

**ATTACHMENT E**

**TRANSCRIPTS OF ADMINISTRATIVE HEARING AND DECEMBER 16, 2015  
BOARD MEETING**

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

In the Matter of the Application )  
for Final Compensation: )  
 )  
DARRYL HURT, ) Case No. 2012-0190  
 ) OAH No. 2014090777  
 Respondent, )  
 )  
TIMOTHY BACON, ) Case No. 2012-0191  
 ) OAH No. 2014090781  
 Respondent, )  
 )  
 and )  
 )  
CITY OF RIVERSIDE, )  
 )  
 Respondent. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
San Bernardino, California  
Thursday, May 28, 2015

Reported by:  
  
ESTRELLA HERMAN  
CSR No. 13865  
  
Job No. :  
55750SD

1 BOARD OF ADMINISTRATION

2 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

3 MARY AGNES MATYSZEWSKI, ADMINISTRATIVE LAW JUDGE

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Respondent, )  
11 )  
and )  
12 )  
CITY OF RIVERSIDE, )  
13 )  
Respondent. )  
14 \_\_\_\_\_ )

15  
16  
17 TRANSCRIPT OF PROCEEDINGS, taken at

18 650 Hospitality Lane, Suite 330, San Bernardino,  
19 California, commencing at 10:08 a.m.

20 on Thursday, May 28, 2015, heard before  
21 MARY AGNES MATYSZEWSKI, Administrative Law Judge,  
22 reported by ESTRELLA HERMAN, CSR No. 13865,  
23 a Certified Shorthand Reporter in and for  
24 the State of California.

25

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I N D E X

1					
2	PETITIONER'S				
	Witness:	Direct	Cross	Redirect	Recross
3	Samuel Camacho	121			
4	By Mr. Bolander		143		
	By Mr. Okazaki		168		
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6	RESPONDENTS'				
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E X H I B I T S

16		Marked for	Received
	PETITIONER'S:	Identification	In Evidence
17			
18	1 - Statement of Issues, Darryl Hurt, dated 9/19/2014	9	9
19	2 - Statement of Issues, Timothy Bacon, dated 9/19/2014	9	9
20			
21	3 - CalPERS determination letter to Jana Maurice and Darryl Hurt, dated 9/14/2011	9	9
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23	4 - CalPERS determination letter to Jana Maurice and Timothy Bacon, dated 9/14/2011	9	9
24			
25	5 - Letter of Appeal, Darryl Hurt, dated 10/28/2011	9	9

E X H I B I T S (Continued)

		Marked for Identification	Received In Evidence
1			
2	PETITIONER'S:		
3			
4	6 - Letter of Appeal, Timothy Bacon, dated 10/11/2011	9	9
5	7 - OAH Order Consolidating Matter and Setting Hearing Date, dated 1/22/2015	9	9
6			
7	8 - Notice of Consolidated Hearing and Proof of Service, dated 2/5/2015	9	9
8			
9	9 - Disability Retirement Election Application of Darryl Hurt and Letter from City of Riverside regarding disability	9	9
10			
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12	10 -Disability Retirement Election Application of Timothy Bacon	9	9
13			
14	11 -My CalPERS Customer Touch Point Report, Darryl Hurt	9	9
15			
16	12 -My CalPERS Customer Touch Point Report, Timothy Bacon	9	9
17	13 -Payroll Detail Report, Darryl Hurt	9	9
18			
19	14 -Payroll Detail Report, Timothy Bacon	9	9
20	15 -Settlement Agreement, dated 4/12/2010	9	9
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22	16 -E-mail communication regarding pay rate of Darryl Hurt, Personnel Action Form attached	9	9
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E X H I B I T S (Continued)

		Marked for Identification	Received In Evidence
1			
2	PETITIONER'S:		
3			
4	17 -E-mail communication regarding pay rate of Timothy Bacon, Personnel Action Form attached	9	9
5			
6	18 -E-mail communication regarding salary schedule, City of Riverside, Salary Schedule Report, Effective 10/1/2010 attached	9	9
7			
8			
9	19 -E-mail communication regarding settlement agreement, letter of Richard Roth concerning settlement agreement attached	9	9
10			
11			
12	20 -E-mail communication regarding Darryl Hurt and Timothy Bacon's last day at work	9	9
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15	RESPONDENTS'		
16	1 - Bacon - Statement of Issues	9	9
17	2 - Hurt - Statement of Issues	9	9
18	3 - Bacon - Letter regarding compensation review	9	9
19			
20	4 - Hurt - Letter regarding compensation review	9	9
21	5 - Bacon - Second Amended Complaint	9	9
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23	6 - Hurt - Second Amended Complaint	9	9
24	7 - Settlement Agreement	9	9
25	8 - Bacon - Payroll Summary	9	9

E X H I B I T S (Continued)

		Marked for Identification	Received In Evidence
1			
2	RESPONDENTS' :		
3	9 - Hurt - Payroll Summary	9	9
4	10- Bacon - Paycheck Stubs	9	9
5	11 -Hurt - Paycheck Stubs	9	9
6	12 -Salary Schedule Report	9	9
7	13 -Bacon - CalPERS Request for	9	9
8	Information form		
9	14 -Hurt - CalPERS Request for	9	9
10	Information Form		
11	15 -Bacon - Letter Regarding	9	9
12	Appeal		
13	16 -Hurt - Letter Regarding	9	9
14	Appeal		
15	17 -Bacon - Personnel Action	9	9
16	Notice		
17	18 -Hurt - Personnel Action	9	9
18	Notice		
19			
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1 San Bernardino, California, Thursday, May 28, 2015

2 10:08

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4

5 THE COURT: On the record in the Matter before the  
6 CalPERS against Timothy Bacon, Darryl Hurt; case numbers  
7 2012-0190 and 2012-0191; OAH numbers 2014090777 and  
8 2014090781.

9 My name is Mary Agnes Matyszewski. I'm the  
10 administrative law judge assigned to hear this Matter here in  
11 San Bernardino in the CalPERS office.

12 Can I have appearances, please, beginning with the  
13 agency representative?

14 MS. KAUR: Preet Kaur, counsel for CalPERS.

15 THE COURT: Thank you.

16 MR. BOLANDER: Good morning, your Honor. Joseph  
17 Bolander for Respondents Timothy Bacon and Darryl Hurt.

18 MR. OKAZAKI: Good morning, your Honor. My name is Neil  
19 Okazaki. I'm representing the City of Riverside.

20 THE COURT: Good morning.

21 We had several discussions off the record. It's my  
22 understanding the parties have stipulated for me to receive  
23 Petitioner's Exhibits 1 through 20, which I've marked as  
24 Petitioner's 1 through 20, and Respondents' Exhibits 1  
25 through 18, which I've marked as Respondents' 1 through 18.

1           (Petitioner's Exhibits 1 through 20 were marked for  
2           identification by the Court.)

3           (Respondents' Exhibits 1 through 18 were marked for  
4           identification by the Court.)

5           THE COURT: Is that correct, Ms. Kaur?

6           MS. KAUR: Yes, your Honor.

7           THE COURT: Thank you.

8           MR. BOLANDER: That is correct, your Honor.

9           MR. OKAZAKI: Yes, your Honor.

10          THE COURT: Thank you. With that, those documents will  
11          be received.

12          (Petitioner's Exhibits 1 through 20 were received in  
13          evidence by the Court.)

14          (Respondents' Exhibits 1 through 18 were received in  
15          evidence by the Court.)

16          THE COURT: We've also discussed off the record the  
17          matter is consolidated, but I will be writing two separate  
18          decisions. Is that correct, Ms. Kaur?

19          MS. KAUR: Yes, your Honor.

20          MR. BOLANDER: That is, your Honor.

21          MR. OKAZAKI: Yes, your Honor.

22          THE COURT: Thank you. Given that, your case in chief.

23          MR. BOLANDER: I believe we said we were going to admit  
24          the jurisdictional.

25          THE COURT: But everything's in. That's what you all

1 stipulated to.

2 MR. BOLANDER: Very good. Thank you. Your Honor, if I  
3 may, I prepared a very brief opening sort of to set the  
4 stage.

5 Mr. Hurt and Mr. Bacon are two retirees who worked  
6 as police officers for the City of Riverside. They both  
7 honorably served the citizens for nearly 30 years a piece.  
8 Both were lieutenants in 2008, and the record's going to show  
9 that both applied for the rank of captain. They were denied  
10 the rank of captain based on retaliation for their union  
11 activities and other protected activities.

12 So they both filed federal lawsuits against the  
13 City. Those cases were eventually settled; and the record's  
14 going to show that -- the evidence will show that as part of  
15 those settlements, Respondents were each paid captain's pay  
16 moving forward. They received at least captain's pay moving  
17 backwards to the date of the promotion denial. So after  
18 their retirement -- I'm sorry. I'm going back. They both  
19 retired 2010, 2011 respectively.

20 Now, after their retirement, CalPERS refused to  
21 factor the captain's pay they received into their respective  
22 pension calculations claiming that the pay received pursuant  
23 to the settlement agreements was not pay rate or compensation  
24 earnable within the meaning of the retirement clause. In  
25 part because Respondents, they say, were not technically

1 promoted to the rank of captain. And Respondents timely  
2 filed appeals.

3 And I think that provides the context for what  
4 you'll hear today, which are the evidence and Respondents'  
5 two primary contentions here. The first that the payments  
6 received were pay rate and were compensation earnable.  
7 Respondents received all the benefits of the captain's  
8 position, and they were captain's therefore. They received  
9 those benefits going forward. They received those benefits  
10 retroactive to the date they were denied promotion, by their  
11 allegations in the federal lawsuit, illegally.

12 That leads to the second contention that if for some  
13 reason it is determined those payments do not constitute pay  
14 rate or compensation earnable, that can be factored into  
15 their pension calculation. Equitable estoppel operates to  
16 prevent CalPERS from denying them the captain's-level  
17 retirement.

18 My clients will testify that they would not have  
19 entered the settlement agreement that they did basically  
20 saying that they -- they would be treated like captains for  
21 purposes of all benefits that comes along with that. They  
22 would not have entered that settlement agreement if they  
23 don't think those things would be factored into their  
24 retirement calculations.

25 And Senator Roth will testify -- Senator Roth who

1 was an attorney at the time who represented the City -- that  
2 CalPERS represented to the City of Riverside that the way  
3 that the settlement agreement was structured -- the way that  
4 the payment would be made would satisfy all the requirements  
5 of retirement laws to allow these payments to be factored  
6 into the retirement calculation.

7 Now, that is a representation that was then made to  
8 my clients. And based on and reasonably relied on that  
9 representation conformed their conduct to it so that the deal  
10 was structured as it was based on CalPERS' own  
11 representations. If the Court upholds CalPERS determination  
12 that this was not the way it was done -- did not square with  
13 retirement laws, my clients shouldn't be punished for  
14 reasonably relying on the representations of the agency  
15 itself.

16 So this is not a case that, you know, where there  
17 was some scheming to get around the requirements of the  
18 retirement laws. The parties went to the institution itself  
19 and asked them, "Will this work? Are we doing this  
20 correctly?" and was told "Yeah."

21 With that, I will conclude my opening and call my  
22 first witness.

23 THE COURT: Hang on a second. Ms. Kaur, would you wish  
24 to make an opening or reserve?

25 MS. KAUR: I'd like to include my opening in our closing

1 statement if that's okay with the Court.

2 THE COURT: Okay. That's fine.

3 And, Mr. Okazaki, would you like to make an opening  
4 statement?

5 MR. BOLANDER: No. We will -- I'll waive opening.

6 THE COURT: Okay. Thank you.

7 Mr. Bolander, your first witness.

8 MR. BOLANDER: Thank, your Honor. Respondents will call  
9 Respondent Darryl Hurt.

10 THE COURT: Approach and raise your right hand, please.

11

12 DARRYL HURT,

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

15 THE WITNESS: I do.

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

18 THE WITNESS: Darryl, D-A-R-R-Y-L, Hurt, H-U-R-T.

19 THE COURT: Thank you. Before we begin, he doesn't have  
20 a witness notebook from Respondents. He's got the CalPERS;  
21 he just doesn't have the Respondents on the table. Thank  
22 you.

23 Mr. Bolander.

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. BOLANDER:

3 Q Hello, Mr. Hurt.

4 A Hello.

5 Q We'll go over a little bit of your background here.

6 You worked for the City of Riverside with the Riverside

7 Police Department; correct?

8 A Correct.

9 Q When did you start your employment with the City of  
10 Riverside?

11 A 1982.

12 Q In what position did you begin?

13 A Police officer.

14 Q How long did you fill that position?

15 A Approximately ten years before my first promotion.

16 Q What was your -- when did you receive your first  
17 promotion?

18 A Probably 1992 or '3.

19 Q And to what rank?

20 A Sergeant.

21 Q And how long did you serve as sergeant?

22 A Until 1995.

23 Q Did you receive any commendations or awards in your  
24 time as a officer or sergeant?

25 A Yes, I did.

1 Q Can you give us a brief synopsis of some of those?

2 A I received a Medal of Valor. I received a Medal of  
3 Notorious Valor. I received several first-level medals in my  
4 career -- several what they call PIRs, personal incident  
5 reports, and several recognitions through various  
6 organizations like the Riverside Police Officers' Association  
7 and City Council.

8 Q Thank you. And I believe you said you worked as a  
9 sergeant until 1995?

10 A Correct.

11 Q What rank did you promote to after that?

12 A Lieutenant.

13 Q And how long did you work as a lieutenant for the  
14 Department?

15 A Ten years on -- yeah, ten years.

16 Q Okay. And what were your general duties as a  
17 lieutenant?

18 A They were various depending what assignment you were  
19 assigned to. But, basically, it was supervision of sergeants  
20 and officers and various assignments. I worked them all from  
21 S.W.A.T. to air to investigations to watch commander.

22 Q And in what -- what year did you retire from the  
23 City of Riverside?

24 A January 2011.

25 Q And in what rank did you retire?

1 A I believe it was captain.

2 Q Now, during your time at the City, did you file a  
3 federal lawsuit against the City of Riverside?

4 A Yes, I did.

5 Q When about did you do that?

6 A We filed a lawsuit in, I believe, 2008.

7 Q If you could open up the exhibit book there, I'd  
8 like you to take a look at Exhibit Number 5.

9 MR. OKAZAKI: Just to clarify for the record, that was  
10 respondents' 5.

11 MR. BOLANDER: Oh, yes, respondents' 5. Thank you.

12 BY MR. BOLANDER:

13 Q Take a quick moment to review that.

14 A Can I correct? This was filed --

15 Q Sure.

16 A -- filed in 2009.

17 Q Well, what is that document, if you know?

18 A It looks like the lawsuit itself.

19 Q The lawsuit that you filed or was filed on your  
20 behalf against the City?

21 A Yes.

22 THE COURT: One thing I'll just note is exhibit --  
23 respondents' 5 is a Second Amended Complaint. So the  
24 original one may have been filed in 2008. So you may be  
25 correct in your testimony. I don't know whether -- when the

1 amendments were filed.

2 MR. BOLANDER: That's a good point.

3 BY MR. BOLANDER:

4 Q Can you -- can you give me a brief response or brief  
5 synopsis as to why you filed this Complaint against the City?

6 A Sure. When I became lieutenant, I was part of a  
7 administrative association of about 21 administrators that  
8 included lieutenants, captains, deputy chiefs, and the chief.

9 Q And sorry to cut you off. By "administrative  
10 association," what are you referring to?

11 A Our union, basically. The police officers have a  
12 separate union, and the police administrators also had a  
13 union. At that time, there was a captain in charge of the  
14 administrators union. The president -- that was Captain  
15 Dana -- many members were unhappy with his running of the  
16 union.

17 So I believe in 2005 I ran for the union president  
18 and became elected as the union president. In that same year  
19 there were contract issues; so I attempted to address those  
20 contract issues informally with counsel, city manager, and  
21 the mayor. It took a few years of negotiating, which nothing  
22 was occurring. So the membership decided since these issues  
23 weren't being resolved the informal way we would file a  
24 lawsuit against the City.

25 That was the beginning of a eroding relationship

1 at -- between the RPAA, Riverside Police Administration  
2 Association, and the City. Without going into great detail  
3 of what occurred there, that was just, like I said, the  
4 beginning of that.

5 There were several others incidents that occurred.  
6 We'd changed the way the captains were promoted. There was  
7 some animosity created when we created a PAC, a Political  
8 Action Committee, with the -- within the administrators union  
9 that we took some active roles in opposing some candidates  
10 for counsel. In over, probably, a four to five-year period,  
11 that animosity rose to the point where there was messages  
12 sent out to myself and then along with PAC team member Tim  
13 Bacon that we would not ever get promoted.

14 Q Okay. And -- and was one of the allegations in the  
15 lawsuit that you were passed up for promotion based on these  
16 union and political activities that you just described?

17 A Yes.

18 Q And what year, if you remember, or years, were you  
19 passed up for promotion?

20 MS. KAUR: Calls for -- objection. Calls for  
21 speculation.

22 THE COURT: Overruled.

23 THE WITNESS: The first years that I can remember that I  
24 attributed to the retaliation was, I believe, 2006 on.

25 ///

1 BY MR. BOLANDER:

2 Q And on how many occasions after 2006?

3 A I believe there was at least three occasions.

4 Q Did the case --

5 THE COURT: Excuse me one second. When did you first  
6 put in for captain's position?

7 THE WITNESS: 2005.

8 THE COURT: Thank you.

9 BY MR. BOLANDER:

10 Q And do you remember the -- and I'll refer to you --  
11 if you'd like, you can refer to your Complaint on page --  
12 page 12, paragraph 62. I'm just going to ask you if that's  
13 accurate. It reads, "In or about January 2008, Plaintiff was  
14 passed over for promotion to the rank of captain." Is that  
15 consistent with your recollection as to, maybe, the last time  
16 you were passed up for promotion prior to filing the lawsuit?

17 A Just one second. Are you talking about of the --

18 Q I'm talking about --

19 THE COURT: Respondents' page 12 of the Second Amended  
20 Complaint.

21 BY MR. BOLANDER:

22 Q Exhibit 5, right, page 12.

23 A Is that on tab 7?

24 MR. OKAZAKI: It's tab 5.

25 THE COURT: Tab 5.

1 BY MR. BOLANDER:

2 Q Yeah, it looks the same as Tim's.

3 THE COURT: It's page 12, paragraph 62.

4 MS. KAUR: I'll have an objection, your Honor. Vague.

5 THE COURT: Yes?

6 MS. KAUR: Objection. Vague.

7 MR. BOLANDER: I can rephrase.

8 THE COURT: I don't know if there was a question; so go  
9 ahead. Yes, thanks.

10 MR. BOLANDER: I agree.

11 BY MR. BOLANDER:

12 Q You indicated that you believe you were passed up  
13 for promotion to captain in retaliation for some of your  
14 protected activities on more than one occasion beginning in  
15 2006 -- on more than one occasion after 2006; is that  
16 correct?

17 A Correct.

18 Q And I'm pointing you to now page 12, paragraph 62 of  
19 the Second Amended Complaint that we were just looking at.  
20 It says, "In or about January 2008, Plaintiff was passed over  
21 for promotion for the rank of captain." Is that accurate?

22 A Yes.

23 Q And was that the last time you were passed up for  
24 promotion to captain before you filed the lawsuit?

25 A Yes, I believe so.

1 MR. OKAZAKI: I'm going to object as argumentative as to  
2 "passed up." I think he can ask what his perceptions are but  
3 I think --

4 THE COURT: Sustained.

5 MR. BOLANDER: Right.

6 BY MR. BOLANDER:

7 Q The -- you allege -- was that the last time you  
8 alleged you were passed up for the promotion to captain  
9 before you filed --

10 A Yes.

11 Q -- the lawsuit? And did the case that you filed  
12 against the City go to trial?

13 A No, it did not.

14 Q So was the case settled?

15 A Yes.

16 Q Do you remember -- well, actually strike that.

17 I'm going to point you to Exhibit 7 -- respondents'  
18 Exhibit 7. Take a moment to look at this. And then once  
19 you've had a chance, let me know if you're familiar with this  
20 document.

