right, and I'm just asking you, is  
25 this something -- do you know what this is based on? Is

1 it based on the position of captain or battalion chief?

2 A I believe that this one can be received by either  
3 group, both groups.

4 Q And uniform allowance?

5 A Uniform allowance is only for the fire management  
6 group.

7 Q Management and not for the rank and file?

8 A That's correct.

9 Q Now, you indicated on your copy, the first page  
10 of two, there's a star in the middle and that's LEW-02-1  
11 out of Respondent's --

12 THE COURT: That's Exhibit 2.

13 BY MR. KENNEDY:

14 Q -- and there's a star in the middle and it says,  
15 "CalPERS' determination attached." Is there --

16 THE COURT: Wait, wait, wait. Sir, she's not even in  
17 the right book.

18 Start with Respondent's 2.

19 THE WITNESS: This one?

20 THE COURT: It starts with -- you're in the wrong  
21 notebook. See in the very middle where it says, "CalPERS'  
22 determination attached"?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 ///

1 BY MR. KENNEDY:

2 Q And the copy that you have found in your file,  
3 that demarcation wasn't there? That note wasn't there?

4 A This would have -- must not have been at the time  
5 or I had a paper clip meaning attached.

6 Q In the middle of the page?

7 THE COURT: No, no, the note was there, what's not  
8 there is the CalPERS' determination that's apparently  
9 supposed to be attached to this.

10 MR. KENNEDY: Oh, I see, I see.

11 THE WITNESS: This is just my note internally  
12 saying --

13 MR. KENNEDY: I thought she was indicating the other  
14 document.

15 THE COURT: Oh, yeah, no, no, no.

16 MR. KENNEDY: Thank you. Thank you. Thank you.

17 MR. JENSEN: So just to clarify, can I follow up on  
18 the issue because what was in your original that you  
19 brought to us today, is there a mark on the document that  
20 says star "CalPERS' determination attached"?

21 THE WITNESS: The "CalPERS' determination attached"  
22 is that letter from Carlous, I don't recall his last name.

23 MR. JENSEN: But my question, was that written on  
24 your original document that's in your possession?

25 THE WITNESS: Yes.

1 MR. JENSEN: Thank you.

2 THE COURT: Can I have the payroll stubs back?

3 THE WITNESS: (Witness complies)

4 BY MR. KENNEDY:

5 Q So your instructions, then, or your understanding  
6 of why Mr. Lewis got paid what he got paid, the  
7 differential from his fire captain position and the  
8 additional monies was a direction of the City Attorney;  
9 right?

10 A Like I had stated before, I don't know if it was  
11 a combination of City staff, City Attorney and the  
12 CalPERS' representative.

13 Q Well, at the time that you're making these  
14 corrections, do you have a response -- you don't even have  
15 a response from Carlous?

16 A That's not --

17 MR. JENSEN: Objection, argumentative.

18 THE COURT: Hang on a second. I don't know if she  
19 made any correction and that misstates her prior  
20 testimony.

21 BY MR. KENNEDY:

22 Q The basis by which you determined how much  
23 San Bernardino was going to pay Mr. Lewis was directly the  
24 result of the Settlement Agreement and instructions from  
25 the City Attorney's Office; were they not?

1 MR. JENSEN: Objection --

2 THE COURT: He's asking is that true or not?

3 THE WITNESS: That's correct.

4 BY MR. KENNEDY:

5 Q There is no pay schedule for fire captain that  
6 sets forth the additional payments that were made to  
7 Mr. Lewis during this time; right?

8 MR. JENSEN: Objection, Your Honor, it lacks  
9 foundation and she has had no testimony regarding pay  
10 schedules.

11 THE COURT: Overruled.

12 BY MR. KENNEDY:

13 Q Can I direct your attention --

14 THE COURT: Are you withdrawing the question?

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

16 THE COURT: Okay.

17 BY MR. KENNEDY:

18 Q Just one last question. Can you look at page 15  
19 or tab 15 in CalPERS' book, it's a white one there?

20 A Yes.

21 Q Is that San Bernardino's publicly available pay  
22 schedule for fire captain?

23 A Yes.

24 Q Is there any pay schedule that you're aware of  
25 for fire captain that provides additional compensation

1 than set forth here other than as salary?

2 A No.

3 MR. KENNEDY: Okay. Thank you. I have no other  
4 questions.

5 THE COURT: If you look at CalPERS' Exhibit Number 8,  
6 please?

7 MR. KENNEDY: Eighteen?

8 THE COURT: Eight.

9 MR. KENNEDY: Eight?

10 THE WITNESS: Yes.

11 THE COURT: Eight, page 2 of the note at the bottom  
12 it says, "PERS" and then you've got, "Retroactive salary  
13 adjustment, special compensation, both considered  
14 includable compensation." Where did you get that  
15 information from?

16 THE WITNESS: These are codes that we have in our  
17 payroll system. I believe these are from the old CalPERS'  
18 definitions of the pay codes that the pay is reported  
19 under, so we would set in our payroll system that the type  
20 of pay is either classified as a five or six-one. There's  
21 a scale one to six, I don't believe it's used anymore in  
22 the new My CalPERS System. They moved to a different type  
23 of coding system, but this just would have been that a  
24 retroactive salary adjustment would need to be classified  
25 as a five for CalPERS' reporting versus special

1 compensation, which is classified as a six, and that both  
2 of these types of pay are considered includable  
3 compensation.

4 THE COURT: And my question is: Where did you get  
5 that information from?

6 THE WITNESS: The CalPERS' payroll manual.

7 THE COURT: Thank you. Redirect?

8 MR. JENSEN: Just briefly.

9

10 REDIRECT EXAMINATION

11 BY MR. JENSEN:

12 Q Did you refer to Carlous Johnson's letter from  
13 CalPERS in determining the matters that you just  
14 mentioned, the retroactive salary adjustment and special  
15 compensation?

16 A Can you repeat that?

17 Q Did you refer to Carlous Johnson's letter --

18 MR. KENNEDY: It's in the white binder, it's under  
19 CalPERS' binder Exhibit 9.

20 BY MR. JENSEN:

21 Q Exhibit 9 of the CalPERS' binder?

22 A Did I refer to this for what purpose?

23 Q With respect to whether you were determining  
24 whether those items were includable as compensation?

25 MR. KENNEDY: Objection, mischaracterizes her

1 testimony. She didn't determine the issue.

2 THE COURT: Sustained. His question is the same.

3 His question to you, ma'am, is: I just asked you  
4 about what's included in includable compensation, was  
5 there anything in Mr. Johnson's letter to you that led you  
6 to make that determination?

7 THE WITNESS: Well, yes, because Mr. Johnson tells us  
8 basically to report it as special compensation, so then I  
9 would have classified it into a code that would have been  
10 under six so that it would have been reported to CalPERS  
11 as a special compensation.

12 BY MR. JENSEN:

13 Q Are there captains that are paid upgrade paid  
14 when they're acting in the battalion chief rank for more  
15 than 10 shifts?

16 A Do we have any currently?

17 Q Have you had in your experience?

18 A Probably.

19 Q And would you -- what documentation would you  
20 look at to determine that?

21 A We would receive a Personnel Action Form.

22 Q And would that be from the fire department or  
23 from HR?

24 A They're usually initiated by the department and  
25 then it would follow a process of signatures and it would

1 pass by HR.

2 Q Now, let me ask you the question: Does the City  
3 of San Bernardino hire any management employees by  
4 contract?

5 A Yes.

6 Q And is one of those positions a city manager?

7 A Yes.

8 Q Are there any other positions that are individual  
9 contracts with management?

10 A Currently, yes.

11 Q And what are those positions?

12 MR. KENNEDY: Relevancy?

13 THE COURT: Overruled.

14 THE WITNESS: The police chief, possibly the fire  
15 chief. I believe that is all.

16 BY MR. JENSEN:

17 Q And are those managerial positions listed on a  
18 publicly available pay schedule?

19 A Yes.

20 Q And when those -- is this one of the negotiated  
21 terms that the City Council -- well, back up.

22 Are these contracts contained negotiated terms  
23 that the City Council approves and then sends to your  
24 office?

25 A Human resources would have to answer that.

1 Q And did you mention before about negotiated terms  
2 being presented to you?

3 A Negotiated terms?

4 Q I just thought that phrase was used before. When  
5 the City Council approves a contract for one of these  
6 managerial positions, do they send it to you thereafter?

7 A Not necessarily, we acquire them by a variety of  
8 means.

9 Q And when you do -- have you, in your experience,  
10 processed these individual management contracts in the  
11 finance department?

12 MR. KENNEDY: Your Honor, again relevancy.

13 THE COURT: Sustained.

14 BY MR. JENSEN:

15 Q Are any of these individuals who are under  
16 individual contract also members of PERS receiving  
17 benefits from the City?

18 A Retirement benefits?

19 Q Or will receive retirement benefits?

20 A Yes.

21 Q And which employees are those?

22 A It would be the ones that I had stated, the City  
23 manager and the police and fire chief.

24 Q And just briefly, do you have any involvement in  
25 reporting the compensation for those individuals to

1 CalPERS?

2 A I don't recall any, but I don't know if that's --  
3 if I could say that there isn't any trouble with  
4 reporting, I don't know.

5 Q Does the finance department report the  
6 compensation for the fire chief?

7 A The current fire chief is an interim so he is  
8 retired from the CalPERS system, so we currently don't  
9 report.

10 Q At one point, did the City of San Bernardino have  
11 a permanent fire chief who was a contributing member to  
12 CalPERS?

13 A Yes.

14 Q And were you involved in processing the payroll  
15 reporting for that individual to CalPERS?

16 A Yes.

17 Q And were there any similarities to the process  
18 that you went through with that individual and the process  
19 that you went through with Mr. Lewis?

20 MR. KENNEDY: Vague.

21 THE COURT: What do you mean by process? Sustained.

22 BY MR. JENSEN:

23 Q What would be the best way to characterize the  
24 actions that you took when you were seeking direction from  
25 the City Attorney about whether the amounts were

1 PERS-able? Were you analyzing the contract?

2 A I would analyze any contract that came up. If  
3 there was anything that I needed clarification on, I would  
4 go to the City Attorney's Office.

5 Q Did you analyze the contract for the fire chief?

6 MR. KENNEDY: Your Honor, relevancy.

7 THE COURT: Sustained. You're getting really far  
8 afield, Counsel.

9 MR. JENSEN: Well, okay.

10 BY MR. JENSEN:

11 Q So let me just -- you mentioned that or the issue  
12 was raised about the City has liability, established  
13 liability in the context of its actuarial valuations  
14 through CalPERS. Do you recall that testimony?

15 A Yes.

16 Q And are you aware how that might be affected by  
17 the City's bankruptcy?

18 MR. KENNEDY: Objection, Your Honor, relevancy.

19 THE COURT: What's the relevancy?

20 MR. JENSEN: He brought up the --

21 THE COURT: What's the relevancy? He made an  
22 objection to relevancy, I'm going to sustain it. What's  
23 the relevancy?

24 MR. JENSEN: The relevancy is that to the extent that  
25 there's any actuarial valuation issues that are currently

1 outside of the City's control, and I believe to the extent  
2 there's any issues about, you know, conversion or pay as  
3 special comp., those are issues that are just generalized  
4 and not --

5 THE COURT: CalPERS has already rested its case in  
6 chief and I didn't hear those issues, so the objection is  
7 sustained.

8 MR. JENSEN: And I guess just -- well, no further  
9 questions, Your Honor.

10 THE COURT: Cross?

11 MR. KENNEDY: Your Honor, are we going to have  
12 another -- does it look like we're going to have another  
13 day? I don't know if there's any more witnesses. I will  
14 do my best. I know Ms. Daube has to run.

15 THE COURT: Our 15 minutes went 45.

16 MR. JENSEN: Well, I'm done.

17 THE COURT: Do you have any more questions for this  
18 witness?

19 MR. KENNEDY: I may have a couple, but I'm just  
20 asking if there's -- because I know what it's like to be  
21 running to the plane, and if we're going to be back here,  
22 then I would just pick up Ms. Tran when we come back.

23 THE COURT: We've got Ms. Y on the stand right now.

24 THE WITNESS: Mrs. Y works.

25 MR. KENNEDY: Just real quick.



1 REDIRECT EXAMINATION

2 BY MR. JENSEN:

3 Q I just want to turn your attention to the  
4 CalPERS' Touch Point, which I believe is in Exhibit 14,  
5 and if I could just turn your attention to it as far as  
6 refreshing your recollection?

7 A Which book?

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

9 THE COURT: Yes.

10 BY MR. JENSEN:

11 Q Sorry, this is 14 here on the second page here.  
12 As far as the dates, did you make inquiries to CalPERS  
13 approximately June 11th, 2007? Or do you recall  
14 Mr. Lewis -- not Mr. Lewis. Do you recall Mr. Johnson of  
15 CalPERS calling and leaving you a message that they'd have  
16 to review the Agreement in order to make a determination  
17 as to whether it qualifies as reportable compensation?

18 A Yes, because I have those notes on the fax.

19 Q And the date of your original request to -- was  
20 May 24th?

21 A My original request, I believe the May 24th is my  
22 request to the City Attorney's Office.

23 Q And there's, if you look on that Exhibit 14 the  
24 second entry down, there's an entry on here, June 8th, and  
25 would that have been you that called CalPERS on June 8th?

1 THE COURT: It says "Person contacting Laura King."

2 THE WITNESS: It must be me.

3 BY MR. JENSEN:

4 Q Were you the only one that could have called  
5 CalPERS that you're aware of?

6 A That I don't know.

7 MR. JENSEN: No further questions, Your Honor.

8 MR. KENNEDY: Just one question I would like to ask  
9 her.

10

11 RECROSS-EXAMINATION

12 BY MR. KENNEDY:

13 Q Did you review any documents in preparation of  
14 your testimony here today?

15 A I did.

16 Q Do you have those with you?

17 A Yes.

18 Q May I see them?

19 A (Witness complies)

20 MR. JENSEN: May I see them, too?

21 BY MR. KENNEDY:

22 Q And let me ask you, is there anything between you  
23 and your attorney, Ms. Daube, the City Attorney in here?

24 MR. JENSEN: That would be privileged.

25 THE COURT: That's why he's asking, are there

1 anything.

2 MR. KENNEDY: That's why I'm asking.

3 THE WITNESS: I mean, actually, well, the cover sheet  
4 is from our meeting yesterday.

5 BY MR. KENNEDY:

6 Q Please remove it. I mean, just if those are  
7 documents you think we have, tell us.

8 A Actually, all this, everything is what you have  
9 in evidence. These are the letters, yeah.

10 Q Anything else?

11 A No.

12 MR. KENNEDY: Thank you. No other questions,  
13 Your Honor. Oh, one other question.

14 BY MR. KENNEDY:

15 Q Is the management -- you mentioned the top  
16 positions, the City manager and --

17 THE COURT: Fire chief and captain?

18 BY MR. KENNEDY:

19 Q Fire chief, are they covered also by MOUs, or is  
20 there an MOU that covers those positions as well?

21 A There was a resolution that covers those  
22 positions.

23 Q Are they considered in the same group or class?

24 A As what?

25 Q Are they covered in a specific group or class?

1           A    Those two positions are both covered under the  
2 same resolution.

3           Q    Okay.  And is the fire captain and the position  
4 of battalion chief, are they covered under the same group  
5 or class as far as San Bernardino is concerned, or are  
6 they two separate ones, one is managerial and one is rank  
7 and file?

8           A    Battalion chief isn't --

9           MR. JENSEN:  Objection, lacks foundation.

10          THE COURT:  Wait, ma'am, hang on.

11          MR. JENSEN:  Objection, lacks foundation.

12          THE COURT:  Overruled.

13          THE WITNESS:  The battalion chief is in the  
14 management and the captain is in the fire safety rank and  
15 file.

16          MR. KENNEDY:  Okay.  Thank you.  No other questions.

17          MR. JENSEN:  No further questions, Your Honor.

18          THE COURT:  Thank you.  Ma'am, you are released.

19          MR. JENSEN:  And thank you, Ms. Yavornicky.

20          THE COURT:  Thank you.  Let's go off the record.

21          We'll be in recess for one hour.

22                   (Lunch recess)

23          THE COURT:  Back on the record.

24                   Raise your right hand.

25          ///

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

THE WITNESS: Yes, I do.

THE COURT: Thank you. Grab a seat. State your name  
and spell your last name for the record, please.

THE WITNESS: Richard Lewis, last name is L-E-W-I-S.

THE COURT: Thank you. Mr. Jensen?

MR. JENSEN: Thank you.

DIRECT EXAMINATION

BY MR. JENSEN:

Q Mr. Lewis, could you tell us about your  
educational background?

A Yes. I went to high school here in  
San Bernardino, graduated, went on to Valley College. I  
got my AA degree from Valley College. I was a mechanic,  
so I went to various schools then, and I joined the fire  
department when I was 29 in 1981 and started as a  
firefighter, went on through education and got promoted  
along the way.

Q So when did you start work for the City of  
San Bernardino?

A 3/31/81.

Q And that's March 31st?

1 A That's correct.

2 Q And what capacity did you start work for the City  
3 in 1981?

4 A As a firefighter.

5 Q And was there a code to that, a civil service job  
6 description?

7 A Yes.

8 Q What was that, to the best of your recollection?

9 A It was for the firefighter position, that was how  
10 it was classified, safety.

11 Q Great. And do you recall when you joined CalPERS  
12 as a member?

13 A When I joined the fire department.

14 Q And did you -- were dues -- were contributions to  
15 CalPERS taken out of your paycheck or paid on your account  
16 for the full course of your employment with the City of  
17 San Bernardino?

18 A Yes.

19 Q Okay. And as a firefighter, did you undergo any  
20 specific training or education?

21 A Yes.

22 Q And tell us about that.

23 A It was a fire academy. When I got hired, they  
24 didn't hire you out of the academy, they put you through  
25 an academy, and that was that education. And then along

1 the way as a firefighter, I went to various classes given  
2 both by the fire department and at Crafton Hills.

3 They offered a state certification program, so we  
4 were taking state certification classes to become a state  
5 certified firefighter, and I continued with those  
6 throughout my career and got the chief officer certificate  
7 probably by 1990 I had that before I was promoted to  
8 captain.

9 Q And what is a chief officer certificate?

10 A You have to complete the state certification test  
11 from firefighter all the way through and including the  
12 chief officer courses, which have to do with personnel  
13 management, emergency scene management, HAZMAT. There's  
14 eight different core classes, or there were eight core  
15 classes that you had to take, and you had to have an AA  
16 degree in order to qualify for the chief officer  
17 certificate.

18 Q And are you aware of how many firefighters at the  
19 City had the chief officer certificate?

20 A I don't know.

21 Q And you mentioned Crafton Hills, what is that?

22 A Crafton Hills is the college in Yucaipa that has  
23 the fire science program and the paramedic program so you  
24 can specialize in the fire side.

25 Q And did you attend Crafton Hills?

1 A Yes, I did.

2 Q Did you graduate from there?

3 A My AA was from Valley College, but I took a  
4 number of different courses after the fact at Crafton  
5 because they offered a lot of fire science type courses.

6 Q And were you a member of the union as well?

7 A Yes.

8 Q And were you active in the union?

9 A I was a member for about 10 years, and then I got  
10 involved with the E-board, the leadership, and I was in  
11 the leadership for about 10 years.

12 Q What is the E-board?

13 A It's leadership of the union.

14 Q Okay. And you mentioned that at a certain point  
15 you were promoted from firefighter to the next level?

16 A To engineer.

17 Q And when was that?

18 A I think it was -- it was right in '86, I can't  
19 tell you exactly what month.

20 Q And did you receive another promotion after  
21 engineer?

22 A Yes, captain.

23 Q And do you recall when you were captain?

24 A It was in 1991, I think it was in May.

25 Q And is captain a position that you have to test

1 for?

2 A Yes.

3 Q And tell us, describe to us the testing  
4 procedures as you're aware of them.

5 A There's a written examination that's governed by  
6 civil service, and then the subsequent testing can vary  
7 depending on who's putting on the test. There's usually a  
8 writing exercise, sometimes there's an in-and-out basket,  
9 sometimes there's -- usually there's an outside oral board  
10 that's made up of people that are not from your department  
11 so they don't know you at all, and then there's usually an  
12 internal oral maybe with the chief or with just battalion  
13 chiefs, but they're people from your organization.

14 Then there's a simulated exercise, and that can  
15 vary depending on how complicated they want to make the  
16 test. They can do a wildland scenario where they put up a  
17 picture where you can see what's going on and you call in  
18 resources to set up the initial attack. Usually they have  
19 some kind of a structure fire fight that they put you  
20 through.

21 Like I said, for captain it varied a lot, but I  
22 took the test twice, and the last one was more complicated  
23 than the first testing process, but it's virtually the  
24 same with the exception of the simulation part of it  
25 varied. The civil service is pretty involved in making

1 sure it's this test and they pretty much keep it the same  
2 or similar.

3 Q So what is your -- are you aware of what the  
4 civil service promotion process is at the City of  
5 San Bernardino for firefighters?

6 A Yes. They oversee the written examination. They  
7 certify that the person that's taking the test has all the  
8 qualifications to meet the minimum qualification  
9 standards. Usually the fire department and personnel and  
10 civil service work together so that they're all on the  
11 same page as far as what requirements are so that they can  
12 make sure that they're getting qualified individuals to go  
13 in and take the test. Then they do the written test and  
14 that may eliminate some people, and then the people that  
15 passed the test go on to the next step, whatever that may  
16 be.

17 Q And is it your understanding that the people who  
18 pass the test are established on an eligibility list?

19 A Yes.

20 Q Tell us about that.

21 A The first step is the written and then that goes  
22 to the chief and he notifies everybody who's passed and  
23 who hasn't. And then the next step is that they notify  
24 you when your practical or your oral or whatever the rest  
25 of the testing process is going to be, and they line you

1 up so that they can complete the testing process, and that  
2 might take another two or three weeks to a month.

3 And when they have all of those results done,  
4 then they put you in a numerical order, and civil service  
5 oversees everything. They don't really do any part of it,  
6 they just oversee it to make sure it's fair and equitable  
7 for everybody.

8 Q Go ahead.

9 A No, that's pretty much it.

10 Q And is there an ordering to the eligibility list?

11 A There is.

12 Q And what is that?

13 A It's a ranked order of list from one to the  
14 bottom of the list, and so as somebody is promoted, then  
15 they're crossed off and the next one moves up to the  
16 number one spot and the next opening that happens there,  
17 then they promote them.

18 Q And were people placed on the list originally  
19 based on their test scores?

20 A It's a combination of how they finished, and  
21 different percents are given to different parts of the  
22 testing process. In other words, you could have the  
23 written is worth 25 percent and then there's 30 percent  
24 for the actual simulation, writing exercise and maybe the  
25 oral, and then maybe the chief's oral has a 40 percent, so

1 they get to pretty much number you where they want to.

2 Q And tell us, when you were fire captain, did you  
3 test to become battalion chief?

4 A Yes.

5 Q And can you tell us what were the circumstances  
6 behind that testing?

7 A I tested twice. I was on the list twice. The  
8 first time I ended up in the fourth position and the  
9 process was similar to what I had explained with the  
10 captain's position where you took a written test, you went  
11 through a simulation, you went through a writing exercise  
12 and maybe a personnel problem that you dealt with that was  
13 in simulation, usually an outside oral board. The first  
14 one was an outside oral board, and then the chief's oral,  
15 and so the first time -- they also gave you points for  
16 seniority, so civil service would add those points on  
17 afterwards, and that kind of was going away, but the first  
18 battalion chief's test I took, that was a factor because I  
19 started out number two and I ended up number four because  
20 there was people with more seniority taking the test.

21 So I was on the list and I started acting then,  
22 you know, when there was a vacancy or when they needed me,  
23 but that list died and nobody ever did get promoted off  
24 that list. Do you want me to continue on with the second  
25 one?

1 Q No. First let me just say, you mentioned at some  
2 point that you were acting?

3 A Yes.

4 Q Tell us what you mean by you were acting.

5 A Well, if they needed somebody to fill in in the  
6 battalion chief's position, then I had taken the test, I  
7 qualified myself. In order to take the test, you had to  
8 do the chief officer or certified chief officer, so as far  
9 as qualifications, I was all there, and then I met the  
10 requirements by taking the test and being on the list.  
11 And so I would act, you know, it depended on what their  
12 needs were.

13 Q And describe to me what you mean by dependent on  
14 what their needs were.

15 A Well, if they were short somebody and they didn't  
16 have anybody to move up because there's a limited number  
17 of battalion chiefs, so with that number being small like  
18 in the summertime when there's people off on vacation and  
19 stuff, they wouldn't have any actual BCs to replace the  
20 BCs that were gone. Or if they were sick or if there was  
21 an issue that they needed to go to another city for  
22 whatever reason, or if we broke a fire and we were just  
23 short personnel, then they would just do move-ups, so I  
24 would move up into the battalion chief's position.

25 MR. KENNEDY: Can we get what time period we're

1 talking about?

2 THE WITNESS: Well, that was starting from the first  
3 test that I passed, this was still in 2002.

4 MR. KENNEDY: Starting in 2002?

5 THE WITNESS: Starting in 2002.

6 BY MR. JENSEN:

7 Q And there's a couple terminologies I'm going to  
8 ask you questions about. What does BC mean?

9 A Battalion chief.

10 Q And who would make these requests of you?

11 A It would be the duty BC would call me up and say,  
12 "You're going to be acting tomorrow, go here."

13 Q Okay. And were any forms filled out?

14 A No.

15 Q Were any Personnel Action Requests --

16 A No, they didn't do Personnel Action Forms, just  
17 under only two circumstances, one was if you were going to  
18 fill a vacancy for longer than 10 shifts, two is if you  
19 got promoted. Those were the only Personnel Action Forms  
20 that they did at that time. Now, I don't know what the  
21 procedure is now, but while I worked there, that's how it  
22 was done and that's the only time they did Personnel  
23 Action Forms. If you weren't -- it was really to justify  
24 the pay, so that's why they kept track of it.

25 MR. KENNEDY: Your Honor, lack of foundation.

1 THE COURT: Overruled.

2 Sir, when you said one of the times is when there  
3 is to fill a vacancy more than 10 shifts, if you were  
4 doing less than 10 shifts and they didn't do a Personnel  
5 Action Form, did you get paid at a higher rate?

6 THE WITNESS: No.

7 THE COURT: Thank you.

8 BY MR. JENSEN:

9 Q And did you get paid at the BC rate for any of  
10 your acting pay when you were acting BC at that time?

11 A Not until after the settlement was done.

12 Q And describe how many times in, say, 2002 or how  
13 many days you would -- if you can't do it then --

14 A I would be guessing. I can guess.

15 Q No, I don't want you to guess.

16 THE COURT: Can you estimate at all?

17 THE WITNESS: It totally depended on what their needs  
18 were. And to be honest with you, I didn't keep track of  
19 it. Some were several shifts in a row because it varied  
20 based like on what the staffing levels were.

21 If we had a big fire and we had a couple of  
22 assignments out, we might not have but maybe only two or  
23 three battalion chiefs in the City. You could come in and  
24 work a normal shift, and if you had one of those on  
25 vacation or whatever, then you were super short, so they

1 just did move-ups based on your qualifications and then  
2 kind of backfilled until maybe a company came back and  
3 they had a little relief because for three battalion  
4 chiefs to maintain 24/7 somebody on duty, it demands some  
5 personnel. We didn't have any extra, we only had just  
6 what, you know, constant staffing is what they call it.

7 THE COURT: Okay. Thank you.

8 BY MR. JENSEN:

9 Q And you used some of these terms of art that I  
10 just want to clarify. You used the term "move-up," what  
11 is move-up?

12 A That would be where you moved from one rank up to  
13 the next rank.

14 Q And would a move-up be temporary work in a higher  
15 position?

16 A Most of the time that's what it is, yes.

17 Q And in your experience, were move-ups ever  
18 formalized with Personnel Action Requests?

19 A They were if you were going to be in the position  
20 predictably longer than 10 shifts. Otherwise, the payroll  
21 clerk in the fire department would just keep track of it.  
22 They had it was like a spreadsheet, except it was more  
23 like hand done at that time, and they just marked you off  
24 when you were working moved up.

25 Q And so is there a separate payroll clerk at the

1 fire department?

2 A There was a payroll, they called her a ward  
3 clerk, but I don't think they've had them for quite a  
4 while, and they just gathered the information and sent it  
5 to finance. So but they would keep track of when you were  
6 acting and when you were sick so they can do their report  
7 to finance from that sheet.

8 Q And so was the ward clerk -- describe to me how  
9 you dealt with the ward clerk.

10 MR. KENNEDY: Relevancy as to time.

11 THE COURT: Sustained.

12 BY MR. JENSEN:

13 Q During which period were you aware that the ward  
14 clerk worked for the fire department?

15 A Well, that was up until probably about 2004 or -5  
16 we had enough personnel that they had one. After that  
17 they changed the system around and they would just report  
18 directly to finance if you were on vacation or whatever.  
19 But there's always been somebody that kind of has kept  
20 track of it, but they lost the payroll ward clerk probably  
21 in 2003, 2004, somewhere along in there.

22 Q So just while we're on the subject, just tell me,  
23 who would be the person that would be responsible for  
24 performing those positions, those duties? You mentioned  
25 ward clerk or payroll person?

1           A    I think there's a secretary now that just keeps  
2 track of the attendance and sends it over to personnel, or  
3 over to finance rather.

4           Q    And this is a secretary within the fire  
5 department?

6           A    Yes.

7           Q    And is this a secretary in each fire house?

8           A    No. At the central fire station, there's a  
9 report every day of who's on duty, so they keep track of  
10 who's on duty and then send that over to the finance  
11 department so they know who's sick, who's on holiday, who  
12 was on shift that day. And it doesn't necessarily reflect  
13 like whether you moved up or whatever unless it was for a  
14 period of time.

15                   The battalion chiefs could predict when they were  
16 doing the -- when you were setting up the board to plan  
17 and we had a book that we planned from that dictated how  
18 much coverage you needed, how many overtime firefighters,  
19 how many overtime engineers, how many overtime captains,  
20 how many overtime battalion chiefs, and if you were short  
21 whether you needed to move up so you could plan for that.

22                   And that sheet, that was reflected on a big board  
23 and then that board was duplicated on a paper sheet, and  
24 that was sent up to upfront and the secretaries kept those  
25 sheets and kept track of them, who was on duty and who

1 wasn't, and then they would send that report to finance  
2 and then that's how you got paid.

3 Q Interesting. And you also mentioned the term  
4 "backfill." What is backfill?

5 A Oh, backfill is just like kind of like a move-up.  
6 You want to do -- you have to -- this is the hard part for  
7 people to understand. It's a 24/7 operation, so if we  
8 have four people on an engine company and four people on a  
9 truck company and we have 10 or 11 engine companies and we  
10 have three truck companies and we have a battalion chief  
11 at the north end and a battalion chief at the bottom, then  
12 that's your level of personnel. So if any of those people  
13 are gone for any reason, whether they're out or if they're  
14 sick or if they are on injury or holiday or whatever, then  
15 they're backfilled rank for rank if they can, and then  
16 they'll move up if they're short on personnel, like I  
17 explained before.

18 Q Okay. Now, I want to get back to the -- so we  
19 were just discussing the first battalion chief test. You  
20 mentioned that you were placed fourth on the list for  
21 that; is that correct?

22 A Yes.

23 Q And then what transpired after you were placed on  
24 the list the first time?

25 A Well, I acted while the list was in existence and

1 then there was -- when that list ran out, there was  
2 another test given. They called for a new battalion  
3 chief's test, that was in -- I think that was in 2003. It  
4 may have started in 2002, so I'm sorry about the dates.

5 THE COURT: When was the first time?

6 THE WITNESS: The first one I was thinking was 2002,  
7 but it couldn't have been because we took the battalion  
8 chief's test in late 2002, but it didn't finish until  
9 2003. So it would have been two years prior to that, so  
10 it would have been 2001 was when I took the first test  
11 because I had been a captain for 10 years.

12 And then the second test, I'm almost positive it  
13 started in November or December and then the test didn't  
14 finish until February because they had trouble  
15 logistically trying to get people to do the -- not the  
16 written test because we had taken that, but the subsequent  
17 testing on the simulator and all that, it takes a lot of  
18 personnel.

19 BY MR. JENSEN:

20 Q And tell us what you recall about your  
21 performance on the battalion chief test for the second  
22 time?

23 A Well, I passed the written. I got the highest  
24 score on the written. Then we went on to the oral, the  
25 writing exercise, the simulator situation where we did a

1 wildland, like a grass fire wildland incident with a  
2 structure firefighter incident and a HAZMAT incident. And  
3 we had to go in and set them up, bring in the resources,  
4 make adjustments as the conditions changed.

5 One of the things that was paramount in the  
6 simulator exercises was that if you hurt any of your  
7 personnel or if they were killed or your tactics didn't  
8 reflect what was going to be safe for them, then you would  
9 have failed that portion of the test and you would not be  
10 allowed to be put on the list. So there's a provision  
11 where they can go back after six months and then retest  
12 and then be placed on the list.

13 So I went through the written, I did the  
14 simulations, I did the oral, I did the chief's oral, and  
15 there was only three of us on the list by the end, and two  
16 of the other people on the list failed the practical, so  
17 it was supposed to be just me on the list, but that's not  
18 how it was. That's not how it was done so --

19 MR. KENNEDY: Your Honor --

20 MR. JENSEN: Go ahead.

21 MR. KENNEDY: Your Honor -- never mind.

22 THE COURT: Go ahead, next question.

23 BY MR. JENSEN:

24 Q And during this time, did you perform any of the  
25 duties of the battalion chief?

1 A Yes.

2 Q And can you describe those to us?

3 A Well, we did because I was higher up on the list,  
4 I acted more --

5 MR. KENNEDY: Could I interpose an objection as to  
6 time lines?

7 THE COURT: This is the second, 2003.

8 THE WITNESS: 2003, yeah.

9 MR. KENNEDY: 2003 until?

10 THE WITNESS: 2003 through 2004 and actually through  
11 until 2005, that list was extended a year.

12 MR. KENNEDY: So if I'm correct, then, the time  
13 period we're talking about is from February 2003 to --

14 THE WITNESS: About the end of 2005 before they  
15 called for the next list because they extended the list by  
16 one year.