21 A Yes, I am.

22 Q You've seen it before?

23 A Yes.

24 Q What -- what is this document?

25 A We had participated in a day-long negotiations where

1 how we were going to settle with the suit; and we had come to  
2 an agreement, verbally at least, on how we would settle that.  
3 This is a record of then Attorney Roth, now Senator Roth,  
4 reading this into court record in federal court.

5 Q And was there an understanding -- at least did you  
6 have an understanding that this would be -- the agreement  
7 that was read into the record in federal court would be  
8 reduced to a formal written settlement agreement at some  
9 point?

10 A Yes.

11 Q Do you know if that ever happened?

12 A Yes.

13 Q Did it happen?

14 A Never happened.

15 Q Do you know why?

16 A There were several reasons. I actually received  
17 copies of this document. I had some issues --

18 THE COURT: "This" being respondents' 7?

19 THE WITNESS: Yes.

20 THE COURT: Thank you.

21 THE WITNESS: I had some questions and issues about what  
22 I believed we negotiated for. And I had sent an e-mail to  
23 that effect to my attorney, Russell Perry, who was then  
24 communicating those issues back and forth with Mr. Roth. The  
25 main issue was some of the language that was referred to

1 lieutenant instead of captain.

2 And then, also, they had as a last point -- the  
3 offer itself had some issues with confidentiality of the  
4 document and what -- or not this document, of confidentiality  
5 information and their use of it for the law firm's purposes,  
6 I believe.

7 BY MR. BOLANDER:

8 Q So -- so you didn't believe that what was just  
9 captured in terms of the verbally read into the record  
10 encompassed everything that was agreed to?

11 A That's correct.

12 Q What did you understand the terms of the settlement  
13 to be?

14 A I understood the terms of settlement that we would  
15 be compensated at captain's rate with all benefits due to us  
16 12 months in arrears; that upon our retirement we would be  
17 compensated to the rate of top-step captain; and that we  
18 would, basically, not disclose any confidential information  
19 as a result of the proceedings and any other documents that  
20 we obtain; that we would also receive a noneconomic -- a  
21 compensation so that it would take care of back pay, I guess,  
22 basically.

23 Q Did you, in fact, receive the, I guess as you  
24 described it, the captain's pay in arrears?

25 A Yes.

1 Q And did you receive captain's pay going forward from  
2 the point of the settlement agreement was well?

3 A I believe I did. But I received a letter from PERS  
4 that indicated that we would not be.

5 Q We'll get there. So you -- did you retire with all  
6 the benefits of the captain's position?

7 A Yes.

8 Q Did you believe that you would retire with a --  
9 strike that.

10 Did you believe that the captain's pay you received  
11 would be factored into your -- the calculation of your  
12 pension benefits?

13 A Yes.

14 Q And why did you believe that?

15 A Because we, in my opinion, negotiated -- actually  
16 negotiated a contract agreement that said we would receive  
17 top-step captain upon our retirement. We would have never  
18 agreed to anything else having gone that far in the legal  
19 process.

20 Q And you -- did you believe yourselves to be retiring  
21 as captains?

22 A Yes.

23 Q During the process of negotiating settlement  
24 agreements, did you ask about how the payments would affect  
25 your CalPERS pension?

1 A Yes.

2 Q Do you know if that was a discussion that was had  
3 between the City and Russell Perry, your attorney?

4 A I believe it was. Talking with my attorney, they  
5 said they were having that discussion with PERS.

6 Q They said that -- your attorney told you that -- who  
7 was having that discussion with PERS?

8 MS. KAUR: Objection. Calls for speculation.

9 MR. OKAZAKI: May call for hearsay, too.

10 MS. KAUR: And hearsay.

11 THE COURT: I'll receive it as administrative hearsay.  
12 But the question was what was he told; so overruled. But  
13 I'll receive it as administrative hearsay.

14 THE WITNESS: That the City and Roth were having that  
15 conversation first.

16 BY MR. BOLANDER:

17 Q And was it represented to you by your attorney that  
18 CalPERS had informed Roth that the way the settlement  
19 agreement was structured would ensure that you were receiving  
20 benefit of the captain's retirement?

21 MR. OKAZAKI: Objection.

22 MS. KAUR: Objection.

23 MR. OKAZAKI: Calls for hearsay.

24 THE COURT: Overruled. I'll receive it as  
25 administrative hearsay.

1 BY MR. BOLANDER:

2 Q Would you have accepted the settlement agreement  
3 without that assurance?

4 A No.

5 MS. KAUR: Objection. Vague.

6 MR. BOLANDER: I'll clarify.

7 THE COURT: Go ahead.

8 BY MR. BOLANDER:

9 Q Would you have accepted the settlement agreement  
10 without the assurance that the captain's pay you were  
11 receiving as a part of the settlement agreement would be  
12 included in the -- into your pension retirement -- into your  
13 pension calculation?

14 A No. In our opinion, we were -- if we would have  
15 accepted that, it would have been the same as what we were --  
16 top step lieutenants. And we are already in court ready to  
17 go to trial, and we wouldn't have chosen that.

18 Q If you had not been given the assurance -- or strike  
19 that.

20 If you did not believe you were going to receive the  
21 captain's level retirement, would you have retired when you  
22 did?

23 A No.

24 Q Did you plan your activities in retirement in  
25 anticipation of the higher retirement amount?

1           A     Well, yes, I planned my activity on higher pay  
2 associated with captain.

3           Q     And has not receiving that pay that you expected  
4 negatively affected you?

5           A     I would say it's affected me to the point where  
6 emotionally I'm upset about it because that was the deal that  
7 I believe was struck. I've been a good cop for 30 years, and  
8 I've treated people fairly. And if I told you I was going to  
9 do something, I did that. And so for this -- the City -- to  
10 work for the City for that long and now them backing out of  
11 the deal that we had reached, yeah, I was upset; and I'm  
12 still upset about that.

13                    Has it affected me financially? I would say only to  
14 the point where it's -- I wasn't able to do some things for,  
15 like, my parents that I wanted to do -- buy them a house and  
16 some other things like that. But am I okay? Yeah, I'm okay.

17           Q     Do you have -- I think we can come up with this  
18 probably; but do you have a general understanding of about  
19 what the difference in retirement benefits would have been to  
20 you?

21           MS. KAUR:  Objection.  Vague.

22           THE COURT:  Overruled.

23           THE WITNESS:  Well, the difference in the PERS benefit  
24 paycheck I think is about \$2,000.

25     ///

1 BY MR. BOLANDER:

2 Q Per month?

3 A Yes.

4 Q Okay. I'm going to refer you to Exhibit Number 4.

5 THE COURT: Respondents' book?

6 MR. BOLANDER: Yes, respondents' Number 4.

7 BY MR. BOLANDER:

8 Q Have you seen this document before?

9 MS. KAUR: Hold on. Hold on. I don't know -- I'm not  
10 sure which one. Oh, this is for Mr. Hurt. Okay. I don't  
11 have that in my file. I think -- okay.

12 BY MR. BOLANDER:

13 Q Have you seen this document before, Mr. Hurt?

14 A Yes.

15 Q You received this from CalPERS after your retirement  
16 date; is that correct?

17 A Correct.

18 Q And what did you understand it to be telling you?

19 A That I would receive my retirement pay at a certain  
20 level.

21 Q A lower level than you expected; right?

22 A Yes.

23 Q Were you surprised to get this?

24 A Yes.

25 Q And -- and why were you surprised to get this?



1           A     Correct.

2           Q     And as I'm looking at page -- what would appear to  
3     be on the bottom Exhibit 7:010; so I guess the 10th page of  
4     this exhibit. I realize that I'm making you read small  
5     numbers on the bottom right.

6           A     010 -- okay.

7           Q     And just so we -- the record's clear, it looks likes  
8     from lines 15 to lines 21, there's questions there about you  
9     understanding the terms of the settlement and whether they're  
10    acceptable. And there's a response from Plaintiff Hurt, and  
11    I just wanted to confirm that on page 10 that was -- those  
12    were your statements in court.

13          A     Yes.

14          Q     Okay. And as this agreement's placed on the  
15    record -- you were present during the discussions with  
16    Senator Roth -- now Senator Roth?

17          A     Yes and no.

18          Q     Oh.

19          A     There were times when -- when Jim Brown -- the  
20    attorneys would talk by themselves about certain issues. As  
21    you see in this document, there's several times they went off  
22    record, and we were not in those discussions. We were in the  
23    main discussions, but there were several times we weren't in  
24    discussions.

25          Q     And that's helpful. Because I'm just asking

1 questions to understand what took place here since that's  
2 obviously an operative document here.

3 A Yeah.

4 Q The information that was on the record that is --  
5 but is listed -- or these -- this transcript in which we see  
6 here, that was all stated on the record and you were present  
7 and understood what was going on for that?

8 A Yes. That was stated on the record by Mr. Roth.

9 Q There were times in which during this transcript  
10 that it was -- that they had gone off the record and you  
11 weren't privy to what was discussed. Is that your testimony?

12 A That's correct.

13 Q Okay. During the times in which there were  
14 discussions off the record with the attorneys, you were -- no  
15 attorney from the City was communicating you. You were  
16 separate and aside from what the attorneys were discussing?

17 A My attorney would come back and discuss things with  
18 us.

19 Q But there was no discussions between Senator Roth  
20 directly with you?

21 A No.

22 Q And I'm referring to him as senator, but I think we  
23 can all stipulate at the time he was attorney for the City?

24 A Correct.

25 Q So the attorney from the City wasn't speaking to you

1 directly; is that correct?

2 A No.

3 Q You had mentioned Jim Brown and we -- well, who is  
4 Jim Brown?

5 A At that time he was the assistant attorney, I  
6 believe. The position you hold now for the City.

7 Q We'll just say he was a representative of the City's  
8 as recognized on the record. He was a member of the City  
9 Attorneys Office but wasn't communicating anything to you  
10 directly?

11 A No.

12 Q Okay. This was part of a all-day settlement  
13 conference I think you said?

14 A Yes.

15 Q And during that settlement conference, often times  
16 the two sides were separated from one another; correct?

17 A Yes.

18 Q Judge would kind of go between sides?

19 A Yes.

20 Q So it wasn't as if you were all sitting down like  
21 we're sitting today and having one conversation. Each side  
22 was talking confidentially?

23 A That was part of it. And there were times when the  
24 judge would bring us both.

25 Q Okay. Your understanding of what the agreement was

1 came from your attorney. It never came directly from  
2 Mr. Brown or Mr. Roth or someone from the City; correct?

3 A Correct.

4 Q You in -- and as part of your understanding of this  
5 agreement, you had negotiated to -- you had understood from  
6 Mr. Perry that you were negotiating to retire as a top-step  
7 captain?

8 A Well, not only Mr. Perry. The understanding in the  
9 negotiating process, verbally between meetings with the  
10 judge, was that that's what we were negotiating for.

11 Q Okay. So as the judge is going from side to side --  
12 the open discussion, which also included Mr. Bacon as well I  
13 assume; correct?

14 A Yes.

15 Q Okay. So there were times when the judge would come  
16 talk to you and Mr. Bacon and Mr. Perry, and in those  
17 discussions that was your understanding that you were  
18 negotiating to be a top-step captain?

19 A Correct.

20 Q Okay. And the City would be obligated to pay you as  
21 a top-step captain?

22 A Correct.

23 Q And the City did in fact fulfill that obligation to  
24 pay you as a top-step captain?

25 A I believe up to a certain point they did -- up to

1 the point we retired.

2 Q You're not making a claim the City didn't pay you as  
3 the captain pay that you were entitled in the agreement;  
4 correct?

5 A I'm trying to answer your question. I believe the  
6 City paid us top-step captain up to the point we retired.

7 Q Okay. Which is what the agreement called for up to  
8 the point that you retired?

9 A Not the agreement in my mind, no. It's not what I  
10 understood.

11 Q Okay. But up until you retired and then you were  
12 assuming that -- and then you were negotiating or  
13 understanding that there would be retirement pay coming from  
14 your CalPERS check; right?

15 A We would retire as top-step captain and commensurate  
16 of that would be the retirement pay for captain.

17 Q Okay. But in terms of the salary up until you  
18 retired, the City did pay you that captain pay?

19 A Yes.

20 Q Okay. Which, obviously, if the City didn't then you  
21 would be unable to make a claim so -- from CalPERS. So  
22 obviously the City paid you the top-step captain pay up until  
23 you retired?

24 MS. KAUR: Objection. Argumentative.

25 THE COURT: Overruled.

1 MR. BOLANDER: I'll just object as asked and answered.

2 MR. OKAZAKI: It's clear. I want the record to be  
3 clear. If it's clear enough, I'll move on.

4 BY MR. OKAZAKI:

5 Q And the reason I want to clarify this -- there would  
6 be no obligation from CalPERS to treat your retirement as  
7 top-step captain --

8 MS. KAUR: Objection. Counsel is testifying.

9 THE COURT: Sustained.

10 MR. OKAZAKI: Well, is it your understanding that  
11 CalPERS would need -- well, is it your understanding that in  
12 order -- well, strike that.

13 In reading your allegations, I understand that --

14 MS. KAUR: Objection. Counsel is testifying.

15 THE COURT: He hasn't finished. Let him finish his  
16 question first, please. Go ahead.

17 BY MR. OKAZAKI:

18 Q In reading your allegations, it's my understanding  
19 that your appeal here today is to be paid additional  
20 compensation in your retirement, which would reflect the  
21 value of what your retirement would have been had you retired  
22 as a -- based upon top-step captain, say, versus top step  
23 lieutenant.

24 MR. BOLANDER: I'd object. It misstates the facts.

25 ///

1 BY MR. OKAZAKI:

2 Q Okay. Is that not correct?

3 A I'm not sure it is. I could try to clarify what I  
4 understand from you but --

5 THE COURT: Don't try to clarify.

6 MR. OKAZAKI: That's okay.

7 THE COURT: Let me clarify. Because one thing you said  
8 in your testimony was that how you were an honest and fair  
9 officer but that the -- you thought the City would do what  
10 they said they would do or didn't do. What don't you think  
11 the City of Riverside did?

12 THE WITNESS: I don't think they -- as part of the --  
13 the benefits or part of the agreement it said that they would  
14 also pay us our benefits. I don't believe they paid -- I  
15 don't know factually if this is because PERS rejected or  
16 whatever, but they paid into our retirement for -- for  
17 captain and that's the reason we're not receiving that.

18 BY MR. OKAZAKI:

19 Q So do you have any evidence that the City did not  
20 pay into PERS an amount that reflected your status as a --  
21 entitled to captain pay?

22 A No, I do not.

23 MR. BOLANDER: I'd object. That calls for a legal  
24 conclusion. Belatedly but --

25 THE COURT: Overruled. He just asked him if he has any

1 evidence.

2 BY MR. OKAZAKI:

3 Q So the question as relates to the City not doing  
4 something it was supposed to do, other than your assertion  
5 that it's possible the City may not have paid CalPERS what  
6 you believe it should have paid, is there any other areas in  
7 which you believe the City did not do what it was supposed to  
8 do as it relates to the settlement agreement in this case?

9 MS. KAUR: Objection. Irrelevant.

10 THE COURT: Overruled.

11 THE WITNESS: If the point of contention is the -- the  
12 City making us captains by, I don't know, whatever means and  
13 by them not doing that, if that affects our retirement then  
14 that's why I say the City too because I think the City needs  
15 to step up and do what needs to be done to correct this issue  
16 because it hasn't been corrected. So that's my personal  
17 view.

18 THE COURT: And let me just clarify. Up until the time  
19 you retired, were you getting what you thought you were  
20 supposed to be getting under the settlement agreement?

21 THE WITNESS: Yes.

22 THE COURT: So then it was after the retirement and  
23 getting the CalPERS letter, that's when everything happened  
24 as to why we're here today?

25 THE WITNESS: Correct.

1 BY MR. OKAZAKI:

2 Q And your understanding of what you'd be entitled to  
3 from the City under the settlement agreement was based upon  
4 what was communicated to you by Mr. Perry; correct?

5 A I believe Mr. Roth was communicating with our  
6 attorney that they were in communication with PERS.

7 Q And whatever Mr. Roth communicated to your attorney,  
8 you still learned it through Mr. Perry; correct?

9 A Yes.

10 Q So your understanding would have come from what  
11 Mr. Roth said on the record, what Mr. Perry told you, as well  
12 as what you learned from the judge that day. Those would  
13 have been the representations of your understanding of the  
14 settlement agreement; right?

15 A Yes.

16 MR. OKAZAKI: I have nothing further.

17 THE COURT: Ms. Kaur.

18 MS. KAUR: Your Honor, should I use our exhibits?

19 THE COURT: Either one is fine by me.

20

21 CROSS-EXAMINATION

22 BY MS. KAUR:

23 Q If you could turn to Exhibit 15 in --

24 THE COURT: The PERS.

25 ///

1 BY MS. KAUR:

2 Q -- in CalPERS. It's the same as the other exhibit,  
3 but I don't have that copy. It's the same settlement  
4 agreement -- Exhibit 15. I think you're looking at a  
5 different one.

6 A Oh, same book.

7 Q No. Different book but Exhibit 15.

8 THE COURT: Exhibit 15 is like this.

9 THE WITNESS: Okay.

10 BY MS. KAUR:

11 Q And you just testified that this is the settlement  
12 agreement that you entered into; is that correct?

13 A I guess you're referencing it as a settlement  
14 agreement. I see it as something that was recorded in court  
15 records and that we had 30 days to respond back to the court  
16 with an official settlement agreement. So I saw that as  
17 giving us time to -- because we did not have this document in  
18 our possession.

19 It was just -- we got this, I think, maybe a week  
20 later -- a few days later. And that's when I personally, and  
21 my attorney, had the chance to peruse what the actual wording  
22 was of the document.

23 Q But were you not bound by this settlement -- well,  
24 these court minutes that were -- were you not bound by the  
25 settlement agreement in these court minutes?

1 MR. BOLANDER: Objection. Calls for a legal conclusion.

2 THE COURT: Sustained.

3 BY MS. KAUR:

4 Q Did you consider this to be the final agreement?

5 A I personally did not; but, yes, I signed it.

6 Q And you signed it as a final agreement; is that  
7 correct?

8 A Yes.

9 MR. BOLANDER: Well --

10 MR. OKAZAKI: Wait --

11 THE COURT: Well, there's nothing signed on Exhibit 15.

12 MR. BOLANDER: Yeah, this is oral.

13 THE COURT: What are you saying that you signed? This  
14 is just a transcript of the hearing in court.

15 THE WITNESS: I take that back. I thought I signed  
16 this.

17 BY MS. KAUR:

18 Q So if you could turn to the last page of -- or the  
19 second to the last page of this agreement. It's page 14 on  
20 the document on the very top right.

21 A Yes.

22 Q Can you read for us lines 8 to 13?

23 A "So that everybody's clear, the settlement is not  
24 contingent upon it being successfully reduced to writing. If  
25 for some reason it's not, either party can come before the

1 Court within the next 30 days and seek to have the Court  
2 enforce the terms of the settlement that have been placed on  
3 the record."

4 Q And what is your understanding of that?

5 A If we didn't come to an agreement within 30 days  
6 this would be the settlement.

7 Q And is that still your understanding?

8 A Yes.

9 Q Did you go back to the Court within the 30 days?

10 A No, not that I know of.

11 Q Do you know whether any party went back to the  
12 Court?

13 A No, not that I know of.

14 Q And if you could turn to the second page of this --  
15 this agreement. And that's under Exhibit 15, same exhibit.

16 A Yes.

17 Q Can you read lines 7 through 10 for me?

18 A "Hurt will retire if the City of Riverside Police  
19 Department as a police lieutenant on January 19, 2011; and  
20 Bacon will retire as a police lieutenant on July 17, 2010,  
21 both 50 years of age."

22 Q Is this accurate?

23 THE COURT: Well that's --

24 MR. BOLANDER: Objection. As vague.

25 THE COURT: It's what the document says. This is what

1 Mr. Roth stated. It's not necessarily his statements.

2 MS. KAUR: I'll restate that, your Honor.

3 BY MS. KAUR:

4 Q And did you agree to this verbally in the court  
5 minutes?

6 A This -- this didn't stick out to me until I received  
7 it as a written document. I did not believe that this -- the  
8 word "police lieutenant" was read into record. I thought it  
9 was captain. It was kind of an open-ended statement, and we  
10 all missed it. So I addressed it later in an e-mail.

11 Q And can you turn to the next page? Line 7 states,  
12 "The City will place Lieutenants Hurt and Bacon on paid  
13 administrative leave at a monthly salary equivalent to the  
14 top-step captain's salary rate with full benefits commencing  
15 tomorrow and continuing to the respective dates of their  
16 retirement."

17 A Yes.

18 Q Were you present when this was read into the record?

19 A Yes.

20 Q If you could please turn to Exhibit 10.

21 THE COURT: Petitioner's?

22 MS. KAUR: CalPERS.

23 THE COURT: Thanks.

24 THE WITNESS: Okay.

25 ///

1 BY MS. KAUR:

2 Q Is this your disability retirement application?

3 A First one? It says Timothy Bacon.

4 Q Oh, I'm sorry. I apologize. I mean Exhibit 9.

5 A Correct.

6 Q Under Section 2 for retirement information, it  
7 states "Employer: City of Riverside" and "Position Title:  
8 Police Lieutenant."

9 A Correct.

10 Q Did you sign this application?

11 A I did.

12 Q Is this the application you submitted to CalPERS?

13 A Correct.

14 Q As part of the settlement agreement with the City,  
15 were you required to retire?

16 A Yes.

17 Q And in return you would be paid a higher pay  
18 rate; is that correct?

19 A Yes.

20 Q You testified earlier that you were promoted to  
21 sergeant; is that correct?

22 A Yes.

23 Q And what was the process for that promotion?

24 A I went through the testing process -- written,  
25 inside, outside oral, and I interview with the chief of

1 police.

2 Q I'm sorry the what?

3 A I interviewed with the chief of police.

4 Q And then you were promoted from sergeant to  
5 lieutenant; is that correct?

6 A Correct.

7 Q And what was the process for that promotion?

8 A Basically the same except you had community panels  
9 and a test that basically evaluated your problem solving  
10 abilities and -- and your abilities to write, I guess.

11 Q And you said that was in 1995; is that correct?

12 A Yes.

13 Q How did you learn about that process?

14 MR. BOLANDER: Object to the relevance.

15 THE COURT: Overruled.

16 THE WITNESS: At some point if you have enough  
17 experience to test, then that experience, you know -- the  
18 things that you're supposed to study for, the things that  
19 you're supposed to know as a lieutenant, and hopefully that  
20 experience, helps you get through that testing process.

21 Q Are there set guidelines for that promotion process?

22 A As far as -- I assume you're asking, "Are you placed  
23 on a list?"

24 Q I'm sorry?

25 A I'm assuming that you're asking, "Are you placed on

1 a list after you test?" -- or I don't know what you mean by  
2 "guidelines."

3 Q How did you find out about what the process is? Are  
4 there guidelines? Are there rules in terms of what the steps  
5 are for filing for a promotion for sergeant to lieutenant?

6 A Yeah. You receive a notification from human  
7 resources once there's an opening or openings for that  
8 position. Then that notification usually tells what those  
9 steps and guidelines are. It's usually a one and half-,  
10 two-page document. You go through them and make sure that  
11 you're knowledgeable of those areas.

12 Q And based on your understanding, is that the process  
13 that every -- every sergeant has to follow to become a  
14 lieutenant?

15 A At that time.

16 Q And you testified that sometime in 2005 you were  
17 involved with a union and there was a change in the way a  
18 captain would be promoted?

19 A 2005, yes. The process for captain at the time was  
20 much like the lieutenant process. I believe I was still a  
21 lieutenant at the time in investigations -- or I'm sorry --  
22 in human resources. I was tasked with seeing if the captains  
23 would like a different process than that -- the captains and  
24 lieutenants, otherwise the administrative association. We  
25 researched some things, put together a document, and it was

1 accepted; and that was the way the process was supposed to  
2 occur from that point onward.

3 Q So from 2005 --

4 A Well, I think it took about a year to do that so  
5 probably it was 2006, 2007 I'm not sure. Once that document  
6 was accepted by the administration -- the association, then  
7 that was basically sent to the City and it became part of the  
8 hiring practices -- or promotional practices for captain.

9 Q What were the practices in 2005 before the change --  
10 prior to the change?

11 MR. BOLANDER: Object. That calls for speculation.

12 BY MS. KAUR:

13 Q Based on your understanding?

14 MR. BOLANDER: If you have one.

15 THE WITNESS: I mean, I remember some of it. I'm not  
16 totally clear. I can't be factual about all of it back then,  
17 but I know it was a process similar to what I described with  
18 the lieutenant. Maybe with not -- without a -- actually,  
19 if -- I think the reason why it went to a captain's promotion  
20 is it was a very much informal process.

21 It was -- basically, you would go on a list based on  
22 applying. And then from there, there would be a process of,  
23 maybe, an oral with the chief. And then from there, the  
24 chief would have the ability to promote from that list --  
25 anywhere on that list. So basically it was more a subjective

1 process than an objective one.

2 Q Was there any testing involved?

3 A I don't believe there were -- was any testing at  
4 that time.

5 Q And when you say "chief," you're talking about the  
6 police chief?

7 A Chief of police.

8 Q And how did one get on the list? You're talking  
9 about a list.

10 A Yes. The captain's list for promotion.

11 Q How do you get on that list -- or in 2005, how did  
12 somebody get on the list?

13 A There wasn't -- and I might be going way out here.  
14 It was 2005. But I don't believe there was a formal list.  
15 If you were a lieutenant of any tenure -- and what I mean by  
16 "tenure" is off probation and you were who the chief was  
17 looking for then you got captain and you were the first. So,  
18 basically, any lieutenant off probation could be captain.

19 Q And how did that change in 2006?

20 A It was formalized into education a certain level of  
21 education, being off probation, of course. I believe it was  
22 a certain tenure as lieutenant. And then there was a chief  
23 board's oral.

24 Q I'm sorry, I --

25 A Chief board's oral. It consisted of, at least, I

1 believe, three chiefs, and the chief being one of the main  
2 chiefs, one an assistant or deputy chief, or two deputy  
3 chiefs, and then a ranking from there.

4 Q So the chief board's oral -- what is that? Is that  
5 some sort of a questioning or --

6 A It's a questioning. It's a -- I can't say it's a  
7 formalized questioning. It's, you know -- that was our  
8 intention for it to be that, but it was never put to paper  
9 that it had to be that way. So it was -- basically, they'd  
10 come in and you'd sit with the chief's board -- let me take  
11 that back.

12 The chief's board consisted of two to three of  
13 the -- either the assistant chief or the deputy -- two deputy  
14 chiefs; and then -- then you would go on there from there.  
15 If you pass from there, you would go on to a chief's oral,  
16 which is a one-on-one oral with him.

17 So the chief's board oral would consist of more  
18 technical questions and then -- about administrative duties  
19 and stuff like that. They would report to him, and then he  
20 would have -- he would narrow it down to who he wanted to  
21 talk to and then have a one-on-one with you oral. And then  
22 from there, he would take those recommendations to the  
23 manager for approval for that promotion.

24 Q And was this process in place in April 2010?

25 A Yes.

1 Q And was it in place when you retired?

2 A You mean the day I retired or up to the date I  
3 retired?

4 Q That year. Yeah, up to when you retired.

5 A Well, part of the process is once you got on the  
6 list, you were on there for two years. It was a list for two  
7 years. So I don't know when they tested again. If I tested  
8 in 2006 or '8. The list would have been good till '10. If I  
9 tested a year later, it would have been good till '12. So  
10 I'm not too sure if that was in place there --

11 THE COURT: No. Her question was -- this process that  
12 you just described how the new ways to select the captain --  
13 she was saying when you retired was that process still in  
14 place?

15 THE WITNESS: I don't know.

16 THE COURT: Okay.

17 BY MS. KAUR:

18 Q And you said you filed for -- you were passed up for  
19 promotion you stated?

20 A Uh-huh.

21 Q From a lieutenant to captain; is that correct?

22 A Correct.

23 Q And when you applied in 2000- -- you said you first  
24 applied in 2005?

25 A Correct.

1 Q And what process did you use to apply for this  
2 captain position?

3 A That was the old process.

4 Q The old process. And then in 2006, what process did  
5 you go through to apply for the captain's position?

6 A I believe that was the old process also.

7 Q And did you ever go through the new process to  
8 apply?

9 A I think the first time we went through it was  
10 with -- when I applied for the position.

11 Q I'm sorry?

12 A I think the first time we used it is when I applied  
13 for the position and Tim Bacon and whoever else.

14 Q And when was that? Do you recall the year?

15 A It was 2006 or '7.

16 Q So based on your understanding, that process was  
17 being implemented in 2006 until the year of your  
18 retirement; is that correct?

19 A It wasn't used again until -- because the list was  
20 good for two years until I retired. So I have no knowledge  
21 of whether that process was used again after I retired.

22 Q Not used but was it in place?

23 A As far as I knew, it was in place when -- in place  
24 when I left as the president of the association. I had no  
25 knowledge that it had been changed.

1 Q And when did you leave?

2 THE COURT: That was going to be my question. When did  
3 you leave as president of the association?

4 THE WITNESS: I would say '08, maybe. 2008 I think.  
5 I'm not positive.

6 BY MS. KAUR:

7 Q Did you apply after 2008 for the -- for this  
8 position -- for the captain position?

9 A No. Because I believed we were still on the list  
10 and then we had filed the lawsuit; so --

11 Q So when you say you're on the list, what does that  
12 mean? Does it --

13 A The formal process -- once you go through that  
14 formal process, there's a list. So if you have ten captains  
15 and five are good candidates to be promoted, he makes a list  
16 of those five captains. He can -- he can go anywhere on that  
17 list, but those are the five for the next five positions  
18 he'll take over to the city manager for consideration for  
19 promotion.

20 Q So once you're on the list, you don't need to  
21 reapply; is that correct?

22 A No. The testing process --

23 Q I'll just clarify. So once you're on the list, you  
24 don't need to reapply?

25 A Not for two years.

1 Q Were you promoted to captain through that process?

2 A Not through that process, no.

3 Q Was anybody else -- strike that.

4 Before you retired, you were placed on  
5 administrative leave; is that correct?

6 A Correct.

7 Q During the timeframe of your administrative leave,  
8 were you performing any services for the City of Riverside as  
9 a --

10 MR. BOLANDER: Objection -- I'm sorry.

11 THE COURT: She didn't finish her question.

12 Re-ask. Sorry.

13 BY MS. KAUR:

14 Q During your administrative leave, were you  
15 performing any services for the City of Riverside?

16 MR. BOLANDER: I object that it's vague.

17 THE COURT: What do you mean by "services"?

18 BY MS. KAUR:

19 Q Were you performing any duties -- job duties for the  
20 City of Riverside?

21 MR. BOLANDER: Same objection.

22 THE COURT: Overruled.

23 THE WITNESS: Frankly, I can't remember. I remember  
24 going to court a few times by subpoena which was, I guess --  
25 technically, I was there for the City; but I can't remember

1 what those cases were -- what timeframe that was.

2 Q Any other services you may have been performing?

3 A Other than taking phone calls from individuals  
4 wanting to know about files and systems and things like that,  
5 no.

6 Q And when you say "individuals," who are you  
7 referring to?

8 A People who took -- take over my functions that I was  
9 assigned to at certain times. They would want certain  
10 computer files -- how to get into those or recreate them,  
11 that kind of stuff.

12 THE COURT: And when you said subpoena a few times for  
13 cases, does that mean as, like, an officer who had witnessed  
14 an event you were called for a criminal portion of the case?

15 THE WITNESS: Correct.

16 THE COURT: Okay. Thank you.

17 MS. KAUR: That's all, your Honor.

18 THE COURT: Thank you. Redirect?

19 MR. BOLANDER: Yes, your Honor.

20

21 REDIRECT EXAMINATION

22 BY MR. BOLANDER:

23 Q Mr. Hurt, I'm going to refer you back to CalPERS' 8,  
24 the settlement agreement in front of you.

25 A CalPERS?

1 Q Yes.

2 THE COURT: CalPERS 8 is the Notice to consolidate.

3 MR. BOLANDER: Oh, 7.

4 MS. KAUR: 15.

5 MR. BOLANDER: I'm sorry. CalPERS 15, please.

6 MS. KAUR: Are you talking the settlement agreement?

7 MR. BOLANDER: The court minutes.

8 BY MR. BOLANDER:

9 Q Are you there?

10 A Yeah.

11 Q You testified that you were -- you were present in  
12 court and you understood that the parties had 30 days to  
13 reduce a formal settlement agreement to writing; is that  
14 correct?

15 A Correct.

16 Q And you believe that that would happen; is  
17 that correct?

18 A Correct.

19 Q Did you understand that everything in the -- well,  
20 strike that.

21 Why was there -- why -- strike.

22 What was your understanding as to why what was read  
23 into court would have to be reduced to writing?

24 A Because there were some final details, like, the  
25 PERS things that needed to be worked out in the final

1 settlement.

2 Q And you believed that that would be worked out in  
3 that 30 days?

4 A Yes.

5 Q And you received all the benefits of the captain  
6 position; is that correct?

7 A From the City?

8 Q Yes.

9 A As far as I believe or I know, yes.

10 Q Were you -- were you informed by the City or  
11 otherwise that -- that there was any significance to any  
12 administrative process the City would have to go through to,  
13 you know, make you a captain on paper?

14 MS. KAUR: Objection. Vague. Hearsay.

15 THE COURT: Overruled.

16 THE WITNESS: No. I was never notified by the City  
17 about it.

18 BY MR. BOLANDER:

19 Q So -- and I know I asked this, but you believe --  
20 you were receiving all the pay and benefits of the captain's  
21 position; correct?

22 A Correct.

23 Q And is it on that basis you believed you were a  
24 captain?

25 A Yes.

1 Q I believe Counsel asked you if you were given a  
2 higher pay rate in exchange for retiring. Do you remember  
3 that question?

4 A Yes.

5 Q You were -- were you -- did you also dismiss the  
6 lawsuit in exchange for the consideration you got from the  
7 City?

8 A Yes.

9 Q Was one of the remedies that you were seeking  
10 through your lawsuit promotion to captain?

11 A Excuse me?

12 Q As part of your lawsuit, was one of the remedies  
13 that you were seeking to achieve is an order from the Court  
14 requiring the City to promote you to captain?

15 A Yes.

16 Q And do you understand that -- or strike that.  
17 Did you believe at that time that that was something  
18 that could happen?

19 A Yes. With the clarification the remedies we were  
20 seeking was to top-step captain. We didn't really  
21 necessarily care how they did it.

22 Q Right. But what I mean is -- I'm sorry. What I'm  
23 asking is at the time that the settlement agreement was  
24 negotiated, did you believe that had you gone to court and if  
25 you prevailed, one of the things that you would achieve was

1 an order from the Court requiring the City to promote you to  
2 captain?

3 A Oh, yes.

4 Q And briefly on administrative leave -- during your  
5 time in the police department, did you -- did you ever work  
6 in internal affairs?

7 A Real briefly.

8 Q Well --

9 A As a lieutenant.

10 Q What I'm getting at is did you have any -- did you  
11 ever place an officer on administrative leave or have -- I'll  
12 ask you that.

13 A I didn't have the power to place administrative  
14 leave. It had to -- at that level, it had to be a captain or  
15 above.

16 Q Did you have experience of what somebody's duties  
17 were while they were on administrative leave?

18 A Yes.

19 Q What, typically, is a -- is an officer on  
20 administrative leave required to do?

21 A They're required to usually to be readily available  
22 by phone -- somehow be contacted in that manner. They're  
23 still required to adhere to all the policies and procedures  
24 of the police department. Sometimes they are given written  
25 restrictions on what they can and can't do. And sometimes

1 they're required to report to a certain location for a  
2 certain period of time.

3 Q And is one of those potential things -- you could be  
4 required to report to court?

5 A Correct.

6 Q And did you abide by all of those requirements while  
7 you were on administrative leave?

8 A I did. In fact, other stuff is coming back too. I  
9 was required to, actually, appear in several instances for  
10 administrative hearings involving myself and the chief. That  
11 was while I was on administrative leave.

12 Q You were -- were you ordered to attend those?

13 A Yes.

14 Q And as you understood it, were your duties on  
15 administrative leave any different as a captain versus a  
16 lieutenant?

17 A As far as requirement for an administrative leave,  
18 no.

19 Q Would your -- I'm sorry. That was a bad question.

20 As you understood it, would your -- your duties have  
21 been different if you were labeled a captain versus labeled a  
22 lieutenant -- your administrative leave duties?

23 A I don't believe so.

24 Q And I think your Honor clarified this but just to  
25 make sure. When you say you appeared for court while you

1 were on administrative leave, that was not our your own case  
2 filed against the City.

3 A No. It was on a separate case.

4 Q Were you still in possession of your badge when you  
5 were on administrative leave?

6 A Yes.

7 Q And your -- your duty weapon?

8 A Yes.

9 Q Are you still in possession of your police powers?

10 A As far as I knew, yes.

11 Q So the chief didn't say, "Hurt, come on down here.  
12 Give me your badge and gun"?

13 A No.

14 MR. BOLANDER: That's all.

15 THE COURT: Mr. Okazaki.

16 MR. OKAZAKI: Thank you, your Honor.

17

18 RE CROSS-EXAMINATION

19 BY MR. OKAZAKI:

20 Q And when you're off duty and you actually observe a  
21 crime, your police powers would enable you to effectuate an  
22 arrest?

23 A Correct.

24 Q In fact, as an officer, it's not uncommon  
25 necessarily to if, in fact, you see a crime of significance

1 that you would -- you would take appropriate action as a law  
2 enforcement officer; correct?

3 A Correct.

4 Q And so had you -- while you were on admin leave,  
5 say, observed a robbery in progress, you might, say, within  
6 the city of Riverside, do something?

7 A I might.

8 Q Okay. And no one would tell you that, based upon  
9 your experience, that you would not be able to effectuate  
10 those police powers as long as those were not ordered for you  
11 not to do so; correct?

12 A Correct.

13 Q Phone calls you received as a lieutenant or as a  
14 captain -- well, let's just say while you were on admin  
15 leave -- those were related to work when you said you  
16 received phone calls from others in your department relating  
17 to files or systems?

18 A Correct.

19 Q And you received similar types of calls when you  
20 were on duty; correct?

21 A Correct.

22 Q A -- an officer is required in the Riverside Police  
23 Department to -- to testify in court when required to do so  
24 by subpoena from the District Attorney's Office; correct?

25 A Correct.

1 Q And during the period of time you were on admin  
2 leave, were you asked to go to court?

3 A Yes.

4 Q And you fulfilled those obligations?

5 A Yes.

6 Q Riverside Police Department would require you to be  
7 at least available by phone when you're on admin leave?

8 A Yes.

9 MS. KAUR: Objection. Asked and answered.

10 THE COURT: Overruled.

11 BY MR. OKAZAKI:

12 Q And would you need to be in contact with them so if,  
13 in fact, you were asked to be called in the next day, you  
14 would be, to the extent possible, available to do so?