17 MR. KENNEDY: So a three-year period, okay.

18 BY MR. JENSEN:

19 Q And describe to us what duties of the battalion  
20 chief you performed during just that three-year period?

21 A All of the regular duties, including responding  
22 to emergencies, managing the personnel and the equipment  
23 that was responding and called in and they subsequently  
24 used on the incident. You'd be the incident commander for  
25 an operations division, depending on how big the incident

1 was and what time you arrived on scene. I did --

2 MR. KENNEDY: Your Honor, there's no -- I'd really  
3 like to object to the narrative nature of the questions  
4 and answers. I have no time frame period to talk about.  
5 We're talking about it appears to be continuously from  
6 2003.

7 THE COURT: He's talking about the time period of  
8 2003 to 2005; correct?

9 THE WITNESS: Yes.

10 THE COURT: Okay. Overruled. Go ahead.

11 THE WITNESS: Okay. I'll try and be brief.

12 THE COURT: You're doing fine, sir. Go ahead.

13 THE WITNESS: Okay. I would go out and evaluate  
14 companies when they were doing their training exercises.  
15 I performed the safety officer position on many incidents.  
16 I was involved with planning partially because I was still  
17 in the union. I negotiated the construction and staffing  
18 of the fire station in the Verdemont area, which is on the  
19 northwest end of the City had no protection. So I  
20 directly negotiated that with the City administrator and  
21 the mayor.

22 I was the president of the union at the time and  
23 there had been a lot of promises made to the people out  
24 there and they didn't have coverage. It was becoming more  
25 and more dangerous because our response time was getting

1 longer and the fact that we were busier, so a lot of the  
2 companies that might respond initially out there would not  
3 be in their stations, so it doubled the time before a  
4 first-end unit could get there. So I took a different  
5 position than most union people do, I was more interested  
6 in the safety of the citizens than I was about what it was  
7 going to cost to build that, build and staff that fire  
8 station.

9 MR. KENNEDY: Your Honor, again, this is becoming  
10 very nonresponsive.

11 THE COURT: Sustained.

12 BY MR. JENSEN:

13 Q So let me just direct your attention. My  
14 question was in particular the duties of a battalion chief  
15 that are different or greater than that of a fire chief,  
16 if you can describe those duties that you performed --

17 MR. KENNEDY: Excuse me, fire captain.

18 THE WITNESS: Fire captain.

19 BY MR. JENSEN:

20 Q Fire captain, I'm sorry -- fire captain over this  
21 period of 2002 to 2005?

22 A Taking care of the staffing requirements, going  
23 through planning out the next shift to make sure we were  
24 staffed up. I already said the responding of the  
25 incidents, training evaluations, participation in we had

1 a -- the City had a disaster preparedness unit that they  
2 kind of put together and it was made up from management,  
3 so I got assigned that detail and so I would go there.  
4 They met once a month and we went for quite a while  
5 targeting specific hazards in the City and those kind of  
6 things. So I was involved with the other managers in the  
7 City and what they would undoubtedly be called on with  
8 different departments and how they coordinate together in  
9 case of a disaster.

10 Q Let me ask you a question. At any time, did you  
11 wear the uniform of a battalion chief?

12 A Yes, whenever I was called to move up or if I was  
13 going to go represent the department if I was going to a  
14 meeting where I was going as a battalion chief, then I put  
15 on the battalion chief uniform.

16 Q When you say "a meeting," do you mean a meeting  
17 with other members of the City of San Bernardino?

18 A Yes.

19 Q And so in that capacity, you were appearing in  
20 uniform as a battalion chief?

21 A Yes.

22 Q And how often -- well, on a different thing, how  
23 often or can you estimate the amount of times that you  
24 performed the duties of a battalion chief over that period  
25 2003 to 2005?

1           A    Well, it was more because I was higher up on the  
2 list, so they put me in the acting spot -- I mean, the  
3 first guy I think was already in an acting spot  
4 permanently, and so I would get bumped up on a regular  
5 basis and it varied. I didn't keep track of it. It  
6 wasn't something where I was going to be in for a month,  
7 the 10 shifts and get paid for it, it was just I'd be  
8 acting for a shift or two or maybe three or four and then  
9 I'd be bumped back again.

10           Q    And then you mentioned that there was someone who  
11 was acting as a battalion chief. What is your knowledge  
12 of that?

13           A    Well, most people, if there's a vacancy or a lot  
14 of times what happens is an employee might be burning the  
15 last bit of their time or they might have an injury so  
16 there's a vacancy there, they might just be trying to use  
17 up some of their vacation time or whatever, so it kind of  
18 runs concurrent until they retire. And so if there's  
19 going to be a long-term vacancy, then the first guy or the  
20 next guy to be promoted will be bumped into that position  
21 and just -- and they would just get acting pay until they  
22 actually got promoted, then there would be a Personnel  
23 Action Form and they would get promoted, and then they,  
24 after they passed their probation, would be a permanent  
25 position.

1 Q And just for purposes of clarity, the position  
2 would not be vacant even if someone was working in it  
3 because they were still an active employee in that  
4 position?

5 A That's correct.

6 Q Okay. And so at a certain point, it came to your  
7 attention that there was an issue regarding the promotion  
8 to battalion chief?

9 MR. KENNEDY: Leading.

10 THE COURT: Overruled.

11 BY MR. JENSEN:

12 Q Can you describe that for us?

13 A Yes. The guy that was promoted to first that was  
14 in the permanent acting position --

15 THE COURT: Is that Mr. Moon?

16 THE WITNESS: No, that was Mr. Kulikoff, and he was  
17 promoted and that made me number one on the list and  
18 Dennis Moon number two on the list. So he had a --  
19 Mr. Kulikoff had an incident where he got caught doing  
20 something he shouldn't have been doing and they put him on  
21 administrative leave, and so they let him stay on  
22 administrative leave until the following September, so  
23 that was in 2003, I think, I want to say 2003.

24 So he got promoted pretty much right off the  
25 list. The day he got promoted he went until September,

1 that was his birthday, and he was allowed to retire. They  
2 should of -- I mean, they've always promoted everybody  
3 down the list in numerical order without ever skipping  
4 anybody. No other time in the San Bernardino City Fire  
5 Department had they ever gone out of rank order.

6 So when they bypassed me and promoted Moon, then  
7 we filed a lawsuit that they had violated what the civil  
8 service rules were and what their past practice was and  
9 felt it was discriminatory because I was the president of  
10 the union at the time, and so then it litigated from  
11 there.

12 BY MR. JENSEN:

13 Q And during this period after filing the  
14 litigation and the resolution of the litigation, did you  
15 perform any of the duties of the battalion chief?

16 MR. KENNEDY: Vague as to time.

17 THE WITNESS: Yeah, this --

18 THE COURT: We're still at the time frame of 2003 to  
19 2005?

20 THE WITNESS: We're still up to 2005 because it was  
21 2005, actually 2004 I think we filed, I don't know. It  
22 didn't get resolved until 2007, so it was either late 2004  
23 or early 2005 when the lawsuit was filed.

24 THE COURT: Can I tell you, sir, I'm looking at the  
25 Settlement Agreement and one of the recitals says the date

1 it was filed was May 4, 2005. Any reason to doubt that  
2 date?

3 THE WITNESS: No. Maybe it took longer to file the  
4 case, I'm not sure. I know that that was our intention as  
5 far as the specific dates.

6 THE COURT: I'm talking about dates. There's a lot  
7 of dates in the Settlement Agreement, any reason to doubt  
8 those dates?

9 THE WITNESS: No, I would say that they're probably  
10 all accurate.

11 THE COURT: Okay. Thanks.

12 BY MR. JENSEN:

13 Q So during this period of the filing of the  
14 lawsuits and the resolution in 2007, did you perform any  
15 of the duties of the battalion chief?

16 A I did on occasion whenever they called me up. I  
17 did on emergency grounds more than I did on a  
18 non-emergency basis, mostly because again staffing is  
19 really short-handed and so we rely on being able to have  
20 people that are qualified enough to be able to function in  
21 an emergency scene and command the fire or whatever the  
22 incident happens to be, and because of my experience and  
23 my qualifications, they had no -- the BCs were usually the  
24 ones, the other BCs, that made those decisions about who  
25 to put where.

1           So they would put me in positions that I would be  
2 acting just like a battalion chief, maybe a division or  
3 sometimes they'd just leave me as the incident commander  
4 if I was first in. So that happened a lot in the  
5 foothills, especially with the way we were configured  
6 because I had my own vehicle so I could go and respond and  
7 set up the tactics and strategy that we were going to use.  
8 I would be there like minutes ahead of the next engine  
9 companies or water tenders or whatever was responding.

10           Q    And, again, I want to just direct your attention  
11 to the duties of the battalion chief that are greater than  
12 the duties of a fire captain. Can you describe what those  
13 duties would be in those fire incidents?

14           MR. KENNEDY: Asked and answered.

15           THE COURT: Are they any different than what you  
16 described earlier, sir?

17           THE WITNESS: No.

18           THE COURT: Objection sustained.

19 BY MR. JENSEN:

20           Q    And so, Mr. Lewis, there was a settlement  
21 proposed to you of this claim that you were passed over  
22 for battalion chief. What was your --

23           MR. KENNEDY: Objection -- never mind.

24 BY MR. JENSEN:

25           Q    What was your -- and let me just refer to the

1 document. Why don't we just look at this Exhibit 2 that's  
2 in Respondent's binder. This is the one that begins with  
3 the attorney's letter on the front.

4 Yeah, actually, Your Honor --

5 THE COURT: Exhibit 2 is the one that has her  
6 handwriting all over it, let's use that one. Let's use  
7 Exhibit 1.

8 MR. JENSEN: Let's use Exhibit 1.

9 THE WITNESS: Okay.

10 MR. JENSEN: Actually, that's got her handwriting on  
11 the second page.

12 MR. KENNEDY: You can use Exhibit 6 of CalPERS.

13 THE COURT: Exhibit 6.

14 BY MR. JENSEN:

15 Q Exhibit 6 of CalPERS, Mr. Lewis, tell us when you  
16 have that?

17 A I have it.

18 Q And I just want to turn your attention to the  
19 second page of Exhibit 2, and in particular the other  
20 substantive terms of the settlement?

21 A Okay.

22 Q Are you familiar with this document?

23 A Yes, I am.

24 Q Can you tell us what your understanding of 2-A  
25 was?

1 MR. KENNEDY: Your Honor, at this time I'd like to  
2 interpose an objection on parol evidence, also to  
3 competency.

4 THE COURT: Objection is overruled.

5 MR. KENNEDY: On both?

6 THE COURT: On both, yes.

7 MR. KENNEDY: Thank you.

8 THE WITNESS: I'll just read it.

9 BY MR. JENSEN:

10 Q Just tell us your understanding of it.

11 A Well, that they were going to set the date back  
12 to when they promoted Moon to correct the error that they  
13 made by passing me over, so they used the date that they  
14 promoted him to start my back pay because that's when I  
15 should have been promoted.

16 Q And what was the pay that you were entitled to  
17 under the Settlement Agreement as of the --

18 A It was battalion chief --

19 MR. KENNEDY: Objection, document speaks for itself,  
20 Your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: It was battalion chief's pay and that  
23 it would begin at that time and go forward, that's what A  
24 is. Do you want me to go on?

25 ///

1 BY MR. JENSEN:

2 Q And then if you can address the subsection B of  
3 this document?

4 A Okay. It says I'll be compensated for the  
5 forward, once they paid me the back pay back to there,  
6 they would pay me forward at the battalion chief's rate  
7 and I would receive all the benefits just exactly the same  
8 as if I had been promoted, I just didn't get the title.  
9 And my understanding of this when it says "all," which is  
10 what my attorney pointed out to me --

11 MR. KENNEDY: Objection, hearsay.

12 THE COURT: I'll receive it as administrative  
13 hearsay.

14 Go ahead, sir.

15 THE WITNESS: Okay. It says, "Including all current  
16 and future benefits granted to battalion chiefs," that  
17 means all, and so I wanted to make sure that it was my  
18 retirement as well. And so I asked to have that  
19 clarified, is that, in fact, including my retirement  
20 because I wouldn't have settled if it was anything else,  
21 and they --

22 MR. KENNEDY: Objection --

23 THE WITNESS: -- they assured me --

24 THE COURT: Wait, wait, wait, hang on.

25 MR. KENNEDY: It's an improper narrative going as

1 well, but also it's hearsay, and it also violates, again,  
2 the parol evidence rule and not understanding of this  
3 Agreement.

4 THE COURT: Overruled.

5 Go ahead, sir.

6 THE WITNESS: So with those terms, I agreed that I  
7 would accept the settlement.

8 BY MR. JENSEN:

9 Q And when you say "my retirement," what are you  
10 referring to?

11 A My CalPERS retirement, that the BC pay would be  
12 counted.

13 Q And by counted, can you be more specific what you  
14 mean by counted?

15 A That my percentage of -- my percentage that I  
16 would get from CalPERS would be based on my time served at  
17 the battalion chief rate and I would get any benefits that  
18 went along with that, including the EPMC and the benefits  
19 that the BCs had already negotiated.

20 Q And were you aware of the benefits that the  
21 battalion chiefs had already negotiated?

22 A I was pretty aware. I got a copy of them when I  
23 got a copy of the MOU, the battalion chief's MOU. The  
24 fire management MOU had them all listed out there.

25 Q And was the CalPERS' retirement at the battalion

1 chief pay a material term that induced you to settle this  
2 claim?

3 A Absolutely.

4 Q And if you had known that you would not be  
5 entitled, or if someone had said to you that you would  
6 possibly not get the battalion chief salary included in  
7 your pay raise, would you have settled?

8 A No.

9 Q And I'd like to get your attention on this  
10 Subsection C under 2, with respect to future overtime?

11 A My understanding of this, it was because captains  
12 work a lot of overtime and the rate of pay was to be paid  
13 captain's overtime, and it was actually more money than  
14 what the battalion chiefs made when they worked overtime  
15 because they worked straight time.

16 Q And was this -- after this Agreement, were you  
17 putting in a great deal of overtime?

18 A I did, yeah.

19 Q And were you paid at the captain's rate?

20 A I was paid exactly as it says in the Agreement.

21 Q And going on to the next section of D, was that a  
22 material term of this Agreement too?

23 A I wouldn't say -- it was just an issue because  
24 the chief had been fairly retaliatory, which is why I was  
25 in the position I was in, which is why we had the lawsuit

1 to begin with, so I wanted to make sure that he wasn't  
2 going to mess with me.

3 Q So tell us about your understanding of the police  
4 chief's ability to assign --

5 A You mean the fire chief?

6 THE COURT: You said police chief.

7 BY MR. JENSEN:

8 Q I'm sorry. Thank you. What's your understanding  
9 of the fire chief's ability to assign employees to perform  
10 different duties?

11 MR. KENNEDY: Objection, competency, Your Honor, it  
12 goes to the charter as well as the civil --

13 THE COURT: Sustained.

14 BY MR. JENSEN:

15 Q Do you have any experience in -- or what is your  
16 experience with the police chief's assignments of --

17 THE COURT: You keep saying police.

18 MR. JENSEN: I'm sorry.

19 MR. KENNEDY: Relevancy?

20 THE COURT: What's the relevance?

21 MR. JENSEN: I think the assignment to duties has  
22 been raised in this in many different manners, in  
23 particular this idea that there is a job title with  
24 certain duties associated with it and that CalPERS has  
25 been using the job title rather than the duties.

1 THE COURT: Right, he's already testified at length  
2 here this afternoon of all the duties of a battalion chief  
3 during these time frames.

4 MR. JENSEN: Oh, I understand. I guess the sort of  
5 reverse of it is whether the fire chief could have  
6 assigned him as a battalion chief to only perform the  
7 captain's duties or responsibilities.

8 MR. KENNEDY: Could have is the --

9 THE COURT: What's the relevance? He's a fire  
10 captain, he's getting battalion chief pay, he's doing  
11 battalion chief duties is his testimony.

12 MR. JENSEN: Right.

13 THE COURT: So what's the relevance of putting it in  
14 reverse? Do you want me to find that he's a fire captain?

15 MR. JENSEN: No, no, I don't.

16 THE COURT: Okay.

17 MR. JENSEN: It's really, I guess, just the point of  
18 it really is what's the flexibility of the different  
19 duties that they don't always correspond to the documents.

20 THE COURT: Why don't you just ask that question  
21 then?

22 MR. JENSEN: Okay.

23 BY MR. JENSEN:

24 Q In your experience, do the duties that a  
25 firefighter performs always match with the job titles in

1 the duty statements?

2 A Not necessarily. You have to understand that  
3 the --

4 MR. KENNEDY: Objection, nonresponsive.

5 THE COURT: Why not, sir?

6 THE WITNESS: Because it's like a paramilitary  
7 organization and it's not like you're coming to work and  
8 doing a specific task. There's so many variations that  
9 it's really necessary for the fire chief to have the  
10 ability or give his designee the ability to reassign,  
11 change people's duties, tasks or whatever. I mean, I've  
12 gone out with a piece of emergency apparatus and watered  
13 trees for the City, so anything can happen. If the chief  
14 orders it, you're just going to go do it.

15 BY MR. JENSEN:

16 Q And were you involved in the City's  
17 implementation of this Settlement Agreement in any way?

18 A How do you mean?

19 Q Did you talk to Laura Yavornicky about the  
20 Settlement Agreement?

21 A I did right after the Settlement Agreement  
22 because I wanted to make sure that she had it all dialed,  
23 because it did take a couple of months for them to get all  
24 the stuff together because I think we settled in May --

25 THE COURT: It says March on the signature date.

1           THE WITNESS: March, and it was by the time they  
2           figured out how to report it to PERS and stuff, it wasn't  
3           until June, so it took a little time for them to go  
4           through the mechanics of it.

5           So after that I went to her to make sure that  
6           there wasn't any issues with the reporting part or the  
7           benefit part and to clarify and make sure that like the  
8           administrative leave time, because it was given on a  
9           specific date, they gave it on the fiscal year instead of  
10          on the annual year where most leaves are given on the  
11          annual year so you only had so much time to burn it all or  
12          you would lose it. So those kinds of just technical  
13          things to make sure that I had the right understanding of  
14          what the implementation part would be.

15         BY MR. JENSEN:

16           Q     And did the City ever raise any questions to you  
17           about whether it was being properly implemented?

18           A     Nope.

19           Q     And did you have any -- were you made aware that  
20           CalPERS wrote a letter to the City regarding how to report  
21           the compensation?

22           A     I was. I'm not sure when I first saw that  
23           letter, though. I believe I was made aware of it sometime  
24           months after it had happened, maybe I may have gone back  
25           and checked again to make sure that the PERS was coming

1 out right and there wasn't any issues or anything with it.  
2 And I don't know if Laura showed me that letter, I can't  
3 tell you for sure. I did see the letter at some time  
4 after the implementation had taken place.

5 THE COURT: And before you retired?

6 THE WITNESS: Oh, yes, yeah, long before I retired.

7 BY MR. JENSEN:

8 Q So let me ask you a question about your union  
9 activities. Did you remain in the union leadership after  
10 the -- after 2007, the Settlement Agreement?

11 A I was out of the union leadership in 2005,  
12 actually the end of 2004. I was still a member of the  
13 union and I remained a member, you know, until I retired  
14 because I had always been a member and I supported the  
15 union.

16 Q And were there other people who were battalion  
17 chiefs or acting battalion chiefs who were members of the  
18 union?

19 A Yes.

20 Q And was there any conflict between the -- not any  
21 conflict. Was there significant conflict between the  
22 battalion chiefs and the union?

23 A Not until the later years, not until around 2009  
24 or 2010, I think there was some issues that came up mostly  
25 over disciplinary issues.

1 Q And let me ask you to look at your pay stub,  
2 which is --

3 THE COURT: Exhibit 30.

4 MR. JENSEN: Thank you. And, Your Honor, may I  
5 approach?

6 THE COURT: Uh-huh.

7 MR. JENSEN: Just it would be easier for me to look  
8 at the same copy.

9 BY MR. JENSEN:

10 Q Mr. Lewis, do you recognize these documents?

11 A Yes.

12 Q And with reference to the document for June 30th,  
13 2011 --

14 A Yes.

15 Q Did you look at this document at the time of  
16 receiving the pay?

17 A Yes.

18 Q And what did you gather from this document?

19 A Well, that there was the regular pay, which is  
20 the way they always put it in there. There was the  
21 concession adjustment, which the battalion chiefs, the  
22 City was looking for concessions and so the battalion  
23 chiefs entered into an agreement that they would give back  
24 a certain amount of money every month, a percentage, and  
25 so I was included in the management group, so I was

1 subject to that takeaway.

2 I had a concession balance so I could use that to  
3 offset so I wasn't actually taking less money, but it  
4 diminished what my concession balance was that was given  
5 to us by the City years before. So that's why it shows  
6 the 716.44 as a minus, and then the 716 put back in was  
7 deducted from my concession balance and put in there to  
8 neutralize that.

9 There's 12 hours of sick leave. There's a chief  
10 officer certification we negotiated to have to be paid  
11 \$250 a month for our chief officer certification, and so  
12 that's what that reflects. The battalion chief's pay is  
13 in there, the 1,521.50, and then the MOU incentive is the  
14 EPMC that is reflective of the total amount, not counting  
15 this \$716.44.

16 Q And with reference to the -- so when looking at  
17 this, did you believe that the City was properly paying  
18 you, compensating you the battalion chief salary?

19 A Yes.

20 Q And looking at the right-hand column, it says  
21 "PERS" there?

22 A Yes.

23 Q And tell us your understanding of what that PERS  
24 was related to.

25 A Well, I know the percentages varied, but the PERS

1 would come out as a percentage of the total amount. So at  
2 that time that \$606.65 represented those things that we  
3 talked about on the left side, it reflected that total  
4 amount and that the PERS was paid on that amount.

5 Q So did you understand that the City was taking  
6 out contributions for PERS based on your battalion chief  
7 pay?

8 A Yes, and I verified that with Laura.

9 Q And how did you verify that?

10 A I simply asked her. I went to her office and I  
11 said okay, so this is all right now? I didn't use this  
12 pay stub, it was one after they started reporting, I just  
13 wanted to make sure everything was right. She said, "Oh,  
14 that's absolutely right," and that may have been when she  
15 showed me the letter from Carlous Johnson that said this  
16 was how you were supposed to report it, so I was pretty  
17 satisfied. I mean, the City was doing everything they  
18 were supposed to do and it looked like it was all being  
19 recorded properly.

20 Q And let me turn your attention to that second pay  
21 stub.

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

23 THE WITNESS: Yes.

24 THE COURT: Yes.

25 ///

1 BY MR. JENSEN:

2 Q And this is for the period of July 7th?

3 A No, it was July 31st, 2012, the end of July.  
4 That was the ending date of the pay period.

5 Q And there's a second in the left-hand column, a  
6 second entry it says, "injury pay"?

7 A Yes, I was on injury at that time.

8 Q And what is that?

9 A Well, they record the injury time off, so they  
10 just keep track of those hours. I was on injury because I  
11 had contracted stage IV lymphoma and so I was on injury.

12 Q And by "on injury," do you mean --

13 A I was not working, I was taking treatment.

14 Q And is it your understanding that that's a  
15 payment under the labor code 4850?

16 A Yes, that's why there's no taxes taken out on the  
17 right side.

18 Q Okay. I want to get back to that. That's yet to  
19 occur in our chronology, so maybe I'll just hold off on  
20 this for a second. So if you can just address the period  
21 from after the signing of the settlement to the time  
22 before you went out on injury --

23 A Yes.

24 Q -- and describe to us any battalion chief duties  
25 that you performed during this period, and if they are the

1 same as the duties before, you can say the same duties  
2 that you previously --

3 A They were the same. It wasn't as often that I  
4 would get bumped up to cover somebody, but if they needed  
5 me, they were already paying me, so they just used me. I  
6 mean, it didn't cost them anything and we were always in a  
7 budget crisis, so they just used me.

8 It was more on the emergency fire ground, and I  
9 guess if you wanted to -- the battalion chiefs knew that  
10 because of my experience with the union and my experience  
11 in management that I knew the peace officer bill of rights  
12 backwards and forwards, and so they, like I said, they had  
13 a lot of disciplinary issues in 2009 forward, so it was  
14 important that they were appropriate.

15 And so a lot of times they would come and talk to  
16 me to about, you know, here's what we've got, an employee,  
17 and this is what's going on and they might even name them  
18 or whatever. They knew that I'd be totally confidential  
19 and they'd kind of lay out what they thought their  
20 strategy was going to be.

21 And then I would usually advise them, hey,  
22 remember, treat the employees like your kids. We just  
23 want to make them better, we don't want to kill them, we  
24 just want to make them better. And that worked really  
25 well. We worked really well together, and I think they

1 respected my opinion and it helped -- it helped heal a lot  
2 of issues.

3 Q And are disciplinary responsibilities, are those  
4 battalion chief duties?

5 A Yes.

6 Q Are they fire captain duties?

7 A The initiation is. It depends on the level of  
8 offense, but usually the lower-level minor type things  
9 that you would expect a supervisor to be able to handle,  
10 they can handle themselves. Things that are greater or  
11 have more liability attached to them, then those are ones  
12 that for sure the battalion chief would want to include  
13 them in that.

14 Q And can you estimate for us about how many of  
15 those incidents were you involved in in this period from  
16 2007 to the time before you were injured?

17 MR. KENNEDY: Vague as to those incidents.

18 THE COURT: The discipline incidents where the --

19 THE WITNESS: The disciplinary issues, is that what  
20 you're referring to?

21 MR. KENNEDY: Relevancy, the testimony was fire  
22 captain and --

23 THE COURT: No, no, and he's asking now to just give  
24 us an example of time when there would be more extensive  
25 disciplinary issues.

1 MR. KENNEDY: Okay. If that's the question, okay.

2 THE COURT: Overruled. Go ahead.

3 THE WITNESS: Okay. There was at least a dozen,  
4 probably more than that. Some were really easy to fix,  
5 others were more complicated and took a little bit more  
6 time to figure out.

7 BY MR. JENSEN:

8 Q And how long would the more difficult ones to  
9 figure out take in a number of days to resolve?

10 A Two or three days to just get some background,  
11 figure out what really did happen, make sure that you had  
12 the right story, you know, before you moved forward.

13 Q And were these confidential?

14 A Yes.

15 Q And so let me just ask you a couple questions  
16 about other potential duties, which I don't know if you've  
17 addressed, that are typically duties of a battalion chief.  
18 Did you assist with --

19 MR. KENNEDY: Leading.

20 THE COURT: Overruled, it's not leading.

21 Sir, may I have Exhibit 30 back, please?

22 THE WITNESS: Oh, sure.

23 MR. JENSEN: And, Your Honor, I might come back to  
24 that second question.

25 ///

1 BY MR. JENSEN:

2 Q Did you assist with the fire department budget in  
3 any way?

4 MR. KENNEDY: Vague as to assist.

5 THE COURT: Do you understand the question?

6 THE WITNESS: I do understand the question.

7 THE COURT: Overruled.

8 THE WITNESS: Yes, inasmuch as that we are regularly  
9 assigned duties that would probably ordinarily be a  
10 battalion chief's duty. I mean, I was assigned to do some  
11 remodel estimation for the stations, so I went out and got  
12 estimates and that, and that had to be put into a budget  
13 because we had so much money to work with. So inasmuch as  
14 that part, when we were doing estimates for equipment  
15 specifications, I worked with the committee so we could go  
16 get estimates on exactly what kind of, you know, spec'ing  
17 out the equipment and then figuring out how we could  
18 budget for it and pay for it, those kinds of things. So  
19 from that respect, I was involved with the budget.

20 BY MR. JENSEN:

21 Q And I know you mentioned this briefly about the  
22 parameters of the peace officer's bill of rights -- I'm  
23 sorry, the firefighter's bill of rights?

24 A Yes.

25 Q What is your understanding about what level of

1 management needs to be involved in dealing with issues  
2 that are potentially subject to the firefighter's bill of  
3 rights?

4 A If there is actually going to be discipline  
5 taken, then at least the battalion chief level, and  
6 sometimes it was higher than that, or at least the chief  
7 and deputy chief would be brought in to talk about where  
8 this was going to make sure we were kind of all on the  
9 same page.

10 Q And approximately how many matters that you dealt  
11 with would have been subject to your experience with the  
12 firefighter's bill of rights in that --

13 MR. KENNEDY: Relevance.

14 MR. JENSEN: -- period?

15 THE COURT: I'm not going to ask you again to please  
16 let people finish the question before making an objection.

17 Go ahead, start over.

18 BY MR. JENSEN:

19 Q So the question was about how many -- estimating  
20 how many incidents were directed to your attention that  
21 would have been subject to the firefighter's bill of  
22 rights over this period of 2007 until the time you went  
23 out on injury?

24 MR. KENNEDY: Vague, relevance. In what capacity?  
25 Fire chiefs get involved in these type of actions too.

1 THE COURT: Sustained.

2 BY MR. JENSEN:

3 Q In your capacity of performing the duties of the  
4 battalion chief and over this period of 2007 to the time  
5 of your -- before you were injured, can you estimate how  
6 many matters were brought to your -- how about delegated  
7 to you by the fire department that would have been subject  
8 to the firefighter's bill of rights?

9 MR. KENNEDY: Again, vague as to delegation.

10 THE WITNESS: I think I stated --

11 THE COURT: Hold on. Overruled. He said dozens.

12 MR. JENSEN: I was just trying to clarify.

13 THE COURT: I hear it the first time, Counsel.

14 MR. JENSEN: Yeah, but actually it's --

15 MR. KENNEDY: The objection I have -- well, I'll take  
16 it up on direct -- or cross.

17 BY MR. JENSEN:

18 Q And can you describe any incidents where you had  
19 to monitor staffing levels as needed by management of the  
20 fire department over that period 2007?

21 A Whenever I was at the south battalion, which is  
22 who took care of that, whenever I was working there as a  
23 battalion chief, or I would help set up the books so that  
24 we could plan for the next day or the next cycle.

25 Q And can you describe how often that happened in

1 that period?

2 MR. KENNEDY: What's the period?

3 THE COURT: 2007 until when he went out; we haven't  
4 established when that was.

5 THE WITNESS: I don't know, I didn't work the south  
6 battalion very often, half a dozen times maybe.

7 BY MR. JENSEN:

8 Q Okay. And do you recall ever seeking retirement  
9 estimates from CalPERS?

10 A Yes.

11 Q And can I just direct your attention to the  
12 document 10 in the Respondent's binder, Exhibit 10?

13 A Okay.

14 Q Do you recognize this document?

15 A I do.

16 Q And do you remember making this request?

17 A Well, this was right when I was going to retire.  
18 I made one earlier before this.

19 Q Oh, I believe maybe that's the one in -- well,  
20 describe to us the earlier one that you recall making.

21 THE COURT: What's the relevance?

22 MR. JENSEN: If I can find the document in here. It  
23 doesn't matter actually, let's just move forward. Oh,  
24 these are later, okay.

25 ///

1 BY MR. JENSEN:

2 Q And so I guess at a certain point you suffered an  
3 injury, and perhaps describe the first time you were  
4 injured on the job.

5 A You mean --

6 MR. KENNEDY: Relevance.

7 THE COURT: Sustained.

8 BY MR. JENSEN:

9 Q At a certain -- well, did you go out on  
10 disability leave?

11 A Yes, I did.

12 Q And when did you go out on disability leave?

13 A The last time that I went out on disability leave  
14 before I retired, is that what you're talking about?

15 Q Well, when was the first time you went out on  
16 disability leave?

17 MR. KENNEDY: Relevancy.

18 THE COURT: What's the relevance, Counselor?

19 THE WITNESS: In 1983.

20 THE COURT: I'm looking at Exhibit 11, which is the  
21 signing before the disability hearing officer, which is an  
22 extensive list.

23 BY MR. JENSEN:

24 Q So, actually, if I can just turn your attention  
25 to Exhibit 11 in Respondent's binder. Do you recognize

1 this document?

2 A Yes.

3 Q And what is this document?

4 THE COURT: Other than what I've just said it was?

5 MR. JENSEN: What's that?

6 THE COURT: Other than what I just said it was?

7 THE WITNESS: Yes, that's what the judge just said.

8 MR. JENSEN: Yeah, that's what it is. Your Honor,

9 I'd like to offer 11 into evidence.

10 THE COURT: Any objection to my receiving Exhibit 11?

11 MR. KENNEDY: I'm sorry?

12 THE COURT: Any objection to my receiving 11?

13 MR. KENNEDY: No.

14 THE COURT: Eleven will be received.

15 MR. KENNEDY: Is the Court taking official notice of

16 it?

17 THE COURT: I'm going to receive it.

18 MR. KENNEDY: Thank you.

19 (Respondent's Exhibit 11 was received

20 in evidence by the Court.)

21 BY MR. JENSEN:

22 Q And what was the date that you went out on

23 disability for the last time?

24 A It was July 6th, I had injured my right knee on a

25 fire.

1 THE COURT: What year, sir?

2 THE WITNESS: Oh, I'm sorry, that was July 6th, 2011.

3 THE COURT: Thank you.

4 BY MR. JENSEN:

5 Q And prior to this time in, say, the three-month  
6 period prior to you going out on disability, had you  
7 performed any of the duties of the battalion chief?