15 A Are you talking in administrative leave capacity or  
16 just --

17 Q Yeah. When you -- do you understand my question? I  
18 can rephrase it, if you'd like.

19 A Please.

20 Q I want to discuss the availability. I mean, could  
21 you just disappear for a month?

22 A In administrative leave capacity?

23 Q Yes. Yes.

24 A I believe as long as we gave notification you could.

25 Q But you needed to have approval if you were

1 hypothetically not going to be available on some sort of  
2 regular basis as defined by the Department?

3 A I've never been in that situation, but I would say  
4 yes.

5 Q Okay. You had a settlement in this case with the  
6 City of Riverside -- the federal lawsuit that's been  
7 referenced earlier; correct?

8 MS. KAUR: I'm sorry. I'm having a hard time hearing  
9 you.

10 MR. OKAZAKI: My apologies to all of you, then.

11 BY MR. OKAZAKI:

12 Q There was a settlement of the federal lawsuit that's  
13 been described throughout your testimony here today; correct?

14 A Yes.

15 Q Okay. And separate and apart from the issue of  
16 captain's pay, there was a monetary settlement as well?

17 A Correct.

18 Q Okay. So separate and apart from your  
19 classification as captain's pay was a damages settlement that  
20 you received; right?

21 A Yes.

22 Q Okay.

23 MR. OKAZAKI: All right. I have no further questions.

24 THE COURT: Thank you. Ms. Kaur?

25 ///



1 that or I saw it. But, usually, you would have to notify  
2 your captain, and the captain would be the one making that  
3 decision -- or captain or above.

4 Q While you were on administrative leave, did you have  
5 authority to place anybody on administrative leave?

6 A In very limited circumstances, yes.

7 Q The same limited circumstances that existed while  
8 you were working as a lieutenant?

9 A I'm sorry. I'm maybe not understanding your  
10 question.

11 Q So you said -- you said it's very limited -- in very  
12 limited circumstances. And what are those circumstances?

13 A A -- for me, it would be an officer does an obvious  
14 criminal act that we need to take his powers away  
15 immediately. That would be one of those circumstances that I  
16 would call that we had the power to do that.

17 Any other circumstances, we would take and bring  
18 that person in and then have that discussion with the captain  
19 or above. And then in most cases Internal Affairs would get  
20 involved and take it from there. But in an emergency  
21 situation, we had the ability to put them on admin leave for  
22 a very limited amount of time. And then it had to be an  
23 emergency type of situation.

24 Q So that was the same criteria while you were on  
25 administrative leave; is that correct?

1 A For a lieutenant to place a subordinate on?

2 Q For you to place anybody on administrative leave.

3 Could you place anyone on administrative leave while you are  
4 on administrative leave?

5 A No.

6 Q No, you could not. Okay. Did you use your police  
7 powers while you were on administrative leave to effectuate  
8 an arrest?

9 A No.

10 Q Did you use your police powers other than to make  
11 appearances for the subpoenas while you were on  
12 administrative leave?

13 A No.

14 MS. KAUR: That's all, your Honor.

15 THE COURT: Anything?

16 MR. BOLANDER: Couple very quick ones.

17

18 FURTHER REDIRECT EXAMINATION

19 BY MR. BOLANDER:

20 Q When you were -- when you moved from sergeant to  
21 lieutenant, did you immediately cease all involvement with  
22 any case you were working while you were a sergeant?

23 A No.

24 Q Okay. There was some natural carryover; correct?

25 A Correct.

1 Q When you moved from officer to sergeant, did you  
2 immediately cease all involvement with every case or activity  
3 at the time you were performing as an officer?

4 A No.

5 Q And you received -- or did you receive captain's pay  
6 while you were on administrative leave?

7 A Yes.

8 Q And as to the very last question regarding whether  
9 or not you can place another police employee on  
10 administrative leave while you, yourself, was on  
11 administrative leave. Could a captain on administrative  
12 leave place another employee on administrative leave?

13 A I don't believe so. I think placing someone on  
14 administrative leave would require you to be actively on duty  
15 to do that.

16 Q So -- are -- though officers retain some of their  
17 authorities and duties, as you've described, on  
18 administrative leave, is it your testimony that they also  
19 have some of their powers and duties curtailed regardless of  
20 their rank?

21 A Correct.

22 MR. BOLANDER: That's all.

23 THE COURT: Mr. Okazaki?

24 ///

25 ///

1                                   FURTHER RECROSS-EXAMINATION

2       BY MR. OKAZAKI:

3           Q     Well, you don't really actually know whether or  
4     not -- let me go back.

5                    Have you ever heard a scenario where someone on  
6     admin leave is asked to try to put somebody on admin leave?

7           A     No.

8           Q     And you're not familiar with any protocol about  
9     that?

10          A     No.

11          Q     So, realistically, you don't really no whether  
12     someone on admin leave could do it or not do it if they got  
13     the order from a superior officer?

14          A     That's correct.

15          MR. OKAZAKI:  No further questions.

16          THE COURT:  Ms. Kaur?

17                    Thank you, sir, you are released.

18          THE WITNESS:  Thank you.

19          THE COURT:  We're going to go off the record for ten  
20     minutes.

21                    (Recess)

22          THE COURT:  Your next witness, Counsel.

23          MR. BOLANDER:  Respondents call Respondent Timothy  
24     Bacon.

25          THE COURT:  Sir, can you raise your right hand.

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

4           THE WITNESS:   I do.

5           THE COURT:   Thank you.  Can you state your full name and  
6   spell your last name for the record, please?

7           THE WITNESS:   Timothy Bacon.  Last name B-A-C-O-N.

8           THE COURT:   Thank you.

9                   Counsel.

10          MR. BOLANDER:  All right.

11

12                                   DIRECT EXAMINATION

13   BY MR. BOLANDER:

14          Q    Mr. Bacon, you also worked for the City of Riverside  
15   Police Department; correct?

16          A    That is correct.

17          Q    And when did you start your employment with the  
18   City?

19          A    In 1982.

20          Q    And did you start as police officer as well?

21          A    Yes.

22          Q    How long did you work as an officer?

23          A    I worked seven or eight years as an officer, I  
24   believe.  Maybe a little longer.

25          Q    And did you at some point move to the rank of

1 sergeant?

2 A Yes, I did.

3 Q When was that?

4 A The same -- that would have been early '90s. I  
5 don't remember the exact year.

6 Q And how long did you fill that position?

7 A Three or four years.

8 Q And when did you move to the rank of lieutenant?

9 A I believe 1995. Just a few months after Lieutenant  
10 Hurt was promoted.

11 Q And when did you retire with the City?

12 A July 16, 2010.

13 Q And did you retire as a captain?

14 A Yes.

15 Q Did you receive any awards or commendations in your  
16 time as a police officer with the department?

17 A Oh, many. Many.

18 Q Can you give us a brief description of some of  
19 those?

20 A I was selected as an officer with several different  
21 task forces, one of which was the Eastside Task Force, by  
22 then police chief, Sonny Richardson. I was school a resource  
23 officer. The only person in the history to be nominated for  
24 Riverside County Officer of the Year as a result of  
25 investigations that I did, one of which was the first air

1 assault with ATF and DEA ever in the Riverside PD history.

2 I was nominated two different other times as  
3 Riverside County Officer of the Year at least two, maybe,  
4 three more times. I have the largest murder conspiracy case  
5 in the nation. Thirty people went to jail under one murder  
6 of a 14-year-old boy in Casa Blanca.

7 I helped develop what is currently the gang unit  
8 today -- gang unit they have in the Riverside PD. I have  
9 received the Distinguished Service Medal. I can't tell you  
10 how many commendations -- at least 50 plus PIRs and different  
11 things, onsite arrests.

12 THE COURT: Can you -- what does PIR stand for?

13 THE WITNESS: It's a personal incident report. For  
14 example, if you're driving by and you witness a burglary in  
15 progress or shooting -- of which I have many times, one of  
16 which cost me dearly -- then you get written up because it's  
17 outstanding support in police work -- typically by your  
18 sergeant and then those eventually result in commendations.

19 BY MR. BOLANDER:

20 Q Thank you. And you also filed a lawsuit against the  
21 City; correct?

22 A That is correct.

23 Q And I'll refer you to the respondents' notebook.

24 A Am I speaking loud enough? Because I couldn't hear  
25 him in the back. It was torture.

1 Q Exhibit Number 5, please. And have you seen this  
2 document before?

3 A Yes, sir.

4 Q And is this the -- this is also a Second Amended  
5 Complaint that was filed against the City; correct?

6 A I believe so.

7 Q And the lawsuit was filed separately from Mr. Hurt's  
8 lawsuit; correct?

9 A Correct.

10 Q And at some point they were consolidated together?

11 A They were joined at some later date, yes.

12 Q And can you tell me why -- why you filed a lawsuit  
13 against the City?

14 A During this process of our new police officers'  
15 association when we both got promoted, we became managers and  
16 we had our own association. And as a result of our City  
17 Manager's Office and the assistant city manager and our chief  
18 of police, two councilmen in particular, we were targeted as  
19 a result of our political action.

20 Darryl Hurt was the president of our administrators  
21 association. We developed a political action committee; and  
22 as part of that duties -- I was a perfect choice, I guess,  
23 for him; but it may not have been a perfect choice for me  
24 because I was selected to work in the chief's office to run  
25 and build a nonexistent community policing program which

1 eventually became a platform for training.

2 And prior to my retirement, I had the privilege of  
3 entertaining 56 different police agencies. And up until  
4 recently, Lieutenant Hurt said the New York PD came out and  
5 was very disappointed with the fact that the same program  
6 that I was developing -- or had developed was no longer in  
7 existence.

8 So as a police -- the head of the community policing  
9 unit out of the chief's office, I was involved with the  
10 community cops and clergy, neighborhood watch groups,  
11 developing these groups, gang members, their families, the  
12 city. So, therefore, politically, we can reach out and touch  
13 a lot of different people. So we, in fact, did that.

14 And as part of our duties, we went out and  
15 interviewed potential candidates for certain offices. If we  
16 were going to put our name in, we wanted to see what they  
17 were all about. And we interviewed all these candidates for  
18 these political positions. And as a result of us not  
19 selecting or backing these two particular council members,  
20 that started a fire storm of major proportions.

21 Q And as part of that lawsuit, you allege that one of  
22 the forms of retaliation was that you were passed up for  
23 promotion to captain; is that right?

24 A That is correct.

25 Q Do you remember how many promotions you believe you

1 were passed up in unlawful retaliation?

2 A I believe I had only competed twice. I believe that  
3 to be the case. I know I did at least one because it  
4 resulted in a lawsuit; so --

5 Q Do you remember about when the last time you  
6 competed for the captain's promotion was?

7 A 2000- -- it was the same one that Lieutenant Hurt  
8 talked about. I believe it was 2006, 2007. I could look  
9 here and find out exactly, but it was thereabouts.

10 Q Okay. And you, along with Mr. Hurt, settled your  
11 case; correct?

12 A That is correct.

13 Q And there wasn't a separate settlement negotiation  
14 for Darryl and then a separate one for you; right?

15 A No, there wasn't.

16 Q I want to refer you to, I guess, Respondents'  
17 Exhibit 7. And have you had a chance to review this  
18 document?

19 A Yes.

20 Q And what -- what do you understand it to be?

21 A This was -- this was us going on record moments  
22 after we got the approval from the City and our attorney that  
23 we would be made top-step captain with back pay. I would go  
24 out at 30 years; and that's not in here, it's part of that,  
25 which means they had to pay me two and a half additional

1 years in my retirement.

2 That -- I mean, it went very quickly. This was just  
3 the forefront of us telling Percy, the judge, I don't  
4 remember his last name, that --

5 Q Anderson.

6 A What was his name?

7 Q Anderson.

8 A Judge Anderson that it went very quickly. He -- we  
9 got the approval. We made the -- made our terms, and they  
10 said they met our terms with the approval of PERS, and we  
11 went through.

12 Q Was -- was this a document -- I'm talking about  
13 Exhibit 7 -- was this a document that you were handed at that  
14 meeting and asked to sign?

15 A No. I don't believe I signed anything that day.

16 Q Was this, essentially, what was just verbally read  
17 at court?

18 A That is correct.

19 Q Or strike that. Verbally stated in court?

20 A I believe so.

21 Q And did you believe that at some later date it would  
22 be -- a more complete settlement agreement would be reduced  
23 to writing?

24 A Writing -- that's correct.

25 Q And what did you understand -- and I think you might

1 have -- you might have hit this; but I just want to ask more  
2 specifically. What did you understand that you would receive  
3 as part of the settlement agreement?

4 A If I may, your Honor, I'll tell you this one in a  
5 nutshell when it came down to me and this hearing. I want to  
6 thank you for hearing us. I made phone calls for several  
7 years, and there hasn't been a month gone by that I didn't  
8 want this resolved. And as a result of saying that, I thank  
9 you for being here.

10 When I went into chambers with the federal judge and  
11 he started to tell me about -- and I will digress just for a  
12 couple minutes, but I think this is important so you know  
13 where we're coming from. And everybody in the room was  
14 apparently afraid of this judge, especially our attorneys and  
15 the City's attorney and Mr. Roth. It concerned me to some  
16 extent when he starts telling me we're not going to get money  
17 from the State. We should have been in a different court.

18 And I interrupted him and I said, "See that eagle  
19 above you, your Honor?" I said, "That means something to me.  
20 And that little, bald, black guy out there -- I love that  
21 guy. If him and I were wrong -- this is a matter of right or  
22 wrong -- I don't get a nickel, I don't care." And that goes  
23 for this hearing because this is right or wrong.

24 So he sat back in his chair and he says, "What do  
25 you want?" So I made this very clear. I said, "I want to be

1 top-step captain. And I'm not stupid; so I know what they're  
2 going to do. They're going to want us to retire. I want  
3 back pay back to the day I should have been promoted to  
4 captain." I said, "I want \$250,000."

5 And I should have stopped myself because I should  
6 have -- I should have asked for more because we had one heck  
7 of a case. So when we came out -- they brought him in  
8 separately. I didn't know what he wanted nor did I expect --  
9 I sat and I thought to myself, "Whoa, I have young kids.  
10 This is huge. Did I make the right choice? I love what I'm  
11 doing."

12 Very few people did it as well as me and you can --  
13 that includes here in San Bernardino, wherever you're at.  
14 And I'm not bragging -- to some extent because I worked hard  
15 to get to that point. So when I left the room -- I didn't  
16 leave the room to retire as a lieutenant. We had a great  
17 case, not a good case.

18 This pales in comparison with what would have happen  
19 and did happen several weeks after we settled this. But we  
20 love the city of Riverside. And if I could get \$50 million,  
21 I would. I'm not stupid. However, this was a case of right  
22 or wrong.

23 So to dispel anything and we don't have to beat each  
24 other up with minimal questions -- not that any are  
25 minimal -- I will tell you this. Today I get addressed as

1 captain from troops. Today I get addressed from captains  
2 from current captains on the police department. Did I walk  
3 out of there as a captain? I wouldn't have sold my soul for  
4 being a lieutenant. So, hopefully, that answers some of  
5 that.

6 Q Yes. Thank you. So you received a check for  
7 damages from the City; correct?

8 A That is correct.

9 Q And you also received separately wage payments of  
10 captain's pay; correct?

11 A I received back pay. I think it was at least a  
12 year. I was under the impression we got back pay to the date  
13 of our -- which would have been -- should have been our  
14 promotion, but I think looking at this was probably a year.

15 And then I got top-step captain wages, which would  
16 have brought me up to 30 years because I had 27 and a half  
17 years. So they had to pay me -- so the City gave me enough  
18 money to pay into PERS -- enough to bring me up to 30 years,  
19 which would have been, you know, what I wanted and top-step  
20 captain wage.

21 Q Did you understand the -- the -- attaining the rank  
22 of captain to be something separate from the monetary damages  
23 that you received?

24 MS. KAUR: Objection. Vague.

25 THE COURT: Overruled.

1 THE WITNESS: It was part of -- in order for us to --  
2 right or wrong, I want to be made captain dated back to the  
3 original. I want to be top-step captain when I leave at  
4 30 years, and I want 250,000 for what they put us through.

5 BY MR. BOLANDER:

6 Q I want to refer you to --

7 THE COURT: Mr. Bolander, do you want to make the phone  
8 call because it's ten after. He's available at noon.

9 MR. BOLANDER: I haven't received -- I'm supposed to get  
10 a text.

11 THE COURT: When he's by the phone?

12 MR. BOLANDER: Right.

13 THE COURT: Okay. Great. Let's keep going.

14 MR. BOLANDER: Maybe if I get to a, sort of, a natural  
15 breaking point I'll make the call.

16 THE COURT: If you want to leave your phone on so you  
17 hear it. I know we're waiting for him.

18 MR. BOLANDER: Thank you.

19 THE COURT: No problem.

20 BY MR. BOLANDER:

21 Q Can I refer you to Exhibit 7. I believe it's the  
22 second page of Exhibit 7.

23 THE COURT: This is Respondents' 7?

24 MR. BOLANDER: Yes.

25 THE WITNESS: Okay.

1 BY MR. BOLANDER:

2 Q Now, second paragraph down reads that, "Hurt will  
3 retire from the City of Riverside Police Department as a  
4 police lieutenant on July 19, 2011; and Bacon will retire on  
5 July 17, 2010, both 50 years of age." Now, when this was  
6 stated in court by Senator Roth, what did you understand that  
7 to mean?

8 A Well, July 16th would have been the date. But  
9 everybody addressed us up to that point as lieutenants. So  
10 it's a little more complicated issue because they're calling  
11 us lieutenants, but we're going out as captains. That's what  
12 I knew it to mean.

13 Q And you understood that you were getting all the  
14 benefits and pay of a captain?

15 A Absolutely.

16 Q And --

17 A Top-step captain.

18 Q In your time at the department, were there any  
19 police lieutenants who received top-step captain's pay?

20 A At their rank?

21 Q Yes.

22 A Not that -- no.

23 Q And did you believe that you would retire with the  
24 captain's pension?

25 A Absolutely.

1 Q And --

2 A I believe I did retire at top-step captain and then  
3 looking in my -- looking at the letter and this and then  
4 that's when Darryl and I started calling each other going,  
5 "Hey, wait a minute." That's why we're here.

6 Q Is there anything that was said during the  
7 negotiations of -- at --that other occurred either at or  
8 before this hearing that made you believe that PERS would  
9 honor the -- strike that. It's a bad one.

10 Is there anything made -- is there any -- what made  
11 you believe that your captain's pay would be factored into  
12 your pension calculation?

13 A We were told by the then city attorney -- assistant  
14 city attorney and Mr. Roth who were walking down the hall in  
15 front of federal court talking to our attorney saying it's  
16 good to go. Everybody's accepted it. And that our attorneys  
17 advised us that the City advised them that all our -- the  
18 agreement would be reached. We would leave as top-step  
19 captain, top-step captain pay; and that's why I didn't think  
20 it would be a problem with it.

21 Q Did you understand PERS to be one of the everybody  
22 who you were referring to?

23 A I understood --

24 MS. KAUR: Objection. Calls for speculation.

25 THE COURT: Overruled. He asked what he knows.

1 THE WITNESS: I never would have accepted if I didn't  
2 believe PERS was going to accept it, to be honest with you;  
3 and neither would he. If they didn't say that they agreed to  
4 it, that started this ball rolling; or I would have went to  
5 court. And I think you understand how you can feel that in  
6 my voice. I would have went to court -- win or lose.

7 BY MR. BOLANDER:

8 Q So you would have -- would you have -- I'll just ask  
9 you. Would you have accepted the settlement agreement as it  
10 was if you did not believe that your pension benefits would  
11 reflect the captain's pay you received?

12 A Absolutely not.

13 Q I want to refer you to exhibit -- Respondents'  
14 Exhibit 3.

15 A Of the same book?

16 Q Yes.

17 A Okay.

18 Q Do you remember receiving this notification from  
19 CalPERS?

20 A Yes.

21 Q And what did you understand it to be telling you?

22 A That there was a mistake. I believe that I was not  
23 going to get what we agreed to in federal court and that  
24 something had happened -- something wasn't right; and we  
25 needed to start asking questions. I was completely shocked.

1 Q Would you have retired on the date that you ended up  
2 retiring if you didn't believe you were going to receive  
3 credit for the captain's pay in your PERS calculation?

4 A No.

5 Q Has not receiving the, call it, captain's-level  
6 retirement negatively affected you?

7 MS. KAUR: Objection. Irrelevant.

8 THE COURT: Overruled.

9 THE WITNESS: Absolutely.

10 MR. BOLANDER: That's all I have for direct. Would you  
11 like me to make a call and see if we can get Senator Roth?

12 THE COURT: Yes. Why don't we go off the record.

13 (Phone call made to Senator Richard Roth)

14 THE COURT: We're back on the record. Raise your right  
15 hand, please.

16

17 RICHARD ROTH,

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

20 THE WITNESS: I do.

21 THE COURT: Thank you. Can you state your full name,  
22 please, and spell your last name for the record, please.

23 THE WITNESS: Richard D, as in "Dale," Roth, R-O-T-H.

24 THE COURT: Great. Thank you. Counsel is going to ask  
25 you questions. And I'll have the attorneys identify

1 themselves, okay.

2 THE WITNESS: Thank you.

3 THE COURT: Go ahead, sir.

4

5 DIRECT EXAMINATION

6 BY MR. BOLANDER:

7 Q Good afternoon, Senator Roth, Joe Bolander here.

8 A Yes, sir.

9 Q One moment. We're --

10 MR. OKAZAKI: Senator Roth, this is Neil Okazaki.

11 I -- just for the judge's perspective, I was  
12 speaking with Mr. Bolander and also speaking with Ms. Kaur.  
13 We just want to clarify, your Honor, that Mr. Roth is being  
14 called for the purpose of answering questions that would not  
15 elicit the -- not elicit information that would be protected  
16 by the attorney-client privilege.

17 So, in other words, he's not to -- he's not being  
18 asked any questions -- or any question that's being asked by  
19 counsel today is not in any way intended to ask Mr. Roth to  
20 reveal communications that he had with his client, members of  
21 the City of Riverside. He -- obviously, if there were  
22 communications in which the privilege would not apply, such  
23 as conversations in which outside parties such as CalPERS  
24 employees or others would have been present, those  
25 communications are not protected.

1           But I think counsel, if I understood it correctly,  
2 is not attempting through calling this witness or by crossing  
3 this witness is intending to breach the attorney-client  
4 privilege.

5           MS. KAUR: Well, if I have questions that are relevant,  
6 I will ask them; and I suppose you can object as we go along.

7           MR. OKAZAKI: Okay. But I'm assuming that no counsel is  
8 intentionally intending to ask questions that are intended to  
9 breach the attorney-client privilege.

10          MS. KAUR: I don't understand how.

11          MR. BOLANDER: Well, I can represent I am certainly not.  
12 I've spoken with Senator Roth and Mr. Okazaki prior to the  
13 hearing; and I think they know the, sort of, my intended  
14 scope. Obviously, if I come close to the line, I'm confident  
15 Senator Roth and Mr. Okazaki both would understand their  
16 obligations to their client.

17          THE COURT: And when I hear objections, I'll rule on  
18 them. So I understand the City's position.

19          MR. OKAZAKI: Okay. Thank you.

20          THE COURT: Sir.

21 BY MR. BOLANDER:

22          Q       Thank you, Senator Roth. Joe Bolander here again.  
23 And I do appreciate your office and yourself working with us  
24 to allow this to happen today.

25          A       No problem.

1 Q I'll start with some basic background. You're  
2 currently a state senator?

3 A Yes, sir.

4 Q And how long have you served in that role?

5 A Since -- I was sworn in in December of 2012, and the  
6 session started in January of 2013.

7 Q And what district do you represent?

8 A The 31st Senate District, western Riverside County.

9 Q Thank you. Can you -- I read your bio; so I know  
10 there's a lot of it. But can you give me a basic rundown of  
11 your professional history prior to serving in the Senate?

12 A Well, I -- after law school, I went into the Air  
13 Force. I was a judge advocate with the Air Force from 1975  
14 to 1979; worked for the National Labor Relations Board as a  
15 field attorney in Los Angeles from '79 to 1981.

16 I was in private practice in Riverside from 1981,  
17 essentially, until -- I still do a little bit of legal  
18 work -- but until January of 2013 in Riverside at various  
19 firms during that period of time.

20 Q Thank you. So you're here today testifying in a  
21 CalPERS administrative appeal hearing in which my clients  
22 have challenged a CalPERS determination. And when I refer to  
23 my client, I'm referring to Mr. Bacon and Mr. Hurt. Are you  
24 familiar with Timothy Bacon and Darryl Hurt?

25 A Yes, I am through a case that I -- in which I

1 represented the City of Riverside back in the late 2000s.

2 Q Okay. And just for purposes of -- I'm going to ask  
3 you to refer to one of the exhibits I provided you. It's  
4 exhibit -- actually two of them -- Exhibits number 5 and 6.  
5 Do you have those in front of you?

6 A Let me see if I can figure out my computer here. I  
7 know which ones they are. The five is the -- is the Bacon --  
8 Tim Bacon Second Amended Complaint. And Exhibit 6 is the  
9 Second Amended Complaint for damages for Plaintiff Darryl  
10 Hurt. Yes, I do.

11 Q Yes. Thank you. And I'm not going to ask you any  
12 specific questions about those documents per se. I just  
13 wanted to ensure that that's the federal lawsuit we're  
14 talking about, and that's the context in which you remember  
15 the case.

16 THE COURT: And for the record, these are Respondents' 5  
17 and 6.

18 MR. BOLANDER: Yes. Respondents' 5 and 6.

19 THE WITNESS: Yes, exactly.

20 BY MR. BOLANDER:

21 Q Okay. Thank you. And, as you indicated, you  
22 represented as counsel the City of Riverside in those  
23 cases; correct?

24 A Yes, I did.

25 Q Okay. And did those cases proceed to trial?

1           A     No, they did not. There was a -- a settlement  
2 conference that was conducted in the federal case shortly  
3 before the -- I'm not -- I don't remember whether the matter  
4 was actually set for trial or whether it was at the pretrial  
5 conference. But around the pretrial conference, the case  
6 proceeded to a settlement conference. Judge Percy Anderson  
7 was presiding in the federal court.

8           Q     Okay. And that leads me to my next exhibit, which  
9 is 7. Do you have that in front of you?

10          A     I do. This is the transcript from Judge Anderson's  
11 courtroom.

12          Q     Okay. Thank you. Now -- and, again, you know  
13 excluding -- well, strike that.

14                    During the process of negotiating a settlement or  
15 potential settlement at the time of Mr. Bacon and Mr. Hurt's  
16 lawsuits, did you, as a representative of the City, have any  
17 discussions with CalPERS?

18          A     Well, what I recall and I think it must have been --  
19 well, I don't -- let me just say this. I don't have my  
20 calendars from that time period -- my law practice calendars  
21 nor do I have my law practice files. So all I have is what  
22 has been provided to me in these Exhibits 5, 6, and 7. But  
23 what I recall is sometime prior to April of 2000, say,  
24 April 12 of 2010, I was present at the city of Riverside in a  
25 conference room with the City's human resources. I believe

1 he was the deputy director at the time. There was another  
2 city employee whose name and position I do not recall. I was  
3 present along with the supervising -- then Supervising Deputy  
4 City Attorney Jeff Brown, and we were present for a telephone  
5 conference. I do not recall the name or the position of the  
6 individual on the other end of the telephone conference but  
7 it was my recollection -- it's my recollection and it was my  
8 understanding that the person was a representative of  
9 CalPERS. And we were having this conference for the purposes  
10 of outlining the proposed settlements -- or what we intended  
11 to propose -- and I don't recall which of those it was --  
12 with Officers Bacon and Hurt.

13 Q And --

14 A I didn't -- I did not -- if I can just add this. I  
15 did not speak during the, that I recall, during the telephone  
16 conference.

17 Q But could you hear what was being said by the  
18 individual who you believe to be from CalPERS on the other  
19 end of the line?

20 A Yes. While I do not recall what was said by that  
21 representative, it was my understanding from that meeting  
22 that there were no objections to what we were proposing in  
23 the federal district court settlement.

24 Q And -- and what was being proposed, as you remember  
25 it, was that Bacon and Hurt would receive captain's pay going

1 forward for a period while they were on administrative leave  
2 and captain's pay retroactively; correct?

3 A Yes.

4 Q And when you say that CalPERS didn't -- you don't  
5 remember any objection to the proposal, do you mean that  
6 CalPERS indicated, as you understood it, that those captain's  
7 pay payments would be calculated in my clients' pension  
8 calculation, basically?

9 MS. KAUR: Objection. Calls for speculation. Hearsay.

10 THE COURT: Overruled. Why don't you just ask him what  
11 he recalls.

12 BY MR. BOLANDER:

13 Q What do you recall? Can you describe more  
14 specifically what do you mean when you say that CalPERS  
15 didn't offer any objection to the --

16 A Well, I don't remember who spoke. And maybe I did  
17 speak, but I don't recall that. But we outlined the  
18 parameters of the settlement which -- which were that the two  
19 officers would receive back pay at the captain's rate because  
20 this was a failure to promote case remember, in essence.

21 They would receive back pay at the captain's pay  
22 rate. And then they would be on administrative leave for a  
23 period of at least 12 months as I recall so that they would  
24 receive captain's pay at the top captain's pay scale for the  
25 city of Riverside in an administrative leave status; and that

1 at -- following that, that at two different points in time,  
2 because they were on a different time schedule, Officer Hurt  
3 would retire somewhere around July of 2011 and Officer Bacon  
4 would retire at -- in July of 2010, thereabouts; and that  
5 they would retire at the captain's pay rate.

6 That was my understanding. That's what we  
7 presented, and that was my understanding. My understanding  
8 was following that conversation that that would be  
9 acceptable.

10 Q And I'm just trying to nail down what you mean by  
11 "acceptable." Do you mean acceptable in that --

12 A Well, there was -- I'll answer it. It was my  
13 understanding that they would be permitted to retire as if  
14 they were captains and that their retirement pay would be  
15 based on the captain's pay scale that they had, in fact, been  
16 paid both through back pay and as a result of the 12 months  
17 of pay while on administrative leave.

18 Q Thank you. And did you relay this -- the  
19 understanding you received from this conversation to  
20 Mr. Russell Perry who was representing Hurt and Bacon at the  
21 time?

22 A Well, I don't recall exactly when. I told Russell  
23 Perry that it was my understanding that -- that they would be  
24 retired at the, based on my conversation with CalPERS, at the  
25 captain pay scale.

1           But I also recall advising Russell that he needed to  
2 call CalPERS because he was asking me questions. And I said,  
3 "You need to call CalPERS and verify, you know, this  
4 information yourself or do whatever you need to do to verify  
5 it; but this is my understanding. And so based on that  
6 understanding, you know, I'm prepared to propose this."

7           Now, you will note from the transcript I did not go  
8 into retirement in the transcript because that was a little  
9 bit out of the purview of what we were doing.

10          Q     I understand. And the understanding on that point  
11 was that after some period of time, the outline of the  
12 settlement agreement that was placed on the record would be  
13 reduced to writing; is that correct?

14          A     That's correct. And I attempted to do so.

15          Q     And because of -- well, why did that not -- or did  
16 that happen?

17          A     Well, I reduced a draft to writing and circulated  
18 it. There was some disagreements among counsel as to the  
19 confidentiality. Again, I don't have the settlement  
20 agreement in front of me, but my recollection is there was  
21 disagreement among counsel as to the nature and extent of the  
22 confidentiality provision that was referenced in the  
23 transcript.

24                 And when we could not -- when we could not agree, as  
25 I recall, I made the decision to rely on the transcript and

1 not on the -- on a settlement agreement. And, frankly, the  
2 judge made that clear in the -- at the time of the April 12,  
3 2010, hearing anyway that the matter was settled  
4 notwithstanding whether or not there was ever a written  
5 settlement agreement negotiated or signed. And so we relied  
6 on the transcript and abandoned the effort to try to come to  
7 an agreement on the language of a written settlement  
8 agreement.

9 Q And essentially, then, the parties are left with  
10 what's embodied in the transcript?

11 A Exactly.

12 MR. BOLANDER: I have nothing further at this time.

13 THE COURT: Cross-examination?

14 MR. OKAZAKI: I have -- well.

15

16 CROSS-EXAMINATION

17 BY MR. OKAZAKI:

18 Q Senator Roth, this is Neil Okazaki. Good afternoon.

19 A Yes, sir.

20 Q Senator, did you ever have any direct conversations  
21 at any time with -- with Mr. Bacon regarding your  
22 understanding of the terms of the settlement?

23 A I don't recall. I don't -- well, I certainly would  
24 not have done that during the course of the litigation up  
25 through the time of settlement. And I can't recall whether I

1 encountered him in Riverside after that point in time and had  
2 any conversation with him on the settlement. I'm certain I  
3 didn't have any detailed conversation with him.

4 Q Okay. And up until the time of the settlement you  
5 as well never had a conversation, I assume, with Mr. Hurt  
6 either?

7 A Not -- certainly not outside the presence of their  
8 attorneys.

9 Q Okay. And do you have any recollection of having a  
10 conversation about the terms of the settlement prior to the  
11 settlement going into effect in the presence of their  
12 attorneys? Do you have a recollection of that ever occurring  
13 with either Mr. Bacon or Mr. Hurt?

14 A I don't have any specific recollection of that. I'm  
15 -- I'm -- although I don't recall the conversation, I'm  
16 certain that I would have had a conversation with Russell  
17 Perry about what we were proposing.

18 Q Right.

19 A And, again, I would have told him, you know -- and I  
20 remember asking -- I have a vague recollection of having a  
21 conversation with him and having him ask questions. And I  
22 remember telling him that he needed to independently verify  
23 this information, but it was my understanding that we would  
24 pay the money; they would be on administrative leave; they  
25 would be permitted to retire; and their -- that their

1 captain's pay would be used in the retirement calculation.

2 Q And when you say "independently verify the  
3 information," are you referring to --

4 A I was referring to talking to someone at CalPERS.  
5 And, in fact, I am almost certain I told him he needed to do  
6 that.

7 MR. OKAZAKI: Nothing further, your Honor.

8 THE COURT: Okay. Sir, the CalPERS attorney is now  
9 going to ask you questions. Ms. Kaur.

10

11 CROSS-EXAMINATION

12 BY MS. KAUR:

13 Q Senator, do you know whether Mr. Perry did  
14 independently call CalPERS to verify the information you  
15 provided to him?

16 A No, I do not know that at all.

17 Q Did you receive anything in writing, or do you know  
18 whether the City received anything in writing from CalPERS  
19 regarding that discussion?

20 A Well, I can't speak for the City, but I did not  
21 receive anything in writing from CalPERS.

22 Q Are you aware whether the City did receive anything  
23 in writing concerning that discussion?

24 MR. OKAZAKI: I'm going to object in terms of -- to the  
25 extent that the question may reveal communications between

1 him and the City of Riverside. It's protected by the  
2 attorney-client privilege.

3 THE COURT: I understand. She was asking if he has any  
4 knowledge of that.

5 MR. OKAZAKI: Again, for the record, my objection would  
6 be to the extent that the knowledge would come from a  
7 communication between him and the client. I would object as  
8 to privilege.

9 THE COURT: Okay. Sustained.

10 THE WITNESS: Do you need me to do something?

11 THE COURT: No. Just hang out for the next question,  
12 sir.

13 THE WITNESS: Okay.

14 BY MS. KAUR:

15 Q Do you recall seeing any documents that were sent to  
16 the City or addressed to the City regarding this discussion?

17 MR. OKAZAKI: Objection.

18 BY MS. KAUR:

19 Q -- from CalPERS?

20 MR. OKAZAKI: Sorry. I didn't mean to interrupt the  
21 question. But I would object to the extent that it violates  
22 the attorney-work-product privilege. It's a document that  
23 would have been shared by the client with the attorney.

24 THE COURT: Overruled. She was asking if there were any  
25 PERS documents that he ever saw.

1 MR. OKAZAKI: As I understood the question, PERS  
2 documents that -- that had come to the City. To the extent  
3 that any documents had come from PERS that was shared as part  
4 of the representation of the City would be privileged.

5 THE COURT: Overruled. You can answer that.

6 THE WITNESS: I don't -- I didn't see any -- I didn't  
7 see any documents from CalPERS. And my only contact with  
8 CalPERS -- again, I don't remember who the person was or what  
9 the position was -- was that single telephone conference that  
10 we had in the City's conference room because I wanted to make  
11 sure that, you know, when I was proposing a settlement that  
12 it was going to work. And I satisfied myself based on what I  
13 heard that it was -- at least I thought it would work.

14 BY MS. KAUR:

15 Q Did you reduce your -- your understanding in writing  
16 or -- and provide that to CalPERS or have any communication  
17 in writing with CalPERS concerning that understanding?

18 A No. And, in fact, the -- you'll note from the  
19 transcript in the federal court proceeding that we really  
20 didn't touch on the retirement piece other than, I think, we  
21 may have referenced the dates of retirement because that was  
22 outside the purview of this process.

23 Q And when you say "it was outside the purview of this  
24 process," what do you mean by that?

25 A Well, the -- the settlement agreement provided that

1 the two officers would retire, generally, on the dates  
2 indicated. But that required action on their part, too, to  
3 apply with CalPERS and to, you know -- I'm not necessarily  
4 that familiar with the process since I'm not a -- an  
5 annuitant. But my understanding is that they have to apply.  
6 They have to work with CalPERS to determine the retirement  
7 calculations, set the retirement dates, and all that. So  
8 that was the process that was outside the federal court  
9 proceeding.

10 Q Was it your understanding that the information that  
11 was provided to you by the CalPERS staff during that  
12 telephone conference was not a final determination regarding  
13 Mr. Hurt or Mr. Bacon's retirement?

14 MR. BOLANDER: I'm going to object that it's vague.

15 THE COURT: Overruled.

16 THE WITNESS: Well, I didn't -- may I answer?

17 THE COURT: Go ahead, sir.

18 THE WITNESS: I didn't have any -- any understanding one  
19 way or the other on that. I assumed that there was -- if  
20 there was a problem that it would have been identified to me  
21 because I would not have -- I would not want to be in a  
22 position to propose something in the context of a federal  
23 district court proceeding that didn't -- that wasn't going to  
24 work.

25 You know, I have credibility -- I'm supposed to have

1 some credibility, too, as an officer of the court. So I was  
2 satisfied that -- that based on the conversation that there  
3 was no impediment. At least none had been identified to me.

4 So I felt comfortable proposing the settlement,  
5 telling, you know, my colleagues on the other side of the  
6 case that they needed to do their own due diligence if there  
7 was an issue but that it looked like this would work to  
8 achieve the objective, which was to settle the case,  
9 recognizing that this is a non-selection for promotion case,  
10 settle it as if they had been promoted and been receiving  
11 money, which to me implied that at the end of the process  
12 they would get to retire as if they had been promoted as  
13 captains.

14 But beyond that, I did not have an understanding as  
15 to what the CalPERS process was to retire them, whether there  
16 needed to be an initial or final determination.

17 BY MS. KAUR:

18 Q Did you conduct any independent investigation or  
19 inquiry to verify the information that was -- that your claim  
20 was provided to you by CalPERS staff?