8 A Yes, mostly on the fire ground, on the emergency  
9 operations ground.

10 Q And you mentioned earlier in your testimony that  
11 it wouldn't cost them anything for you to act as battalion  
12 chief. What did you mean by that?

13 A Well, they were already paying me, so they could  
14 kind of use me however they wanted to. The chief had the  
15 ability to order whoever to do whatever, I mean, and his  
16 designees, which could be the deputy chief or other  
17 battalion chiefs or whatever, he could say, hey, we need  
18 you to do this. It's a paramilitary organization, you  
19 don't ask why, you go and do it.

20 Q And when you say they're already paying you, they  
21 were already paying --

22 A They were paying me battalion chief's wages.

23 Q And so you mentioned previously that a Personnel  
24 Action Request Form was only needed to get paid?

25 A Well, yes, if you have -- because they have to be

1 able to justify why this captain is getting battalion  
2 chief's pay or why this engineer is getting captain's pay,  
3 and it's done with a -- I guess they do it with a  
4 Personnel Action Form now, that's not what they called it  
5 back then, but they would fill out an Acting Slip is what  
6 we called it, and it showed the days that that individual  
7 was moved up to that higher position. And if it exceeded  
8 back then it used to be six shifts, so if it exceeded  
9 those six shifts, then it would go into payroll and they  
10 process it and then pay them at the higher rate for that  
11 period of time. If it was less than six shifts, then they  
12 wouldn't pay them.

13 Q And so, I mean, one of the reasons that you  
14 didn't fill out the Personnel Action Request is that you  
15 were already receiving the pay?

16 MR. KENNEDY: Lack of foundation.

17 THE COURT: Overruled.

18 THE WITNESS: None would be filled out unless I  
19 was -- unless they were planning on putting me in a  
20 position for a long period of time.

21 BY MR. JENSEN:

22 Q But since you were already being paid the  
23 battalion chief --

24 A It was kind of an inconsequential thing, it  
25 wouldn't matter.

1 MR. KENNEDY: Leading.

2 THE COURT: Overruled.

3 BY MR. JENSEN:

4 Q And so when you went out on disability on  
5 July 6th, 2011, what happened after that?

6 A Well, I went to -- I went to get evaluated on my  
7 knee and they started me on some rehab. I had already had  
8 surgery on my right knee previous and they told me next  
9 time you're going to end up getting a knee. And so they  
10 started on the rehab, and during that period of time, I  
11 was diagnosed with stage IV lymphoma and they had to stop  
12 treating me. They didn't want to do rehab or any kind of  
13 surgery or anything until I was over the cancer.

14 And so I believe that was just like within that  
15 month that I started getting treated in August for my  
16 lymphoma, and I continued treatment and monitoring until  
17 about July, I think, around July of the following year,  
18 which would be 2012, and then they were able to start me  
19 back on my knee. They were going to evaluate to see  
20 whether they could do something with my knee.

21 Q And are you aware --

22 A It was kind of two injuries at the same time.

23 Q Are you aware of whether the lymphoma was  
24 presumed to be job related?

25 A Yes. They didn't accept it at first, but they

1 did accept it. The City accepted the lymphoma as job  
2 related.

3 Q And so my question is: What job -- what sort of  
4 job or duties did you perform from July 6th, 2011 to the  
5 date of your retirement when you were on disability?

6 A I was just trying to get well.

7 Q So you didn't perform --

8 A I was never on the job. I didn't do any kind of  
9 light duty or any other kind of work.

10 Q And approximately how long did that last that you  
11 were on disability leave?

12 A So it was from July 6th, 2011 until I actually  
13 retired in 2012, November 1st I think is what the date is  
14 that they used.

15 Q And is there some reason why it was 16 months  
16 between the --

17 A Because there was two injuries, the first injury  
18 started with my knee, then the doctor that was treating me  
19 for my knee told me that I cannot do anything for you  
20 while you're undergoing chemo. And that being the primary  
21 concern, I got treated -- I took chemo, I beat the cancer,  
22 and after my doctor released me to be able to be treated  
23 for my knee, then I went back to the doctor to get treated  
24 for my knee. And so they left me on -- because there was  
25 a break in the 4850 time for the knee, they let me come

1 back and rehab on my knee for the remainder of what that  
2 year would be.

3 Q What's the terminology "there's a break in the  
4 4850 time"?

5 A Well, because of the circumstances where the  
6 doctor said he couldn't treat me, they stopped treatment.  
7 So from July 6th until the first part of August when I  
8 started getting treatment, the doctor said, "I have to  
9 notify the City I'm going to stop treatment, and so to  
10 stop your 4850 time on your right knee until you get  
11 treated for your cancer." And so there was a break in  
12 that and so there was still lots of time left on my right  
13 knee to get fixed, but we had to fix the cancer first or  
14 it kind of wouldn't have been worth putting any money in  
15 the knee; right?

16 Q And how were you paid during that break?

17 A I was paid 4850 time battalion chief's pay wages  
18 exactly as I had been paid since 2007.

19 MR. JENSEN: Thank you.

20 And, Your Honor, if I may, just bring that second  
21 pay slip?

22 THE COURT: Um-hum.

23 MR. JENSEN: Thank you.

24 THE WITNESS: Thank you.

25 ///

1 BY MR. JENSEN:

2 Q And, Mr. Lewis, there's the later pay slip there.

3 A This one?

4 Q Yes. And you mentioned -- well, let's look at  
5 this. On the left-hand column there's some entries in the  
6 document?

7 A Yes.

8 Q And first I just want to ask you a question. Was  
9 this second payroll sheet for the time when you were on  
10 4850 time?

11 A Yes.

12 Q Okay. So if you can just describe to us what  
13 those entries are?

14 A Okay. There's the regular pay like they always  
15 paid. There's the cumulative 144 hours of injury pay,  
16 which just meant they kept paying me for that time. Then  
17 there's chief officer certificate pay and battalion  
18 chief's pay and then the EPMC on that total amount.

19 Q So the battalion chief's pay was listed on that  
20 period when you were on 4850?

21 A Yes. Yes, there was never any break on the  
22 battalion chief's pay.

23 Q And were PERS contributions taken out of that?

24 A Yes, they were.

25 Q Okay. Now, I'd like to turn your attention to

1 the retirement -- Disability Retirement Election  
2 Application in Exhibit 11 of CalPERS' binder and --  
3 actually, before we get to that, if I can turn your  
4 attention to Exhibit 10 in our binder, it's Retirement  
5 Allowance Estimate Request?

6 A Yes.

7 Q Do you recognize this document?

8 A Yes.

9 Q And what is this document?

10 MR. KENNEDY: Which document, may I ask?

11 THE COURT: Exhibit 10 in Respondent's.

12 MR. KENNEDY: Ten in Respondent's and mine is a  
13 Retirement Application.

14 THE COURT: No, Retirement Allowance Estimate  
15 Request.

16 THE WITNESS: Yes.

17 MR. KENNEDY: I'm sorry, Retirement Allowance, okay.  
18 Thank you.

19 THE WITNESS: This was when I was getting ready to  
20 retire. Okay. I mean, I filled this out like, I don't  
21 know, just a few days before -- well, you can see, it's  
22 date stamped October 10th, 2012, but I had an estimate  
23 prior to that and I can tell you when it was, I just don't  
24 see it in here.

25 ///

1 BY MR. JENSEN:

2 Q If I could turn your attention to page 4 of  
3 Exhibit 10?

4 A Okay. Yes.

5 MR. KENNEDY: Is that -- okay.

6 BY MR. JENSEN:

7 Q Did you make a request for a service retirement  
8 at this time?

9 A Pending disability.

10 Q And can you explain to the Court what a service  
11 retirement pending disability is?

12 A Well, I wanted to use my service time but I also  
13 wanted them to consider the disability retirement, the  
14 industrial disability retirement, but it had to go to a  
15 hearing officer first.

16 Q And is it your understanding that a service  
17 retirement pending disability means that the first  
18 50 percent of the salary or the benefit is tax free, and  
19 the amount in addition to the 50 percent is taxable?

20 A That's correct.

21 Q Okay. And did you receive this document that's  
22 dated October 31st, 2012, the six-page document?

23 A I believe I did, yes.

24 Q And I just want to turn your attention to the  
25 second page of -- actually, it's not the second page, it's

1 the fifth page of Exhibit 10.

2 THE COURT: What does it say at the bottom?

3 MR. JENSEN: Yeah, it's LED10-5.

4 MR. KENNEDY: LEW?

5 MR. JENSEN: LEW. If I call him a police chief one  
6 more time --

7 BY MR. JENSEN:

8 Q And do you recognize the amount of the final  
9 compensation used in this document?

10 A Yes.

11 Q And what is this final compensation?

12 A \$13,500.41.

13 Q And do you know what this number corresponds to?

14 A It's the battalion chief wages, my chief officer  
15 cert. and the EPMC.

16 Q And there's two different amounts of years of  
17 service in the box on that page 5?

18 A Yes.

19 Q Is the four years of service associated with  
20 military time?

21 A No, it was time I purchased.

22 Q And what was it, additional retirement service  
23 credit?

24 A Yes.

25 Q And so did you -- do you recall when you

1 purchased that?

2 A Yes, either 2003 or 2004, it was somewhere right  
3 along in there.

4 Q Okay. And so on this date of October 31st, 2012,  
5 what was the salary rate in which you believed that you  
6 were going to be entitled to retirement?

7 A The \$13,500.41.

8 Q And I just want to -- well, Your Honor, I'd like  
9 to move Exhibit 10 into evidence.

10 THE COURT: Any objection to my receiving Exhibit 10?

11 MR. KENNEDY: As a single document, yes, if they  
12 could just be -- if we're going to refer to them any time,  
13 it might be better to break them down as to the request  
14 and then the second document, the letter, and then there's  
15 the estimates. Could we denominate them as A, B, C?

16 THE COURT: Well, they're all Bates stamped at the  
17 bottom, so we can figure out what is what, so I'm just  
18 going to receive it all as one document. It's all with  
19 one tab.

20 MR. KENNEDY: Are you going to admit them as one  
21 document?

22 THE COURT: Yes. Well, I'm admitting it as one  
23 exhibit, not one document.

24 MR. KENNEDY: One exhibit, okay. Thank you.

25 (Respondent's Exhibit 10 was received

1 in evidence by the Court.)

2 BY MR. JENSEN:

3 Q And, Mr. Lewis, I'd like to turn your attention  
4 to Exhibit 13 in Respondent's binder, which is also  
5 Exhibit 11 in CalPERS' binder. Do you recognize this  
6 document?

7 A Is this the MOU document? Do I have the right  
8 one?

9 Q I'm sorry, it should be a Retirement Election,  
10 Disability Retirement Election Application.

11 A Yes, okay. That is 13 in our binder.

12 Q Yeah, 13 in our --

13 MR. KENNEDY: And 11 in CalPERS.

14 THE WITNESS: Okay. Just the option, okay.

15 BY MR. JENSEN:

16 Q Do you recognize this document?

17 A Yes.

18 Q And on the first page of this document, I want to  
19 direct your attention to Section 2.

20 A Yes.

21 Q And it says, "Position title, fire captain"?

22 A Yes.

23 Q And can you explain why you wrote that?

24 A Because that was the formal title that I held at  
25 the time.

1           Q    And for Disability Retirement Election  
2 Application purposes, why didn't you write down battalion  
3 chief?

4           A    Because I had not been given that title.

5           Q    And was it -- what was your understanding of why  
6 you weren't given that title?

7           A    That was part of the terms of the Settlement  
8 Agreement, that I would get everything that the battalion  
9 chief got just like I'd been promoted but I couldn't have  
10 the title.

11          Q    Were you deemed to be performing the duties at  
12 certain times?

13          A    If the fire chief wanted me to perform the  
14 duties, then that's what I did.

15          Q    So what meaning did you attach to the City  
16 denying you the title of battalion chief?

17          A    I don't believe it was the City. The City would  
18 have promoted me, it was the fire chief, that was his last  
19 little thing and he just didn't want me to have the title.

20          Q    What do you mean by "last little thing"?

21          A    Well, there was retribution, that's why I wasn't  
22 promoted and that was his last little dig. If he could  
23 keep me from actually getting the title, then I guess in  
24 his mind he won.

25          Q    And were -- did you ever understand why the title

1 was important to him?

2 A I never understood a lot of things he did.

3 Q Okay. So in filing this application as fire  
4 captain, were you making an admission or suggestion to  
5 CalPERS?

6 MR. KENNEDY: Objection, calls for a conclusion.

7 THE COURT: Overruled. This is what his mind was  
8 when he wrote it.

9 BY MR. JENSEN:

10 Q Was it your mindset that you would be only  
11 entitled to a retirement based on the salary of the fire  
12 captain?

13 A No. In fact, I was assured --

14 MR. KENNEDY: Objection, Your Honor, there is no  
15 question.

16 THE COURT: Sustained.

17 BY MR. JENSEN:

18 Q And why not?

19 MR. KENNEDY: Relevance, why not.

20 THE COURT: Go ahead.

21 THE WITNESS: Because previously I had made sure that  
22 they were taking my PERS out. I double-checked with Laura  
23 to make sure the documents were all right. She even  
24 provided me with documents that I didn't know existed that  
25 made me believe that the PERS was being taken out, that it

1 was correct.

2 I subsequently, my wife and I went to PERS here  
3 in this office after I took their little test thing to get  
4 an evaluation of what my final compensation was going to  
5 be, and that was back in September of 2011 because I  
6 really thought I might be retiring, I didn't know what was  
7 going to happen, so I wasn't sure, I wanted to get in and  
8 at least get an estimate.

9 So we went through the process and there was a  
10 couple of times that I raised some issues that, okay,  
11 well, I want to make sure that my battalion chief's wages  
12 count on my retirement. And that's why you see this  
13 inquiry here because what we got back from this Karen  
14 Zimmerman is --

15 MR. KENNEDY: I'm sorry?

16 THE COURT: What are you looking at, sir?

17 THE WITNESS: This is the Touch Points, this is why I  
18 know what date it was. So that was their response back to  
19 me and they ensured me that, yes, I would get the  
20 battalion chief's wages, but it would be counted along  
21 with the certification and the EPMC.

22 MR. KENNEDY: Your Honor, move to strike. There's no  
23 question in front of this witness, nonresponsive.

24 THE COURT: Overruled.

25 MR. JENSEN: And, Your Honor, just we're almost at

1 4:00 and we haven't touched on the EPMC issues.

2 THE COURT: Right. So whenever you're done, just let  
3 me know.

4 MR. JENSEN: Let me just follow up with the  
5 Touch Point.

6 MR. KENNEDY: Which exhibit are we on?

7 THE COURT: Exhibit 14 in Respondent's.

8 MR. JENSEN: Actually, Your Honor, I'd like to  
9 admit -- move for admission of Exhibit 13.

10 MR. KENNEDY: No objection.

11 THE COURT: Exhibit 13 will be received.

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

14 BY MR. JENSEN:

15 Q And just one last question, Mr. Lewis --

16 THE COURT: Just so you know, sir, Exhibit 12 is not  
17 in evidence either.

18 MR. KENNEDY: I'm sorry, Exhibit 11?

19 MR. JENSEN: Oh, Exhibit 12 is not in?

20 MR. KENNEDY: Did he just move 11?

21 THE COURT: No, he just moved --

22 MR. KENNEDY: Oh, he moved his 13?

23 THE COURT: He moved his 13.

24 MR. KENNEDY: And just can the record reflect that  
25 that's the same document, I believe, as CalPERS'

1 Exhibit 11 since that is moved into evidence as well.

2 THE COURT: Yeah. All the CalPERS documents are in  
3 evidence except for 4, which was withdrawn.

4 BY MR. JENSEN:

5 Q So, Mr. Lewis, I just want to finish up this.

6 THE COURT: I told you 12 is not in evidence.

7 MR. JENSEN: Oh, yeah.

8 BY MR. JENSEN:

9 Q Mr. Lewis, can you just turn to Exhibit 12?

10 A Okay.

11 Q Do you recognize this document?

12 A Yes.

13 Q Did you receive this document?

14 A Yes.

15 MR. JENSEN: Your Honor, I'd like to move Exhibit 12  
16 into evidence.

17 THE COURT: Any objection to my receiving Exhibit 12?

18 MR. KENNEDY: Relevancy.

19 THE COURT: Overruled. I'm going to receive it.

20 (Respondent's Exhibit 12 was received  
21 in evidence by the Court.)

22 MR. JENSEN: Thank you, Your Honor. And I just want  
23 to finish on the Touch Point because he brought it up.

24 THE COURT: Um-hum.

25 ///

1 BY MR. JENSEN:

2 Q If you can just look at Exhibit 14 for a moment.  
3 You mentioned that -- well, at some point did you call  
4 CalPERS regarding their treatment of the compensation  
5 reported by the City of San Bernardino?

6 A Well, it wasn't a call. I came here with my wife  
7 and we went through all of the review that they  
8 recommended that you do before you retire to make sure  
9 your compensations are right and all the adjustments are  
10 made if they need to be made or whatever.

11 So I asked the person that sat down with us that  
12 I wanted to make sure and I wanted them to check with PERS  
13 to make sure that all of these numbers lined up, that my  
14 battalion chief's pay and my certification pay and my EPMC  
15 was all the way that I believed that it was and all the  
16 way that I had been told that it was. And so that's -- I  
17 think they, PERS, contacted the Zimmerman person.

18 THE COURT: What page are you looking at, LEW --

19 MR. JENSEN: Actually --

20 THE COURT: Stop.

21 THE WITNESS: 14-2.

22 THE COURT: 14-2, okay.

23 THE WITNESS: At the top.

24 THE COURT: Okay. The 6/23/2011 entry?

25 THE WITNESS: Yes, I believe that's it because it was

1 compensation issues and that was an issue that I raised,  
2 and then they came back and gave me the -- they assured me  
3 that it was all calculated right, that that is what I was  
4 going to retire on.

5 MR. KENNEDY: And, Your Honor --

6 THE COURT: Hang on.

7 THE WITNESS: That's what it says.

8 THE COURT: It might also be a 9/19/2011 entry.

9 MR. KENNEDY: I would object on the grounds of  
10 hearsay.

11 THE COURT: I'll receive it as administrative  
12 hearsay.

13 MR. JENSEN: And, Your Honor, I just want to note  
14 that their document says, "Spoke to member and assured him  
15 that all of his special compensation will not be used in  
16 his retirement calculation," so that would be a  
17 contemporaneous writing that would satisfy the business  
18 records and overcome any hearsay objection for the truth  
19 of the matter asserted.

20 THE COURT: I don't know if it's contemporaneous. I  
21 don't know who wrote this, it's not his document.

22 MR. JENSEN: I think the testimony from the CalPERS'  
23 witness is they, as I recall Ms. Lueras's testimony, was  
24 that they enter into this database as notes about the  
25 contemporaneous -- reported notes contemporaneous to the

1 communications from either the member or the employer.

2 MR. KENNEDY: There was also the hearsay he came into  
3 the office, I spoke with somebody, they called somebody,  
4 and again I have no objection to administrative hearsay.

5 THE COURT: I'm going to receive it at this point.

6 MR. JENSEN: Thank you, Your Honor.

7 MR. KENNEDY: You're going to receive it?

8 THE COURT: Well, the document is already in  
9 evidence.

10 MR. KENNEDY: Actually, there's compound hearsay.

11 THE COURT: The whole 14 is already in evidence.

12 MR. KENNEDY: But the discussion was that --

13 THE COURT: What someone told him, that's the part  
14 that I understood your objection to. All I was receiving  
15 was the discussions, not the actual document, it's already  
16 in evidence.

17 MR. KENNEDY: Thank you.

18 MR. JENSEN: Okay. Great, thank you. And,  
19 Your Honor, it's 4:00.

20 THE COURT: All right. We'll be in recess until we  
21 all talk on the phone on the 21st.

22 MR. JENSEN: And thank you, Your Honor.

23 (Hearing adjourned at 4:02 p.m.)  
24  
25

REPORTER'S CERTIFICATE

I, Heidi Bamber, Hearing Reporter, do hereby certify:

That the foregoing transcript of proceedings was taken before me on October 14, 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.



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HEIDI BAMBER, CSR No. 12080  
Certified Shorthand Reporter  
For The State Of California

<b>A</b>	92:1 167:11	168:16,19,23	195:21	102:11 106:4
<b>\$13,500.41</b>	208:11	169:5 170:18	<b>adjustments</b>	110:6 111:15
216:12 217:7	<b>acted</b> 9:23 66:11	180:23 208:24	175:4 224:9	111:22 112:3,7
<b>\$250</b> 196:11	173:25 176:4	209:4,14	<b>admin</b> 107:3	112:8 129:9,11
<b>\$606.65</b> 197:2	<b>acting</b> 9:22	<b>actions</b> 151:24	<b>ADMINISTR...</b>	131:17,17
<b>\$716.44</b> 119:10	13:17,17 14:6	203:25	1:2 2:1	132:12,22
119:12 196:15	14:11,13,15,18	<b>active</b> 162:8	<b>administrative</b>	135:22 144:24
<b>A-L-V-A-R-A...</b>	33:10 34:7	181:3	1:5 2:4,21	155:16 182:25
137:8	52:1,7,8,10	<b>activities</b> 194:9	87:16 107:3	183:7 186:17
<b>a.m</b> 2:19 7:2	53:3,4,16 54:5	<b>actor</b> 89:1	110:1 181:21	188:3 189:16
<b>AA</b> 159:17	55:5 57:11,12	<b>actual</b> 85:11	181:22 187:12	189:20,22
161:15 162:3	57:15 58:2,19	108:8 126:1	193:8 225:11	192:17,20,21
<b>ability</b> 190:4,9	58:19,20 59:4	165:24 167:19	226:4	194:10 195:23
192:10,10	59:17 62:25	226:15	<b>administrator</b>	219:8
208:15	63:17,25 64:2	<b>actuarial</b> 73:22	177:20	<b>ahead</b> 7:20 20:6
<b>able</b> 67:10 96:1	64:9,9,10,11	73:22 138:21	<b>admission</b> 220:4	51:4 75:25
183:19,20	65:13,23 66:12	138:24 152:13	222:9	97:8 141:10
200:9 209:1	66:25 67:21	152:25	<b>admit</b> 47:13	165:8 175:20
210:18 211:22	76:8,9,13,15	<b>add</b> 38:7 107:2	217:20 222:9	175:22 177:10
<b>abroad</b> 11:4	76:17 80:25	166:16	<b>admitted</b> 140:23	177:12 184:8
<b>absence</b> 8:15,16	81:6 120:21,23	<b>added</b> 37:25	<b>admitting</b>	187:14 188:5
74:24	120:25 121:4,5	<b>addition</b> 76:22	217:22	201:2 203:17
<b>absent</b> 74:22	121:7 127:23	99:10 215:19	<b>admonish</b> 8:18	220:20
<b>absolutely</b> 189:3	127:25 128:1,6	<b>additional</b> 70:6	128:16	<b>air</b> 51:2 59:1
197:14	128:6,24	91:15,22	<b>admonition</b> 8:13	<b>alleging</b> 60:9
<b>AC</b> 70:15	133:17,18,19	102:25,25	<b>adopted</b> 19:14	<b>allow</b> 9:6,15
<b>academy</b> 160:23	133:19,22,24	104:1 109:16	21:2	54:9 62:3
160:24,25	134:1,5 148:14	116:3 124:1,2	<b>adopting</b> 18:8	136:7
<b>accept</b> 188:7	166:21 167:2,4	124:10,11	<b>advise</b> 8:13	<b>allowable</b> 136:4
210:25 211:1	168:12 169:10	128:23 129:6	199:21	<b>allowance</b> 142:4
<b>accepted</b> 211:1	169:10 171:6	130:11 144:8	<b>affirmative</b>	142:5 214:5,14
<b>access</b> 66:18,22	180:2,3,8,11	145:6,25	67:21,22,23	214:17
<b>account</b> 69:22	180:21 181:14	216:22	<b>afield</b> 152:8	<b>allowed</b> 135:25
70:4,20 71:4	184:2 194:17	<b>address</b> 67:7	<b>afternoon</b> 191:2	175:10 182:1
71:18,20 96:6	209:5	187:2 198:20	<b>AGENCY</b> 3:3	<b>allowing</b> 7:16
160:15	<b>acting-higher</b>	<b>addressed</b>	<b>AGNES</b> 1:5 2:4	<b>Alvarado</b> 137:7
<b>accountant</b> 70:7	66:7	201:17	2:20	137:7,9,13,17
<b>accounting</b>	<b>acting-pay</b> 128:6	<b>adjourned</b>	<b>agreed</b> 72:24	<b>amended</b> 36:1
71:21 74:25	<b>Action</b> 14:19	226:23	188:6	<b>amount</b> 65:8
76:6,8,9,23	33:1 52:11,17	<b>adjust</b> 108:18,24	<b>agreement</b> 4:13	102:25 119:1
<b>accounts</b> 112:18	52:24 57:16	109:20 115:14	13:13 58:6	119:12 120:4,8
<b>accurate</b> 183:10	61:8,12 62:1,6	119:10,11	61:3 79:7,14	124:2,3 136:7
<b>accusation</b> 7:6	62:8 63:11	122:13,14	79:21 80:2,21	136:15 179:23
<b>acquire</b> 150:7	64:14 65:7,9	<b>adjusted</b> 115:15	89:13,17,22	195:24 196:14
<b>act</b> 52:2 59:15	65:11 67:2	<b>adjustment</b>	90:8,10 91:12	197:1,4,4
59:19 91:24	75:6,17 76:3	115:1 146:13	93:24 94:10	213:18 215:19
	148:21 168:15	146:24 147:14	96:3,8 98:9	216:8

<b>amounts</b> 131:18 134:18 141:24 151:25 216:16	<b>appears</b> 69:9 177:5	77:25	<b>assisting</b> 126:17	111:2 113:6
<b>analyst</b> 12:10	<b>applicable</b> 14:2 25:23 27:15	<b>argument</b> 32:3 61:25 62:2	<b>associate's</b> 69:16	117:13 121:9
<b>analyze</b> 152:2,5	30:22 65:12	67:20	<b>associated</b> 91:17 190:24 216:19	123:23 131:8
<b>analyzing</b> 152:1	<b>application</b> 4:24 43:1 71:14	<b>argumentative</b> 128:14 144:17	<b>association</b> 13:11	136:23 139:25
<b>and/or</b> 98:10	214:2,13	<b>arguments</b> 78:4	<b>assume</b> 36:22 46:8 63:19	145:13 155:3,5
<b>Angeles</b> 3:13	218:10 219:2	<b>arrived</b> 177:1	100:9 139:9	178:13 181:7
<b>Ann</b> 137:9	220:3	<b>art</b> 170:9	<b>assumed</b> 76:21 76:25	184:10 185:18
<b>annual</b> 193:10 193:11	<b>applies</b> 21:9 29:8,23 30:2,3	<b>asked</b> 9:18 23:18 37:4 52:1 54:4	63:1,2 78:18	189:9 197:20
<b>annually</b> 25:17	30:18 31:12	68:1 75:19	<b>assuming</b> 44:19	203:20 205:11
<b>answer</b> 22:24 41:22 43:23	34:21 65:7	76:2 79:16	220:13 225:2	206:24 213:25
65:14 87:1,8	135:22	98:5 102:23,24	225:14	214:4 215:2,24
87:13,20 91:6	<b>apply</b> 27:17 29:11 30:20,25	108:6 109:22	<b>assumption</b> 9:16	218:3,19
98:3 105:22	31:4 52:5	120:13,14,20	<b>assured</b> 187:23 220:13 225:2	<b>attorney</b> 7:13 8:18 50:9
109:24 123:4	59:10,18	137:19 148:3	225:14	105:16 106:7
123:13 129:23	<b>appointed</b> 32:17	184:14 187:18	<b>attach</b> 219:15	144:8,11
130:19,24	<b>approach</b> 15:19 15:22 16:3	197:10 224:11	<b>attached</b> 35:2 97:11,13,21	151:25 154:12
137:21 149:25	17:5 19:5 36:8	<b>asking</b> 14:7 21:2 33:4,18 38:5	138:14 142:15	154:16,17
<b>answered</b> 67:13 75:19 108:6	38:20 42:18	61:24 64:19	142:22 143:5,9	156:23,23
123:10 137:19	46:23 57:3,5	65:21 66:3	143:20,21	187:10
184:14	85:20,22 97:16	70:16,17 80:11	200:11	<b>attorney's</b> 49:9 49:11 79:9
<b>answers</b> 177:4	113:11,13	103:7 113:15	<b>attaches</b> 37:13	86:12 102:23
<b>anybody</b> 167:16 182:4	155:8 195:5	123:5,13	<b>attachment</b> 38:2 125:11 138:16	104:2,22
<b>anymore</b> 146:21	197:22	130:23 139:6	<b>attachments</b> 138:16	105:22 117:12
<b>Anytime</b> 91:19	<b>appropriate</b> 199:14	141:23,24	<b>attack</b> 163:18	131:25 132:2,7
<b>AP</b> 112:14	<b>approval</b> 53:13 53:18 57:21	145:2 153:20	<b>attend</b> 161:25	133:1 144:25
<b>APC</b> 3:15	58:21	156:25 157:2	<b>attendance</b> 172:2	152:4 155:22
<b>apologize</b> 58:10 81:23	<b>approved</b> 26:6 39:13 52:12	200:23	<b>attendant</b> 63:10	185:3
<b>apparatus</b> 192:12	57:15 73:2,4	<b>aspects</b> 11:22	<b>attention</b> 18:22 21:18 24:9	<b>attorney-client</b> 61:6
<b>apparently</b> 26:22 143:8	73:14 110:4	<b>assert</b> 78:7	25:11 26:1	<b>attorneys</b> 3:11 3:16 105:3
<b>appeal</b> 8:3 67:14	119:3,7	<b>asserted</b> 225:19	27:9,23 29:6	<b>Augmund</b> 93:8
<b>appealed</b> 7:6 8:4	<b>approves</b> 149:23 150:5	<b>assess</b> 139:1	34:17 38:15	<b>August</b> 70:2 108:2,21
<b>appear</b> 121:2	<b>approximately</b> 155:13 203:10	<b>assign</b> 190:4,9	39:11 40:14	210:15 212:7
<b>appearance</b> 49:19	211:10	<b>assigned</b> 78:5 120:15 179:3	42:9 51:24	<b>authenticate</b> 15:13 42:6
<b>APPEARANC...</b> 3:1	<b>April</b> 116:16	191:6 202:9,10	55:9 58:18	<b>authority</b> 57:17 63:3 103:23
<b>appearing</b> 50:2 179:19	<b>area</b> 177:18	<b>assignment</b> 190:21	78:14,16 80:15	<b>authorizes</b> 57:12 63:12
	<b>argue</b> 61:21	169:22 190:16	81:10 83:11	<b>authorizing</b> 63:12
		<b>assist</b> 7:14,16 201:18 202:2,4	84:2 86:22	<b>auto</b> 118:8
		<b>assistant</b> 11:14 11:16 12:8	92:9 93:11	<b>automatically</b> 82:20 89:14
			97:7 101:4	

118:12 <b>available</b> 25:21 145:21 149:18 <b>aware</b> 32:16 33:12 34:10,11 49:18 59:20 65:11 108:4 130:2 139:20 145:24 152:16 156:5 161:18 163:4 164:3 171:13 188:20 188:22 193:19 193:23 210:21 210:23	159:14 201:10 <b>backwards</b> 199:12 <b>bad</b> 8:4 <b>balance</b> 196:2,4 196:7 <b>balances</b> 96:5 <b>BAMBER</b> 1:23 2:22 <b>bank</b> 107:4,14 120:2 <b>bankruptcy</b> 152:17 <b>banks</b> 115:25 <b>Barbara</b> 79:6 92:21 <b>bargaining</b> 72:14,14 <b>based</b> 20:13 21:8 43:14 52:8 77:19 78:3 90:21 102:13 103:7 108:2 110:5 113:4,24 120:23 124:4,5 129:11 130:9 136:10 141:25 142:1 165:19 169:20 170:1 188:16 197:6 220:11 <b>bases</b> 9:12 <b>basic</b> 120:19 <b>basically</b> 69:17 73:25 74:4,19 78:5 94:9 129:13 132:23 135:2 148:8 <b>basis</b> 129:5 144:22 180:5 183:18 <b>basket</b> 163:8 <b>Bates</b> 93:14 217:16 <b>battalion</b> 5:24 9:15 31:24 32:3,17,25	40:17,21 44:22 45:6,21,25 46:7 59:8,25 60:10,17,18 63:25,25 64:11 64:12 66:12 80:19,22,25 81:5,6 98:10 98:11,11,19 99:9 100:15 102:8,13,25 103:9,13 105:17 106:22 109:1 116:5 120:6,7 128:25 129:8,16 130:12 131:4 132:18,19 133:9 142:1 148:14 158:4,8 158:13 163:12 166:3,18 167:6 167:17,24 168:9 169:23 170:3 172:15 172:20 173:10 173:11,19 174:2,7,21 175:25 176:19 178:14 179:11 179:14,15,20 179:24 180:11 181:8 182:15 183:15 184:2 184:11,22 186:18,22 187:6,16 188:17,21,23 188:25 189:6 189:14 191:2,6 191:10,11 194:16,17,22 195:21,22 196:12,18 197:6 198:24 199:9 200:4,12 201:17 202:10	203:5 204:4,21 204:23 205:6 208:7,11,17,22 209:1,23 212:17 213:17 213:19,22 216:14 219:2,8 219:16 221:11 221:20 224:14 <b>BC</b> 108:19 115:16 116:3 120:6 121:5,6 121:22 122:3 122:11 123:11 123:16 168:8 168:11 169:9 169:10 188:11 <b>BCs</b> 167:19,20 183:23,24 188:19 <b>beat</b> 211:21 <b>becoming</b> 177:24 178:9 <b>began</b> 69:17 70:2,22 91:21 <b>beginning</b> 102:4 <b>begins</b> 185:2 <b>belief</b> 154:5 <b>believe</b> 13:13,25 18:9 19:16 20:10 47:24 49:10 54:2 55:9 66:1 67:19 76:11 77:1,12 79:23 80:21 89:22 92:2,5 100:24 104:22 107:22 108:14 111:20 113:9 116:8,24 117:8 120:3,20 124:21 125:24 126:7 131:5 133:1,11,13,16 134:23 139:18 141:20 142:2 146:17,21	149:15 153:1 155:4,21 193:23 196:17 205:19 210:14 215:23 219:17 220:25 222:25 224:25 <b>believed</b> 217:5 224:15 <b>benefit</b> 72:11 96:4 99:23 100:2,3,3,10 100:11,18 101:14 106:24 116:7 120:10 124:7,8,12,18 124:18 131:7 141:13 193:7 215:18 <b>benefits</b> 73:16 73:17 98:11,18 98:20,24 99:8 99:9,10,13,19 99:25 100:6,15 102:13,16 104:23 105:1 105:16 106:14 106:18,21,22 106:24 110:25 117:7,10,17 133:18 134:5 134:11 135:1,2 135:5,6,10,14 135:17 136:1 141:22 150:17 150:18,19 187:7,16 188:17,18,20 <b>berating</b> 64:15 <b>Bernardino</b> 1:13 1:18 2:12,18 3:15 7:1,10,13 9:9 11:7,11,13 13:8,21 18:8 22:1,3 26:13 26:15 32:18 33:13 41:6
--	---	---	---	--

42:17 43:5 45:2 62:20 63:10 69:6,18 69:20 70:21 71:9 91:16 95:11 126:18 130:3,10 131:3 136:5 138:21 144:23 149:3 151:10 158:5 159:16,23 160:17 164:5 179:17 182:4 224:5 <b>Bernardino's</b> 13:16 107:18 145:21 <b>best</b> 87:2 119:6 151:23 153:14 160:8 <b>better</b> 96:17 199:23,24 217:13 <b>beyond</b> 66:8 <b>big</b> 169:21 172:22 176:25 <b>bigger</b> 46:4 <b>bill</b> 199:11 202:22,23 203:2,12,21 204:8 <b>binder</b> 18:23 19:3 26:1 47:15 78:17 82:6 83:12 84:3 92:10 131:10 139:25 147:18,19,21 185:2 205:12 206:25 214:2,4 218:4,5,11 <b>birthday</b> 182:1 <b>bit</b> 11:1 127:4 180:15 201:5 <b>blowing</b> 59:1 <b>blue</b> 18:23 19:2 78:17 139:25	<b>board</b> 1:2 2:1 34:9 163:9 166:13,14 172:16,22,23 <b>body</b> 38:5 <b>bolded</b> 35:25 36:1 37:25 <b>book</b> 20:22 21:6 26:24 28:24 55:7,18 142:17 145:19 155:7 172:17 <b>books</b> 204:23 <b>boots</b> 45:4 <b>boss</b> 79:5 <b>bottom</b> 22:9 24:23 35:4 104:11 106:25 115:1 140:10 140:14 146:11 165:14 173:11 216:2 217:17 <b>Boulevard</b> 3:12 <b>box</b> 3:7 216:17 <b>bracket</b> 108:20 <b>break</b> 211:25 212:3,11,16 213:21 217:13 <b>bridge</b> 27:4 <b>brief</b> 177:11 <b>briefly</b> 10:25 69:12 94:22 121:12 123:24 125:3 147:8 150:24 154:23 202:21 <b>bring</b> 15:12,16 49:23 97:6 175:3 212:20 <b>broke</b> 167:22 <b>brought</b> 7:6 38:19 50:4,6 56:12 60:8 78:11 143:19 152:20 203:7 204:6 223:23 <b>budget</b> 111:20	111:24 199:7 202:2,12,18,19 <b>build</b> 178:7,7 <b>bullet</b> 132:16 133:12 <b>bumped</b> 180:4,9 180:20 199:4 <b>bunch</b> 65:19 <b>burden</b> 67:19 <b>burn</b> 193:11 <b>burning</b> 180:14 <b>busier</b> 178:1 <b>business</b> 69:16 225:17 <b>bypassed</b> 182:6 <hr/> <b>C</b> <b>C</b> 189:10 217:15 <b>Cal</b> 11:7 <b>calculated</b> 112:24 124:5 225:3 <b>calculating</b> 40:12 <b>calculation</b> 1:8 2:7 129:14 136:1,7 225:16 <b>California</b> 1:3,4 1:18 2:2,3,18 2:24 3:3,8,13 3:18 7:1,22 <b>call</b> 8:7 9:1,25 10:4,7 54:9 55:2 61:19 63:22 64:5,21 66:4 67:17 68:2 71:14 81:1 86:24 87:1,20 163:17 168:11 170:6 216:5 224:3,6 <b>called</b> 10:13 29:23 68:13 139:21 155:25 156:4 159:2 171:2 174:2 176:15,23	179:7,12 183:16 209:4,6 226:3 <b>calling</b> 155:15 <b>calls</b> 33:3 43:20 60:19 61:15 220:6 <b>CalPERS</b> 4:19 4:22 7:6,9,14 8:24 15:7 40:21 41:3,8 41:14 55:8 65:21 67:19 73:12,15,17 78:4 79:18,18 85:15,17 86:1 86:9,16,18 87:6 88:17 89:11 91:7,15 97:10,13,14,21 100:6,8,14 102:9,13,20 103:9,15 104:3 113:3 114:5,7 125:20 126:1,4 131:9 135:24 136:3,10,14,23 138:20 141:1 141:21,24 142:15,21 143:8,20,21 144:12 145:19 146:5,17,22,25 147:6,13,19,21 148:10 151:1,8 151:12,15 152:14 153:5 154:4 155:4,12 155:15,25 156:5 160:11 160:15 185:12 185:15 188:11 188:16,25 190:24 193:20 205:9 214:2 218:5,13 220:5 222:25 223:2	224:4 225:22 <b>cancer</b> 210:13 211:21 212:11 212:13 <b>cap</b> 116:14,17 <b>capacity</b> 8:11 52:1,2 63:24 63:25 64:2,10 64:11 67:1 132:19 133:8 133:19 160:2 179:19 203:24 204:3 <b>captain</b> 5:22 32:3,25 42:13 44:23 45:7,19 46:6,8 80:19 80:23,25 81:5 100:12 103:12 103:13 106:21 108:19 109:1 115:16 119:6,8 120:7 129:15 130:14,16 131:4 136:20 142:1 144:7 145:5,22,25 157:17 158:3 158:14 161:8 162:22,23,25 163:21 166:2 174:11 178:17 178:18,20,20 184:12 191:10 191:14 200:6 200:22 209:1 218:21 220:4 220:12 <b>captain's</b> 166:10 189:13,19 191:7 209:2 <b>captains</b> 106:9 130:3,10 131:2 148:13 172:19 189:11 <b>captains's</b> 130:12
---	---	---	--	---

<b>care</b> 178:22 204:22	<b>certify</b> 164:7	<b>chief</b> 5:24 9:15	190:5,6 191:2	3:15 5:19 7:12
<b>career</b> 38:4 161:6	<b>chain</b> 138:14	31:24 32:3,17	191:5,6,10,11	7:13,13 8:12
<b>Carlous</b> 87:7	<b>challenge</b> 127:7 127:9	32:25 40:17,21	192:9,13 196:9	9:9 11:8,10,11
90:16 143:22	<b>Chamberlin</b> 4:17	42:13 44:22	196:11,18	11:12 12:1,12
144:15 147:12	<b>chance</b> 32:21	45:6,21,25,25	197:6 198:24	13:8,15,21
147:17 197:15	36:4 50:1,3,8	46:4,5,7 59:8	200:4,12	14:10,14,17,20
<b>case</b> 7:7,8 23:15	50:17 51:11	59:25 60:10,17	201:17 203:5,6	18:8 22:1,3
31:22 52:15	61:2	60:18 63:25	203:7 204:4,23	25:20 26:13,14
59:8,20 60:22	<b>change</b> 16:2	64:1,12,12	208:7,12,14,16	28:23 31:25
61:23 62:24	73:20 74:3,5	66:12 80:19,22	209:23 213:17	32:18 33:2,13
66:14 67:14	74:17 110:2,3	80:25 81:5,6	216:5,14,14	33:19 34:9,12
78:15 127:4	110:4 192:11	98:10,12,19	219:3,9,13,16	35:12 41:6
134:8 137:14	<b>changed</b> 55:3	99:9 100:15	219:18	42:17 43:5,7
140:24 153:5	69:3 80:24	102:8,13 103:1	<b>chiefs</b> 165:25	47:5,8 49:8,11
179:9 183:4	81:4 171:17	103:10,13	166:14,18	49:15 53:19,25
<b>cases</b> 14:22 62:6	175:4	105:17 106:22	167:6,24 174:3	58:22 61:11
<b>cash</b> 115:25	<b>changes</b> 6:4	109:1 116:5	174:8 175:14	62:20 63:13
115:25	18:13 35:11	120:2,6,8	186:22 187:6	69:6,7,14,15
<b>category</b> 45:24	36:20 71:1	121:22 122:2	188:23 190:4,9	69:18,19,21
141:21	72:7,8 73:18	123:16 128:25	190:16 196:12	70:3,21 71:6,9
<b>caught</b> 181:19	74:1,2,2,6	129:8,9,16	202:10 208:22	72:6 73:14
<b>cause</b> 137:15	74:1,2,2,6	130:12 131:4	209:2 212:17	77:19,20 78:3
<b>central</b> 172:8	84:25 94:11	132:18,19	213:18,19,22	79:5,9 86:12
<b>cert</b> 216:15	108:9	133:9 136:19	221:11,20	95:11,17,22
<b>certain</b> 43:8	<b>changing</b> 71:2	137:5 138:1	224:14	96:4 102:23
61:19 65:8	<b>characteristic</b> 46:1	142:1 148:14	<b>chiefs</b> 98:11	104:17 105:16
66:17 94:10	<b>characterizati...</b> 114:4 129:17	149:14,15	163:13 167:17	105:21 106:7
96:5 139:6	130:13 134:21	150:23 151:6,7	169:23 170:4	107:17 117:12
162:14 181:6	<b>characterize</b> 151:23	151:11 152:5	172:15,20	118:20 120:10
190:24 195:24	<b>charter</b> 13:25	153:6 157:17	187:16 188:21	124:9,11
206:2,9 219:12	52:9 107:17,18	157:19 158:4,8	189:14 194:17	126:17 130:3,6
<b>certainly</b> 46:22	107:21,22	158:13 161:6,9	194:17,22	130:10 131:3
101:22	119:7 120:8	161:12,16,19	195:21,23	131:24 132:2,7
<b>certainty</b> 116:25	190:12	163:12 164:22	199:9 203:25	133:1 135:15
<b>certificate</b> 120:2	<b>check</b> 57:24	166:3 167:8,8	208:17	138:25 139:7
121:22 123:16	60:24 64:3,13	168:9 173:10	<b>chronology</b> 198:19	144:8,11,11,25
161:6,9,17,19	118:7,14 120:9	173:11,19	<b>circumstances</b> 76:14,15 77:19	149:2,6,21,23
213:17	121:2 224:12	174:21 175:25	79:2,3 86:8	150:5,17,22
<b>certificates</b> 11:8	<b>checked</b> 193:25	176:20 178:14	166:5 168:17	151:10,25
<b>certification</b> 161:3,4,10	<b>checks</b> 118:12	178:15 179:11	212:5	152:4,12
196:10,11	118:18	179:14,15,20	<b>cite</b> 57:20	154:12,16,16
221:21 224:14	<b>chemo</b> 211:20	179:24 180:11	<b>cities</b> 49:10	155:22 156:23
<b>certified</b> 2:22	211:21	181:8 182:15	108:3	157:16 159:22
161:5 167:8		183:15 184:2	<b>citizens</b> 178:6	160:2,16
		184:11,22	<b>city</b> 1:13 2:12	161:19 164:4
		186:18 188:17		167:21 169:23
		189:1,6,24		177:19,20

179:1,5,7,17 182:4 192:13 193:16,20 195:22 196:5 196:17 197:5 197:17 211:1 212:9 219:15 219:17,17 224:5 <b>City's</b> 14:5 15:10 25:16,21 28:1 34:21 39:13 63:10 124:19 126:5,5 152:17 153:1 192:16 <b>Citywide</b> 72:8 <b>civil</b> 62:21 63:10 160:5 163:6,25 164:4,10 165:4 166:16 182:7 190:12 <b>claim</b> 184:21 189:2 <b>clarification</b> 9:2 30:17 51:20,21 66:16 79:10 86:15,20 100:19,22,23 106:19 114:17 122:9 128:12 131:23 133:7 133:12,16 136:11,15 152:3 <b>clarification's</b> 9:10 <b>clarified</b> 99:7 106:6 187:19 <b>clarify</b> 29:17,20 34:5 65:15 67:18 79:17 100:14 104:25 106:13 143:17 170:10 193:7 204:12 <b>clarifying</b> 132:2	<b>clarity</b> 93:4 181:1 <b>class</b> 13:17,22 27:16 40:21 74:14,14 157:23,25 158:5 <b>classes</b> 41:3,6 45:5 139:15 161:1,4,14,15 <b>classification</b> 77:4,5,9,23,23 <b>classified</b> 146:20 146:24 147:1 148:9 160:10 <b>clear</b> 17:14 87:5 101:25 140:4 <b>clerk</b> 69:22 70:4 70:20 71:4,19 71:20 170:21 170:25 171:3,8 171:9,14,20,25 <b>clerk's</b> 69:21 70:3,23 <b>Client</b> 71:13 <b>client's</b> 65:20 <b>clients</b> 8:19 <b>clip</b> 143:5 <b>code</b> 14:3 108:18 108:20,25,25 109:7,13,20 115:15 148:9 160:5 198:15 <b>codes</b> 110:5 115:14 125:22 125:24 126:2,3 146:16,18 <b>coding</b> 41:14,19 41:20 146:23 <b>college</b> 159:16 159:17 161:22 162:3 <b>colors</b> 19:4 <b>column</b> 84:19 114:24 115:18 118:24 196:20 198:5 213:5	<b>columns</b> 121:10 123:3,11 <b>combination</b> 144:11 165:20 <b>come</b> 52:6 63:19 87:13 132:25 153:22 169:23 197:1 199:15 201:23 211:25 <b>coming</b> 21:23 34:8,9 68:25 72:15 73:19 192:7 193:25 <b>command</b> 183:21 <b>commander</b> 176:24 184:3 <b>commencing</b> 2:18 <b>comment</b> 105:7 115:12 133:13 133:15 <b>commenting</b> 137:14 <b>committee</b> 202:15 <b>communicate</b> 85:14 94:6 <b>communicatio...</b> 226:1 <b>comp</b> 11:20 74:14,14 77:3 139:22,24 153:3 <b>companies</b> 173:9 173:10 177:14 178:2 184:9 <b>company</b> 170:2 173:8,9 <b>comparable</b> 108:3 <b>compare</b> 35:21 <b>comparison</b> 127:19 <b>compensated</b> 80:22 98:8 128:5 187:4	<b>compensating</b> 196:18 <b>compensation</b> 1:9 2:8 3:6 41:14 77:4,6,9 77:23,24 83:25 86:17 101:12 101:13 102:9 102:19,21 103:14,20,23 108:1 113:3,4 113:22,24 114:1,13 120:12 121:20 122:1,18 123:7 123:15 125:23 128:24 130:11 134:22 135:24 136:11 138:9 139:11 145:25 146:13,14 147:1,3,15,24 148:4,8,11 150:25 151:6 155:17 193:21 216:9,11 221:4 224:4 225:1,15 <b>compensations</b> 224:9 <b>competency</b> 40:1 186:3 190:11 <b>Complainant's</b> 19:19,23 35:24 <b>complete</b> 43:14 52:11 77:10 161:10 165:1 <b>completed</b> 41:20 73:3 <b>complicated</b> 163:15,22 201:5 <b>complies</b> 18:24 20:23 21:20 25:12 27:10,24 34:19 35:3 40:16 46:25	48:8 53:16 55:10,13 56:19 78:22 80:17 83:13 84:4 93:13 101:6 112:4 132:15 144:3 156:19 <b>compound</b> 226:10 <b>computerized</b> 71:10 <b>concern</b> 211:21 <b>concerned</b> 138:10 158:5 <b>concerning</b> 8:10 9:7 <b>concession</b> 104:18 108:19 109:4,7,9,13 109:16 119:11 119:15 122:13 195:21 196:2,4 196:7 <b>concessions</b> 104:12,17,19 104:19 105:14 122:14 195:22 <b>conclude</b> 126:21 <b>conclusion</b> 220:6 <b>conclusions</b> 9:13 <b>concurrent</b> 180:18 <b>conditioning</b> 51:2 <b>conditions</b> 18:8 175:4 <b>conferred</b> 135:6 <b>confidential</b> 5:11 25:14,15 27:16 28:9 29:7 30:2,4,8,9 30:23 40:15 199:18 201:13 <b>configured</b> 184:5 <b>confirm</b> 62:11
---	---	---	---	---

<b>confirmation</b> 86:1	<b>contracted</b> 198:11	112:13,20	124:11 178:7	20:3,6,16,19
<b>conflict</b> 194:20 194:21,21	<b>contracts</b> 127:24 149:9,22	<b>correct</b> 16:21 18:14 19:19,25	199:6 208:11	21:14,16 22:7
<b>confused</b> 122:17	150:10	22:14,15 24:24	<b>council</b> 18:7	22:24 23:10,16
<b>consider</b> 24:2 91:6 101:13	<b>contributing</b> 151:11	24:25 26:17	26:6 37:24	23:18,22,24
215:13	<b>contribution</b> 101:11,14,15	30:2,12,13	39:13 72:5,12	24:2,7,18,20
<b>consideration</b> 135:21	120:10,11	31:14 33:2,6	72:23 73:1,2,4	24:22 25:4,8
<b>considered</b> 121:17 146:13	121:15,17,19	33:10 36:2,3	73:14 149:21	26:3,16,19,21
147:2 157:23	124:8	36:21 37:1,3	149:23 150:5	27:4,7,13,21
<b>consistently</b> 136:19	<b>contributions</b> 15:11,14	38:8,9 45:10	<b>Council's</b> 5:19	28:5,7,14,18
<b>constant</b> 170:6	100:25 101:1	45:14 51:13,14	<b>counsel</b> 3:5 7:11	28:20 29:3
<b>constantly</b> 128:18	103:2 134:19	51:17 52:18	7:21 8:12 17:4	30:17,25 31:4
<b>construction</b> 177:17	135:2,4,18,19	53:3,9,10,12	19:1 28:5 29:1	31:7,10,12,15
<b>consultant</b> 77:12	160:14 197:6	53:21,24 55:1	31:20 37:4	31:18,20 32:2
<b>contact</b> 33:19 79:9 85:17	213:23	57:19 58:6,7	39:7 41:11	32:5,8,9,11,22
87:8	<b>control</b> 153:1	59:7 63:5,13	64:16 70:9,10	33:4,21,24
<b>contacted</b> 86:9 86:16 90:20,21	<b>conversation</b> 50:13 51:19	74:10 90:3,4	71:7 81:11	34:3,15,25
91:21 224:17	90:16,18,20	97:1,4 103:10	88:14,20 92:11	35:23 36:8,12
<b>contacting</b> 156:1	131:23	103:11 105:13	109:21 126:16	36:15 37:12
<b>contained</b> 107:7 149:22	<b>conversations</b> 50:16	105:19 114:20	152:8 204:13	38:3,13,17,21
<b>contemporane...</b> 154:6 225:17	<b>conversion</b> 153:2	116:24 117:19	<b>Counselor</b> 206:18	38:24 39:2,5,7
225:20,25,25	<b>convert</b> 139:24	119:20 129:21	<b>count</b> 221:12	39:9,15,19
<b>context</b> 152:13	<b>coordinate</b> 179:8	131:14,20,21	<b>counted</b> 188:12	40:3,5,7,9,24
<b>continue</b> 166:24	<b>copies</b> 43:4 58:4	132:4,13	188:13,14	41:11,18,25
<b>continued</b> 5:1 6:1 161:5	97:25	133:24,25	221:20	42:5,11,19
210:16	<b>copy</b> 17:4 27:1	134:16,20	<b>counting</b> 196:14	43:19,21 44:10
<b>continuing</b> 54:15 115:6	36:5 37:5,16	136:17,20,21	<b>couple</b> 77:2	44:14,24 45:13
<b>continuously</b> 177:5	38:11 47:10	142:8 145:3	120:14 153:19	46:3,13,16,18
<b>contract</b> 107:6,7 107:8 110:1,8	56:10 87:24	154:13,14,20	168:7 169:21	46:19,24 47:1
110:10 124:19	96:17,17,24	160:1 173:21	192:23 201:15	47:16,20,22
149:4 150:5,16	97:2 111:14,15	176:12 177:8	221:10	48:1,14,17,22
152:1,2,5	111:22 131:16	181:5 186:12	<b>course</b> 73:8	49:1,7 51:4
	142:9 143:2	215:20 221:1	160:16	54:8,14,21
	188:22,23	<b>correction</b> 8:1,2	<b>courses</b> 161:12	55:20,22,24
	195:8	144:19	162:4,5	56:16,22 57:4
	<b>core</b> 161:14,14	<b>corrections</b> 144:14	<b>court</b> 7:5,20,24	57:25 58:5,9
	<b>corner</b> 38:23	<b>correctly</b> 66:24	8:4,7,17,23 9:2	58:14 59:13
	92:20 96:18	138:8	9:4,10,12 10:2	60:1,4,13,21
	97:3 111:5	<b>correspond</b> 84:21 191:19	10:6,10,14,16	61:16,24 62:15
		<b>correspondence</b> 86:1 131:24	10:19 12:1,3,5	63:6 64:16,18
		132:5	12:16 13:19,24	64:20 65:1,18
		<b>corresponds</b> 216:13	15:21 16:6,9	66:3,13 67:3
		<b>cost</b> 74:6 124:10	16:12,21,23	67:12,20 68:5
			17:2,6,13,19	68:9,14,16,20
			17:22 18:13,18	70:11,15,17
			18:20 19:1,4,6	75:21,25 78:1
			19:8,19,21	78:8,19 81:11
				81:14,18,21

82:25 83:3,7,9	142:12,16,20	217:16,22	<b>CSR</b> 1:23 2:22	174:4 183:5,6
83:20,22 84:13	142:24 143:7	218:1 220:7,16	<b>culture</b> 11:5	183:7,8
84:15,17 85:4	143:15 144:2	220:20 221:16	<b>cumulative</b>	<b>Daube</b> 3:15,16
85:12,21,24	144:18 145:2	221:24 222:2,7	213:15	8:11,11 16:7
86:12 87:15,18	145:11,14,16	222:11,13,16	<b>curiosity</b> 75:2	17:9 49:6,8,8
87:21 88:1,3,9	146:5,8,11	222:21,23	<b>current</b> 12:19,20	49:16 57:7,8
88:11,14,19,20	147:4,7 148:2	223:2,6,17,19	12:21 19:14	66:15,16
88:23,25 89:2	149:13 150:13	223:21,24	25:22,23 53:3	126:19,20
89:4,6,8,18,21	151:21 152:7	224:18,20,22	77:10 98:10,21	153:14 156:23
89:24 90:2,7	152:19,21	224:24 225:6,8	118:23,24	<b>day</b> 7:9 49:21
90:13,23 91:2	153:5,10,15,17	225:11,20	121:10 123:23	118:21 153:13
91:4,11,19	153:23 155:9	226:5,8,11,13	130:5,6 151:7	172:9,12
92:1,7,11,22	156:1,25	226:20	187:15	181:25 204:24
93:4,9,24 94:5	157:17 158:10	<b>Court's</b> 25:2	<b>currently</b> 12:2	<b>days</b> 169:13
94:12,17,20	158:12,18,20	<b>courtroom</b> 7:15	12:10 13:3	201:9,10 209:6
95:5 96:15,22	158:23 159:3,5	<b>cover</b> 4:12 6:7	35:13,14	214:21
97:3,8,14,17	159:8 169:1,7	6:10 35:16	116:15 148:16	<b>deal</b> 72:4 189:17
97:19,23 98:2	169:16 170:7	38:18 78:17	149:10 151:8	<b>dealing</b> 203:1
98:13,16,22,24	171:11 174:5	82:7 88:5	152:25	<b>deals</b> 72:7
99:2,17,25	175:22 176:7	89:24 139:1	<b>cycle</b> 204:24	<b>dealt</b> 166:12
100:4,23	177:7,10,12	157:3 199:4	<b>cycles</b> 84:25	171:9 203:10
101:20,23,25	178:11 181:10	<b>coverage</b> 172:18		<b>December</b>
102:17 104:8	181:15 182:18	177:24	<b>D</b>	174:13
105:3,10,13,21	182:24 183:6	<b>covered</b> 129:8	<b>D</b> 4:1 189:21	<b>deciding</b> 38:5
106:7 108:7,16	183:11 184:15	157:19,25	<b>dangerous</b>	<b>decisions</b> 183:24
108:23 109:17	184:18 185:5	158:1,4	177:25	<b>deduct</b> 80:11
109:21,23	185:13 186:4,6	<b>covers</b> 58:11	<b>database</b> 225:24	<b>deducted</b> 196:7
110:14 111:4,8	186:21 187:12	157:20,21	<b>date</b> 22:12 49:21	<b>deduction</b>
111:11,17,25	187:24 188:4	<b>Crafton</b> 161:2	82:21 84:20	121:14 123:6
112:9,11	190:6,13,17,20	161:21,22,25	85:1,11 87:7	<b>deductions</b> 71:2
113:12,14,16	191:1,9,13,16	162:4	89:11 98:8	121:10 123:24
114:9,16,20,22	191:20 192:5	<b>created</b> 82:18	111:6,10,10	<b>deemed</b> 219:11
114:25 115:4	192:25 194:5	<b>creating</b> 43:7	112:21,25	<b>defeat</b> 8:16
117:15,20,24	195:3,6 197:24	<b>credit</b> 216:23	113:1 115:8	<b>defense</b> 67:21,22
120:18 121:25	200:18,23	<b>crisis</b> 199:7	154:6,9 155:19	67:23 125:11
122:4,10,17,23	201:2,20 202:5	<b>criteria</b> 14:12	182:25 183:2	<b>defined</b> 101:13
122:25 123:2,8	202:7 203:15	15:3 53:16	186:11,13	134:22
123:10,18,20	204:1,11,13	<b>cross</b> 4:2 27:4	192:25 193:9	<b>defining</b> 106:10
124:23,25	205:3,21 206:7	33:18 153:10	198:4 207:22	<b>definition</b> 106:2
125:11,16	206:18,20	204:16	211:5,13	<b>definitions</b>
126:9,11,14,23	207:4,6,10,12	<b>cross-exam</b>	214:22 217:4	146:18
127:12 128:15	207:14,15,17	46:20	221:18	<b>degree</b> 11:3
129:3,19,22	207:20 208:1,3	<b>Cross-examin...</b>	<b>dated</b> 86:11	69:16 159:17
130:17,22,24	209:17 210:2	48:1,4 126:24	116:13 131:13	161:16
137:3,17,20,22	212:22 214:11	127:1	215:22	<b>delegated</b> 204:6
140:3,14,18,25	214:14 215:10	<b>crossed</b> 165:15	<b>dates</b> 82:12,18	<b>delegation</b> 204:9
141:5,10	216:2 217:10	<b>Cruz</b> 11:2	117:18 155:12	<b>delineated</b>

107:21 <b>demands</b> 170:4 <b>demarcation</b> 143:3 <b>demonstrate</b> 67:22 <b>denied</b> 8:20 138:9 <b>Dennis</b> 181:18 <b>denominate</b> 217:15 <b>denying</b> 7:15 219:16 <b>department</b> 12:24,25 14:20 31:1 34:7 40:17 41:21 44:3 45:2 52:4 52:5,12,13,14 52:15,16 53:18 60:16 62:7 66:19 67:8,11 69:24,25 70:3 70:4,7,20,22 70:24 75:16,23 76:3,7 77:13 78:9,9 108:13 108:15 137:15 148:22,24 150:11 151:5 159:19 160:13 161:2 163:10 164:9 170:21 171:1,14 172:5 172:11 179:13 182:5 202:2 204:7,20 <b>department's</b> 65:5 77:17 <b>departments</b> 179:8 <b>depended</b> 167:11 169:17 <b>dependent</b> 167:13 <b>depending</b> 163:7 163:15 176:25	<b>depends</b> 15:3 44:6,11 45:22 200:7 <b>deposit</b> 118:8 <b>deposited</b> 96:6 <b>deputy</b> 79:23 137:4 138:1 203:7 208:16 <b>describe</b> 43:8 163:3 167:13 169:12 171:8 176:2,19 178:16 181:12 184:12 198:24 204:18,25 205:20 206:3 213:12 <b>described</b> 184:16 <b>description</b> 45:17 74:17 160:6 <b>descriptions</b> 43:2 44:19 45:11,11 <b>designation</b> 14:6 126:5 <b>designee</b> 192:10 <b>designees</b> 208:16 <b>desk</b> 38:11 <b>detail</b> 72:7,8 114:8 115:12 115:14 126:3 179:3 <b>determination</b> 9:20 86:18 87:6 97:10,13 97:15,21 102:12 103:4,4 136:3 142:15 142:22 143:8 143:20,21 148:6 155:16 <b>determinations</b> 103:18 <b>determine</b> 33:19 96:5,10,12	102:18 120:22 123:14 138:25 148:1,20 <b>determined</b> 77:13 108:2,10 144:22 <b>determines</b> 107:18 109:3 109:14 120:20 <b>determining</b> 14:11 114:3 147:13,23 <b>development</b> 61:23 <b>diagnosed</b> 210:11 <b>dialed</b> 192:22 <b>dictated</b> 172:17 <b>died</b> 166:23 <b>difference</b> 9:20 52:3 80:18 81:1 101:2,9 103:12 108:18 108:20,25 109:8,14 115:16 120:7 129:15 135:1 <b>different</b> 36:9 40:11 45:4,10 52:4 54:21 56:7 76:14 78:7 82:13 121:5 125:23 127:16 141:19 141:21 146:22 161:14 162:4 165:21,21 178:4,15 179:8 179:22 184:15 190:10,22 191:18 216:16 <b>differential</b> 131:3 144:7 <b>differently</b> 55:19,20,22 <b>difficult</b> 70:15 201:8	<b>difficulty</b> 51:2 137:15 <b>dig</b> 219:22 <b>dilemma</b> 111:18 <b>diminished</b> 196:4 <b>dire</b> 20:4 <b>direct</b> 4:2 10:23 24:9 34:17 55:8 58:18 64:16 68:23 78:14 80:7 86:22 113:6 123:23 131:8 136:22 139:25 145:13 159:11 178:13 184:10 204:16 205:11 218:19 <b>directed</b> 65:16 79:8 203:20 <b>direction</b> 86:9 103:16 104:1 144:8 151:24 <b>directly</b> 79:14 144:23 171:18 177:20 <b>director</b> 11:14 11:15,16,20,25 74:22,24 75:4 75:5,10,11 76:18 79:6,22 79:23 92:21 96:19 111:5 <b>disability</b> 80:9 206:10,12,13 206:16,21 207:23 208:6 210:4 211:5,11 214:1 215:9,11 215:13,14,17 218:10 219:1 <b>disaster</b> 179:1,9 <b>disciplinary</b> 194:25 199:13 200:3,19,25 <b>discipline</b>	200:18 203:4 <b>discriminatory</b> 182:9 <b>discuss</b> 50:8,22 51:8 <b>discussed</b> 117:1 131:12 137:25 <b>discussing</b> 138:10 173:19 <b>discussion</b> 8:14 51:6,9,12 61:5 88:2 120:16,19 126:10 137:24 226:12 <b>discussions</b> 226:15 <b>distinct</b> 45:1 <b>distinction</b> 57:2 139:19 <b>distinguishes</b> 45:24 <b>distinguishing</b> 46:1 <b>division</b> 12:4,10 12:21,22 70:24 71:19 72:2 75:9,23 77:17 112:18 118:11 176:25 184:2 <b>doc</b> 110:15 <b>doctor</b> 211:18 211:22,23 212:6,8 <b>document</b> 9:22 17:8,11,24,25 18:7,12,25 19:12,13 20:24 20:25 21:25 22:2,9,11 24:11 26:1,6 26:13,14,25 27:2,25 28:1 33:8,13,20 34:20,21 35:12 35:13,15,16,17 35:18 36:5 37:17,21 38:1
--	--	--	---	--