21 A No. I viewed that to be the obligation of -- of my  
22 colleague on the other side of the case.

23 MS. KAUR: That's all, your Honor.

24 THE COURT: Any redirect?

25 MR. BOLANDER: No.

1 THE COURT: Any more questions?

2 MR. OKAZAKI: No, your Honor.

3 THE COURT: Okay, sir, I see that everyone is shaking  
4 their head. They have no more questions for you.

5 MR. BOLANDER: I take that back. I'm sorry. It just  
6 popped into my head.

7 THE COURT: Okay. Go ahead.

8

9 REDIRECT EXAMINATION

10 BY MR. BOLANDER:

11 Q Sorry, Senator Roth. We were going to let you out  
12 of here, but I've brought you back in. Just -- just a couple  
13 questions.

14 You indicated that the retirement consequences of  
15 the payments were not touched on in the -- in the federal  
16 court minutes; correct?

17 A I believe that to be the case, right. I did say  
18 that.

19 Q Did you understand that to be -- when I say "that,"  
20 the -- strike that.

21 Did you understand at the time that Hurt and Bacon  
22 would not have accepted the settlement agreement if they did  
23 not believe they would receive the captain's retirement?

24 MS. KAUR: Objection. Calls for speculation.

25 THE COURT: He's just asking his understanding.

1 Overruled.

2 You may answer, sir.

3 THE WITNESS: Well, I don't know -- I don't know what  
4 they understood or not because, of course, I wasn't having  
5 direct conversations with them. But I can tell you what I  
6 understood.

7 And my understanding was this was a failure to  
8 promote case. For variety of reasons they sued. They  
9 contended they should have been promoted to captains. We  
10 settled. We, in essence, said, "Okay. We give. We're going  
11 to settle this case."

12 The settlement entailed a significant amount of  
13 money at the captain's rate as back pay. And we settled for  
14 a variety of reasons, you know. There's always a  
15 non-admissions provision. But there's a significant amount  
16 of back pay at the captain's rate for both people. There was  
17 12 months at least -- I didn't count -- but 12 months or so  
18 of front pay, in essence, while they were on administrative  
19 leave at the top-step captain rate.

20 And it was my understanding that when they retired  
21 that their pay at the top-step captain rate would be utilized  
22 to compute their retirement. That was my understanding. But  
23 I'm not -- I was not a PERS expert -- CalPERS expert. And,  
24 in fact, I'm certain that I've mentioned that to Russell  
25 Perry during the conversations. So that's my understanding,

1 but that's all I can testify to.

2 Q And is -- and acknowledging that you're not a PERS  
3 expert, is that the reason that the City consulted PERS?

4 A Well I -- I wanted to have some comfort level that I  
5 was proposing something that would work. So that was my  
6 reason for wanting to have a conversation. However, one  
7 sided with CalPERS on the subject of the settlement and the  
8 detail that was being proposed in federal court. I don't  
9 know what the motive was for anybody else on the conference  
10 call, but that was my motive. Because I didn't want to be in  
11 a position of proposing something that didn't work.

12 MR. BOLANDER: Thank you. That's all I have.

13 THE COURT: Anyone else?

14 MR. OKAZAKI: Nothing further, your Honor.

15 MS. KAUR: No, your Honor.

16 THE COURT: Okay. Now everyone is shaking their heads.  
17 Senator, thank you very much for your time, sir. You are  
18 released.

19 THE WITNESS: Your Honor, thank you for your patience in  
20 working with my schedule. I hope you all have a great day.

21 THE COURT: You too, sir. Thank you. Bye-bye.

22 MR. BOLANDER: Thank you, sir.

23 MS. KAUR: Thank you.

24 THE COURT: The record will reflect that I have  
25 terminated the phone call. Let's go off the record one

1 second.

2 (Discussion off the record)

3 THE COURT: Back on the record. Sir, mind you, you are  
4 still under oath. We are resuming the direct examination of  
5 Mr. Bacon.

6 MR. BOLANDER: Can you reread the last question and  
7 answer, please?

8 THE COURT: Your last question was whether or not  
9 retiring not at captain's pay has negatively affected him,  
10 and the answer was, "Absolutely."

11 MR. BOLANDER: I think I was done.

12 MS. KAUR: Yeah, I think you were done.

13 MR. BOLANDER: Yeah, no, I'm done.

14 THE COURT: You're done? Okay. Great.

15 Cross-examination, Mr. Okazaki?

16

17 CROSS-EXAMINATION

18 BY MR. OKAZAKI:

19 Q Good afternoon, sir.

20 A Good seeing you, again.

21 Q You too. And you mentioned something in direct  
22 testimony about a shooting costing you dearly. What were you  
23 referencing by that?

24 A Years ago I was training an officer, and we drove  
25 right in the middle of a gun battle between opposing gangs,

1 and I was caught between the curb and the car and drug down  
2 the street for a short period of time and popped my hip out.  
3 Eventually, I had to have hip replacement surgery.

4 Q How many years did you serve on the department  
5 following that incident?

6 A Probably a good -- well, that was in the early  
7 '90s; so many, many years.

8 Q There was some testimony you gave about the terms of  
9 the settlement of your federal lawsuit. Do you remember  
10 testifying about that?

11 A Today?

12 Q Yes, sir.

13 A Yes.

14 Q Okay. You discussed there was a monetary settlement  
15 and then there was the -- there was the back pay and future  
16 pay as it related to being a captain.

17 A Correct.

18 Q Okay. Did you view those as distinct parts of the  
19 settlement? Or how did you view those various elements?

20 A That was my settlement -- that we would be top-step  
21 captains. I wanted to go out at 30 years. I wanted it based  
22 back to the original date of the promotion. And I wanted  
23 \$250,000 for my efforts.

24 Q Okay. And you were given pay up to the 30 years?

25 A Correct.

1 Q And you were given \$250,000?

2 A And some additional monies. I know they paid PERS.  
3 And, I mean, it gets so complicated that it -- I'm not, you  
4 know -- I haven't really -- as best to my knowledge, there  
5 was a lot of money going around.

6 Q And by "they," the City of Riverside, you're  
7 referring to?

8 A Absolutely.

9 Q And I'm just clarifying that the -- the City  
10 didn't -- did fulfill, at least, those financial obligations  
11 that you described in terms of the back pay as captain,  
12 \$250,000, enough to purchase additional credits to get the  
13 30 years?

14 A That is correct.

15 Q And being captain was important to you?

16 A Being captain was -- as I said, it wasn't the money  
17 as much as what was right.

18 Q Okay.

19 A We were the two best they had. And I'll tell you  
20 that, and I think you know that. And, you know, there were  
21 some things that happened that we don't need to go into today  
22 that would, frankly, shock you if you read the transcripts.  
23 But, yeah, we deserved it.

24 Q At some point you indicated that there was a  
25 discussion in the hallway with Mr. Roth and Mr. Brown.

1           A     My discussion, no. I was standing there. They were  
2 coming down the hallway. Our attorneys, Mike McGill and  
3 Russell Perry, were in the hallway; and they were both  
4 elated. And that's what they said to him; so I didn't have a  
5 one-on-one discussion with Mr. Roth, no. We got pulled into  
6 a separate room. They said, "Hey, this is what's happening."

7           Q     I may have misunderstood. Could you, then,  
8 clarify -- what did you observe or hear Mr. Roth or Mr. Brown  
9 say in this hallway?

10          MS. KAUR: Objection. Calls for speculation. Hearsay.

11          THE COURT: I'll receive it as administrative hearsay.  
12 Go ahead, sir.

13          THE WITNESS: They were walking down the hallway and  
14 basically in a nutshell saying, "Everything was good. We got  
15 approval." And they said that to McGill and Russell, and  
16 Darryl and I were then pulled into a room and discussed and  
17 they said, "Are you guys good with this?" We said, you know,  
18 "Well, if they're going to meet all these requirements,  
19 absolutely."

20          Q     So as I understood, then, your testimony, you heard  
21 Mr. Roth and Mr. Brown say that to Mr. McGill and Mr. Perry?

22          A     Right. It was fast moving because there were some  
23 things -- I've never been put on administrative leave in my  
24 life, you know, and "Hey, we're going to retire and that's  
25 part of it." This went real quick.

1 Q Okay. Do you remember the exact words that were  
2 said or that you just recalled the substance of it?

3 A Just the substance, actually but I know they were  
4 pretty elated. And I was shocked that my career was possibly  
5 going to be coming to an end. It was kind of surreal.

6 Q Had you not entered into the settlement, is it your  
7 belief that you would have gotten more had this case gone to  
8 trial?

9 A With what happened thereafter, absolutely.

10 Q Had you -- had you taken this case to trial, do you  
11 believe that you would have become a captain and made a  
12 significant amount of money to -- that would have outweighed  
13 the settlement amount?

14 MS. KAUR: Objection. Compound. Vague.

15 THE COURT: Overruled.

16 THE WITNESS: Absolutely. And I would have loved to  
17 have gone back and made an impact and built on my program.

18 BY MR. OKAZAKI:

19 Q You heard Senator Roth's testimony today?

20 A Yes, sir.

21 Q Is there anything about the senator's testimony that  
22 you believe was false?

23 A No. But I do believe that -- I don't believe any of  
24 it was false, no.

25 Q You don't believe that any representations made by

1 Mr. Roth were false reputations to your lawyers?

2 MS. KAUR: Objection. Lacks personal knowledge.

3 THE COURT: Overruled. He's asking what he knows.

4 THE WITNESS: No, I don't believe that. I think he's  
5 completely trying to do the best he can. I think there were  
6 some things going around that maybe he needed to refresh his  
7 memory on. But I think overall he's being completely honest  
8 with what he's testifying to what he remembers.

9 BY MR. OKAZAKI:

10 Q And not just his testimony. In any discussions that  
11 occurred, whether it was in the hallway or any information  
12 that came to you through Mr. Perry. At no time did you  
13 believe that Mr. Roth or Mr. Brown made any false  
14 representations as it relates to the terms of the settlement?

15 MS. KAUR: Objection. Calls for speculation.

16 THE COURT: Overruled. He's just asking his belief.

17 THE WITNESS: No. At this point, no. The  
18 information -- I don't think that -- well, I can't say that  
19 to Mr. Brown. My personal opinion of Mr. Brown will be  
20 separate from what I just heard. But what I just heard from  
21 him I believe he's trying to tell us what he remembers as  
22 truthful as possible. But I don't know what Mr. Brown would  
23 have to say. Does that make sense?

24 BY MR. OKAZAKI:

25 Q Well, as you sit here today, do you have any

1 information that Mr. Brown in any way falsely represented any  
2 of the terms of your -- any terms of the settlement agreement  
3 to you?

4 MR. BOLANDER: I'd object to that as asked and answered.

5 THE COURT: Overruled.

6 THE WITNESS: Again, I can't answer for Mr. Brown to be  
7 honest with you. I don't trust him or Brown as far as I can  
8 throw him. As far as Senator Roth, I will tell you, he  
9 sounded like he was trying to tell the truth as best as  
10 possible.

11 I do remember that there were some things going back  
12 and forth that were "Hey, this happened so quick within a  
13 30-day period." I think -- I can't answer for Mr. Brown. I  
14 don't trust the guy.

15 BY MR. OKAZAKI:

16 Q I guess my question is you have information -- do  
17 you have information that you understood was relayed to you  
18 by your attorneys --

19 A Correct.

20 Q -- that were communicated to your attorneys by  
21 Mr. Brown or Mr. Roth; correct?

22 A I believe Mr. Roth, yes.

23 Q Okay. So as it relates to the information that was  
24 relayed to you by Mr. Perry that came from Mr. Roth, you  
25 don't -- as you sit here today, you don't believe any of that

1 was false misrepresentations; correct?

2 A No.

3 Q Okay. As it relates to any information that you  
4 understood came from Mr. Brown through Mr. Perry, do you  
5 believe that in any way the information relayed to you by  
6 Mr. Perry that came from Mr. Brown was a false  
7 representation?

8 A I don't know if any of that information came from  
9 Mr. Brown.

10 MR. BOLANDER: I would object. It lacks foundation. I  
11 don't if he said that Jim Brown told --

12 THE WITNESS: Yeah, I wouldn't want to answer anything  
13 further about Jeff.

14 BY MR. OKAZAKI:

15 Q Okay. Well, then, let me ask you this. Do you have  
16 any information that you obtained -- and I appreciate  
17 counsel's clarifications. Let me rephrase the question.

18 As you sit here today, based upon -- you've had a  
19 lot of time to think about this Matter. Is there anything  
20 that Mr. Perry told you as it relates to terms of the  
21 settlement, even occurred that day, that you understood was  
22 communicated to Mr. Perry through Mr. Brown?

23 A No.

24 Q Okay.

25 MR. BOLANDER: Can I note as well for the record that I

1 think we're testifying two areas, I think, that would be  
2 technically covered by attorney-client privilege. But I do  
3 understand there's an issue of representations that were made  
4 to the attorney -- from the attorney to the client. And as  
5 far as that goes, you know, we're fine with that. I  
6 understand the relevance of that. But beyond that, in a  
7 broader scope, I just want to ensure that there's no waiver  
8 here.

9 MR. OKAZAKI: Yeah.

10 THE COURT: Understood.

11 MR. OKAZAKI: And my questions, I think, your Honor,  
12 were trying to be limited to what I thought --

13 MR. BOLANDER: I agree.

14 MR. OKAZAKI: Okay.

15 BY MR. OKAZAKI:

16 Q And so I guess my final area of inquiry, then, which  
17 is much related to what I just questioned you about, sir, was  
18 you entered into the settlement agreement based upon the  
19 information before you. You don't -- you're not alleging  
20 that the City of Riverside lied to you in some way to get you  
21 to enter into an agreement that you otherwise wouldn't have  
22 entered; correct?

23 MS. KAUR: Objection. Irrelevant.

24 THE COURT: Overruled.

25 THE WITNESS: Something happened. I can't say -- I'm

1 not saying -- would I put it past them? No. Would I put  
2 it -- something happened that PERS started the ball rolling,  
3 and we changed the course of our lives because of it through  
4 the City.

5 We came up with what we thought was, "Hey we should  
6 have been captains. This is what we're going to settle with,  
7 and you can retire us, and we'll be captains the rest of our  
8 life with captain's pay. I'll go apply somewhere else."  
9 That's a very difficult thing to say. You know, that's a  
10 tough question. Do I think they lied? I don't know. I  
11 don't know. I hope not.

12 Q You don't have any information that they did?

13 A No.

14 Q And what Mr. Roth testified here today was his  
15 understanding of a conversation with PERS. You believe that  
16 conversation took place?

17 A Absolutely.

18 Q You believe that when Mr. Roth described the nature  
19 of that conversation that you believed that he's describing  
20 it accurately to the best of his recollection, at least,  
21 today?

22 A Can I -- can I have just one minute off the record  
23 with my attorney to answer that?

24 THE COURT: Yes. We'll go off the record.

25 (Attorney-Client discussion off the record)

1 THE COURT: Sir, mind you, you're still under oath.  
2 Mr. Bolander.

3 MR. BOLANDER: I would just like to state briefly we had  
4 a brief break off the record to discuss potential concerns  
5 regarding attorney-client information. I think we revolved  
6 them. And if you wouldn't mind having the question reread  
7 accordingly to the witness.

8 THE WITNESS: Please repeat.

9 MR. OKAZAKI: If I could prevail on the court reporter  
10 since I've forgotten the exact wording.

11 (Record read)

12 THE WITNESS: Absolutely.

13 MR. OKAZAKI: No further questions, your Honor.

14 THE COURT: Thank you. Cross exam, Ms. Kaur?  
15

16 CROSS-EXAMINATION

17 BY MS. KAUR:

18 Q You refer to a settlement agreement during your  
19 testimony -- a settlement agreement. And when you're talking  
20 about a settlement agreement, are you referring to the  
21 agreement under exhibit -- Respondents' Exhibit 7?

22 A Well, I was asked about it. Let me go to 7 to see.  
23 He asked me specifics. I was asked a question about this  
24 exhibit, yes, second page, second paragraph.

25 Q But throughout your testimony you also answered

1 questions regarding a settlement agreement. Were you  
2 referring to this settlement agreement or is there some other  
3 settlement agreement apart from this one?

4 A I don't know of any other settlement. I answered  
5 the questions specific to what I was directed to, and I  
6 believe it was just on this exhibit.

7 Q Okay. You said you were promoted to lieutenant in  
8 1995; is that correct?

9 A Several months after Lieutenant Hurt, yes. '95, '96  
10 in that area, but it was after him -- shortly after.

11 Q So it was shortly after Mr. Hurt. Did you go  
12 through the same process for promotion to lieutenant as  
13 Mr. Hurt did?

14 A Absolutely.

15 Q And I believe you stated that you were passed up for  
16 promotion for captain; is that correct?

17 A That's correct.

18 Q And when did you apply for promotion for captain?

19 A It would have been -- I would have to do a little  
20 research; but it would have been in that time period for  
21 2006, 2007, I believe, maybe, 2005 -- right in there.

22 Q How many times did you apply?

23 A I believe I've applied twice. I know for a fact  
24 once, but I'm getting old so maybe twice.

25 Q At least once?

1 A At least once, yes.

2 Q And sometime in 2006, 2007; is that correct?

3 A That for sure, yes.

4 Q And was it the same process that Mr. Hurt went  
5 through?

6 A Yes.

7 Q And were you placed on the list?

8 A Absolutely.

9 THE COURT: Can I step in there one second? Because  
10 Mr. Hurt talked about two different processes for captain  
11 because it changed. So I don't know which process this  
12 witness went through.

13 THE WITNESS: It's all uniform when you -- like  
14 Lieutenant Hurt said --

15 THE COURT: No --

16 THE WITNESS: The captains.

17 MS. KAUR: I'll clarify.

18 THE COURT: The captain process changed. There was one  
19 process that was more subjective and they made it more  
20 objective.

21 BY MS. KAUR:

22 Q When you applied in 2006, what was the process that  
23 you went through when you applied for the promotion?

24 A There was two oral panels as described. We went  
25 through the same process he described as far as there was a

1 panel with questions based on basic community policing, which  
2 I ran. They were all community policing questions, and then  
3 they had an inside oral with the chief.

4 Q So that was the same process Mr. Hurt went through  
5 in 2006; is that correct?

6 A Right. I think they pared down the list to those  
7 that they thought would be the most qualified as chief. I  
8 don't think he interviewed everybody; he may have. But to my  
9 understanding you were selected to interview with the chief,  
10 and Darryl and I both were selected, and we had an oral with  
11 the chief.

12 Q But you were not ultimately promoted to the captain  
13 position; is that correct?

14 A That is correct.

15 Q When you were on administrative leave -- when you  
16 were on administrative leave in 2010, did you perform any  
17 services for the City of Riverside?

18 A Yes.

19 Q What duties did you perform?

20 A Probably one of the most significant was I wrote a  
21 letter -- there was a murderer here that was going to get  
22 out. Again, my forte was gangs most of my life and career --  
23 well, most of my career. And it was Tony Salazar, Jr., was  
24 murdered by a gang member in the area; and he was due to come  
25 out on parole -- dangerous man to society.

1           So I don't remember if it was the DA's office or the  
2 Investigative Unit and/or parole that wanted me to write a  
3 letter as to why he shouldn't get out, and I did. And then I  
4 don't know if I went to court but I was frequently asked  
5 questions about -- and they kept him in by the way. I know  
6 state parole called. They had one letter and that was mine,  
7 which was a good thing. So we'll leave it at that. There  
8 was a lot of different phone calls and such.

9           Q     So you performed some duties that were similar to  
10 the duties you performed before you went on administrative  
11 leave; is that correct?

12          A     Yes. We're policemen. We didn't lose anything. We  
13 were put on administrative leave. We had a hundred percent  
14 same powers we did when we were sworn in -- never lost a  
15 thing.

16          Q     When you testified earlier, you mentioned that  
17 during the settlement in April 2010, that's when you --  
18 strike that.

19                When you filed your lawsuit against the City, did  
20 you intend to retire?

21          A     No.

22          MR. BOLANDER:  Objection.  Vague as to time and  
23 generally.

24          THE COURT:  Overruled.

25          THE WITNESS:  No.  Actually, it was like a sledge hammer

1 it just happened so quickly and I really anticipated going to  
2 court and exposing -- or putting our case on and was looking  
3 forward to it.

4 BY MS. KAUR:

5 Q When did you decide to retire?

6 A When they agreed to our terms and said this is it.  
7 And they said, "You need to come down to PERS." What he was  
8 saying he had to come down here to PERS, and we had to come  
9 down here expeditiously because my 50th was coming sooner  
10 than his. So I came down to this building, had the ladies up  
11 front help with the application and so on and so forth.

12 Q Did you retire in return for settling the lawsuit?

13 A That was part of the agreement.

14 MS. KAUR: I don't have any further questions, your  
15 Honor.

16 THE COURT: Redirect?  
17

18 REDIRECT EXAMINATION

19 BY MR. BOLANDER:

20 Q Counsel asked you, I think, in relation to the  
21 promotional process that you went through in 19- -- or in  
22 2005, 2006, 2007, I think in that range, the promotional  
23 process for captain as to if you ever promoted to the rank of  
24 captain; and your answer was "No." What I wanted to clarify  
25 was you didn't promote to captain as a part of that

1 process; correct?

2 A Yes, that's correct.

3 Q But did you ever attain the position of captain  
4 after that?

5 A Yes.

6 Q Okay. And do you believe you would have continued  
7 working had the -- had you not been guaranteed a captain's  
8 retirement?

9 A Absolutely. I think I would have been -- I loved  
10 what I was doing.

11 MR. BOLANDER: I have nothing further.

12 THE COURT: Recross?  
13

14 RECCROSS-EXAMINATION

15 BY MR. OKAZAKI:

16 Q Mr. Bacon, just to confirm, Exhibit 7, which is the  
17 transcript from the federal court proceeding, you were  
18 present while this -- while this was placed on the  
19 record; correct?

20 A That is correct.

21 Q Okay. And at some point at the end it confirms --  
22 essentially, it's the 10th page. But, essentially, just --  
23 you spoke on the record. There's something where it says  
24 "Plaintiff Bacon" and it says some words. I just want to  
25 confirm you were present -- that was your statement on

1 page 10?

2 A Yes.

3 Q Okay. A process for promotion that was discussed  
4 here -- there's been a couple processes for promotions that  
5 have been discussed. Do you know whether or not those are  
6 formulized -- or formalized in the City's municipal code?

7 A I believe they are.

8 Q As it relates to -- do you know whether or not, when  
9 I'm talking about processes, that there's -- there's an  
10 application process and there's people that are placed on  
11 lists -- if the city council passed that as a law or whether  
12 those are procedures that are put into place ultimately by  
13 the Department?

14 MS. KAUR: Objection. Calls for legal conclusion.

15 THE COURT: Overruled. He's just asking if he knows.

16 THE WITNESS: I know that the -- to my knowledge, what I  
17 believe to be the process, I know that there is a formal  
18 process. And it is an application process, there's a testing  
19 process that goes through the chief's office who makes a  
20 selection. And ultimately that selection is approved via the  
21 City Manager's Office.

22 Q Is it your understanding the city manager ultimately  
23 makes the hiring decision -- the promotional decisions?

24 A Yes.

25 Q Okay.

1 MR. OKAZAKI: All right. I have no further questions,  
2 your Honor.

3 THE COURT: Cross exam, Ms. Kaur?

4 MS. KAUR: No, your Honor.

5 THE COURT: Okay. Thank you, sir.

6 Are we all done?

7 THE WITNESS: Thank you everybody for being here.

8 THE COURT: You're released.

9 Let's go off the record.

10 (Lunch recess)

11 THE COURT: Back on the record.

12 Mr. Bolander.

13 MR. BOLANDER: Your Honor, Respondents are resting  
14 subject to cross-examination.

15 THE COURT: Thank you.

16 Mr. Okazaki.

17 MR. OKAZAKI: The City will be presenting no witnesses,  
18 your Honor.

19 THE COURT: Thank you.

20 Ms. Kaur.

21 MS. KAUR: We have one witness, your Honor.

22 THE COURT: Thank you. Sir, can you raise your right  
23 hand.

24 ///

25 ///

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

4 THE WITNESS: I do.

5 THE COURT: Thank you. Can you state your full name  
6 please, sir, and spell it for the record.

7 THE WITNESS: First name Samuel, S-A-M-U-E-L. Last name  
8 Camacho, C-A-M-A-C-H-O.

9 THE COURT: Thank you.

10 Ms. Kaur.

11

12 DIRECT EXAMINATION

13 BY MS. KAUR:

14 Q Mr. Camacho, do you currently work for CalPERS?

15 A Yes.

16 Q What department do you work in?

17 A I work in the Employer Account Management Division.

18 And the unit that I work in is the Employer and Compensation  
19 Review Unit.

20 Q What is your job title there?

21 A Retirement Program Specialist II.

22 Q What are your duties as a Retirement Program  
23 Specialist II?

24 A In my unit, our duties primarily are to work  
25 reviewing compensation reporting practices by public agencies

1 that contract with CalPERS and also specific member  
2 compensation reviews as part of retirement benefits that are  
3 with CalPERS.

4 Q And how long have you held that position?

5 A As a RPS2, I've held the position for three and a  
6 half years.

7 Q And what do you before that?

8 A Before that -- two years preceding -- or three years  
9 preceding that I worked in quality assurance in our employer  
10 contact center where I overlooked a group of analysts and  
11 made sure that their work was quality, and I was responsible  
12 for that and training and coaching.

13 Q And was that at CalPERS?

14 A Yes.

15 Q And what was your job title there?

16 A During that time it was Retirement Program  
17 Specialist I or RPS1.

18 Q And long did you hold that position?

19 A That position was three and a half years as well.

20 Q And what did you prior -- what did you do prior to  
21 that position?

22 A Prior to that for about a year and a half to two  
23 years at CalPERS, I worked in our employer contact center  
24 where we dealt -- well, as an analyst, I dealt with  
25 specifically public agencies, human resource departments, and

1 payroll departments in regards to all benefits that had to do  
2 with CalPERS.

3 Q What were your duties?

4 A It was mostly phone correspondence and e-mail  
5 correspondence with public agencies. Whenever an issue came  
6 up about any benefits with CalPERS, they would contact us;  
7 and we'd had have to work with them to resolve, give  
8 information out, training, education.

9 Q For your position as a Retirement Program Specialist  
10 II at CalPERS, did you receive any sort of training?

11 A Yeah. For -- there's formal classroom training  
12 early on as I started at CalPERS -- about six or seven weeks  
13 of training that encompassed all the benefits at CalPERS that  
14 are offered to our members.

15 And then as an RPS2 there's certain qualifications,  
16 education, or work experience that you have to meet; and you  
17 end up having to apply for those -- for that position as an  
18 RPS2. And then once you get into that classification, it's  
19 mostly job shadowing and informal training with other  
20 seasoned analysts.

21 Q So you mentioned you handle cases regarding  
22 compensation earnable. How are those cases handled by your  
23 department?

24 A The unit I work in, when we get member review  
25 cases -- there's a variety of ways that we'll get a case into

1 our unit in order for a review to be done -- a thorough  
2 review to be done. And they come through retirement  
3 applications, disability retirement application, service  
4 credit purchases, a death of a member.

5 And during that process we'll -- our unit is  
6 requested to do a thorough analysis and review and research  
7 of a specific member's payroll history in order to determine  
8 a final compensation amount that's used in a calculation of  
9 benefit and, specifically, final compensation, which is used  
10 to determine their pension amount.

11 Other parts of our unit that I am responsible for is  
12 working specifically with agencies on compliance issues and  
13 their reporting practices through audits. The City might be  
14 audited or an agency might be audited and there might be  
15 findings that come up specifically to do with compensation  
16 reporting and compensation earnable, special compensation.  
17 And part of my responsibility is to work with the agency to  
18 come into compliance so that -- in part, we do that work so  
19 we can avoid future specific member issues that come up down  
20 the line -- get them in compliance beforehand to avoid those  
21 issues later on.

22 Q Are there categories you're looking at when you're  
23 trying to determine whether the reporting is compensation  
24 earnable?

25 A Yeah. We -- we base our determinations and our

1 analysis of the compensation that's reported to CalPERS in  
2 two parts. The Government Code 20636 is our basis for  
3 determining what is compensation earnable in two parts.

4 It's pay rate, which is the base -- pay rate is  
5 define as the monthly base pay paid in cash to similarly  
6 situated group or class of employees for services rendered on  
7 a full-time basis during normal working hours as long as it's  
8 pursuant to a publicly available pay schedule. So that part  
9 is the pay rate portion that we make determinations on.

10 And then the special compensation portion are -- is  
11 the other part of compensation earnable, which is -- consists  
12 of knowledge, special skills, work experience, work hours  
13 that might be reported to CalPERS for -- for its members.

14 Q So are you, then, required by Government Code  
15 Section 20636 to classify an individual in a group or class?

16 A Yeah.

17 MR. BOLANDER: Objection. Vague.

18 THE COURT: Overruled. You can answer.

19 THE WITNESS: Yes. 20636 section basically refers to  
20 any pay rate or special compensation that's reported to  
21 CalPERS has to be pursuant to a group or class of employees.

22 BY MS. KAUR:

23 Q And how do you determine a group or class for an  
24 employee?

25 A Usually, the agencies will group the employees

1 together based on their classification, for example, police  
2 group. There's one -- there's specific -- usually, in their  
3 labor agreements they'll outline a group of employees that  
4 are affected by a labor agreement.

5 So for police, you'll have police officers,  
6 sergeants, lieutenants, captains. So it's usually work  
7 location, work hours, similar job duties are how we determine  
8 group or class.

9 Q Do you then use that group or class to determine the  
10 accurate pay rate for that individual?

11 A That's one of the considerations we look at.

12 Q What else do you look another?

13 A We also look at the -- the pay that's being reported  
14 to CalPERS as making sure that it's pursuant to a publicly  
15 available pay schedule or labor policy or agreement that's  
16 been approved by a governing body that the agency -- the  
17 governing body that is reporting the compensation.

18 Q And you said you look at agreements; is that  
19 correct?

20 A Labor agreements, labor policies, yes.

21 Q What other documents do you look at when you try to  
22 determine the accurate pay rate for the individual? Are  
23 there specific documents you look for in a file?

24 A There are. There are. The main document is a  
25 publicly available pay schedule which has to be approved by

1 the governing body through an open public meeting. Labor  
2 agreements, labor policies that also have been approved  
3 through the agency's governing body. Salary resolutions that  
4 go before governing bodies, labor contracts, specific  
5 contracts for specific positions like city manager.

6 So we look at those documents as well. We look at  
7 everything that's reported to CalPERS from the agency because  
8 they're responsible for reporting the compensation to us and  
9 putting it in the system on behalf of the members. So we  
10 look at that information as well. And we -- those documents  
11 we validate it by getting the board minutes and the signed  
12 copies of those board minutes showing the approval of those  
13 documents that we're making our determination on.

14 Q So do you do your own research outside from what's  
15 already provided to you in the file by the --

16 A Yeah. There's only certain information that's  
17 provided up front by the agency in the system. It's usually  
18 just electronic transactions that are submitted by the  
19 agency. So we have to reach out to the agency for certain  
20 documents.

21 A lot of times the agencies will have their  
22 documents and the information online on their websites. A  
23 lot of times they won't; so there is some reaching out and  
24 researching, gathering those documents to make a full  
25 determination.

1 Q So it's the agency that reports the pay rate?

2 A Yes. The agency reports all of the payroll to  
3 CalPERS.

4 Q And how is that reported?

5 A It's electronically. They either upload a file -- I  
6 don't know the exact terminology -- the files that they use.  
7 Or they key it in directly into the system that they're  
8 linked up with CalPERS.

9 Q If an employer has a specific question about  
10 reporting a certain item or amount of compensation, could  
11 they contact you?

12 A They can contact me directly. I work with a  
13 specific group of agencies. I'm responsible for certain  
14 counties, certain specific agencies. And other analysts in  
15 my working unit -- they also are responsible for certain  
16 counties, specific agencies.

17 There's also our employer contact center, which I  
18 used to work in. They deal directly through education and  
19 informational stuff where they can educate agencies.  
20 Agencies can contact them for information; and we can respond  
21 to them via e-mail, through phone, in rooms like this in  
22 training sessions at the regional offices where there's a big  
23 group of public agencies.

24 Q Have you ever been contacted by an employer about --  
25 on questions regarding how to report compensation earnable?

1           A     Yeah.  It's part of my job most of the time but  
2     especially for the specific counties and agencies that I'm  
3     responsible for.  So all the time.  Every day.

4           Q     And how are you contacted?

5           A     Usually through phone -- by phone.  They can e-mail  
6     me directly.  Most of the time agencies that do not have a  
7     direct contact or they don't know of a direct contact,  
8     CalPERS will contact our employer contact center; and they  
9     will refer them over to us through a -- what they call a  
10    workflow.

11                   They'll send over an inquiry over to us relaying the  
12    question, and then we'll take a look at what they're asking  
13    and then respond to them either -- usually through a phone  
14    call or e-mail or refer them to, maybe, some training or  
15    something informal that's online available already for them.

16           Q     Is it your understanding that in giving these  
17    responses, you're not making the final determination on  
18    behalf of CalPERS?

19           A     That's correct.  Any phone call or e-mail  
20    correspondence is not a final determination.  It's mostly  
21    informational and educational for them and sharing what  
22    hopefully would be, you know, the right information.

23           Q     So are those responses or the information you  
24    provided subject to final review?

25           A     All members of Public Employees' Retirement System

1 are subject to review. Anything that's reported to CalPERS  
2 on behalf of a member, including myself, is subject to review  
3 at some point. So a phone conversation or an e-mail  
4 conversation is not a final determination in any sense.

5 Q Is it your understanding that the employers who are  
6 contacting you -- they're aware that you're not providing  
7 them with a final determination?

8 MR. BOLANDER: Objection. Calls for speculation.

9 THE COURT: Sustained.

10 BY MS. KAUR:

11 Q Is it communicated to the employers who are  
12 contacting you that your responses -- or an analyst's  
13 responses are not the final determination?

14 MR. OKAZAKI: Calls for speculation as to "analysts"  
15 other than himself.

16 THE COURT: Sustained. If you want to limit it to him,  
17 that's one thing.

18 BY MS. KAUR:

19 Q Is it your understanding that the responses you're  
20 providing to the employer -- I apologize.

21 THE COURT: You're going -- do you communicate to the  
22 employer that your responses are not a final determination.

23 THE WITNESS: Answer that?

24 THE COURT: Yeah.

25 THE WITNESS: Yes. Usually, I'll advise them that it's

1 informational and is not a final determination. The agencies  
2 that we work for -- they understand that it's not a final  
3 determination. If they wanted something formalized in  
4 writing, they can request that; and we can, most of the time,  
5 do that for them.

6 And a lot of times our -- our determinations are not  
7 always final. We're obviously here because of that. So  
8 there are always appeal rights, and the members definitely  
9 have rights to dispute any of our determinations -- still not  
10 final.

11 Q After -- after an employer reports a pay rate or  
12 special compensation, is it common for CalPERS to not accept  
13 that pay rate or special compensation as compensation  
14 earnable?

15 A It's very common, actually. And that's primarily  
16 the CalPERS board. They direct -- our unit was created  
17 specifically for that a long time ago in order to curb  
18 pension spiking and to make sure that agencies are reporting  
19 in compliance with the Government Code and the regulations  
20 that define compensation earnable and define pay rate and  
21 special compensation.

22 Because, ultimately, those are -- there's an  
23 understanding that the agencies -- that they can report the  
24 information to us. There's the understanding that they  
25 report it does not make it final in the member's retirement

1 calculation or benefits.

2 They're getting -- there still has to be a process  
3 for that to be thoroughly reviewed and analyzed and making  
4 sure that's it's funded and that there's no compliance issues  
5 with what's being reported. So there's always issues coming  
6 up where adjustments have to be made, instructions and  
7 determinations have to be made in order to limit a benefit to  
8 what a member's fully entitled to based on regulations and  
9 Government Codes.

10 Q And could that adjustment be made by CalPERS even  
11 after a member retires?

12 A Yes. It can happen before they retire or after they  
13 retire.

14 Q And are you familiar with Mr. Hurt and Mr. Bacon's  
15 case?

16 A Yes.

17 Q And when did you get involved in this appeal?

18 A I got involved in this case -- or in these cases  
19 about sometime in middle of last year where our legal office  
20 advised us that there is going to be a hearing coming up.  
21 And so I was assigned and tasked to be a witness in the case.

22 And my task was -- that's when I started working on  
23 it and looking into the case and getting familiar with the --  
24 our determination that we made on the case and everything  
25 that had happened as far as retirement calculation, our

1 determination, and our review and analysis of the case.

2 Q You're not the analyst who initially worked on this  
3 matter; is that correct?

4 A No.

5 MR. BOLANDER: Objection. Vague as to -- late but vague  
6 as to "initially."

7 THE COURT: Overruled.

8 THE WITNESS: Yeah, I didn't initially. Like, back in  
9 2010 when they applied for retirement, no, I didn't initially  
10 do the review. It was done by analyst Nicki Cook. The first  
11 review was done through -- I guess there was an estimate  
12 request by one of -- Mr. Hurt or Bacon. I can't recall, but  
13 Cheryl Livingston did the review on both cases. She's a  
14 manager in our unit.

15 Q And when you say "review," what do you mean?

16 A We did a thorough review of the compensation  
17 reporting on both Mr. Hurt and Bacon.

18 Q Did you have a chance to review both files?

19 A Yes.

20 Q Following the review do you understand -- or can you  
21 explain what happened?

22 MR. BOLANDER: Objection.

23 MR. OKAZAKI: Vague.

24 MR. BOLANDER: Vague and broad.

25 THE COURT: Sustained.

1 BY MS. KAUR:

2 Q Were you able to follow the development in terms of  
3 what happened in this -- in terms of CalPERS' determination?

4 A Yes.

5 Q Was there an increase in the pay rate for Mr. Hurt  
6 from June 2010 to June -- January 2011?

7 A For Mr. Hurt, yes. The agency reported a higher pay  
8 rate starting in June of 2010 into the system that went  
9 through the end of -- through January of 2011 up until the  
10 retirement date. It's an amount of 14,583, something like  
11 that.

12 Q And there was also an increase in the rate -- pay  
13 rate for Mr. Bacon from June 2010 to July 2010; is that  
14 correct?

15 A Yeah. For Mr. Bacon, same thing occurred. In  
16 June 2010, the agency started reporting a higher pay rate;  
17 and that one was only for two months up until July which he  
18 retired in July 2010.

19 Q And based on your review that reporting was not  
20 accepted by CalPERS as compensation earnable; is that  
21 correct?

22 A That's correct. Our determination was that the pay  
23 rate, according to Government Code 20636, was part of a pay  
24 or conversion of benefits in anticipation or in connection  
25 with a separation from service or anticipation of retirement.

1 Q And what was the basis for that determination?

2 A The basis was the Government Code 20636, section  
3 (f) -- subsection (f), where if we find or anything is  
4 reported to CalPERS as pay rate or special compensation  
5 that's in connection or in anticipation of the separation or  
6 retirement then that's what's considered a -- it's the  
7 compensation earnable for.

8 Q Was there a specific document that you relied on --  
9 or the analyst relied on to take make that determination?

10 A Yeah. We relied on several things. First, we  
11 relied on the information that was reported by the agency in  
12 the system. That information triggered a review because of  
13 the increase. It was over 15 percent, I believe.