39:12,13,22 40:1 47:4,13 47:14 51:23 52:10 54:5,6,6 54:11 62:1 63:21,23 64:8 78:21 79:4 82:15,16,17 83:14,16 84:22 85:18,19,24,25 86:7 87:18,19 88:6 92:14,16 94:14 97:6,11 97:19 99:16 103:24,25 111:3 114:4,12 122:19 125:8 133:6 134:12 134:13,14 136:25 140:15 141:1,6,7,9 143:14,19,24 185:1,22 186:19 187:3 195:12,15,18 205:12,14,22 207:1,3 213:6 214:7,9,10 215:21,22 216:9 217:11 217:14,18,21 217:23 218:6,7 218:16,18 222:25 223:11 223:13 225:14 225:21 226:8 226:15	15:12,13 19:6 21:8 24:3 25:21,24 26:7 28:22,23,24,25 42:22 43:5 46:21 47:8 49:23,24 50:2 50:3,5 56:12 61:7,13 64:4 64:21,22 65:19 66:1,2,9,25 67:11,13,15 69:10 78:15 82:13,17 88:16 89:11,16 118:2 118:4,6 132:11 138:13 141:3 156:13 157:7 191:19 195:10 220:23,24 223:2	<b>duties</b> 9:7,14,19 11:15,17 43:8 43:14,16 44:4 45:10,17,19,20 64:23 65:23 70:20 71:24 74:11,15,19 75:1,2,9,14,18 76:4,21,22 77:11,16 78:3 78:7 120:15,15 120:23 128:4 171:24 175:25 176:19,21 178:14,16 179:24 182:15 183:15 184:11 184:12,13 190:10,21,24 190:25 191:2,7 191:11,19,24 192:11 198:24 199:1,1 200:4 200:6 201:16 201:17 202:9 204:3 208:7 211:4 219:11 219:14	118:15 120:13 184:16 205:18 205:20 208:10 <b>early</b> 182:23 <b>earnable</b> 134:22 <b>earned</b> 80:9 <b>earnings</b> 114:24 118:24,24 119:25 <b>ease</b> 94:10 <b>easier</b> 38:7 195:7 <b>Easland</b> 81:8 86:10,19 111:13,21 133:14 <b>Easland's</b> 113:5 <b>East</b> 2:17 <b>easy</b> 81:24 201:4 <b>edition</b> 35:25 <b>edits</b> 128:13 <b>education</b> 141:19 159:20 160:20,25 <b>educational</b> 11:1 69:13,14 100:3 140:10,19 141:12,12,15 159:14 <b>effect</b> 20:9 22:18 <b>effective</b> 112:25 116:16 <b>EID</b> 94:24 95:8 95:10 <b>eight</b> 12:13 82:10 113:8,9 146:8,9,11 161:14,14 <b>Eighteen</b> 19:6 146:7 <b>either</b> 33:23,24 59:13 67:15 68:4 102:3 142:2 146:20 182:22 217:2 222:17 226:1 <b>Election</b> 214:1	218:9,10 219:1 <b>Eleven</b> 207:14 <b>eligibility</b> 164:18 165:10 <b>eliminate</b> 164:14 <b>else's</b> 92:19 <b>emergencies</b> 176:22 <b>emergency</b> 161:13 183:17 183:21 192:12 199:8 208:8 <b>emphasis</b> 11:3 <b>employed</b> 11:10 12:12 16:1 58:9 130:16,21 131:2 <b>employee</b> 14:2 31:23 33:8 43:25 52:21 72:7,8 77:8 81:4 95:12 102:19 116:17 118:7 120:1,3 120:21,22 124:2,10 135:14,22 136:5 180:14 181:3 199:16 <b>employee's</b> 101:12,12 103:5 107:3 110:5 121:14 122:24 123:15 124:4 135:10 135:20 <b>employees</b> 1:3 2:2 3:3 7:22 13:2,9,16,22 15:16 18:9,10 21:10 25:15,23 28:10 29:9,13 29:13,23,24 30:4,21,23 31:2 39:17 41:6,8,13 43:13 47:9,10
<b>documentation</b> 14:14 57:20 61:13 62:1 63:16,18 64:1 65:22 66:6 87:9 91:22 96:14,16 98:4 98:5 128:12 148:19	<b>doing</b> 64:12 102:1 103:15 139:5 169:4 172:16 177:12 177:14 181:19 181:20 191:10 192:8 197:17 202:14	<b>duty</b> 5:22,23 42:12,14,16 43:7,12,24,24 44:3,13,15,17 44:18 45:9 74:23 168:11 170:4 172:9,10 172:25 192:1 202:10 211:9	<b>E</b> <b>E</b> 3:4 4:1,10 5:1 6:1 57:10,10 <b>E-board</b> 162:10 162:12 <b>e-mail</b> 137:1 138:14,15 <b>e-mails</b> 137:10 <b>earlier</b> 102:10	<b>documents</b> 172:23

70:25 71:2 73:7 118:20 119:2,2 139:4 149:3 150:21 190:9 199:22 <b>employer</b> 73:20 74:3 100:25 101:11 103:2 139:1 226:1 <b>employer's</b> 101:15 135:19 <b>employer-paid</b> 15:11,13 120:10 124:8 <b>employment</b> 9:9 18:9 69:7,17 95:10 139:18 160:16 <b>encompass</b> 74:16 141:21 <b>encompassed</b> 99:24 <b>ended</b> 166:8,19 <b>ends</b> 90:8 <b>engine</b> 173:8,9 184:8 <b>engineer</b> 45:18 162:16,21 209:2 <b>engineers</b> 172:19 <b>ensured</b> 221:19 <b>enter</b> 37:8 225:24 <b>entered</b> 70:25 195:23 <b>entering</b> 71:5 <b>entire</b> 26:17,18 30:1 94:13 <b>entirely</b> 22:11 <b>entirety</b> 73:8 <b>entitled</b> 23:14 76:13 99:12 100:14,18 120:23 135:14 186:16 189:5 217:6 220:11	<b>entries</b> 117:15 213:5,13 <b>entry</b> 98:17 114:18,21 116:9 117:2 119:9,11 155:24,24 198:6 224:24 225:8 <b>EPMC</b> 15:18 18:11 23:14 25:16,19 26:7 31:3 39:14,23 40:12 51:8,9 51:21 124:8,12 139:13,13 140:11 188:18 196:14 213:18 216:15 221:21 222:1 224:14 <b>equipment</b> 176:22 202:14 202:17 <b>equitable</b> 165:6 <b>equivalent</b> 121:6 <b>error</b> 186:12 <b>especially</b> 44:7 52:3 67:8 184:5 <b>ESQ</b> 3:4,11,16 <b>essentially</b> 72:11 74:12 <b>establish</b> 41:2,5 <b>established</b> 40:20 42:17 55:16 152:12 164:18 205:4 <b>estimate</b> 169:16 179:23 200:14 204:5 214:5,14 214:22 221:8 <b>estimates</b> 202:12 202:14,16 205:9 217:15 <b>estimating</b> 203:19 <b>estimation</b>	202:11 <b>evaluate</b> 177:13 210:19 <b>evaluated</b> 77:11 210:6 <b>evaluation</b> 138:21,24 139:5 221:4 <b>evaluations</b> 178:25 <b>events</b> 86:7 <b>everybody</b> 7:25 17:13 164:22 165:7 182:2 <b>evidence</b> 4:11 5:2 6:2 16:17 16:19 17:2,8 18:16,20 20:2 20:19 21:12,16 22:5 23:24 24:5,6,15 25:8 26:10,21 28:4 28:20 30:16 31:17 32:8 34:3,24 36:15 37:9 39:6 40:4 40:9 42:2 44:13 46:18 47:22 48:13,20 49:2 81:12,13 81:16,17 83:9 83:19,20 84:12 84:17 87:23 89:8 93:22 94:20 124:21 124:25 140:23 157:9 186:2 188:2 207:9,20 217:9 218:1 222:13,17 223:1,3,6,16 223:21 226:9 226:11,16 <b>exact</b> 49:21 <b>exactly</b> 31:23 96:2 105:21 125:25 133:4	162:19 187:7 189:20 202:16 212:18 <b>examination</b> 10:23 58:16 65:3 68:23 147:10 155:1 159:11 163:5 164:6 <b>examined</b> 10:14 68:14 159:3 <b>examining</b> 47:18 <b>example</b> 200:24 <b>exceeded</b> 209:7 209:8 <b>exception</b> 73:19 163:24 <b>excerpt</b> 19:15,16 19:17 55:17 <b>exclude</b> 7:15 8:17 <b>excluded</b> 80:10 <b>exclusively</b> 104:3 <b>excuse</b> 10:8 60:3 78:16 111:14 140:5 178:17 <b>executive</b> 11:14 11:15,16 12:8 <b>exercise</b> 163:8 163:14 165:24 166:11 174:25 <b>exercises</b> 175:6 177:14 <b>exhibit</b> 6:7 16:11 16:24 17:1,8 17:16,18 18:18 18:19,22 19:2 19:21,23 20:3 20:8,16,18,22 20:22,22 21:5 21:6,14,15,19 21:22 22:9,13 22:17,21 23:2 23:22,23 24:22 24:24,24 25:6 25:7,11,13	26:1,3,19,20 26:24 27:9,23 28:12,18,19,24 29:6,10,11,21 29:22 31:7 32:5,7,12 34:2 34:18 35:24 36:9,12,14 38:16,18 39:4 39:12 40:7,8 47:3,14,17,20 47:21 48:22,25 49:4,5 55:9,15 55:16 56:22 78:16 81:10,12 81:16,18 82:3 82:3 83:2,4,6,7 83:8,12,18 84:2,5,7,11,13 84:15,16 88:5 88:8 89:4,6,7 90:25 92:9,12 93:12,22 94:12 94:19,23 95:2 97:9,11 101:5 103:16,24 104:5,6,7 105:3,20,21 106:11 112:9 113:7 114:7,10 114:11,19 115:6 117:24 117:25 125:4 125:10 131:9 132:3,3 136:23 140:1 142:12 146:5 147:19 147:21 154:4 155:4,23 185:1 185:5,7,8,12 185:13,15,19 195:3 201:21 205:12 206:20 206:25 207:10 207:19 214:2,4 214:11 215:3 216:1 217:9,10
--	--	--	--	---

217:23,24,25 218:4,5 222:6 222:7,9,11,12 222:16,18,19 223:1,9,15,17 223:20 224:2 <b>exhibits</b> 17:15 42:1,1,2,10 46:17 55:8 96:25 117:14 136:23 <b>existed</b> 220:24 <b>existence</b> 173:25 <b>existing</b> 35:11 <b>exists</b> 33:20 <b>expand</b> 66:8 <b>expect</b> 200:9 <b>expected</b> 11:18 <b>experience</b> 15:2 130:8,9 132:23 134:25 148:17 150:9 170:17 183:22 190:15 190:16 191:24 199:10,10 203:11 <b>explain</b> 94:23 107:16 215:10 218:23 <b>explained</b> 166:9 173:17 <b>exposed</b> 62:11 <b>extended</b> 58:22 176:11,15 <b>extensive</b> 200:24 206:22 <b>extent</b> 152:24 153:1 <b>extra</b> 170:5	178:1 187:19 220:13 <b>fact/law</b> 4:21 <b>factor</b> 166:18 <b>factual</b> 8:13,14 9:16 <b>failed</b> 175:9,16 <b>fair</b> 106:20 165:6 <b>fairly</b> 71:1 189:24 <b>falls</b> 40:21 <b>familiar</b> 13:15 15:5 34:6 40:11 42:16 45:8 65:5 185:22 <b>far</b> 8:14 12:14 14:1 15:7 30:25 48:20,20 101:10,10 103:3 106:17 107:12 114:8 131:18 138:8 139:2 152:7 155:5,12 158:5 164:11 167:8 183:5 <b>Fartus</b> 137:2 <b>fast</b> 121:25 123:3 <b>fault</b> 8:5 <b>fax</b> 6:10 87:7 89:12,14,19,24 155:18 <b>faxed</b> 85:25 88:5 88:17 89:11 <b>February</b> 174:14 176:13 <b>federal</b> 124:4 <b>feel</b> 88:25 89:1 <b>felt</b> 9:5,10 182:9 <b>fifth</b> 216:1 <b>fight</b> 163:19 <b>figure</b> 85:9 98:5 201:6,9,11 217:17	<b>figured</b> 193:2 <b>figuring</b> 202:17 <b>file</b> 5:17 12:23 20:12 21:8,10 27:16,17 28:9 28:14,16 29:9 29:13 30:5,6,8 30:9,19,22,23 31:5,13 32:23 33:8 34:22 39:15,18,23 45:7 46:8,9 53:23,25 54:5 54:10 57:11,14 57:24 60:24 62:6 63:12 64:1,7 65:17 65:23 66:1,9 66:14,18,21 67:4,6 96:23 98:22 99:11 106:15 109:2 109:10,13,15 115:23 116:18 116:22 119:19 120:5 124:5,14 126:1 127:17 127:19 139:17 141:13 142:7 143:2 158:7,15 183:3 <b>filed</b> 182:7,21,23 183:1 <b>files</b> 67:9 <b>filing</b> 182:13 183:13 220:3 <b>fill</b> 167:5 168:18 169:3 209:5,14 <b>filled</b> 59:5,9 168:13 209:18 214:20 <b>final</b> 1:8 2:7 53:18 56:12 86:18,24 87:1 87:8,13,17,19 87:20 91:6,9 111:14,15,22	216:8,11 221:4 <b>finalize</b> 36:23 <b>finance</b> 4:15 14:21 41:21 53:17,19 66:20 69:25 70:2,4,7 70:20,22,24 75:4,5,10,11 75:16,23 76:3 76:7,18 77:17 78:9 79:6,22 92:21 96:19 150:11 151:5 171:5,7,18 172:3,10 173:1 <b>find</b> 25:6 64:21 101:25 191:14 205:22 <b>Finding</b> 4:20 <b>fine</b> 35:22 102:2 177:12 <b>fingers</b> 140:20 <b>finish</b> 31:10 174:8,14 203:16 223:5 223:23 <b>finished</b> 165:20 <b>fire</b> 5:5,7,14,18 5:22 6:3,5 12:24,25 13:10 15:15,17 18:9 18:10 21:7,10 21:24 24:12 26:24 27:18 28:2,10,14 30:21 31:1,2,4 31:12,13,23,25 32:3,25 34:22 35:19 39:15,16 40:17 44:22 45:2,6,7,7,18 45:19,25 46:4 46:5,6,8,9 52:4 52:5,13,16,16 65:5 66:11,19 67:8,11 78:9 95:19,23,24,25	96:10,11 98:6 98:12,21 104:18,21,23 105:1,15 106:21 107:7,8 107:19,19 108:13,14 109:9,10 115:23 116:13 119:6,8 129:8 129:15 130:3 130:10,14,16 131:2,4 136:19 136:19 137:4 137:15 138:1 141:13 142:5 144:7 145:5,22 145:25 148:22 149:14 150:23 151:6,7,11 152:5 157:17 157:19 158:3 158:14 159:18 160:13,23 161:2,23,24 162:5 163:19 164:9 166:2 167:22 169:21 170:21 171:1 171:14 172:4,7 172:8 175:1 177:18 178:7 178:15,17,18 178:20,20 182:4 183:21 184:12,13 188:24 190:5,9 191:5,9,14 192:9 199:8 200:6,21 202:2 203:25 204:7 204:20 207:25 208:8 218:21 219:13,18 220:3,11 <b>firefighter</b> 159:20 160:4,9
<b>F</b>				
<b>F-A-R-T-U-S</b> 137:2 <b>F-R-A-T-U-S</b> 137:3 <b>fact</b> 17:10 77:14 128:1 162:4				

160:19 161:1,5 161:11 162:15 175:2 191:25 <b>firefighter's</b> 202:23 203:2 203:12,21 204:8 <b>firefighters</b> 161:18 164:5 172:18 <b>first</b> 3:17 7:18 8:21 10:13 11:9,12 37:18 37:19 49:18 55:11 68:13 69:19 90:12 91:20 94:22 104:5 115:13 118:24 119:5 142:9 159:2 163:23 164:21 166:8,13,15,17 167:1 168:2 173:19,24 174:5,6,10 180:3,19 181:13 184:4 193:22 204:13 206:3,15 210:25 211:17 212:7,13 213:8 215:15,17 218:18 <b>first-end</b> 178:4 <b>fiscal</b> 73:20,21 107:1,2,14 193:9 <b>five</b> 146:20,25 <b>fix</b> 201:4 212:13 <b>fixed</b> 212:13 <b>flexibility</b> 191:18 <b>Floor</b> 3:17 <b>focus</b> 67:6 <b>folded</b> 97:3 <b>folder</b> 38:10 <b>follow</b> 63:9	143:17 148:25 222:4 <b>follow-up</b> 64:25 130:23 <b>following</b> 16:15 79:17 87:8 91:24 118:10 132:1 181:22 210:17 <b>follows</b> 10:14 68:14 159:3 <b>foothills</b> 184:5 <b>force</b> 20:8 22:18 23:7 <b>forgot</b> 81:22 <b>form</b> 14:19 33:1 52:11,17,24 57:17 61:9,9 62:6,9 63:12 64:14 65:7,9 65:12 67:2 77:10 148:21 169:5 180:23 208:24 209:4 <b>formal</b> 60:18 133:19 218:24 <b>formalize</b> 14:17 <b>formalized</b> 170:18 <b>formally</b> 133:19 <b>formatting</b> 56:6 <b>former</b> 136:5 137:4 <b>forms</b> 61:12 168:13,16,19 168:23 <b>forth</b> 33:1 46:10 52:20 105:20 145:6 146:1 <b>forward</b> 98:9 186:23 187:5,6 199:13 201:12 205:23 <b>forwards</b> 199:12 <b>found</b> 28:25 143:2 <b>foundation</b>	13:18 26:11 40:23 41:17 46:2 60:20 63:4 127:11 140:21 145:9 158:9,11 168:25 209:16 <b>four</b> 122:15 166:19 173:8,8 180:8 216:19 <b>fourth</b> 166:8 173:20 <b>frame</b> 177:4 182:18 <b>frames</b> 191:3 <b>frankly</b> 54:6 <b>FratuS</b> 137:4,23 <b>free</b> 88:25 215:18 <b>front</b> 18:23 36:24 44:21 56:25 65:19 82:3 91:11 96:23 97:9,20 117:22 118:16 122:19 132:11 185:3 221:23 <b>full</b> 10:16 68:17 160:16 <b>full-time</b> 76:17 <b>fully</b> 51:24 <b>function</b> 183:20 <b>further</b> 9:6 20:14 41:23 47:25 62:14 68:4 101:21 122:8 126:8 153:8 156:7 158:17 <b>future</b> 94:3 98:11 102:7 106:18 187:16 189:10	<b>general</b> 73:10 99:21 <b>generalized</b> 153:3 <b>generate</b> 52:17 <b>generated</b> 14:19 52:11 89:14 118:9,12 <b>getting</b> 64:9 102:19 152:7 164:12 177:25 191:10 209:1,2 210:9,15 212:8 214:19 219:23 <b>give</b> 38:24 60:18 67:15 69:12 73:22 77:8 125:12 134:10 192:10 195:23 200:23 <b>given</b> 79:22 129:10 131:16 161:1 165:21 174:2 193:8,10 196:4 219:4,6 <b>gives</b> 23:11 43:24,25 <b>go</b> 7:20 20:6 51:4 52:10 64:3 74:23 75:25 82:7 88:1 97:8,25 110:4 126:9 141:10 152:4 158:20 164:12 164:15 165:8 167:21 168:12 175:3,11,20,22 177:10,12,13 179:3,13 184:6 186:23,24 187:14 188:5 192:14 193:3 201:2 202:15 203:17 206:9 206:12 208:19 209:9 215:14	220:20 <b>goes</b> 19:13,22 53:17 139:9 164:21 190:12 <b>going</b> 8:17,18 9:1,6,15 10:7 16:23 23:8,10 25:25 26:19 28:24 29:14,19 33:24 35:23 36:12 37:25 38:13,17,22,24 39:2 41:25 45:9 46:16 48:22 51:2,3 53:7,8 56:11 62:25 64:5,6 64:13,13 66:3 67:15,16 68:5 68:6 87:8 88:5 104:4 111:14 111:21 119:4 125:12 126:23 128:16 129:13 129:15 141:4 144:23 152:22 153:11,12,21 163:17 164:25 166:17 168:7 168:12,17 170:19 175:8 178:7,22 179:13,13,14 180:6,19 184:7 186:11 187:25 189:21 190:2 192:14 199:17 199:20 203:4,8 203:15 205:17 207:17 208:6 210:9,19 212:9 217:6,12,18,20 221:4,7 223:19 225:4 226:5,7 <b>good</b> 10:25 96:13 126:20 <b>gotten</b> 46:20
---	---	---	---	--

100:20 136:6 138:17 <b>governed</b> 163:5 <b>Grab</b> 159:5 <b>graduate</b> 162:2 <b>graduated</b> 11:2 159:16 <b>grant</b> 67:16 <b>granted</b> 10:2 98:11 106:9 116:14 187:16 <b>granting</b> 8:7 <b>grass</b> 175:1 <b>great</b> 8:9 16:5 29:25 41:23 62:13 85:12 88:23 90:22 107:15 123:18 160:11 189:17 226:18 <b>greater</b> 178:15 184:11 200:10 <b>ground</b> 199:8 208:8,9 <b>grounds</b> 23:9 183:17 225:9 <b>group</b> 31:24,25 40:20 41:13 95:23,24 96:8 98:21,22 99:11 101:16 103:3 109:10,15 115:23 119:17 119:18,19 124:20 142:3,6 157:23,25 158:4 195:25 <b>groups</b> 41:2,5,9 72:15 96:4 107:19 119:16 120:4,5 124:20 141:16,18 142:3 <b>guess</b> 25:6 45:23 80:23 103:7 130:9 131:22 153:8 169:14	169:15 191:4 191:17 199:9 206:2 209:3 219:23 <b>guessing</b> 169:14 <b>guidelines</b> 14:10 <b>guy</b> 180:3,19,20 181:13 <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <b>H</b> 4:10 5:1 6:1 <b>half</b> 119:3 126:20,21 205:6 <b>hall</b> 120:13,19 <b>hallway</b> 50:20 51:6,7 <b>hand</b> 10:10 68:10 70:10 158:24 170:23 <b>handed</b> 17:3,11 17:24 18:12 <b>handing</b> 17:4 47:3 <b>handle</b> 200:9,10 <b>handling</b> 13:3 <b>handwriting</b> 4:14 6:10 84:7 84:9,12 86:4 87:3 88:6 92:16,19 93:1 93:5,17,19,22 93:25 94:1,2 94:15,24 96:19 98:16 104:5,11 104:13 106:25 131:13 132:16 185:6,10 <b>handwritten</b> 95:8 140:15 <b>hang</b> 24:20 85:4 114:16 144:18 158:10 187:24 225:6 <b>happen</b> 192:13 201:11 221:7 <b>happened</b> 54:19	184:4 193:24 204:25 210:5 <b>happening</b> 85:5 <b>happens</b> 165:16 180:14 183:22 <b>hard</b> 173:6 <b>Harris</b> 71:13 <b>hazards</b> 179:5 <b>HAZMAT</b> 161:13 175:2 <b>head</b> 126:2 <b>heading</b> 29:23 <b>heal</b> 200:1 <b>health</b> 95:16,22 96:1,2 100:3 <b>hear</b> 58:23,25 59:2 70:12,14 101:21 102:1 126:4 153:6 204:13 <b>heard</b> 2:20 30:17 <b>hearing</b> 7:9 50:15 206:21 215:15 226:23 <b>hearsay</b> 87:14 87:16 187:11 187:13 188:1 225:10,12,18 226:2,4,10 <b>HEIDI</b> 1:23 2:22 <b>held</b> 71:25 218:24 <b>Helen</b> 4:3 10:7 10:12,18 <b>help</b> 19:9 204:23 <b>helped</b> 200:1,1 <b>hey</b> 199:21 208:17 <b>high</b> 159:15 <b>higher</b> 13:22 14:13 52:8,10 53:4,9,16 58:2 58:19,19,20 59:4,5,14,17 59:19 75:18 76:4,16 128:4	134:11 169:5 170:14 176:3 180:1 203:6 209:7,10 <b>higher-acting</b> 14:1,25 15:1 33:7 52:21,22 52:22 53:5,6 <b>highest</b> 174:23 <b>Hills</b> 161:2,21 161:22,25 <b>hire</b> 149:3 160:24 <b>hired</b> 69:21 160:23 <b>historical</b> 25:4 <b>historically</b> 23:11 <b>hold</b> 198:19 204:11 <b>holding</b> 78:5 <b>holiday</b> 115:19 115:24 116:7 117:16 172:11 173:14 <b>honest</b> 169:18 <b>Honestly</b> 72:19 <b>Honor</b> 7:19 8:1 8:6,10,22 10:4 10:8,21 12:14 15:19 16:3,8 16:16,18,22,25 17:3,5,20 18:15 19:5 20:1,15 21:11 21:13 22:4,6 23:15,21 24:4 24:14,17 25:1 26:9,22 27:11 27:20 28:3,6 28:21 29:2 30:15 31:16 32:6,10 33:17 34:1,14,23 36:7,13,17 37:8,14 38:20 39:3 42:18	44:12 46:12,23 47:13 48:11 56:11 57:3 58:10 60:3 61:21 64:25 65:15,25 67:5 67:18 75:22 81:16,20 83:18 84:11 85:20 87:22,25 88:18 89:3 90:6 92:3 93:21 94:16 96:20,25 97:5 97:16,24 101:18 113:11 114:18 117:14 117:21 123:19 124:21 126:8 126:22 129:1 140:21 145:8 150:12 152:6 152:18 153:9 153:11 154:23 155:8 156:7 157:13 158:17 168:25 175:19 175:21 177:2 178:9 185:4 186:1,20 190:11 195:4 197:22 201:23 207:8 212:20 217:8 220:14 221:22,25 222:8 223:15 223:22 225:5 225:13 226:6 226:19,22 <b>Hospitality</b> 2:17 <b>hour</b> 126:12,20 126:21 158:21 <b>hours</b> 80:8 107:2 107:3,14 120:1 133:7 196:9 198:10 213:15 <b>house</b> 172:7 <b>houses</b> 43:2
---	---	---	--	--

<b>housewife</b> 69:17	81:3 84:22,23	<b>included</b> 72:13	215:14	54:19 173:3
<b>HR</b> 11:7,14,16	84:24 85:17	98:20 100:21	<b>information</b>	<b>interim</b> 36:19
11:20,21,22	100:18 192:17	148:4 189:6	71:5 77:15	151:7
12:4,8,9,10,10	193:14 194:4	195:25	91:16 108:4	<b>interlineations</b>
12:21,22 14:20	<b>implemented</b>	<b>includes</b> 116:3,4	117:9 118:10	35:7
34:7 44:3	94:10 116:16	<b>including</b> 98:10	146:15 147:5	<b>intermediary</b>
52:25 53:11,15	125:19 193:17	98:14 99:6,7	171:4	36:20
96:8 138:5	<b>implementing</b>	99:22 107:19	<b>informed</b> 136:3	<b>internal</b> 94:3
148:23 149:1	28:1 83:25	115:7 117:10	<b>infrequent</b>	163:12
<b>Hum</b> 55:21	91:21 102:11	161:11 176:21	76:20	<b>internally</b> 95:11
<b>human</b> 60:16	135:22	187:15,19	<b>initial</b> 69:7	143:11
62:7 65:6	<b>import</b> 50:13	188:18	163:18	<b>Interoffice</b> 4:15
66:16,22 69:23	<b>important</b>	<b>incomplete</b>	<b>initially</b> 70:25	<b>interpose</b> 176:5
77:8,12 108:14	199:14 220:1	60:11,20	73:17 178:2	186:2
137:9 149:25	<b>imposed</b> 18:10	<b>inconsequential</b>	<b>initiate</b> 75:5,17	<b>interpretation</b>
<b>hurt</b> 175:6	<b>improper</b>	209:24	<b>initiated</b> 148:24	91:12 117:11
<b>hybrid</b> 127:16	187:25	<b>increase</b> 116:15	<b>initiating</b> 76:3	<b>interpreting</b>
<b>hybrids</b> 127:21	<b>in-and-out</b>	116:17	<b>initiation</b> 200:7	99:16
<b>hypothetical</b>	163:8	<b>increases</b> 110:4	<b>injured</b> 200:16	<b>interrupting</b>
60:12,20	<b>inappropriate</b>	<b>incur</b> 124:9	204:5 206:4	128:18
	60:5	<b>incurred</b> 74:21	207:24	<b>interviewed</b>
<b>I</b>	<b>inappropriately</b>	<b>independent</b>	<b>injuries</b> 210:22	77:15
<b>idea</b> 63:18 73:10	59:21 60:2,9	103:18	211:17	<b>involved</b> 12:22
137:13 190:23	<b>inasmuch</b> 202:8	<b>index</b> 82:7	<b>injury</b> 173:14	60:22 61:17
<b>identical</b> 55:14	202:13	<b>indicate</b> 27:14	180:15 198:6,7	72:17,19 73:15
55:14,15	<b>incentive</b> 72:13	63:17	198:9,10,11,12	79:25 108:8
<b>identification</b>	120:2,9 121:23	<b>indicated</b> 9:5	198:22 203:23	138:2 151:14
4:11 5:2 6:2	122:3,11	63:15 102:3	206:3 211:17	162:10 163:25
16:8,12 17:19	123:17 140:10	126:16 142:9	213:15	177:16 179:6
38:22 39:5	141:12,15,19	<b>indicates</b> 22:9	<b>inputting</b> 118:10	192:16 200:15
48:20 49:1	141:20 196:13	64:7 89:18	<b>inquire</b> 55:3	202:19 203:1
88:9 95:10	<b>incident</b> 66:11	117:17	<b>inquiries</b> 155:12	203:25
<b>identify</b> 49:7	175:1,2,2	<b>indicating</b> 90:25	<b>inquiring</b> 61:6	<b>involvement</b>
<b>identifying</b>	176:24,24,25	110:17 143:13	117:6	61:18 150:24
48:21 134:17	181:19 183:22	<b>indication</b>	<b>inquiry</b> 221:13	<b>issue</b> 54:18
<b>immediately</b>	184:3	112:20 113:25	<b>instances</b> 62:11	80:18,20 97:6
91:24	<b>incidents</b> 177:15	<b>individual</b> 149:8	117:5	143:18 148:1
<b>impact</b> 135:4,20	178:25 184:13	150:10,16	<b>instructions</b>	152:11 167:21
<b>implement</b> 13:7	200:15,17,18	151:15,18	144:5,24	181:7 189:23
72:24 73:11	203:20 204:18	209:6	<b>insurance</b> 100:3	225:1
79:11 99:19,22	<b>includable</b>	<b>individual's</b>	<b>intended</b> 26:23	<b>issues</b> 25:5 51:8
100:22 104:19	146:14 147:2	120:16	<b>intention</b> 183:4	67:7 101:17
108:9 111:20	147:24 148:4	<b>individuals</b>	<b>intentional</b>	152:25 153:2,3
111:23 134:13	<b>include</b> 39:18	139:7 150:15	102:1	153:6 193:6
138:5	44:4 66:11	150:25 164:12	<b>interested</b> 54:7	194:1,24,25
<b>implementation</b>	100:6 121:21	<b>induced</b> 189:1	178:5	199:13 200:2
22:12 79:8	136:7 200:12	<b>industrial</b> 80:9	<b>interesting</b>	200:19,25

203:1 221:10 222:1 225:1 <b>it'll</b> 26:25 <b>Italian</b> 11:6 <b>Italy</b> 11:5 <b>item</b> 73:15 121:4 121:6,17 136:15 <b>items</b> 62:8 72:4 72:4,10,13,22 73:2,6 79:10 124:16 136:14 147:24 <b>IV</b> 198:11 210:11	41:12,23 42:4 42:7,8,14,15 42:18,20,21 43:3,22 44:12 45:12 46:2,23 47:2,12,23 48:9,11,24 50:18 51:7,15 54:15,23 55:18 56:11 57:3,5,7 58:10,17,24 59:3,16,24 60:3,6,7,14 61:1 62:4,13 63:4 64:15,25 65:4,15,25 66:8,15 67:5 67:18,23 68:4 68:20,21,24 70:16,18 71:8 75:22 76:1 78:2,11,13,20 81:13,15 83:10 83:18,21,23 84:11,18 85:13 85:20,22 86:3 86:21 87:22 88:15,19,21,24 89:1,3,9 90:6 90:11,14,15 91:5,14 92:8 92:12,13,24 93:10,16,21 94:15,18,21 95:7 96:20 97:5,9,16,18 97:24 99:3 100:5,13 101:3 101:22 102:5 103:6 104:9,10 105:8,24 106:12 108:11 109:18,22 110:7,18 111:1 112:1,6,12 113:9,13,15,17 113:18 114:11	114:14 115:5 117:21,25 118:1 123:22 124:21,24 125:2,14,17,18 126:8 127:6,11 128:14 129:1 129:17 130:13 133:20 135:8 137:16,18 140:21 143:17 143:23 144:1 144:17 145:1,8 147:8,11,20 148:12 149:16 150:14 151:22 152:9,10,20,24 153:8,16 154:23 155:2,8 155:10 156:3,7 156:20,24 158:9,11,17,19 159:8,9,12 168:6 169:8 170:8 171:12 174:19 175:20 175:23 176:18 178:12,19 181:11 182:12 183:12 184:19 184:24 185:8 185:10,14 186:9 187:1 188:8 190:7,14 190:18,21 191:4,12,15,17 191:22,23 192:15 193:15 194:7 195:4,7 195:9 197:22 198:1 201:7,23 202:1,20 203:14,18 204:2,12,14,17 205:7,22 206:1 206:8,23 207:5 207:8,21 208:4	209:21 210:3 212:19,23 213:1 215:1,6 216:3,5,7 218:2,15 220:9 220:17 221:25 222:4,8,14,19 223:4,7,8,15 223:22 224:1 224:19 225:13 225:22 226:6 226:18,22 <b>Jensen's</b> 55:5 <b>job</b> 1:24 13:5 42:23,25 43:2 43:24 44:19,19 45:11,17 74:17 77:3 78:5,6 160:5 190:23 190:25 191:25 206:4 210:24 211:1,3,4,8 <b>John</b> 3:10,11 7:7 <b>Johnson</b> 148:7 155:14 197:15 <b>Johnson's</b> 91:19 147:12,17 148:5 <b>joined</b> 159:18 160:11,13 <b>judge</b> 1:5 2:4,21 207:7 <b>judgment</b> 134:13 <b>July</b> 107:11 198:2,3,3 207:24 208:2 210:5,17,17 211:4,12 212:7 <b>June</b> 85:10 86:11 87:7 112:24 113:1 118:15 131:13 154:7,9 155:13 155:24,25 193:3 195:12 <b>justify</b> 168:23	209:1 <hr/> <b>K</b> <hr/> <b>K-I-N-G</b> 69:4 <b>Karen</b> 221:13 <b>keep</b> 12:16 70:11 88:20 104:4 123:12 164:1 169:18 170:21 171:5 172:9 180:5 190:17 198:10 219:23 <b>keeps</b> 172:1 <b>Kennedy</b> 3:4 7:19,20,21,21 8:10,22,24 9:5 9:17 12:14 13:18,23 16:18 17:10 18:1,17 19:15,20 20:4 20:7,11,14 21:13 22:6,8 22:16,21 23:3 23:5,17,20,25 24:16,19,21 25:1 26:11 27:3,11,14,19 28:6,8,11,13 28:17 29:1,14 29:16,18 30:1 30:5,7,9,11,14 31:19 32:11,12 32:14,21,24 33:6,9,12,17 33:23 34:25 35:1,4,7,10,15 35:22 36:16,24 37:2,4,7,10,14 38:10 40:1,5,6 40:23 41:10,17 41:19 42:24 43:18,20 44:9 44:16,21 45:1 45:4,8,14,16 45:23 46:5,11 46:15,19,22
--	---	--	---	--

47:16,18 48:2 48:5,10,14,16 48:19 49:3,14 49:17 51:5 54:24 55:21,23 55:25 56:1,14 56:17,23,24 57:9 58:3,7,11 58:23,25 59:11 59:23 60:11,19 61:15,21 62:16 62:19 63:5,8 64:18 66:23 67:4,9,25 70:9 70:12,13,17 71:7 75:19 77:25 81:19,22 81:25 82:2,6 82:10,12,15,19 82:22 83:4 84:14 87:14,17 87:24 88:18 89:5 91:9,18 92:3 93:14,23 95:3 96:24 99:14 100:7,11 100:16 101:18 101:24 102:3 102:15 104:7 105:9,12,18,20 105:23 108:6 110:23 112:5,8 112:10 113:8 114:6,17,21,24 115:3 122:5,8 123:19,21 126:16,21 127:2,8,14 128:21 129:4 129:20 130:1 130:15,20,23 131:1 133:21 135:12 137:6 138:12 140:5,8 140:23 141:4 141:11 142:13 143:1,10,13,16	144:4,21 145:4 145:12,15,17 146:3,7,9 147:18,25 149:12 150:12 151:20 152:6 152:18 153:11 153:19,25 154:2,21 156:8 156:12,21 157:2,5,12,14 157:18 158:16 167:25 168:4 168:25 171:10 175:19,21 176:5,9,12,17 177:2 178:9,17 181:9 182:16 184:14,23 185:12 186:1,5 186:7,19 187:11,22,25 190:11,19 191:8 192:4 200:17,21 201:1,19 202:4 203:13,24 204:9,15 205:2 206:6,17 207:11,13,15 207:18 209:16 210:1 214:10 214:12,17 215:5 216:4 217:11,20,24 218:13 220:6 220:14,19 221:15,22 222:6,10,18,20 222:22,24 223:18 225:5,9 226:2,7,10,12 226:17 <b>Kennedy's</b> 34:5 <b>kept</b> 53:22 66:18 168:24 171:19 172:24,25	213:16 <b>kids</b> 199:22 <b>kill</b> 199:23 <b>killed</b> 175:7 <b>kind</b> 9:21 63:18 163:19 166:17 170:2 171:19 173:5 179:2,5 180:17 199:19 202:16 203:8 208:14 209:24 210:12,22 211:8,9 212:14 <b>kinds</b> 193:12 202:18 <b>King</b> 69:3,6,8 156:1 <b>knee</b> 207:24 210:7,8,9,19 210:20 211:18 211:19,23,24 211:25 212:1 212:10,13,15 <b>knew</b> 199:9,11 199:18 <b>know</b> 9:21,22 23:20 33:5,21 35:5,10 37:18 37:20 42:5 43:13 44:1 46:19 49:14,18 52:4 54:10 57:1,15,15 61:10,20 62:10 65:14 66:13,21 67:9 74:2 78:23 79:25 80:3,5,5 81:3 81:12 85:5 86:9 89:15 90:2,4,20 91:10 94:9 95:23 98:3 100:17,19 104:24 106:16 109:6 110:12 110:21 111:17	119:16 122:20 125:25 134:9 134:24 135:15 136:2,6,9 137:10,12,18 138:1,16,19 139:3 140:25 141:1,25 144:10,18 151:2,4 153:2 153:13,14,20 156:6 161:20 163:11 166:22 167:11 168:20 170:6 172:11 182:21 183:4 194:2,13 196:25 199:16 201:12,16 202:16,21 205:5 214:21 216:13 220:24 221:6,18 222:3 222:16 225:20 225:21 <b>knowledge</b> 15:6 15:10 25:18 32:19 54:17 73:7 77:22 108:12 130:9 132:23 180:11 <b>knowledgeable</b> 51:23 <b>known</b> 189:4 <b>knows</b> 100:7 140:22 <b>Kulikoff</b> 181:16 181:19	41:17 60:19 100:16 168:25 209:16 <b>lacks</b> 46:2 63:4 127:11 140:21 145:8 158:9,11 <b>Lane</b> 2:17 <b>language</b> 11:5,5 79:13 95:18 105:25 116:12 <b>late</b> 174:8 182:22 <b>lateral</b> 70:22 <b>latest</b> 83:5 <b>Laura</b> 4:4 50:10 50:12,14 68:12 68:18 69:3,4,6 69:8,8 156:1 192:19 194:2 197:8 220:22 <b>law</b> 1:5 2:4,21 3:10,11,15,16 73:7 <b>lawsuit</b> 60:8 64:23 182:7,23 189:25 <b>lawsuits</b> 183:14 <b>lay</b> 199:19 <b>lead</b> 46:9 <b>leadership</b> 162:10,11,13 194:9,11 <b>leading</b> 44:9 60:11 181:9 201:19,20 210:1 <b>learned</b> 11:5 <b>learning</b> 39:8 <b>leave</b> 37:5 41:21 80:9,9 96:5 107:3,14 110:2 111:4 115:25 120:1 126:18 181:21,22 184:3 193:8 196:9 206:10 206:12,13,16
--	---	---	--	--

211:11 <b>leaves</b> 33:19 193:10 <b>leaving</b> 155:15 <b>led</b> 79:3 148:5 <b>LED10-5</b> 216:3 <b>left</b> 8:24 76:7,21 87:10 115:25 197:3 211:24 212:12 <b>left-hand</b> 38:23 84:19 112:13 112:20 198:5 213:5 <b>legal</b> 13:2,6 61:5 63:21,23 64:8 113:24 132:7,8 132:12,22 <b>legal's</b> 63:20 <b>legislation</b> 38:4 <b>length</b> 66:5 191:1 <b>let's</b> 45:18 47:24 55:3 66:21 104:4 118:14 125:3 126:9,23 158:20 185:6,6 185:8 205:23 213:4 <b>letter</b> 4:12,17,22 28:2 78:25 91:24 143:22 147:12,17 148:5 185:3 193:20,23 194:2,3 197:15 217:14 <b>letters</b> 157:9 <b>level</b> 72:6 105:17 162:15 173:12 200:7 202:25 203:5 <b>levels</b> 169:20 204:19 <b>LEW</b> 216:4,5 224:18 <b>LEW-02-1</b> 95:3	142:10 <b>LEW-02-3</b> 93:15 <b>LEW-021</b> 115:13 <b>LEW-03-3</b> 98:7 <b>LEW-21-2</b> 24:24 <b>LEW-26-20</b> 35:4 <b>LEW-3</b> 112:10 <b>LEW17-1</b> 140:12 <b>LEW17-2</b> 140:13 <b>Lewis</b> 1:10 2:9 3:20 4:6 8:2,5 9:7 23:13 31:22 32:16,25 33:14 47:7 54:1,20 59:21 60:8,17 63:24 66:2,10 78:6 79:7 80:6 83:25 89:17 98:8 103:9 104:20 106:14 128:23 129:6 130:16,21 131:5 132:17 134:9,10 139:13 144:6 144:23 145:7 151:19 155:14 155:14 159:1,7 159:13 184:20 185:15 195:10 213:2 218:3 222:15 223:5,9 <b>Lewis's</b> 4:18 15:6,16 60:15 64:6 65:16 66:9 85:15 86:17 91:16 95:12 102:12 107:14 109:2 109:13 112:25 116:17 127:4 128:13 136:18 <b>liability</b> 138:25	139:1,2 152:12 152:13 200:11 <b>lieu</b> 105:25 106:3,8,10,18 106:22 117:2,6 <b>light</b> 211:9 <b>liked</b> 87:5 <b>limited</b> 167:16 <b>Lincoln</b> 3:4 <b>Linda</b> 3:15,16 49:8 50:10,14 <b>line</b> 37:22 107:15,16 119:1 121:4,6 164:25 <b>lined</b> 224:13 <b>lines</b> 176:6 <b>Linus</b> 71:14 <b>list</b> 123:1 164:18 165:10,13,14 165:18 166:7 166:21,23,24 167:10 173:20 173:24,25 174:1 175:10 175:12,15,16 175:17 176:3 176:11,15,15 180:2 181:17 181:18,25 182:3 206:22 <b>listed</b> 117:18 123:11 124:16 149:17 188:24 213:19 <b>listen</b> 9:24 <b>listening</b> 50:15 <b>litigated</b> 182:10 <b>litigation</b> 182:14 182:14 <b>little</b> 11:1 56:6 69:12 170:3 193:3 201:5 219:19,20,22 221:3 <b>logistically</b> 174:15	<b>Lolita</b> 3:6 7:23 <b>long</b> 12:12 76:24 77:20 130:4 194:6 201:8 209:20 211:10 <b>long-term</b> 180:19 <b>longer</b> 22:18 89:22 168:18 170:20 178:1 183:3 <b>look</b> 13:6 22:8 24:23 32:21 35:1 37:18 38:6 42:3 50:5 54:4,10 55:24 65:16 89:18 96:15 98:5 99:23 105:3 110:21,23,24 118:14 125:3,4 137:22 145:18 146:5 148:20 153:12 154:3 155:23 185:1 195:1,7,15 213:4 224:2 <b>looked</b> 21:1 94:8 98:6 117:11 197:18 <b>looking</b> 17:24 21:3 24:22 37:23 56:22 83:1 96:13 98:3,4 100:1 106:7 140:16 182:24 195:22 196:16,20 206:20 221:16 224:18 <b>looks</b> 20:25 21:4 21:9,23 22:12 26:6,18 36:17 38:1 56:6 87:6 89:12 90:9 98:7 99:6 104:18 109:5	<b>Los</b> 3:13 <b>lose</b> 193:12 <b>lost</b> 171:20 <b>lot</b> 73:18 106:24 162:5 163:21 174:17 177:23 178:1 180:13 183:6 184:4 189:12 199:13 199:15 200:1 220:2 <b>lots</b> 212:12 <b>louder</b> 70:16 <b>lower-level</b> 200:8 <b>Lucras</b> 3:6 7:23 8:25 9:1,18,25 <b>Lucras's</b> 9:12 225:23 <b>lunch</b> 97:25 126:13 158:22 <b>lymphoma</b> 198:11 210:11 210:16,23 211:1
<b>M</b>				
<b>ma'am</b> 36:2 54:12 64:20 68:10 88:4,12 89:18 90:3 94:1 97:20 105:14 126:15 141:3 148:3 158:10,18 <b>maiden</b> 69:1,2,2 <b>maintain</b> 170:4 <b>maintained</b> 35:12 <b>maintains</b> 53:25 <b>making</b> 87:12 108:24 128:18 144:13 154:19 163:25 203:16 205:16,20 220:4 <b>management</b>				

5:10,16 11:7 13:10 21:5 25:14,15 26:23 26:24 27:16 28:9,15 29:7,9 29:13,24 30:2 30:3,4,18,20 30:21,21 31:2 31:12,23 32:1 39:16,18,23 40:15,18,20 45:6 95:20,23 95:25 96:10,11 98:6,12 100:12 104:19,21,24 105:1,15 106:15 107:5,7 107:20 109:11 109:15 116:6 116:14,19,23 119:19 120:6 124:13,15 127:20 139:17 141:14 142:5,7 149:3,9 150:10 157:15 158:14 161:13,13 179:2 188:24 195:25 199:11 203:1 204:19 <b>manager</b> 11:19 11:20,20 12:4 12:11,21,22 14:20 50:11,25 51:10,13 53:19 58:21,22 63:13 71:22,23 72:3 74:9,11,13,16 74:20,21,25 77:14 137:9 149:6 150:23 157:16 <b>manager's</b> 53:17 <b>managerial</b> 149:17 150:6 158:6 <b>managers</b> 11:19	13:9 179:6 <b>managing</b> 176:22 <b>manner</b> 39:25 41:9,11 <b>manners</b> 40:12 190:22 <b>manual</b> 102:21 147:6 <b>March</b> 58:7,8 116:1 159:25 192:25 193:1 <b>mark</b> 16:8 17:7 17:16 38:18,22 48:22 87:25 88:5 95:8 112:13 143:19 <b>marked</b> 4:11 5:2 6:2 16:11 17:17,18,20 38:25 39:4 48:25 56:2 88:8 131:9 170:23 <b>market</b> 11:3 <b>markings</b> 87:3 <b>MARY</b> 1:5 2:4 2:20 <b>master</b> 109:2,13 116:18 <b>match</b> 191:25 <b>material</b> 189:1 189:22 <b>Matt</b> 137:4 <b>matter</b> 1:8 2:7 7:5 91:7,10,11 91:17 205:23 209:25 225:19 <b>matters</b> 72:9 147:13 203:10 204:6 <b>MATYSZEW...</b> 1:5 2:4,20 <b>max</b> 116:17 <b>mayor</b> 177:21 <b>mean</b> 21:1 45:15 54:5,20 55:4	56:4 61:25 73:2,17 74:2 78:1,9 87:4 88:21 94:8 95:21 98:17 104:25 107:12 108:23 112:16 119:18 121:6 128:11 130:4 136:19 139:12 139:12 140:25 151:21 157:3,6 167:4,13 168:8 179:16 180:2 182:2 188:14 190:5 192:11 192:18 197:17 198:12 199:6 202:10 206:5 208:12,15 209:13 214:20 219:20 <b>meaning</b> 84:24 117:2 120:5 143:5 219:15 <b>means</b> 94:24 95:15 99:7 112:23 137:21 150:8 187:17 215:17 <b>meant</b> 46:6 108:17 110:14 115:11 213:16 <b>mechanic</b> 159:17 <b>mechanics</b> 193:4 <b>meet</b> 14:12 164:8 <b>meeting</b> 76:19 157:4 179:14 179:16,16 <b>meets</b> 53:16 <b>member</b> 15:11 15:13 100:25 101:11 103:2 120:10,11 121:14,16,19	123:7 124:8 135:24 151:11 160:12 162:6,9 194:12,13,14 225:14 226:1 <b>member's</b> 101:14 123:7 135:18 136:1 <b>members</b> 137:15 150:16 179:17 194:17 <b>memo</b> 4:16 81:8 83:24 86:13 111:16,19,23 131:13,15 154:6 <b>memorandums</b> 11:24 <b>mention</b> 18:11 150:1 <b>mentioned</b> 8:2 35:20 51:25 71:5 77:3 134:15 135:2 138:20 147:14 152:11 157:15 161:21 162:14 167:1 171:24 173:3,20 180:10 202:21 208:10,23 213:4 224:3 <b>mentions</b> 29:21 <b>mess</b> 128:19 190:2 <b>message</b> 81:7 87:10 155:15 <b>met</b> 167:9 179:4 <b>method</b> 41:15,19 <b>Michael</b> 3:10,11 7:7 <b>middle</b> 51:3 95:13 142:10 142:14,21 143:6 <b>military</b> 216:20 <b>mind</b> 36:7 45:24	175:21 184:23 219:24 220:7 <b>mindset</b> 220:10 <b>mine</b> 19:7,9 84:10 86:5 92:4,17 93:20 214:12 <b>minimum</b> 164:8 <b>minor</b> 200:8 <b>minus</b> 196:6 <b>minute</b> 125:17 <b>minutes</b> 56:4 68:6 126:20 153:15 184:8 <b>mischaracteri...</b> 102:15 147:25 <b>misstates</b> 144:19 <b>moment</b> 10:8 28:6 42:3 78:21 96:15 224:2 <b>money</b> 129:14 189:13 195:24 196:3 202:13 212:14 <b>monies</b> 144:8 <b>monitor</b> 204:19 <b>monitoring</b> 210:16 <b>month</b> 118:21 118:22 162:19 165:2 179:4 180:6 195:24 196:11 210:15 <b>monthly</b> 102:7 103:9,11,19 119:2,3 <b>months</b> 77:2 175:11 192:23 193:24 211:15 <b>Moon</b> 181:15,18 182:6 186:12 <b>morning</b> 7:12 10:25 66:5 125:12 <b>motion</b> 27:1 <b>MOU</b> 5:5,7,14
--	--	--	---	---

13:8,13 14:2 14:12 15:17 16:10 18:12 19:13,17,23 20:11 21:4,7,8 21:24 22:2 24:12 26:23 28:1 30:2 35:2 35:19 37:24 38:1 52:9 56:5 58:11 59:9,17 76:11 104:12 104:17 105:14 109:4,7,12,16 115:23 116:25 119:11,15 120:3,9 121:22 122:3,11,13 123:16 157:20 188:23,23,24 196:13 218:7 <b>MOUs</b> 11:24 13:4,6 15:4 25:22 65:24 72:14,15,17,24 73:5 157:19 <b>move</b> 23:8 81:11 81:16 122:5 167:16,24 172:21 173:16 179:12 205:23 217:9 221:22 222:9,20 223:15 <b>move-up</b> 170:10 170:11,14 173:5 <b>move-ups</b> 167:23 170:1 170:17 <b>moved</b> 12:9 146:22 170:12 170:24 172:13 201:12 209:7 222:21,22,23 223:1 <b>moves</b> 165:15	<b>N</b>	<b>negotiating</b> 72:17 <b>negotiations</b> 12:23 72:20 73:3 <b>NeoGov</b> 42:23 43:1,1 <b>neutralize</b> 196:8 <b>never</b> 9:14 61:18 72:19 175:21 184:23 211:8 213:21 220:2 <b>new</b> 73:22,24 146:22 174:2 <b>night</b> 8:24 <b>Nineteen</b> 23:17 23:18 <b>non-emergency</b> 183:18 <b>non-reportable</b> 79:18 <b>nonresponsive</b> 178:10 192:4 221:23 <b>Nope</b> 193:18 <b>normal</b> 169:24 <b>north</b> 3:4 173:11 <b>northwest</b> 177:19 <b>notation</b> 84:23 86:17 95:25 107:11 109:20 114:15 115:13 115:19 117:17 154:19 <b>notations</b> 94:3,9 115:7 <b>note</b> 16:23 28:21 35:23 85:10 90:7 104:16 108:16,17,23 108:24 133:3 143:3,7,11 146:11 225:13 <b>notebook</b> 19:22 21:21 35:24 96:18 142:21	<b>noted</b> 107:12 <b>notes</b> 90:21 131:22 132:1 132:10 155:18 225:24,25 <b>notice</b> 22:8 27:2 86:23 125:11 207:15 <b>notifies</b> 164:22 <b>notify</b> 164:23 212:9 <b>noting</b> 96:9 <b>November</b> 174:13 211:13 <b>number</b> 7:7,8 19:1 78:18 84:20 85:1,4,8 94:25 95:9 107:21 112:21 112:22,23 113:19 115:7 116:1,10,13 139:7 146:5 162:4 165:16 166:1,19,19 167:16,17 181:17,18 201:9 216:13 <b>numbers</b> 84:20 95:10 107:10 224:13 <b>numerical</b> 165:4 182:3	40:6,23 41:17 44:14 45:12 46:2,15 47:16 48:14,17 59:23 60:4 63:4 64:15 81:18 84:13 87:14 89:4 91:9,13 99:14 100:7 102:15 127:6 127:11 128:14 129:1,17,22 130:13 133:20 135:8 137:16 144:17 145:1,8 147:25 152:18 152:22 153:6 158:9,11 176:5 184:18,23 186:2,4,19 187:11,22 190:11 192:4 203:16 204:15 207:10,12 217:10 220:6 220:14 222:10 223:17 225:18 226:4,14 <b>objections</b> 38:12 48:19 83:6 128:20 <b>obscured</b> 96:19 <b>observation</b> 54:16 <b>obviously</b> 8:13 <b>occasion</b> 9:19 135:23 183:16 <b>Occasional</b> 128:9 <b>occasionally</b> 138:20 <b>occasions</b> 134:25 <b>occupying</b> 139:8 <b>occur</b> 14:22 74:4 198:19 <b>occurred</b> 32:20 33:16 54:17,18
	<b>O</b>	<b>OAH</b> 1:10 2:9 7:7 <b>oath</b> 88:4,12 126:15 <b>object</b> 37:10 177:3 225:9 <b>objection</b> 9:7 18:17 20:3,14 21:13 23:10,16 23:25 28:17 31:18 32:11,12 33:3 37:12		

55:6 73:25 80:1 <b>occurs</b> 59:4 110:2 <b>October</b> 1:19 2:19 7:1 22:13 114:22 115:2 214:22 215:22 217:4 <b>offense</b> 200:8 <b>offer</b> 16:16 17:8 18:15 20:2 21:11 22:4 24:14 26:9 28:3 30:15 31:17,21 34:23 40:4 44:12 48:12 83:18 84:11 87:22 89:3 93:21 207:9 <b>offered</b> 161:3 162:5 <b>offering</b> 32:9 89:2 <b>offhand</b> 113:2 <b>office</b> 3:15 7:10 49:9,11 53:17 53:19 54:10 63:20 69:21 70:3,23 79:9 102:23 104:2 104:23 117:12 131:25 132:2,8 133:2 141:23 144:25 149:24 152:4 155:22 197:10 221:3 226:3 <b>officer</b> 120:2 161:6,9,12,16 161:19 167:8,8 177:15 196:10 196:11 199:11 206:21 213:17 215:15 216:14 <b>officer's</b> 121:22	122:2 123:16 202:22 <b>OFFICES</b> 3:10 <b>official</b> 6:7 9:21 9:22 26:25 27:2 35:11,13 35:20 36:5,25 37:2 38:18 43:4 66:17 67:4 134:23 207:15 <b>offset</b> 109:9 196:3 <b>offsetting</b> 109:7 109:12 119:11 <b>oh</b> 8:4 11:6 16:15 22:25 42:14 49:8 56:20 60:6 70:16 81:13,15 82:22 83:2 85:25 89:20 95:2,16 97:17 97:18 106:2 110:16,19 111:9,10 114:11 122:7 122:24 123:9 129:24 130:5 133:15 143:10 143:15 157:13 173:5 191:4 194:6 197:13 201:22 205:19 205:23 208:2 222:19,22 223:7 <b>okay</b> 9:4 10:2 12:17 15:5,9 16:5 18:18 19:8,20 20:11 20:14 22:7 23:3,22 26:9 27:9,13,19 28:11 29:18 30:14 31:11 32:5,24 33:9	33:12 35:7,10 35:21 36:11 38:11,13 40:14 43:24 44:12,21 45:23 46:11 47:20 50:1,22 51:18,22 53:19 55:23 56:10,10 57:4,7 63:15 64:24 75:25 78:24 81:21 82:22 90:22 92:7 93:9,21 97:23 99:2 100:4 105:18 111:25 113:17 117:13,20 119:9 120:24 121:24 122:17 122:25 124:24 126:23 128:11 129:24 131:7 131:15,22 132:5 134:8,21 136:22 137:13 141:10 142:24 145:16 146:3 152:9 154:10 154:21 158:3 158:16 160:19 162:14 168:13 170:7 173:18 176:17 177:10 177:11,13 181:6 183:11 185:9,21 187:4 187:15 191:16 191:22 197:11 198:18 201:1,1 201:3 205:8,13 205:24 213:12 213:14,25 214:17,20 215:4,5,21 217:4,24 218:11,14,14 220:3 221:10	223:10 224:22 224:24 226:18 <b>old</b> 146:17 <b>Olympic</b> 3:12 <b>once</b> 72:23 73:3 108:9 179:4 187:5 <b>one-off</b> 61:22 127:4,15 <b>one-offs</b> 127:21 <b>ones</b> 105:7 150:22 158:6 183:24 200:11 201:8 <b>online</b> 25:24 <b>open</b> 82:3 <b>opening</b> 165:16 <b>operation</b> 173:7 <b>operations</b> 176:25 208:9 <b>OPF</b> 66:24,24 67:3 <b>opinion</b> 104:22 113:24 132:7,8 132:12,22,25 138:4 200:1 <b>opinions</b> 9:12 <b>opportunity</b> 51:8 <b>option</b> 218:14 <b>oral</b> 163:9,12 164:24 165:25 165:25 166:13 166:14,14 174:24 175:14 175:14 <b>order</b> 8:8 10:5 61:13 64:17 155:16 161:16 165:4,13 167:7 182:3,5 208:15 <b>ordered</b> 54:3 <b>ordering</b> 165:10 <b>orders</b> 192:14 <b>ordinarily</b> 202:9 <b>organization</b> 163:13 192:7	208:18 <b>original</b> 96:22 97:2 143:18,24 154:8 155:19 155:21 <b>originally</b> 165:18 <b>outside</b> 74:3 109:25 110:8 110:10,14,16 110:17 138:4 153:1 163:9 166:13,14 <b>overall</b> 46:8 <b>overcome</b> 225:18 <b>overhear</b> 51:11 <b>overlap</b> 45:10,17 45:20 <b>overrule</b> 23:10 <b>overruled</b> 13:24 33:4 37:12 41:18 43:19,21 44:10 45:13 46:3 60:1,21 61:16 63:6 87:15 91:13 99:17 102:17 108:7 122:10 127:12 130:18 140:25 145:11 149:13 158:12 169:1 177:10 181:10 186:4 186:21 188:4 201:2,20 202:7 204:11 209:17 210:2 220:7 221:24 223:19 <b>oversee</b> 164:6 165:6 <b>oversees</b> 165:5 <b>overtime</b> 133:7 133:11,13 172:18,19,19 172:20 189:10 189:12,13,14
--	--	--	---	--

189:17 owed 139:4	<b>paid</b> 39:23,23 52:7 53:9,14 64:9 75:13 109:16 112:17 116:2,2,4 118:21 119:2 128:23 129:14 130:11 131:3 139:13 144:6,6 148:13,13 160:15 169:5,9 173:2 180:7 187:5 189:12 189:19,20 196:10 197:4 208:24 209:22 212:16,17,18 213:15	137:23 139:22 140:14,15,23 154:15,15 163:24 165:5 173:6 193:6,7 193:14 202:14 212:7 219:7 226:13 <b>partial</b> 19:23 <b>partially</b> 177:16 <b>participation</b> 178:25 <b>particular</b> 75:24 82:17 116:2 117:9 119:22 121:21 122:15 178:14 185:19 190:23 <b>particularly</b> 63:24 128:11 <b>parts</b> 165:21 <b>pass</b> 134:13 149:1 164:18 <b>passed</b> 59:21 60:9 164:15,22 168:3 174:23 180:24 184:21 <b>passing</b> 186:13 <b>Pause</b> 10:9 <b>pay</b> 5:21 14:1,25 15:1,6 33:7 34:7 42:11 47:5,6,9,11,17 50:24 51:21 52:21,22 53:5 53:6,8 57:12 57:15 60:17 63:1 64:2 66:7 75:13 76:8,9 76:13 78:6 79:17 80:8,19 81:1,6 84:25 99:23 100:2,25 102:7,14 103:19 104:17 107:18 108:1 108:18,24,25	109:3,14,20 110:3,4,5,25 112:25 113:21 115:14,15 116:3,4 119:3 119:3,5,7 120:3,6,21,23 120:25 121:4,5 121:6,6,7,21 121:22,23 122:1,3,11,11 122:24 123:11 123:11,16,16 127:22,22,23 127:25 128:1 131:8 132:18 134:1,19 136:18 139:21 140:11 141:12 141:12 144:23 145:5,9,21,24 146:18,18,20 147:2 149:18 153:2 168:24 169:10 180:21 186:14,16,22 187:5,6 188:11 189:1,7,12 191:10 195:1 195:16,19 196:12 197:7 197:12,20 198:4,6 202:18 209:2,2,10,12 209:15 212:17 212:21 213:2 213:14,15,17 213:18,19,22 224:14,14 <b>pay-and-conv...</b> 139:21,23 <b>payable</b> 112:18 <b>paycheck</b> 121:21 122:16 160:15 <b>paying</b> 51:24 134:8 196:17 199:5 208:13	208:20,21,22 213:16 <b>payment</b> 84:24 112:17 198:15 <b>payments</b> 24:5 128:24 129:2,5 129:6 145:6 <b>payoff</b> 95:19 96:5 115:19 116:3,7 <b>payroll</b> 41:21 50:11,24,25 51:10,12 70:23 71:10,16,19,22 71:22,23,24 72:1 73:11,24 74:9,11 75:1,5 75:17 76:3,6 76:10,21,22 77:14,14,17 80:4,12 83:25 84:23,25 85:1 85:16 94:3,4,6 94:7,8 96:3,7 101:2 102:21 107:25 112:18 112:23,23 114:8 116:1,13 117:23,23 118:7,10,11,11 118:14,20 120:22,24 121:2 125:20 127:10,16 135:3 138:5,8 144:2 146:17 146:19 147:6 151:14 170:20 170:25 171:2 171:20,25 209:9 213:9 <b>payrolls</b> 85:8 <b>pays</b> 72:13 <b>PD</b> 112:14 <b>PE</b> 95:14 <b>peace</b> 199:11 202:22
----------------------	---	---	---	--

<b>PEHP</b> 95:16 98:6 105:7,10 105:15 <b>pending</b> 215:9 215:11,17 <b>pension</b> 91:17 100:9,11 136:8 <b>pensionable</b> 121:20 122:1,6 122:18 134:16 <b>people</b> 77:18 127:17 163:10 163:13 164:14 164:14,17 165:18 166:20 167:18 173:7,8 173:8,12 174:15 175:16 177:23 178:5 180:13 183:20 194:16 203:16 <b>people's</b> 192:11 <b>percent</b> 95:19 108:21,21 109:9,10 116:15,25 165:23,23,25 215:18,19 <b>percentage</b> 96:10,12 121:17,19 124:5 188:15 188:15 195:24 197:1 <b>percentages</b> 96:9 98:6 119:21 196:25 <b>percents</b> 165:21 <b>perform</b> 9:19 76:4 175:24 182:15 183:14 190:9 191:6 211:4,7 219:13 <b>performance</b> 174:21 <b>performed</b> 9:8 9:14 44:5	108:12 176:20 177:15 178:16 179:24 198:25 208:7 <b>performing</b> 75:9 75:14,18 78:7 120:15 171:24 204:3 219:11 <b>performs</b> 191:25 <b>period</b> 24:6 35:15,20 37:2 47:11 58:21 64:7 76:8,12 76:24 167:25 171:13 172:14 176:13,17,20 177:4,7 178:21 179:24 182:13 183:13 198:2,4 198:20,25 200:15 203:14 203:22 204:4 204:20 205:1,2 208:6 209:11 209:20 210:10 213:20 <b>periods</b> 9:8 23:14,14 74:23 76:20 <b>PERL</b> 9:20 134:22 <b>permanent</b> 53:22,25 58:19 151:11 180:24 181:14 <b>permanently</b> 180:4 <b>permission</b> 17:7 <b>PERS</b> 31:3 39:14 73:23 80:14 120:11 121:13,14 123:6,14 124:1 124:7,10,17,18 124:19 131:19 131:19 134:18 135:18 138:6	146:12 150:16 154:11,12,17 193:2,25 196:21,23,25 197:4,6 213:23 220:22,25 221:2 224:12 224:17 <b>PERS-able</b> 122:7,8 123:7 123:15 134:16 152:1 <b>person</b> 43:16 53:3,4,13 57:14 133:17 141:1 156:1 164:7 171:23 171:25 224:11 224:17 <b>person's</b> 53:22 <b>personal</b> 15:6 54:16 <b>personally</b> 139:10 <b>personnel</b> 14:19 32:23 33:1 52:11,17,24 54:4 57:16 61:8,11 62:1,6 62:8 63:11 64:7,14 65:7 65:11,17 66:1 66:9,14,17,21 67:2,4,6,9 148:21 161:12 164:9 166:12 167:23 168:15 168:16,19,22 169:4 170:5,18 171:16 172:2 173:12,16 174:18 175:7 176:22 180:22 208:23 209:4 209:14 <b>perspective</b> 23:11 25:5	77:8 96:3,7 101:2 120:22 <b>pertain</b> 28:8 <b>phone</b> 64:5,21 66:4 226:21 <b>phrase</b> 110:8,11 150:4 <b>pick</b> 153:22 <b>picture</b> 163:17 <b>piece</b> 13:3 22:20 25:18 192:12 <b>place</b> 35:14,14 54:22 84:24 106:1,22 194:4 <b>placed</b> 63:2 165:18 173:20 173:23 175:12 <b>plan</b> 15:18 95:16 95:22 96:1,2 172:16,21 204:24 <b>plane</b> 153:21 <b>planned</b> 172:17 <b>planning</b> 177:16 178:23 209:19 <b>Plaza</b> 3:4 <b>please</b> 10:16 17:13 26:2 35:1,22 42:24 46:24 48:6 55:11 56:18 68:16 70:17 71:7 79:16 92:22 128:19 130:18 136:23 146:6 157:6 159:6 201:21 203:15 <b>POA</b> 57:16 <b>point</b> 36:10 41:25 48:12 66:19 67:5 133:12 139:20 151:10 155:4 162:14 167:2 181:6 191:17 206:2 222:5	223:23 224:3 226:5 <b>pointed</b> 187:10 <b>points</b> 166:15,16 221:17 <b>police</b> 5:5,7 21:7 21:10,23 24:12 27:18 30:21 107:19,20 149:14 150:23 190:3,6,16,17 216:5 <b>policies</b> 13:16 14:6,12 34:6 34:11 <b>policy</b> 13:21 14:8 75:22 76:2 <b>political</b> 11:4 <b>portion</b> 16:18 175:9 <b>portions</b> 94:10 <b>posed</b> 79:24 <b>position</b> 11:9,12 11:23 12:7,19 12:20,21 13:17 14:11,15,18 16:4 19:14 32:17 33:10 40:18 41:2,5 43:9,15,17 44:1,8 52:7,22 53:2,3,5,6,7,9 53:14 59:6,25 60:15 63:2 65:13,20,20,22 66:10 67:11,21 69:19 70:5,23 71:18 75:3,18 76:4,5,6,10,12 76:16,18 77:13 80:23 98:10,12 128:4,25 129:7 130:4,5,7 132:24 133:17 133:18,22,24 134:1,6,11
--	--	---	--	---

142:1 144:7 158:3 160:9 162:25 166:8 166:10 167:6 167:24 170:15 170:19 177:15 178:5 180:20 180:25 181:1,4 181:14 189:25 209:7,20 218:21 <b>position's</b> 127:22 <b>positions</b> 45:1 45:10 59:9 70:6 72:1 78:3 81:2 139:7,8 149:6,8,11,17 150:6 157:16 157:20,22 158:1 171:24 184:1 <b>positive</b> 174:12 <b>possession</b> 143:24 <b>possible</b> 44:2,2 <b>possibly</b> 23:6 63:16 149:14 189:6 <b>post-employ...</b> 95:16,22,25 96:2 <b>posted</b> 107:13 <b>potential</b> 201:16 <b>potentially</b> 203:2 <b>PR</b> 112:22,22 115:7 116:9 <b>practical</b> 164:24 175:16 <b>practice</b> 25:16 75:16 76:2 182:8 <b>practices</b> 34:7 34:11 <b>pre</b> 26:8 <b>predate</b> 24:1	<b>predict</b> 172:15 <b>predictably</b> 170:20 <b>premised</b> 139:2 <b>premium</b> 131:7 <b>Prentice</b> 137:14 <b>preparation</b> 50:2 156:13 <b>preparedness</b> 179:1 <b>present</b> 3:20 7:11,14,25 <b>presented</b> 49:12 73:15 150:2 <b>president</b> 177:22 182:9 <b>presumed</b> 210:24 <b>pretty</b> 11:6 163:25 164:1 165:9 166:1 181:24 188:22 197:16 <b>previous</b> 20:25 210:8 <b>previously</b> 22:16 69:5 117:1 131:12 199:2 208:23 220:21 <b>primarily</b> 70:10 72:1,4 <b>primary</b> 211:20 <b>printing</b> 83:5 <b>printout</b> 138:19 <b>prior</b> 19:14 25:2 25:3 34:7,9 69:15 74:1,6 79:24 85:17 86:10,19 106:13 115:19 116:6 144:19 174:9 208:5,6 214:23 <b>privilege</b> 61:7 <b>privileged</b> 66:2 156:24 <b>probably</b> 36:18	36:18 73:10 82:23 106:23 148:18 154:9,9 161:7 171:15 171:20 183:9 201:4 202:9 <b>probation</b> 180:24 <b>problem</b> 48:21 96:21 166:12 <b>procedure</b> 14:23 14:24 39:24 168:21 <b>procedures</b> 14:6 14:10 54:17 62:21,24 63:10 127:10 163:4 <b>proceedings</b> 1:17 2:16 10:9 <b>process</b> 51:25 52:6,10 54:17 54:21 55:3 57:16,22,22 60:16 63:7,11 73:13 108:15 118:13 127:10 138:6 148:25 151:17,18,21 163:23 164:4 164:25 165:1 165:22 166:9 209:10 221:9 <b>processed</b> 60:24 150:10 <b>processes</b> 62:7 118:11 <b>processing</b> 62:21 71:15 72:21 151:14 <b>proffer</b> 9:17 <b>program</b> 71:15 161:3,23,23 <b>project</b> 88:24 <b>projection</b> 12:14 <b>promises</b> 177:23 <b>promote</b> 165:17 <b>promoted</b> 32:17	60:10 71:20 76:10 98:9 159:20 161:7 162:15 165:14 166:23 168:19 180:20,22,23 181:13,17,24 181:25 182:2,6 186:12,14,15 187:8 219:9,18 219:22 <b>promotion</b> 9:22 32:24 33:10 162:20 164:4 181:7 <b>pronounce</b> 81:22 <b>proof</b> 31:22 67:19 <b>properly</b> 193:17 196:17 197:19 <b>proposed</b> 184:21 <b>proposing</b> 38:6 38:7 <b>protection</b> 177:19 <b>prove</b> 14:20 66:14 67:14,24 <b>provide</b> 43:13 60:17 85:18 139:10 <b>provided</b> 47:10 49:23 71:13 73:23 77:10 87:9 97:12 125:14 220:24 <b>provides</b> 53:4,5 57:11 145:25 <b>providing</b> 77:15 <b>provision</b> 27:15 29:8,12 31:3 57:10 59:9,11 107:24 139:12 175:10 <b>provisions</b> 15:17 35:25 52:9 59:17 61:19	<b>public</b> 1:3 2:2 3:3 7:22 73:7 91:23 92:1 <b>publicly</b> 145:21 149:18 <b>purchased</b> 216:21 217:1 <b>purports</b> 22:11 37:11 <b>purpose</b> 9:11 43:11 137:10 138:23 147:22 <b>purposes</b> 40:22 41:3 66:16 81:4 94:3 99:4 100:18 114:5,7 120:24 122:19 133:7,16 181:1 219:2 <b>pursuant</b> 9:20 57:17 103:15 107:5 124:13 129:7,9,11 <b>put</b> 24:5 26:23 52:21 73:4 109:25 154:4 160:24 163:16 163:19 165:4 175:10 179:2 179:14 180:2 181:20 183:25 184:1 195:20 196:6,7 202:12 <b>puts</b> 25:4 <b>putting</b> 163:7 189:17 191:13 209:19 212:14
---	--	--	--	--

**Q**

**qualification**  
36:16 164:8  
**qualifications**  
164:8 167:9  
170:1 183:23  
**qualified** 164:12  
167:7 183:20  
**qualifies** 155:17

<p><b>qualify</b> 26:25                  161:16  <b>question</b> 9:18                  22:6,24 24:16                  27:11 30:1                  32:14 34:6                  39:7 44:16                  62:5 63:23                  67:25 68:2                  70:19 73:9                  75:22 78:12                  79:19,21 80:8                  80:10,24 81:2                  81:19 82:12                  95:6 96:13                  102:10 103:7                  109:24 112:5                  114:18 119:5                  121:16 123:8                  123:10,20                  128:15 130:19                  130:22 132:17                  133:23 134:12                  136:10 137:22                  141:10 143:23                  145:14,15,18                  147:4 148:2,3                  149:2 156:8                  157:13 175:22                  178:14 179:10                  191:20 194:8                  201:1,24 202:5                  202:6 203:16                  203:19 211:3                  213:8 220:15                  221:23 222:15  <b>questioned</b> 80:3  <b>questioning</b> 99:6                  99:21  <b>questions</b> 20:5                  23:19,20 29:3                  41:24 46:14,21                  47:25 58:12                  62:14 67:13                  68:3,4 79:8,10                  79:25 105:2                  111:19,23</p>	<p>120:14,14                  126:8 132:2                  136:13 146:4                  153:9,17                  154:11,22                  156:7 157:12                  158:16,17                  168:8 177:3                  193:16 201:15  <b>quick</b> 82:12                  139:11 153:25                  154:3  <b>Quickly</b> 92:3  <b>quite</b> 54:6 171:3                  179:4</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>raise</b> 10:10                  68:10 158:24                  189:7 193:16  <b>raised</b> 79:19,20                  80:20 152:12                  190:22 221:10                  225:1  <b>raising</b> 67:20  <b>ran</b> 174:1  <b>random</b> 74:1  <b>randomly</b> 76:18  <b>range</b> 130:12  <b>rank</b> 5:17 12:23                  20:12 21:8,9                  27:16,17 28:9                  28:14,16 29:9                  29:13 30:5,6,8                  30:9,19,22,23                  31:4,13 34:22                  39:15,18,22                  45:7 46:7,9                  57:11,14 98:22                  99:10 106:14                  109:10,15                  115:23 116:22                  119:19 120:5                  120:16 124:14                  127:17,19                  139:17 141:13                  142:7 148:14</p>	<p>158:6,14                  170:12,13                  173:15,15                  182:5  <b>ranked</b> 165:13  <b>rarely</b> 44:4  <b>rate</b> 53:8 73:22                  73:24 74:3,5                  101:10,11                  102:8,14,25                  103:10,12,19                  108:1 109:1,3                  110:5 113:22                  115:17 116:4,5                  119:3,4,6,7                  120:7,8 123:7                  136:18 139:1                  169:5,9 187:6                  188:17 189:12                  189:19 209:10                  217:5  <b>rates</b> 72:11                  73:20 102:7                  107:18  <b>read</b> 78:23 101:7                  102:6 106:8                  108:16 109:21                  111:5,11                  114:18 123:3                  186:8  <b>reading</b> 138:15  <b>readopted</b> 36:20  <b>ready</b> 214:19  <b>real</b> 139:11                  153:25 154:3  <b>really</b> 26:7 51:24                  58:23 61:18                  62:11 73:18                  76:17 80:1                  96:6 101:20                  121:25 128:17                  135:15 136:3                  152:7 165:5                  168:23 177:2                  183:19 191:17                  191:18 192:9                  199:24,25</p>	<p>201:4,11 221:6  <b>reason</b> 15:9 69:9                  78:2 167:22                  173:13 183:1,7                  211:15  <b>reasons</b> 209:13  <b>reassign</b> 192:10  <b>rebuttal</b> 9:25                  54:4  <b>recall</b> 51:18,19                  60:23 74:5,6                  79:3,5,20 80:1                  80:19 86:8                  88:16 89:10                  90:19 92:25                  103:25 106:1                  113:2,21                  115:10 117:3                  119:22 120:16                  124:19 125:22                  137:23 138:13                  143:22 151:2                  152:14 155:13                  155:14 160:11                  162:23 174:20                  205:8,20                  216:25 225:23  <b>receipt</b> 89:15  <b>receive</b> 16:23                  26:19 33:25                  36:12 38:13                  39:2 46:16                  48:23 49:4,5                  52:22 73:21                  81:6 83:16                  87:15 91:23,25                  99:10 100:21                  106:21,21                  134:12 148:21                  150:19 162:20                  187:7,12                  207:17 215:21                  217:18 223:13                  223:19 225:11                  226:5,7  <b>received</b> 4:11                  5:2 6:2 17:1</p>	<p>18:18,19 20:17                  20:18 21:14,15                  23:22,23 25:6                  25:7,10 26:20                  28:18,19,23                  32:5,7 34:2                  36:14 39:6                  40:7,8 46:18                  47:20,21 49:2                  79:7 83:7,8                  84:15,16 86:7                  86:14 87:10                  89:6,7 94:12                  94:13,19                  106:14 111:7                  138:18 141:18                  142:2 207:14                  207:19 217:25                  222:11,12                  223:20  <b>receives</b> 120:3  <b>receiving</b> 20:3                  23:16 31:18                  32:12,13 44:15                  47:17 48:15,17                  76:8,9 80:1                  81:18 84:13                  86:10 89:4                  94:13 120:21                  132:17 150:16                  195:16 207:10                  207:12 209:15                  217:10 223:17                  226:14  <b>recess</b> 66:3 68:6                  68:8 88:10                  126:13 158:21                  158:22 226:20  <b>recitals</b> 182:25  <b>reclassified</b>                  74:13 77:18                  78:10  <b>recognize</b> 18:25                  19:12 20:24                  21:3,22 24:11                  25:2,13 26:5                  27:25 34:20</p>
---	---	---	---	--

39:12 42:22	155:1	101:15	23:9 37:20	125:23 131:19
47:3 83:14	<b>redistribute</b>	<b>regular</b> 13:4	54:19 66:10	131:19 134:18
84:5,7 92:14	98:1	43:8 74:3 80:8	78:2	135:3,24
92:19 93:1,17	<b>refer</b> 50:1 57:1	119:1 121:18	<b>relief</b> 170:3	136:12,14,16
118:4 125:8	115:22 147:12	121:21 122:1	<b>rely</b> 103:22	146:18 148:10
136:25 195:10	147:17,22	122:11 123:11	183:19	154:11 224:5
205:14 206:25	184:25 217:12	123:15 176:21	<b>relying</b> 105:5	225:25
214:7 216:8	<b>reference</b> 94:4	180:4 195:19	<b>remain</b> 75:1	<b>Reporter</b> 2:23
218:5,16	94:11 110:13	213:14	194:9	<b>reporting</b> 15:7
223:11	195:12 196:16	<b>regularly</b> 125:20	<b>remainder</b> 212:1	39:14 41:16
<b>recollection</b> 87:2	<b>references</b>	202:8	<b>remained</b> 71:23	73:12 80:5,14
101:8 119:6	137:24	<b>rehab</b> 210:7,10	80:25 81:5	85:15 86:16
133:1,3 155:6	<b>referencing</b>	210:12 212:1	194:13	101:10,14
160:8	35:17	<b>reimburse</b> 124:7	<b>remains</b> 101:15	122:19 126:3,5
<b>recommended</b>	<b>referred</b> 132:6	124:10	<b>remember</b> 49:20	138:7,8 146:25
224:8	<b>referring</b> 15:15	<b>reimbursing</b>	126:2 199:22	150:25 151:4
<b>record</b> 7:5,10	19:8,17 23:1,4	124:11	205:16	151:15 193:6
10:17 17:14	28:12 58:1	<b>relate</b> 20:11 25:5	<b>remind</b> 88:4,12	197:12
18:1 19:9,16	90:24 104:13	<b>related</b> 44:20	126:15	<b>reports</b> 11:21
25:1 28:22	104:15 132:6	65:9 66:25	<b>reminder</b> 110:19	66:11 75:17
48:21 49:7	135:3,9,10,13	124:17 196:24	110:20	141:23
68:7,9,17 88:1	135:17 188:10	210:24 211:2	<b>remodel</b> 202:11	<b>represent</b>
88:2,3,7,11	200:20	<b>relating</b> 64:22	<b>remove</b> 157:6	179:13
90:7 92:3	<b>reflect</b> 7:10 24:5	<b>release</b> 42:1 68:5	<b>repeat</b> 95:6	<b>representation</b>
93:14 101:25	39:22 172:12	89:13	110:12 122:21	55:5 87:12
114:17 126:9	175:8 222:24	<b>released</b> 46:12	123:4,13	<b>representative</b>
126:10,11,12	<b>reflected</b> 37:17	158:18 211:22	127:13 147:16	86:2 144:12
126:14 128:18	114:7 172:22	<b>releasing</b> 46:13	<b>replace</b> 167:19	<b>represented</b>
140:4 158:20	197:3	<b>relevance</b> 31:19	<b>reply</b> 4:19	197:2
158:23 159:6	<b>reflective</b> 56:4	31:20 78:1	<b>report</b> 41:8,14	<b>representing</b>
198:9 222:24	196:14	190:20 191:9	75:6 76:3	49:8
<b>recorded</b> 197:19	<b>reflects</b> 196:12	191:13 203:13	102:20 103:23	<b>represents</b>
<b>records</b> 32:22	<b>refresh</b> 101:8	203:24 205:21	120:11 148:8	118:25
66:20 91:23	<b>refreshing</b> 155:6	206:6,18	151:5,9 154:12	<b>reprinted</b> 82:23
124:22 225:18	<b>refute</b> 9:16	220:19	154:17 171:6	154:6
<b>Recross</b> 4:2	65:21	<b>relevancy</b> 13:23	171:17 172:9	<b>request</b> 4:19
62:15	<b>regarding</b> 14:6	23:25 25:2	173:1 193:2,20	7:14,16 8:7,19
<b>RECROSS-E...</b>	14:13 15:11,13	32:14 48:19	197:16	10:2 28:22
62:18 154:1	15:18 25:16	61:21 77:25	<b>reportable</b> 79:17	52:21,23,23,25
156:11	33:13 34:7	93:23 149:12	102:9,21,24	53:2 61:9,12
<b>red</b> 6:7 36:24	65:6,7,23	150:12 152:6	103:1 155:17	62:6,9 64:16
38:10,18	67:11 79:8	152:18,19,21	<b>reported</b> 1:22	65:7,12 67:16
<b>redesignates</b>	80:11 85:15	152:22,23,24	2:21 103:8,11	79:9 91:15,22
78:3	86:16 91:16	171:10 190:19	103:12 113:2,4	91:24 92:1
<b>redirect</b> 4:2 8:25	145:9 181:7	200:21 206:17	113:21,23	155:19,21,22
9:1 58:14,16	193:20 224:4	223:18	114:13 120:25	205:16 208:24
65:3 147:7,10	<b>regardless</b> 33:9	<b>relevant</b> 9:11	121:1 125:20	209:14 214:5

214:15 215:7 217:13 <b>requested</b> 100:24 <b>requesting</b> 65:25 80:2 <b>requests</b> 168:10 168:15 170:18 <b>require</b> 62:25 <b>required</b> 102:20 117:11 <b>requirements</b> 61:14 95:19 164:11 167:10 178:22 <b>rescind</b> 22:11 <b>rescinded</b> 22:20 24:24 <b>researching</b> 73:8 <b>resolution</b> 5:3,6 5:8,9,11,12,14 5:16,18,20 6:6 13:14 14:2 15:4 17:4,17 18:7 19:22 20:8 23:2 25:14 26:16,17 26:18,25 27:15 28:8 29:7,8,12 37:13,14,17,19 38:2 116:14 157:21 158:2 182:14 183:14 <b>resolutions</b> 15:10 23:7 25:22 52:9 72:25 73:5 <b>resolve</b> 201:9 <b>resolved</b> 182:22 <b>resources</b> 60:16 62:7 65:6 66:17,22 69:24 77:8,12 108:14 137:9 149:25 163:18 175:3 <b>respect</b> 79:12 147:23 189:10	202:19 <b>respected</b> 200:1 <b>respond</b> 178:2 184:6 <b>responded</b> 102:24 <b>Respondent</b> 1:11,14 2:10 2:13 3:10 4:22 9:15 <b>Respondent's</b> 4:2,11,23 5:2 6:2 16:11 17:1 17:14,18 18:19 19:22 20:7,16 20:18,22 21:6 21:15,21 23:23 25:7 26:20 28:19 32:7 34:2 36:14 39:4 40:8 46:17 47:14,21 48:25 78:16 82:3 83:8,12 84:3,16 88:8 89:7 91:1 92:10 94:19 104:7 105:23 113:8,9 125:5 125:6 140:3,5 140:6,24 142:11,18 185:2 205:12 206:25 207:19 214:11,12 217:25 218:4 222:7,12 223:20 <b>Respondents</b> 65:19 <b>responding</b> 176:21,23 178:24 184:9 <b>response</b> 86:10 86:12,13,15,19 87:11 90:19,23 91:20 105:16	106:17 113:5 132:1 136:9 144:14,15 154:15,16 177:25 221:18 <b>responsibilities</b> 77:11 78:4 191:7 200:3 <b>responsibility</b> 74:24 <b>responsible</b> 171:23 <b>responsive</b> 66:20 <b>rest</b> 119:25 164:24 <b>restate</b> 99:4 <b>rested</b> 153:5 <b>result</b> 64:1 131:23,24 144:24 <b>results</b> 165:3 <b>retain</b> 80:22 <b>retained</b> 70:5 <b>retaliatory</b> 189:24 <b>retest</b> 175:11 <b>retire</b> 135:7 180:18 182:1 205:17 214:20 224:8 225:4 <b>retired</b> 151:8 194:5,6,13 206:14 211:13 <b>retirement</b> 1:3 2:2 3:3 4:19,24 7:22 15:17,18 16:1 31:3 72:11 73:7 100:6,8,15 102:12,19 103:5 135:10 135:20 136:1 138:8 150:18 150:19 187:18 187:19 188:9 188:11,25 205:8 211:5	214:1,1,4,13 214:14,17 215:7,11,13,14 215:17 216:22 217:6 218:9,10 219:1 220:11 221:12 225:16 <b>Retirements</b> 139:4 <b>retiring</b> 221:6 <b>retribution</b> 219:21 <b>retroactive</b> 115:1 146:12 146:24 147:14 <b>reverse</b> 191:5,14 <b>review</b> 3:6 11:23 13:4 24:2 50:3 53:1,15 61:2 78:21 87:9 103:25 136:11 155:16 156:13 224:7 <b>reviewed</b> 74:15 79:24 <b>reviewing</b> 138:13 <b>Richard</b> 1:10 2:9 3:20 4:6 8:2 47:7 159:1 159:7 <b>right</b> 10:10 19:10 33:17 37:21 44:23 48:10 50:5,17 51:12,16 54:1 54:25 55:17 56:16 57:18 59:19 63:3 64:11,12,12 67:1,15 68:10 70:10 74:7 82:4 83:5 88:23 90:13 97:18 98:2 99:7 101:23 107:12,13	109:23 111:4 111:12 115:18 127:10 128:1,7 128:16 129:16 131:13 132:24 135:7 140:16 140:19,20 141:24 142:17 144:9 145:7 153:23 154:17 154:18,21 158:24 162:18 181:24 191:1 191:12 192:21 193:13 194:1 197:11,13,14 198:17 201:12 205:17 207:24 210:8 212:10 212:12,15 217:2 218:7 220:23 222:2 224:9 225:3 226:20 <b>right-hand</b> 92:20 196:20 <b>rights</b> 199:11 202:22,23 203:3,12,22 204:8 <b>risk</b> 11:19 <b>role</b> 63:17 138:11 <b>roll</b> 78:8 <b>Room</b> 3:7 <b>Rose</b> 3:18 <b>row</b> 169:19 <b>rude</b> 128:17 <b>rule</b> 188:2 <b>rules</b> 62:21,24 63:9 65:5,6 138:6 182:8 <b>ruling</b> 25:3 <b>run</b> 153:14 <b>running</b> 153:21 <b>runs</b> 180:18
---	---	---	---	---

<b>S</b>	71:9 91:16	<b>scale</b> 146:21	82:13,22 87:18	49:14 76:12
<b>S</b> 4:10 5:1 6:1	95:11 107:18	<b>scenario</b> 163:16	89:24 90:1	188:16
<b>S.B</b> 71:13	126:18 130:3	<b>scene</b> 161:13	97:17,17,17	<b>service</b> 62:21
<b>Sacramento</b> 3:8	130:10 131:3	177:1 183:21	98:16 105:4	63:11 160:5
<b>safe</b> 175:8	136:5 138:21	<b>schedule</b> 129:7	115:8,20	163:6,25 164:4
<b>safety</b> 5:5,7,14	144:23 145:21	145:5,22,24	132:19 140:9	164:10 165:4
5:16,18 6:3,5	149:3 151:10	149:18	140:18 142:21	166:16 182:8
12:25 13:2,9	158:5 159:16	<b>schedules</b> 139:6	143:10,10	215:7,10,12,16
15:15 16:10	159:23 160:17	145:10	156:18,20	216:17,19,22
18:9,10 21:7,7	164:5 179:17	<b>school</b> 11:2	163:17 194:3	<b>servicing</b> 63:24
21:10,24 24:12	182:4 224:5	159:15	210:19 214:21	<b>set</b> 33:1 52:19
24:13 28:2,10	<b>Santa</b> 3:18 11:2	<b>schools</b> 159:18	214:24 221:12	76:14 105:20
28:14 29:9,12	<b>sat</b> 224:11	<b>science</b> 11:4	<b>seeing</b> 20:13	121:9 146:1,19
29:23,24 30:20	<b>satisfied</b> 197:17	161:23 162:5	21:7,9 54:7	163:18 175:3
30:23 31:23,25	<b>satisfy</b> 61:7,13	<b>scope</b> 33:21 67:7	<b>seeking</b> 67:9	184:7 186:11
34:22 35:19	225:17	<b>score</b> 174:24	136:14 151:24	204:23
39:15,16,17	<b>save</b> 54:9	<b>scores</b> 165:19	205:8	<b>sets</b> 99:12,19
44:7 45:7 46:9	<b>saw</b> 193:22	<b>seat</b> 10:19 159:5	<b>seen</b> 29:2 33:23	145:6
98:21 107:8,19	<b>saying</b> 32:2	<b>second</b> 17:13	141:2,3,6,7,8	<b>setting</b> 172:16
109:9 115:23	44:18,19 57:25	24:20,23 38:17	<b>semi-monthly</b>	<b>settle</b> 189:1
158:14 160:10	62:1 82:25	80:7,16 85:4	118:20 119:2	<b>settled</b> 60:8
177:15 178:6	89:24 90:1	86:23 105:4	<b>send</b> 57:21 81:7	64:23 187:20
<b>safety's</b> 15:17	99:15 105:13	117:15 121:9	150:6 172:10	189:7 192:24
<b>sake</b> 9:10	123:12 134:17	141:5 144:18	173:1	<b>settlement</b> 4:13
<b>salaries</b> 108:9	140:18 143:12	155:11,24	<b>sends</b> 149:23	58:6 60:23
129:12	190:17	166:24 174:12	172:2	61:3,22 63:20
<b>salary</b> 103:9,12	<b>says</b> 56:5 80:8	174:21 176:7	<b>senior</b> 3:5 7:21	79:7,14 89:13
108:2,5 115:1	80:21 84:20	185:11,19	12:9	89:17 90:8,10
129:7,16 134:3	86:18,23 95:14	197:20 198:5,6	<b>seniority</b> 166:16	93:24 106:4
136:18 139:6	97:10 98:8,16	198:20 201:24	166:20	112:17 128:24
146:1,12,24	102:7 104:11	212:20 213:9	<b>sent</b> 81:8 86:1,19	129:1,9,11,13
147:14 189:6	104:23 105:25	215:25,25	88:16 89:19	129:18 131:17
196:18 215:18	106:8,25	217:14	171:4 172:24	131:17 132:12
217:5 220:11	107:15 111:21	<b>secretaries</b>	<b>sentence</b> 17:15	132:22 144:24
<b>San</b> 1:13,18 2:12	112:13 114:13	172:24	37:22 102:7	169:11 182:25
2:18 3:15 7:1	115:19 117:9	<b>secretary</b> 172:1	109:19	183:7 184:20
7:10,13 9:9	119:10 121:10	172:4,7	<b>sentences</b> 31:10	185:20 186:17
11:7,11,13	121:13 132:17	<b>section</b> 22:11	<b>separate</b> 99:12	188:7 192:17
13:8,16,21	140:10,18	98:7 107:17,22	158:6 170:25	192:20,21
18:8 22:1,3	142:14,21	107:23 189:21	<b>separately</b>	194:10 198:21
26:13,15 32:18	143:20 146:12	218:19	117:11	219:7
33:13 41:6	156:1 182:25	<b>see</b> 23:7 24:23	<b>September</b>	<b>settlements</b>
42:17 43:5	187:4,9,15	26:7 35:8	181:22,25	61:18
45:2 62:20	189:20 192:25	37:18 38:6	221:5	<b>seven</b> 90:10
63:10 69:6,18	196:20 198:6	47:24 48:6,9	<b>sequence</b> 86:7	130:7,8,8
69:20 70:21	218:21 225:7	54:5 60:25	<b>series</b> 107:9	<b>seventh</b> 90:11
	225:14	66:4 67:10	<b>served</b> 48:7	<b>Shakespearean</b>

89:1 <b>sharing</b> 74:6 <b>sheet</b> 6:10 88:6 89:24 157:3 171:7 172:22 172:23 213:9 <b>sheets</b> 70:25 103:8 172:25 <b>shift</b> 169:24 172:12 178:23 180:8 <b>shifts</b> 65:8,13 148:15 168:18 169:3,4,19 170:20 180:7 209:8,9,11 <b>short</b> 76:20 126:18 167:15 167:23 169:25 172:20 173:16 <b>short-handed</b> 183:19 <b>Shorthand</b> 2:23 <b>show</b> 55:16 56:2 89:21 <b>showed</b> 194:2 197:15 209:6 <b>shows</b> 37:24 89:25 196:5 <b>shy</b> 77:21 <b>sic</b> 7:7,11 <b>sick</b> 120:1,2 167:20 171:6 172:11 173:14 196:9 <b>side</b> 28:2 61:4 161:24 197:3 198:17 <b>sign</b> 53:20 <b>signature</b> 90:9 90:11 93:7 192:25 <b>signatures</b> 148:25 <b>signed</b> 33:1 63:12 111:14 111:15,22	<b>significant</b> 194:21 <b>signing</b> 198:21 206:21 <b>similar</b> 45:19,20 116:22 119:21 121:3 127:16 164:2 166:9 <b>similarities</b> 151:17 <b>simple</b> 71:1 <b>simply</b> 197:10 <b>simulated</b> 163:14 <b>simulation</b> 163:24 165:24 166:11,13 <b>simulations</b> 175:14 <b>simulator</b> 174:17,25 175:6 <b>single</b> 106:17,23 217:11 <b>sir</b> 10:2 41:25 66:14 89:2 102:1 114:10 142:16 169:2 177:12 182:24 184:16 187:14 188:5 192:5 201:21 208:1 221:16 222:16 <b>sitting</b> 50:15 72:20 101:21 <b>situation</b> 59:21 128:7,13 136:2 174:25 <b>situations</b> 127:16 <b>six</b> 89:19,20,25 90:2,5,12 146:21 147:1 148:10 175:11 209:8,9,11 <b>six-one</b> 146:20 <b>six-page</b> 215:22	<b>skip</b> 23:6 <b>skipping</b> 182:3 <b>slip</b> 209:5 212:21 213:2 <b>slips</b> 117:23 <b>small</b> 167:17 <b>smooth</b> 38:11 56:4,4 <b>somebody</b> 52:1 63:17 104:2 135:6,6 136:10 138:4 165:14 167:5,15 170:4 171:19 199:4 226:3,3 <b>sorry</b> 8:4,4,23 11:16 12:17,19 17:20 18:1 19:2 22:25 31:11 39:1 42:24 46:5 48:16 51:1 56:21 64:3 65:10 70:1,9 71:7 77:5 81:15,22 95:2 101:18 105:8 105:12 111:9 121:24 137:7 155:11 174:4 178:20 190:8 190:18 202:23 207:11 208:2 214:17 218:9 221:15 222:18 <b>sort</b> 36:19 99:23 99:25 104:17 127:4,15 191:4 211:3 <b>sources</b> 103:22 <b>south</b> 204:21 205:5 <b>span</b> 58:11 <b>speak</b> 11:6 18:4 42:24 70:16 76:5 96:2 <b>speaking</b> 50:12	<b>speaks</b> 40:1 186:19 <b>spec</b> 43:24 <b>spec'ing</b> 202:16 <b>special</b> 103:13 103:19 113:22 113:23,25 114:13 120:12 139:11,12,22 139:24 146:13 146:25 147:14 148:8,11 153:3 225:15 <b>SPECIALIST</b> 3:6 <b>specialize</b> 161:24 <b>specific</b> 52:4 73:9 78:6 86:8 99:20 114:18 125:24 136:2 141:8 157:25 160:20 179:5 183:5 188:13 192:8 193:9 <b>specifically</b> 77:7 79:20 80:3 <b>specifications</b> 202:15 <b>specifies</b> 53:2,7 53:8 63:23 <b>specify</b> 109:5 <b>specs</b> 42:23,25 44:19 <b>speculation</b> 33:3 43:20 60:19 61:15 <b>spell</b> 10:17 68:17 92:22 159:6 <b>spelled</b> 68:19 <b>spoke</b> 111:10,10 111:13,21 135:1 225:14 226:3 <b>sporadic</b> 76:19 128:8 <b>spot</b> 165:16	180:2,3 <b>spreadsheet</b> 170:22 <b>staff</b> 3:5 7:21 94:4,6,7,8 144:11 178:7 <b>staffed</b> 178:24 <b>staffing</b> 169:20 170:6 177:17 178:22 183:18 204:19 <b>stage</b> 198:11 210:11 <b>stamped</b> 93:14 214:22 217:16 <b>stand</b> 67:3 88:21 153:23 <b>standards</b> 164:9 <b>standing</b> 51:12 58:24,25 <b>star</b> 95:13 142:10,14 143:20 <b>starred</b> 97:10 <b>start</b> 11:9 15:2 85:7 142:18 159:22 160:2 186:14 203:17 210:18 <b>started</b> 11:8,22 54:25 159:19 166:19,21 174:4,13 197:12 210:7 210:10,15 211:18 212:8 <b>starting</b> 121:13 168:2,4,5 <b>starts</b> 52:15 90:8 142:20 <b>state</b> 1:4 2:3,23 10:16 11:7 68:16 124:1 159:5 161:3,4 161:4,10 <b>stated</b> 63:21 133:6 144:10
---	--	---	---	---

150:22 204:10 <b>statement</b> 5:22 5:23 25:2 43:12,25 44:3 99:21 <b>statements</b> 42:12,14,16 43:8 44:13,15 44:17,18 45:9 192:1 <b>station</b> 172:8 177:18 178:8 <b>stations</b> 178:3 202:11 <b>status</b> 59:4 <b>stay</b> 181:21 <b>step</b> 51:3 73:13 164:15,21,23 <b>Stephanie</b> 86:19 111:13,21 <b>stick</b> 55:23 <b>stop</b> 17:13 38:17 58:5 63:6 109:23 130:17 130:17 210:11 212:9,10 224:20 <b>stopped</b> 212:6 <b>story</b> 201:12 <b>straddled</b> 129:8 <b>straight</b> 189:15 <b>strategy</b> 184:7 199:20 <b>Street</b> 3:7,17 <b>strictly</b> 135:21 <b>strike</b> 17:15 23:8 122:5 221:22 <b>strikeout</b> 35:24 36:22 <b>strikeouts</b> 35:8 35:11 36:17,18 37:25 <b>structure</b> 163:19 175:2 <b>STT</b> 28:22 <b>stub</b> 50:24 51:21 195:1 197:12	197:21 <b>stubs</b> 5:21 42:12 47:5,6,17 118:7 144:2 <b>studied</b> 11:4 <b>studies</b> 11:3 <b>study</b> 74:14,14 77:3,4,6,9,24 <b>stuff</b> 167:19 192:24 193:2 <b>Subcategory</b> 57:10 <b>subject</b> 9:6 23:25 47:18 171:22 196:1 203:2,11,21 204:7 <b>submit</b> 53:11 57:20 <b>submitted</b> 52:25 124:3 <b>subpoena</b> 6:8 29:2 33:22 48:6,15,18,23 <b>subpoenaed</b> 7:12,17 15:9 67:12 <b>subpoenas</b> 49:11 <b>subsection</b> 79:12 187:2 189:10 <b>subsequent</b> 163:6 174:16 <b>subsequently</b> 176:23 221:2 <b>substance</b> 61:8 <b>substantive</b> 185:20 <b>suffered</b> 206:2 <b>suggestion</b> 220:4 <b>Suite</b> 2:17 3:12 <b>summertime</b> 167:18 <b>super</b> 169:25 <b>superceded</b> 30:11 <b>supervises</b> 46:7 <b>supervisor</b> 71:22	71:24 72:3,3 74:13,17,20 76:7,10,21,22 77:14 200:9 <b>support</b> 65:20 <b>supported</b> 194:14 <b>supports</b> 32:2 <b>supposed</b> 73:11 143:9 175:17 197:16,18 <b>sure</b> 16:9 24:21 31:23 36:6 37:6 53:15 56:3 57:1,23 57:24 65:14 77:7 85:23 96:1 104:24 138:7 164:1,12 165:6 178:23 183:4 187:17 190:1 192:22 193:5,7,13,22 193:25 194:3 197:13 200:12 201:11,22 203:8 220:21 220:23 221:7 221:11 224:8 224:12,13 <b>surgery</b> 210:8 210:13 <b>survey</b> 108:2,5,8 <b>survivor</b> 124:18 <b>sustain</b> 152:22 <b>sustained</b> 13:19 40:3,24 60:13 75:21 78:1 114:9 129:3,19 129:22 137:20 148:2 150:13 151:21 152:7 153:7 171:11 178:11 184:18 190:13 204:1 206:7 220:16 <b>sustaining</b> 60:4	<b>sworn</b> 10:13 68:13 159:2 <b>symbolize</b> 94:1 <b>system</b> 1:3 2:2 3:3 7:22 42:23 43:1,1 62:22 71:10,12 73:24 118:11 146:17 146:19,22,23 151:8 171:17 <hr/> <b>T</b> <b>T</b> 4:10 5:1 6:1 <b>T-R-A-N</b> 10:18 <b>tab</b> 82:7,9 145:19 217:19 <b>table</b> 124:6 <b>tactics</b> 175:7 184:7 <b>take</b> 33:18 37:5 37:24,24 38:6 42:3 56:20 74:8 78:21 96:15 110:21 110:23,24 125:17 138:2 161:15 164:13 165:2 167:7 192:23 201:9 204:15 <b>takeaway</b> 196:1 <b>taken</b> 2:16 84:24 131:22,23 160:15 167:6 174:16 194:4 198:16 203:5 213:23 220:25 <b>takes</b> 174:17 <b>talk</b> 50:17,20 72:21 177:4 192:19 199:15 203:7 226:21 <b>talked</b> 50:10 57:15 121:25 197:3 <b>talking</b> 13:10 51:7,15 52:13	59:13 66:5,21 91:10 117:16 122:20 123:4 168:1 176:13 177:5,7 183:6 206:14 <b>talks</b> 14:1 31:3 138:9 <b>targeting</b> 179:5 <b>task</b> 192:8 <b>tasks</b> 77:11 192:11 <b>tax</b> 80:10 124:1 124:4,6 215:18 <b>taxable</b> 215:19 <b>taxes</b> 80:11 198:16 <b>team</b> 13:6 <b>tech</b> 12:9 <b>technical</b> 193:12 <b>technician</b> 71:21 72:2,7 76:6,9 76:23 <b>tell</b> 10:25 14:9 43:11 50:12 52:2 54:22 69:12 72:22 79:2 82:25 85:24 86:6 95:14 96:14,23 104:12,15 108:17 112:19 118:24 120:18 123:2,2,24 125:25 133:2 157:7 159:13 160:22 162:19 163:3 164:20 166:2,5 167:4 171:22 174:20 182:24 185:15 185:24 186:10 190:3 194:3 196:23 214:23 <b>telling</b> 154:17 <b>tells</b> 96:8 148:7 <b>temporary</b>
---	--	--	--	---

58:20 75:13 119:10 122:14 140:11,19 170:14 <b>Ten</b> 214:12 <b>tenders</b> 184:9 <b>term</b> 60:1 87:17 91:9 102:16 106:4 107:1 122:6 129:3 134:15,23 170:10 173:3 189:1,22 <b>terminologies</b> 168:7 <b>terminology</b> 212:3 <b>terms</b> 18:8 90:12 116:21 149:21 149:22 150:1,3 170:9 185:20 188:6 219:7 <b>terribly</b> 37:20 37:20 <b>test</b> 161:10 162:25 163:7 163:16,22 164:1,7,13,13 164:15,18 165:19 166:3 166:10,18,20 167:6,7,10 168:3 173:19 174:2,3,8,10 174:12,13,16 174:21 175:9 221:3 <b>tested</b> 166:7 <b>testified</b> 10:14 50:18 68:14 131:16 159:3 191:1 <b>testify</b> 8:18 29:1 37:15 54:8 <b>testifying</b> 54:16 <b>testimony</b> 8:15 9:6,7,24 10:1	17:11 19:21,24 22:16,17 30:18 48:12 50:8,23 78:12 99:15 102:16 128:5 132:7 144:20 145:9 148:1 152:14 156:14 191:11 200:21 208:10 225:22 225:23 <b>testing</b> 163:3,6 163:23 164:25 165:1,22 166:6 174:17 <b>text</b> 56:8,9 <b>thank</b> 10:19,21 12:5 16:7,25 19:8 20:1 27:19 28:17 29:25 30:24 31:15 32:6 34:1 36:13 37:7 39:3,19 42:20 46:11 47:1,12 48:24 54:14 58:12 62:13 68:16,21 68:25 70:13 82:2 83:3,5 85:12 87:21 90:14 91:4 92:7 93:9 94:18 97:19 100:4 101:24 105:18 109:17 111:25 115:3 117:20 120:24 121:24 123:18 130:18 143:16 143:16,16 144:1 146:3 147:7 154:21 157:12 158:16 158:18,19,20 159:5,8,9 169:7 170:7	186:7 190:8 195:4 207:18 208:3 212:19 212:23,24 214:18 217:24 223:22 226:6 226:17,18,22 <b>Thanks</b> 183:11 <b>they'd</b> 155:15 184:3 199:19 <b>thing</b> 31:7,9 61:25 74:20 106:17 112:9 179:22 209:24 219:19,20 221:3 <b>things</b> 23:12 71:3 73:9 80:2 110:22 124:25 135:20 175:5 179:6 193:13 197:2 200:8,10 202:18 220:2 <b>think</b> 8:25 16:18 19:13 22:12 36:9,17 37:4 37:23 41:23 49:22 54:20 55:16 56:14 58:7 64:18 66:19 67:6 73:9,10 87:18 96:24 99:20,21 101:17,20 110:14 113:19 117:14 126:16 126:20 128:4 131:16 157:7 162:18,24 171:3 172:1 174:3 180:3 181:23 182:21 190:21 192:24 194:24 199:25 204:10 210:17 211:13 224:17 225:22	<b>thinking</b> 174:6 <b>third</b> 36:2 101:7 114:25 <b>Thirteen</b> 55:25 <b>Thirty-three</b> 44:14 <b>thoroughly</b> 61:4 <b>thought</b> 81:15 143:13 150:4 199:19 221:6 <b>three</b> 42:11 56:14 122:4,12 165:2 169:23 170:3 173:10 175:15 180:8 201:10 <b>three-month</b> 208:5 <b>three-year</b> 176:17,20 <b>tickler</b> 110:3,20 <b>tie</b> 78:8 <b>tied</b> 21:4 <b>time</b> 15:16,25 24:6 26:8 33:15 36:19,21 36:21 43:17 54:9 55:3,6 57:23,25 58:1 58:9 64:7 70:25 71:1 72:18 74:15,23 76:12,20,24 77:25 79:6,22 80:20 82:18,24 85:15 86:15 90:17 91:18,20 95:24 104:18 109:5,8 115:24 120:5,11 126:19 128:3,3 131:5 136:13 136:13 138:3 139:14,20 143:4 144:13 145:7 154:7 166:8,15	167:25 168:20 168:22 169:10 170:16,23 171:10 172:14 173:24 174:5 174:22 175:24 176:6,12 177:1 177:4,7,22,25 178:3 179:10 180:15,17 182:4,10,16,18 186:1,23 188:16 189:15 191:3 193:1,3 193:8,11 194:3 195:15 197:2 198:7,9,21 200:16,24 201:6 203:22 204:4,13 206:3 206:13,15 207:23 208:5 209:11,20 210:9,10,22 211:25 212:4 212:10,12,17 213:9,10,16 215:8,12 216:6 216:20,21 217:12 218:25 <b>times</b> 77:22 123:7 169:2,12 179:23 180:14 199:15 205:6 219:12 221:10 <b>tinnitus</b> 102:4 <b>title</b> 12:1,20 60:18 74:18 78:5,6 79:23 187:8 190:23 190:25 218:21 218:24 219:4,6 219:10,16,19 219:23,25 <b>titles</b> 191:25 <b>today</b> 15:10 32:22 33:19,22
---	--	---	--	--

<p>37:5 38:19                  49:13,19,24                  50:2,9,18 55:2                  68:25 120:13                  143:19 156:14  <b>told</b> 134:9,10,10                  210:8 211:19                  223:6 224:16                  226:13  <b>tomorrow</b>                  168:12  <b>top</b> 46:9 80:15                  94:24 111:4                  126:2 130:11                  137:23 157:15                  224:23  <b>total</b> 196:14                  197:1,3 213:18  <b>totally</b> 122:17                  169:17 199:18  <b>Touch</b> 155:4                  221:17 222:5                  223:23  <b>touched</b> 222:1  <b>track</b> 168:24                  169:18 170:21                  171:5,20 172:2                  172:9,25 180:5                  198:10  <b>training</b> 160:20                  177:14 178:25  <b>Tran</b> 4:3 6:9                  10:7,12,18,25                  15:22 16:7,14                  17:3,10,24                  18:22 19:12                  20:7,21 21:18                  22:8 24:9,19                  27:14 28:8                  30:1 32:16                  33:18 34:5,17                  35:1,17 36:4                  36:21 37:16                  38:15 39:11                  40:11 42:9,16                  44:17 47:24,25                  48:6 49:4,12</p>	<p>49:19 57:5                  58:18 62:13,20                  67:25 153:22  <b>TRANSCRIPT</b>                  1:17 2:16  <b>transfer</b> 70:24  <b>transferred</b> 70:3  <b>transmitted</b>                  126:1  <b>transpired</b>                  173:23  <b>treat</b> 199:22                  212:6  <b>treated</b> 31:22,25                  210:15 211:21                  211:22,23                  212:11  <b>treating</b> 210:12                  211:18  <b>treatment</b> 15:6                  198:13 210:16                  212:6,8,9                  224:4  <b>trees</b> 192:13  <b>trouble</b> 151:3                  174:14  <b>truck</b> 173:9,10  <b>true</b> 22:21 44:7                  90:3 97:1                  145:2  <b>truth</b> 225:18  <b>try</b> 25:23 27:1                  126:21 177:11  <b>trying</b> 24:4                  35:21 65:21                  94:5 101:22                  121:25 122:20                  174:15 180:16                  204:12 211:6  <b>Tuesday</b> 1:19                  2:19 7:1  <b>turn</b> 18:22 20:21                  21:18 22:10                  25:10,25 27:9                  27:23 29:6                  38:15 39:11                  40:14 42:9</p>	<p>47:24 55:7,11                  55:11 56:18,20                  80:15 81:10                  83:11 84:2                  92:9 93:11                  101:4 111:2                  112:2,6 121:9                  132:14 155:3,5                  185:18 197:20                  206:24 213:25                  214:3 215:2,24                  218:3 223:9  <b>turned</b> 96:18  <b>turning</b> 94:22                  114:15  <b>Twenty</b> 21:21                  24:7  <b>Twenty-five</b>                  31:12  <b>Twenty-one</b>                  25:10  <b>Twenty-three</b>                  27:20  <b>Twenty-two</b>                  29:15,16  <b>twice</b> 118:21  <b>two</b> 7:9 20:5                  37:18,19 42:11                  44:13,21 45:1                  45:4 47:14,17                  49:22 57:2                  58:4 71:21                  72:1 81:1                  99:12 117:6,15                  117:25 118:2                  119:12 142:10                  158:1,6 165:2                  166:19 168:17                  168:18 169:22                  174:9 175:15                  180:8 181:18                  201:10 210:22                  211:17 216:16  <b>two-thirds</b>                  113:10  <b>type</b> 66:6 131:7</p>	<p>141:20 146:19                  146:22 162:5                  200:8 203:25  <b>types</b> 71:3                  110:25 141:21                  147:2  <b>typewritten</b>                  140:14  <b>typically</b> 11:18                  52:8 58:20                  63:7 201:17</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>U.C</b> 11:2  <b>Uh-huh</b> 65:1                  195:6  <b>Um-hum</b> 65:18                  83:22 212:22                  223:24  <b>unaffected</b>                  103:2  <b>unclear</b> 41:4                  131:18  <b>undergo</b> 160:19  <b>undergoing</b>                  211:20  <b>underlining</b>                  98:13  <b>underneath</b> 59:1                  79:13,16  <b>understand</b> 14:7                  38:12 58:6                  62:2 64:10                  65:18 66:24                  98:25 99:22                  101:23 135:19                  173:7 191:4                  192:2 197:5                  202:5,6 219:25  <b>understanding</b>                  11:24 13:7                  14:5 19:24                  38:3,4 99:18                  106:13 107:24                  123:8 124:9                  127:25 128:22                  132:10,21</p>	<p>134:17 138:23                  144:5 164:17                  185:24 186:10                  187:9 188:2                  189:11 190:3,8                  193:13 196:23                  198:14 202:25                  215:16 219:5  <b>understands</b>                  64:18  <b>understood</b>                  97:12 220:2                  226:14  <b>undertaken</b> 8:15                  52:6  <b>undertakes</b>                  14:15  <b>undoubtedly</b>                  179:7  <b>uniform</b> 142:4,5                  179:11,15,20  <b>union</b> 162:6,8,13                  177:17,22                  178:5 182:10                  194:8,9,11,13                  194:15,18,22                  199:10  <b>unique</b> 127:9,15  <b>unit</b> 51:2 178:4                  179:1  <b>units</b> 72:14  <b>unused</b> 115:24  <b>unwithdraw</b>                  29:20 31:16  <b>update</b> 73:23,24                  82:18 110:5  <b>updated</b> 25:24  <b>updates</b> 82:20  <b>updating</b> 71:1  <b>upfront</b> 172:24  <b>upgrade</b> 65:12                  65:13 75:13                  140:11,19                  148:13  <b>upgraded</b> 13:22                  52:1,2 67:1  <b>upper</b> 38:23</p>
---	--	--	--	--

92:20 <b>use</b> 56:11 60:5 61:11,12 69:6 71:12 84:22 96:10,11 110:20 117:22 180:16 184:7 185:6,6,8,12 196:2 197:11 208:14 215:12 <b>usually</b> 85:10 148:24 163:7,9 163:11,18 164:9 166:13 183:23 199:21 200:8 <b>utilize</b> 83:24	152:13 <b>variations</b> 192:8 <b>varied</b> 163:21,25 169:19 180:5 196:25 <b>variety</b> 11:17,21 150:7 <b>various</b> 159:18 161:1 <b>vary</b> 163:6,15 <b>vehicle</b> 184:6 <b>vendor</b> 71:13 <b>vent</b> 59:1 <b>Verdemont</b> 177:18 <b>verified</b> 197:8 <b>verify</b> 197:9 <b>version</b> 36:19 38:11 56:12 <b>versions</b> 56:14 <b>versus</b> 72:6,8 74:16 77:14 139:21 146:25 <b>violated</b> 182:7 <b>violates</b> 188:1 <b>virtually</b> 163:23 <b>voice</b> 12:16 70:11 88:20 <b>voir</b> 20:4 <b>volume</b> 12:15 <b>votes</b> 38:8	119:24 121:12 <b>want</b> 17:16 28:21 37:20 39:11 40:14 42:3 45:23 54:15 55:8,24 56:2,3 58:18 63:22 64:20 66:23 67:5 78:8 81:10 82:7 97:6 102:6 111:2,16 113:17 117:13 117:21 121:9 123:1 136:22 155:3 163:15 166:1,24 169:15 170:10 173:6,18 181:23 184:10 185:18 186:24 191:14 198:18 199:23,23,24 200:12 210:12 213:8 215:24 217:8 218:18 219:19 221:11 223:5,22 225:13 <b>wanted</b> 29:17 46:13 187:17 190:1 192:22 197:13 199:9 208:14 215:12 215:13 219:13 221:7 224:12 224:12 <b>ward</b> 171:2,8,9 171:13,20,25 <b>wasn't</b> 21:2 33:16 51:23 54:23 57:23 61:17 128:6,6 135:25 143:3,3 173:1 180:6 190:1 193:2,6 194:1 196:3	199:3 219:21 221:7 224:6 <b>water</b> 184:9 <b>watered</b> 192:12 <b>way</b> 47:8 72:6 113:10 114:3 114:25 132:6 151:23 159:21 161:1,11 184:5 192:17 195:20 202:3 224:15 224:16 <b>we'll</b> 25:6 27:4 55:23 126:12 158:21 226:20 <b>we're</b> 7:9 8:25 24:4 29:14 56:11,22 59:13 65:21 66:21 68:6 73:11 88:7 153:12,21 167:25 171:22 176:13 177:5 182:18,20 217:12 221:25 <b>we've</b> 46:21 55:16 66:5 153:23 199:16 <b>wear</b> 179:11 <b>website</b> 25:21 28:25 141:8 <b>week</b> 49:20,20 <b>weeks</b> 165:2 <b>welcome</b> 39:20 <b>went</b> 11:2,7 21:1 48:23 49:10,11 66:6 70:23 123:10 151:18 151:19 153:15 159:15,16,18 159:20 161:1 166:10,11 174:24 175:13 179:4 181:25 188:18 193:5 197:10 198:22 202:11 203:22	205:3 206:13 206:15 207:22 210:4,6,6 211:23 221:2,9 224:7 <b>weren't</b> 168:23 219:6 <b>Wes</b> 48:9 <b>Wesley</b> 3:4 7:21 <b>West</b> 3:12 <b>whisper</b> 101:19 <b>white</b> 55:7 82:6 131:10 145:19 147:18 <b>wide</b> 11:17,21 <b>wife</b> 221:2 224:6 <b>wildland</b> 163:16 175:1,1 <b>withdraw</b> 25:25 68:2 78:12 133:22 145:15 <b>withdrawing</b> 130:22 145:14 <b>withdrawn</b> 26:3 29:16 223:3 <b>withholdings</b> 80:10 <b>witness</b> 7:18 8:21 10:13,15 10:18 12:2,4 12:17 13:25 15:20,23,25 16:4 18:2,4,14 18:24 19:25 20:10,13,23 21:20 22:15,19 23:1,4,5 24:16 24:25 25:12 26:18 27:10,17 27:24 28:10,12 28:16 29:3,17 29:20,22 30:3 30:6,8,10,13 30:20 31:2,6,9 31:11,14 32:15 32:19,23 33:7 33:11,15 34:19
<b>V</b>				
<b>vacancies</b> 68:1 <b>vacancy</b> 59:5,14 59:18,19 166:22 168:18 169:3 180:13 180:16,19 <b>vacant</b> 181:2 <b>vacation</b> 116:14 116:17 117:16 167:18 169:25 171:18 180:17 <b>vague</b> 13:18 41:10 43:18 45:12 60:19 61:15 87:17 91:18 96:6 100:7,11 102:16 114:6 122:6 127:6 133:20 151:20 182:16 200:17 202:4 203:24 204:9 <b>Valley</b> 159:16,17 162:3 <b>valuation</b> 152:25 <b>valuations</b>	<b>W</b>			
	<b>W-4</b> 124:2,4 <b>W-4s</b> 71:2 <b>wages</b> 208:22 212:17 216:14 221:11,20 <b>wait</b> 22:24 24:20 111:15,17,19 111:23 114:16 128:19 130:17 130:17 141:5 142:16,16,16 158:10 187:24 187:24,24 <b>walk</b> 118:23			

35:3,3,6,9,13 35:19 36:3,6 36:22 37:1,3,6 37:15,23 38:9 38:19 39:17,20 40:16 41:20,24 42:5,25 44:11 44:18,25 45:3 45:6,15,22 46:4,7,11,23 46:25,25 47:18 48:8,23 49:13 54:3,4,9,13 55:10,13 56:19 57:6 58:2,13 59:12,14 60:22 61:17 63:7 64:15,24 65:16 67:2,12 68:2,5 68:13,15,18 70:14 75:20 78:22 80:17 81:20,24 82:1 82:5,9,11,14 82:16,20,23 83:2,13 84:4 85:7,20,23,25 86:14 87:20 88:13 89:20,22 90:1,4,25 91:3 91:23 92:2,5 92:23 93:7,13 94:2,7 95:4,6 96:22 97:1,4 97:20,22 98:2 98:7,15,18,23 98:25 99:20 100:2,9,17,24 101:6 102:18 105:6,11,19 106:10 108:8 108:18,24 109:25 110:16 110:24 111:6,9 111:13,19 112:4 113:11 114:12 117:19	117:22 122:3,7 122:13,22,24 123:1,6,9,14 126:17,25 127:7,13 129:24 132:15 135:9 137:4,21 138:1 140:7,16 141:7 142:19 142:23 143:11 143:21,25 144:3,3 145:3 146:10,16 147:6 148:7 149:14 153:18 153:24 155:8 156:2,19 157:3 158:13 159:2,4 159:7 168:2,5 169:6,17 174:6 176:8,10,14 177:9,11,13 178:18 181:16 182:17,20 183:3,9 184:17 185:9 186:8,22 187:15,23 188:6 192:6 193:1 194:6 197:23 200:19 201:3,22 202:6 202:8 204:10 205:5 206:19 207:7 208:2 209:18 212:24 214:16,19 218:14 220:21 221:17,23 224:21,23,25 225:7,23 <b>witness's</b> 99:14 <b>witnesses</b> 4:2 7:12,16 8:8,12 8:17 10:5 54:8 153:13 <b>won</b> 219:24 <b>word</b> 60:5 79:15	79:15 87:19 98:13 <b>wording</b> 133:2 <b>words</b> 45:16 52:6 63:1 165:22 <b>work</b> 13:6,16,22 19:4 23:12 43:25 55:6 64:12,22 69:23 103:8 159:22 160:2 164:10 169:24 170:14 189:12 192:7 202:13 205:5 211:9 <b>worked</b> 11:18,21 23:13 77:20 168:21 171:14 189:14,15 199:24,25 202:15 <b>workers</b> 11:20 <b>working</b> 69:5,15 76:25 132:18 133:8 135:15 170:24 181:2 198:13 204:22 <b>works</b> 153:24 <b>worth</b> 165:23 212:14 <b>wouldn't</b> 9:23 72:18 80:13 98:18 101:1,9 128:4 136:9 167:19 187:20 189:23 208:11 209:12,25 212:14 <b>write</b> 78:25 79:3 109:19 123:3 219:2 <b>writes</b> 44:3 <b>writing</b> 14:17 92:18 154:10 163:8 165:24 166:11 174:25	225:17 <b>writings</b> 154:4 <b>written</b> 14:10 87:19 115:12 118:19 133:5 143:23 163:5 164:6,13,21 165:23 166:10 174:16,23,24 175:13 <b>wrong</b> 105:14 142:20 <b>wrote</b> 99:1 104:16 111:5 111:11 131:15 133:3 193:20 218:23 220:8 225:21	139:12 143:15 154:16 157:9 176:8 182:17 185:4 189:18 194:6 204:14 207:8 216:3 218:12 223:2,7 <b>year</b> 11:4 73:20 73:21 74:4 77:1 85:1,7,9 85:11 94:11 96:9 107:1,2 107:11,14 108:22 109:6,6 110:2,22,25 115:15,19,24 116:2,3,6 118:22 119:22 119:23 120:8 139:21 176:11 176:16 193:9 193:10,11 208:1 210:17 212:2 <b>years</b> 12:13 73:18 74:1,21 77:21 92:6 130:5,6,8 162:9,11 174:9 174:11 194:23 196:5 216:16 216:19 <b>Yep</b> 115:4 <b>yesterday</b> 9:3 94:13 157:4 <b>Yucaipa</b> 161:22
			<b>X</b>	
			X 4:1,10 5:1 6:1 XX 107:12	
			<b>Y</b>	
			Y 153:23,24 <b>Y-A-V-O-R-N...</b> 68:19 <b>Yavornicky</b> 4:4 50:10,12 68:12 68:18,25 69:4 69:8 78:15 81:24,25 82:1 82:2,2 85:14 85:22 89:10 102:6 113:13 125:3,19 126:25 127:3,3 127:3 128:22 158:19 192:19 <b>yeah</b> 16:6 36:8 48:10 69:3,7 74:6 86:25 90:1 100:9 102:18 110:16 110:20 111:20 112:11 123:2 125:25 133:10	
			<b>Z</b>	
			<b>Zimmerman</b> 221:14 224:17	
			<b>0</b>	
			023 112:11 051 108:20 109:6,12 07 112:24 113:1 08 116:1	

<b>1</b>	55:9 56:3,22	1991 162:24	181:23,23	2:9 7:7
1 22:11 26:16	56:23 125:1	1996 69:18,21	182:18 217:2	207 4:20
85:8,8 90:8	218:4,11,12	1998 70:2 71:16	2004 24:1 55:4	21 5:5,9 24:9,15
94:12 95:2	222:9,11,12,22	1999 22:13,17	114:22 115:2	24:22,24 25:6
96:17 124:25	222:23	71:20	171:15,21	25:7 56:20,21
185:7,8	14 1:19 2:19 7:1	1999-235 5:4	176:10 182:21	217 4:18
1,521.50 196:13	155:4,11,23	1999-236 5:6	182:22 194:12	21st 226:21
10 4:3,18 65:13	222:7 224:2	1999-242 5:16	217:2	22 5:10 25:11,13
108:21 109:10	226:11	1999-252 5:8	2005 71:21,25	25:25 26:3
136:23 148:15	14-2 224:21,22	1999-253 5:9	176:11,14	29:11,14,20,21
162:9,11	144 213:15	19th 131:13	177:8 178:21	29:22 30:2,15
168:18 169:3,4	147 4:4	154:7,9	179:25 182:19	30:18,25 31:16
170:20 173:9	15 68:6 114:22	1st 107:11 108:2	182:20,21,23	31:18 32:5,7
174:11 180:7	115:2 116:15	108:21 116:16	183:1 194:11	56:18
205:12,12	145:18,19	211:13	2005-454 5:20	222 4:23
214:4,11 215:3	153:15		2006 11:8 54:25	223 4:22
216:1 217:9,10	154 4:4	<b>2</b>	2006-66 5:18	23 5:7,12 16:19
217:25	155 4:5	2 4:12 16:5 92:9	2007 20:9 58:6,8	26:1,5,9,19,20
10/5/04 113:1	156 4:5	92:12 93:12,22	71:22,23 74:8	27:6,7,12,14
100 116:25	159 4:6	94:12,19,23	85:5,6 126:6	55:15
10th 214:22	15th 85:10	95:2 97:9	131:13 154:7	23rd 58:8
11 4:20 84:20,25	112:24 113:1	104:5,6,7	155:13 182:22	24 5:14 16:19
85:1,4,9	116:18 118:21	112:9 115:6	183:14 194:10	27:9,23 28:3
112:22,23	16 6:3 125:1	132:14 142:12	200:16 203:22	28:12,18,19
125:1,4 173:9	211:15	142:18 146:11	204:4,20 205:3	55:12,15,19
206:20,25	17 6:3,4 77:21	154:3 185:1,5	212:18	84:25 85:8,8
207:9,10,12,19	130:5,6,6	185:19 189:10	2009 35:16	118:22
214:2 218:5,13	140:1,3,6	218:19	58:12 69:3	24/7 170:4 173:7
222:18,20	17th 86:11	2-A 185:24	194:23 199:13	24678 95:12
223:1	18 5:3 6:4 18:22	20 5:3,7 21:19	2010 194:24	24th 155:20,21
11500 3:12	19:2,7,21 20:2	21:22 22:4,9	2011 6:4 16:1	25 5:9,16 29:6
11th 87:7 155:13	20:3,8,16,18	23:15,16,17,18	18:13 118:15	29:10 30:11
12 4:22 17:15	22:13,17 23:2	23:22,23 24:1	195:13 208:2	31:7 32:9,12
42:1,10,11	23:8 24:1	24:6	210:5 211:4,12	33:25 34:2,14
115:7 120:1	77:21	2000 71:21	221:5	165:23
125:1 196:9	186 107:16,17,21	2000-13 5:11	2011-33 6:6 17:4	26 5:12,17 6:7
222:16,19	107:23 108:17	2000-251 5:15	17:17	34:18,23 36:12
223:6,9,15,17	108:18 109:20	2000-333 5:13	2012 126:6	36:14 37:10,16
223:20	110:3 115:14	2001 174:10	198:3 210:18	37:18,18 38:12
120 107:2	119:7 120:8	2002 168:3,4,5	211:13 214:22	38:13 39:8
12080 1:23 2:22	19 5:5 20:22	169:12 174:4,6	215:22 217:4	27 5:19 39:7,12
127 4:4	21:5,11,14,15	174:8 178:21	2013 92:2,5	40:4,7,8
13 4:23 16:19,20	22:21 24:1,24	2003 35:16	2014 1:19 2:19	28 5:14
16:24 17:15	1981 159:19	58:12 171:21	7:1	29 159:19
19:17,19,23	160:3	174:3,9 176:7	2014-0256 1:9	2986OSD 1:25
35:24 36:9	1983 206:19	176:8,9,10,13	2:8 7:8	2B 98:7
	1990 161:7	177:6,8 179:25	2014040945 1:10	

<u>3</u>	39 6:7,7,10 88:5 88:8 89:2,3,4,6 89:7 125:15	224:24 6/25 87:1,8 6/26 87:10 62 4:3 632 108:18,25 109:20 115:15 65 4:4 650 2:17 68 4:4 68,562.26 112:24 114:23 6th 207:24 208:2 210:5 211:4,12 212:7	94 4:12 94229-2707 3:8 942707 3:7 95401 3:18
34:15 42:1,10 78:16,18,18 81:16,18 82:3 82:3 83:6,7,8 93:11 111:2 112:2,6,9 115:7 125:1 3/31/81 159:24 30 5:21 42:1,11 47:3,14,17,20 47:21 56:13 117:24,25 124:21 165:23 195:3 201:21 30th 118:15 195:12 31st 116:1 159:25 198:3 215:22 217:4 32 5:10 125:1,10 33 5:22 42:2,12 44:13,15 46:14 46:16,17,24 49:22 330 2:17 3340 3:7 34 5:16,23 42:2 42:12 44:13,14 44:15 46:14,16 46:17,24 35 6:3 16:9,10 16:11,16,18,23 17:1 18:13 19:15,19,23 28:23 49:23 55:15,16,22 36 5:17 6:4 17:8 17:16,18,21 18:1,2,3,13,15 18:18,19 28:23 49:23 37 6:7 38:18 39:2,4 56:3,25 38 6:8 48:22,25 49:5	<u>4</u>	<u>7</u>	
	4 83:12,18 101:5 105:3,20,21 106:11 183:1 215:2 223:3 4/30 111:8,9 4/30/07 111:9,13 111:21 4:00 222:1 226:19 4:02 226:23 40 5:19 165:25 400 3:7 438 3:17 45 126:20 153:15 46 5:22,23 47 5:21 48 4:3 6:8,8 4850 80:9 198:15 211:25 212:4,10,17 213:10,20 4th 3:17	7 35:2 36:2 90:9 90:25 103:16 103:24 113:10 114:11 132:3 716 196:6 716.44 196:6 71XX 107:9 75,000 112:17 7th 198:2	
	<u>5</u>	<u>8</u>	
	5 29:22 105:23 105:23 125:1 171:15 216:17 5/15/09 116:13 50 215:18,19 550 3:12 58 4:3	8 82:7 83:2,4 113:7 114:7,10 114:11,19 131:9 146:5 154:3,4 8.7 108:21 109:9 83 4:15 84 4:17 86 162:18 88 6:10 89 6:10 8th 155:24,25	
	<u>6</u>	<u>9</u>	
	6 4:17 84:2,5,7 84:11,13,15,16 90:8 105:23,23 116:1 125:1 185:12,13,15 6/15/07 84:21 85:2 6/23/2011	9 116:10,13 147:19,21 9/19/2011 225:8 9/30/07 111:6 9:12 2:19 7:2 90064 3:13	