14 So when we started to do the review, our analyst  
15 reached out to the agency to inquire about why the increase  
16 took place, what classification the member was working in,  
17 and then taking that making sure that was pursuant to a  
18 publicly available pay schedule. We found that it didn't.  
19 It exceeded the lieutenant position on the pay schedule; so  
20 we asked why.

21 And they then -- the agency then provided more  
22 documentation. They provided a settlement -- or transcripts  
23 of settlement and also personal action forms and explaining  
24 to us why the pay rate increased. So we took that  
25 information and made a determination based off of that --

1 those documents.

2 Q And what was significant about the Personnel Action  
3 Form that led you -- or the analyst to determine that the pay  
4 rate is inaccurate?

5 MR. BOLANDER: Objection. Lacks foundation.

6 THE COURT: Overruled.

7 THE WITNESS: The Personnel Action Form that we were  
8 provided by the City -- two things that jumped out that --  
9 well, the first thing that jumped out that was a red flag for  
10 our analyst to look at was that there were notes on the  
11 action form. It said, "special salary adjustment due to a  
12 settlement agreement." That was highlighted.

13 So we then had to ask why. What's the special  
14 adjustment? Because you can't just give special adjustments  
15 to one person. You have to be pursuant to the Government  
16 Code which is a group or class of employees. They all have  
17 to receive the same benefits, be part of the same process of  
18 pay increases; and they have to be pursuant to those  
19 Government Codes and regulation.

20 So that's what -- for an analyst, that's what jumped  
21 out. We're going to ask. We're not automatically going to  
22 give them the benefit. We have to ask why.

23 Q Did you also review the disability retirement  
24 application?

25 A Yes.

1 Q For Mr. --

2 A For both.

3 Q Mr. Bacon and Mr. Hurt?

4 A Yes.

5 Q Anything of significance in those applications in  
6 relation to the pay rate reported?

7 A Yeah. They -- so we get the -- we look at the  
8 payroll history in the system, and we see the increase. So  
9 we look at their application as part of our review to see  
10 what position or classification they worked in -- or group.  
11 Well, specifically, we look at the retirement date, we look  
12 at the agency they work for, and we look at their  
13 classification they list.

14 So on both applications it says police lieutenant.  
15 So we then -- in making sure that it's pursuant to the  
16 agency's publicly available pay schedule, we have to take the  
17 information reported in the system, the pay rate, match it to  
18 the classification that that agency is -- that the member's  
19 retiring in.

20 And if it exceeds it, we have to ask more questions.  
21 And in this case, on the application, it said police  
22 lieutenant. It didn't match the pay schedule that was  
23 provided to us; so --

24 Q Was there anything in the e-mail communication from  
25 the City stating that Mr. Hurt or Mr. Bacon were promoted to

1 a captain position?

2 A It actually -- the payroll supervisor that Cheryl  
3 Livingston had spoken to based on the e-mail records is  
4 that --

5 THE COURT: I'm going to receive this as administrative  
6 hearsay.

7 Go ahead, sir.

8 THE WITNESS: It specifically states -- it specifically  
9 said they were not promoted to captain. That's what the  
10 agency was saying. And in those e-mails as well, they  
11 mention that the pay rate increases were due to a settlement.  
12 So that's --

13 BY MS. KAUR:

14 Q And if you could turn to Exhibit 18 -- CalPERS'  
15 Exhibit 18.

16 A Okay.

17 Q Pages three and four.

18 A Okay.

19 Q Can you tell me what those documents are?

20 A The first page -- it looks like an e-mail from Jana  
21 Maurice at the City of Riverside who was our analyst's  
22 contact at the City. And Cheryl Livingston was reviewing the  
23 case; so this is an e-mail -- this is a response it looks  
24 like from Jana -- I hope I'm saying her name right --  
25 attaching a spreadsheet and explaining that there is a

1 similar situation to Darryl Hurt to reach out to Jeremy  
2 Hammond, who was the HR director at the time, to get more  
3 information about the pay rate that was reported.

4 Q So are these the e-mails you reviewed?

5 A Yes.

6 Q And you're referring to?

7 A Yes.

8 Q And could you also look at Exhibit 16 -- CalPERS'  
9 Exhibit 16?

10 A The transcripts?

11 Q No. Exhibit --

12 A Oh, wait. Sorry. Wrong one. Okay. More e-mails.

13 Q Exhibit 16.

14 A Yes.

15 Q Can you tell me what these documents are?

16 A These are e-mails --

17 MR. OKAZAKI: Lacks foundation in terms of what the  
18 e-mails are that he didn't author.

19 BY MS. KAUR:

20 Q Were these part of the file --

21 THE COURT: Hold on. Are these e-mails in CalPERS'  
22 files?

23 THE WITNESS: Yes.

24 BY MS. KAUR:

25 Q That you reviewed?

1 A Yes.

2 Q And were these the e-mails that you relied upon --  
3 or that your understanding that CalPERS relied on to make a  
4 determination?

5 MR. OKAZAKI: Lacks foundation. Calls for speculation  
6 as to what others may have relied on.

7 THE COURT: Sustained.

8 BY MS. KAUR:

9 Q You stated you were referred -- or the agency  
10 referred the analyst to the settlement agreement?

11 A Yes.

12 Q Did you review the settlement agreement in this  
13 Matter?

14 A Yes.

15 Q What significance, if any, does that have to you as  
16 an analyst reviewing this Matter?

17 A It was significant because it was the agency  
18 providing that to us identifying why the pay rate increased  
19 and what was reported to us. So we had to take a look at  
20 that and consider that as part of our determination.

21 We don't want to just make a determination without  
22 any basis for adjusting a member's retirement benefit,  
23 especially, if it's depriving them of a certain benefit they  
24 might have expected or it might be lower than what they might  
25 have expected. So we have to consider that. It's part of

1 our job.

2 Q As an analyst, can you rely on the settlement  
3 agreement to accept the pay rate reported by -- the increase  
4 in the pay rate?

5 MR. BOLANDER: Objection. Vague.

6 THE COURT: Overruled.

7 THE WITNESS: Technically, no. Pay rates have to be  
8 pursuant to a publicly available pay schedule, and that pay  
9 schedule has to be approved by a governing body. So if  
10 it's -- if an agency's out of compliance with something like  
11 that then the CalPERS board does have discretion at that time  
12 to, like, consider other documents. But -- but it still has  
13 to be pursuant to the pay schedule. And it's part of a  
14 consideration in order to make our determination.

15 BY MS. KAUR:

16 Q So did you determine that Mr. Hurt and Mr. Bacon  
17 belong to the lieutenant category?

18 A Based on the information that was provided by the  
19 City, yes. We considered them to be police lieutenants based  
20 on what the agency gave us.

21 Q Can you turn to Exhibit 11 -- CalPERS' Exhibit 11?

22 A Okay.

23 Q Can you tell me what these documents are?

24 A These are records from our CalPERS system. They're  
25 called customer touch points, which are notes on a specific

1 member. And, specifically, this one's for Darryl Hurt. So  
2 any time there's an interaction with a member or an agency  
3 calls about a specific member, the interaction, either  
4 through e-mail or phone, is captured in these notes and  
5 placed in the system under that member's account.

6 Q Did you review these notes as part of your review?

7 A Yes.

8 Q Is there anything in these notes suggesting CalPERS  
9 staff informed Mr. Hurt -- well, Mr. Hurt or their employer  
10 that the April 2010 pay increase can be reported as comp  
11 earnable?

12 A There was nothing we found in any of the notes or  
13 interactions captured that mentioned or saying that it would  
14 be okay, something like that.

15 Q And if you could turn to Exhibit 12. Can you tell  
16 me what these documents are?

17 A These are also notes from our system for -- they  
18 capture the interaction. Again, these are specifically for  
19 Mr. Timothy Bacon. So any time there's an interaction, these  
20 are the notes with dates that are captured in the system.

21 Q Did you review these notes?

22 A Yes.

23 Q Anything in these notes suggesting CalPERS  
24 informed -- CalPERS staff informed Mr. Hurt -- Mr. Bacon or  
25 his employer that the April 2010 pay increase can be reported

1 as comp earnable?

2 A There was nothing found in these notes as well.

3 Q There was a final determination made by CalPERS  
4 regarding the pay rate for -- the pay rate increase for  
5 Mr. Hurt and Mr. Bacon; is that correct?

6 A Yes.

7 Q And after reviewing this file, did you reach the  
8 same conclusion as CalPERS initially did?

9 A I would have reached the same conclusion, yeah.

10 MS. KAUR: That's all, your Honor.

11 THE COURT: Thank you.

12 Cross-examination, Mr. Bolander.

13 MR. BOLANDER: Thank you, your Honor.

14

15 CROSS-EXAMINATION

16 BY MR. BOLANDER:

17 Q Good afternoon.

18 A Hi.

19 Q You described that one of your -- your duties now, I  
20 believe, is member reviews. Is that accurate?

21 A Yes.

22 Q And does that -- that relates also to employers as  
23 members of the system is that -- or is an employer review  
24 something different than a member review?

25 A It's different.

1 Q Can you describe the difference?

2 A Sure. The -- in most of our work in our unit --  
3 we're a pretty big unit, about 30 people -- I would say about  
4 80 percent of our work are member reviews. That's most of  
5 our production that we do.

6 A lot of those reviews are sent over to us and  
7 triggered through a variety of ways. Many times there's a  
8 benefit that is being requested by a member. One of these  
9 reviews can be requested to be done from our unit; so that's  
10 where the whole review starts.

11 Q And -- and then an employer review would be an  
12 employer initiating contact with CalPERS and asking for  
13 clarification or something along those lines?

14 A Right. An employer can contact us with specific  
15 questions about compensation, specific questions about  
16 special compensation, or Government Codes that relate to  
17 compensation. We'll also get our employer reviews through  
18 audits.

19 We have an Office of Audit Services at CalPERS here.  
20 Once they complete an audit and they have findings that are  
21 compensation related, they're forwarded over to us in order  
22 to work with the agencies to bring them into compliance.

23 Q And you're currently doing employer reviews? Or is  
24 that something you did in the past?

25 A I'm doing both at this time.

1 Q And just so clarify, you weren't on any call with  
2 Senator Roth regarding this Matter in 2010; right?

3 A No.

4 Q And were you even -- were you -- did your area at  
5 the time -- well, actually, strike that.

6 What were you doing at the time in 2010 for CalPERS?

7 A 2010 I was -- I was in my quality assurance  
8 position, I believe, at that time. I started in this unit in  
9 September 2011.

10 Q So you have no firsthand knowledge of anything that  
11 occurred between the City or these parties and -- these  
12 parties I refer to Mr. Bacon and Mr. Hurt -- and CalPERS  
13 beyond your review of the file?

14 A Beyond my review, no. Just everything that was  
15 included in our review and determination is what I used to --  
16 to review and prepare for this -- for this case.

17 Q Okay. What -- you said specific agencies fall under  
18 your purview. Does that mean specific public employers?

19 A Yes.

20 Q Is one of those the City of Riverside?

21 A No.

22 Q Has it ever been?

23 A What county do you guys fall under? San Bernardino?

24 Q Riverside.

25 A Riverside. No.

1 Q Okay. I'm going to ask you about -- you testified  
2 about the requirement that in order for compensation to be  
3 considered compensation -- or pay rate -- pay rate -- it had  
4 to be paid to employees as part of a specific group or class.  
5 Can you describe that again briefly?

6 A Our Government Code that we base that off of is  
7 20636. Pay rate is cash paid to a similarly situated group  
8 or class -- monthly base pay paid in cash to a similarly  
9 situated group or class of employees for their services  
10 rendered on a full-time basis during their normal work hours  
11 pursuant to the publicly available pay schedule which is  
12 further -- the requirements of that are further delineated in  
13 one of the regulations, 570.5.

14 Q And Mr. Bacon and Mr. Hurt were paid captain's pay  
15 pursuant to the publicly available pay schedule for captains  
16 that was used at the time in the city of Riverside; isn't  
17 that correct?

18 A That's what the City reported to CalPERS, yes.

19 Q But that was correct?

20 MS. KAUR: Objection. Asked and answered.

21 THE COURT: Overruled.

22 THE WITNESS: What do you mean if it was correct? They  
23 put it in the system.

24 BY MR. BOLANDER:

25 Q Right. But what I'm saying is the amount that they

1 were paid was in accordance with the publicly available pay  
2 schedule for captains at the time?

3 MS. KAUR: Objection. No question pending.

4 MR. BOLANDER: That's the question.

5 THE COURT: Overruled.

6 THE WITNESS: The amount that they reported matched the  
7 top range of the captain.

8 BY MR. BOLANDER:

9 Q And the top range of the captain was part of the  
10 publicly available pay schedule?

11 A Yes, at that time.

12 Q Is there a requirement that in order to be paid  
13 pursuant to a publicly available pay schedule that a employee  
14 has to be placed in that position through a certain type of  
15 promotional process?

16 A It's not a requirement in the Government Code.

17 Q So an employee could test for a position pursuant to  
18 the rules of their agency, be selected for that position, and  
19 paid according to the publicly available pay schedule for  
20 that position and that would be pay rate?

21 A Could be. There are specific exclusions as well in  
22 that Government Code to exclude certain compensation as well.

23 Q You'd say that's probably the most normal course;  
24 right? You do whatever you need to do that your employer  
25 says to get promoted.

1 A Right.

2 Q You get promoted. You're a member of that class.  
3 And then you receive that pay, and CalPERS credits it as pay  
4 rate.

5 A Yeah. Usually, there's a group or class of  
6 employees, there's a policy in place. Those employees fall  
7 under that policy of that agency, and they get the pay raises  
8 as they go through their tenure at work, and they fall within  
9 the pay schedule that's in place and effective at the time.

10 Q But it's not required that you proceed through that  
11 process in order to attain the position; right?

12 MS. KAUR: Objection. Calls for a legal conclusions.

13 THE COURT: Overruled.

14 THE WITNESS: We don't -- we don't get into telling the  
15 agency how to promote their employees, no. That's not one of  
16 the requirements.

17 BY MR. BOLANDER:

18 Q You indicated that in your capacity as a -- and  
19 forgive me if I don't get the term right -- employer -- when  
20 you're doing an employer review that you're not making a  
21 final determination based on the facts at that time that  
22 binds the -- the agency; is that correct?

23 A When I'm doing a employer review?

24 Q Right.

25 A Can you say the question again? It was kind of

1 long.

2 Q I think on direct you testified that your employer  
3 review process -- when you're providing information to an  
4 employer, based on questions that they have for you, that  
5 that doesn't constitute a final determination?

6 A Right.

7 Q In your capacity in providing employer reviews, do  
8 you anticipate that the employer who you're providing the  
9 advice and information to will likely act in accordance with  
10 your advice?

11 MS. KAUR: Objection. Vague.

12 THE COURT: Overruled.

13 THE WITNESS: I would think in a working relationship  
14 and if they believe they're getting correct information from  
15 us they would probably act in that way and take our  
16 information that we're giving to them as being correct.

17 BY MR. BOLANDER:

18 Q And in your experience in the employers who you've  
19 dealt with, do you believe that they believe they're getting  
20 correct information from you?

21 MS. KAUR: Objection. Calls for speculation.

22 THE COURT: Overruled. He's asking what his  
23 understanding is.

24 THE WITNESS: I would think that they -- I would fairly  
25 say that they would assume that they're getting information

1 that is not a say-all, be-all final determination on  
2 information that's being given to them. I mean, that's -- I  
3 think it's just a common understanding that it's  
4 informational.

5 BY MR. BOLANDER:

6 Q And I think you indicated that you -- you usually --  
7 you would usually tell employers that this is just  
8 informational. Is that something that -- do you always tell  
9 them that this does not constitute a final determination?

10 A I usually tell people who I speak with -- employers,  
11 members -- that -- meaning it's reported by the agency --  
12 it's still subject to certain requirements in the Government  
13 Code. And I don't read them all to them at the time of a  
14 phone call. But as one of my disclaimers, I give verbally  
15 over the phone or e-mail correspondence that they're asking a  
16 question about special compensation.

17 I let them know as long as it's pursuant to this  
18 Government Code and these regulations, it should be  
19 reportable. You can report it in the system.

20 Q They typically will provide you a scenario, won't  
21 they?

22 A They'll usually provide us a scenario or specific  
23 question and they'll even sometimes provide a specific  
24 language from a policy or something.

25 Q And then you render an opinion?

1           A     We give them information back, yeah, in saying --  
2     give them a response that in order for them to report it  
3     correctly or to effectively report the compensation in our  
4     system.

5           Q     Are you aware of any situations where analysts,  
6     including potentially yourself, no offense, that have given  
7     incorrect information to an employer or a member who is  
8     calling for advice?

9           A     Yeah, I'm pretty sure that's happened.

10          Q     Are you specifically aware of any particular  
11     instances?

12          A     Not specifically. But I'm pretty sure I've given  
13     wrong information before.

14          Q     And if the member or the employer acts on that  
15     advice, to their detriment, is there any particular recourse  
16     that they have?

17          MS. KAUR:   Objection. Calls for a legal conclusion.

18          THE COURT:   Overruled.

19          THE WITNESS:  I mean, ultimately, if we end up --  
20     there's always recourse, I believe, especially if we're -- if  
21     we end up making some type of determination or adjustment on  
22     something that affects either the agency or the specific  
23     member then they have recourse, yeah. They have -- there's  
24     an appeal process.

25                 Even, specifically, for agency employer reviews that

1 deal with the agency and their compliance issues -- they can  
2 appeal those issues even after we make a determination. They  
3 ultimately end up going to the board of CalPERS to get the  
4 final -- final.

5 BY MR. BOLANDER:

6 Q But are there not circumstances where decisions are  
7 made based on advice that you may have given an employer that  
8 can't be unwound through the appeal process?

9 A We give information. The agencies are trained.  
10 There's education for the trainees online and classroom  
11 settings that they -- they get information from a variety of  
12 ways -- from websites; so all that information, there can be  
13 mistakes made, yeah, all the time.

14 Q I won't belabor the point. But I'll give you a very  
15 short hypothetical. For instance, I'm sure you get asked a  
16 lot, "When is the best time for me to retire" -- right -- "to  
17 maximize my pension benefits?" Is that something you hear?

18 A I've heard that, yeah.

19 MS. KAUR: Objection. This line of questioning is  
20 irrelevant.

21 THE COURT: Overruled. He's just giving a hypothetical.  
22 Go ahead.

23 BY MR. BOLANDER:

24 Q And employees often will -- or, you know, if an  
25 employee chooses to act on that advice and, basically, you

1 tell them, "I think you should retire by this date to  
2 maximize your benefit." An employer does so -- an employee  
3 does so. If that information turns out to be incorrect then  
4 that employee may not be able to un-retire. So that's what I  
5 mean when I ask -- or I should phrase it as a question. But,  
6 basically -- I'll ask again.

7 Are there circumstances in which an employer may  
8 make -- an employee or employer may make a decision based on  
9 advice given that cannot be unwound through the internal  
10 appeal process?

11 A I don't know for sure if it can be unwound or not.  
12 But I know that -- I'm pretty sure that member or agency will  
13 act or proceed with their own actions and reporting method --  
14 their own actions based on information that we share with  
15 them, yeah.

16 Q Do you know if Nicki Cook still works for CalPERS?

17 A Not sure.

18 Q Do you know if Cheryl Livingston still works for  
19 CalPERS?

20 A She does.

21 Q Was she --

22 A She's actually my manager.

23 Q Oh, she is. Does she testify at these hearings?

24 A I believe she's testified before, yeah. I'm not  
25 sure though if she has or not.

1 Q I want to go to a -- you indicated that the employer  
2 in this case specifically informed CalPERS that Mr. Bacon and  
3 Mr. Hurt were not promoted to the rank of captain; is that  
4 correct?

5 A Yes.

6 Q Employer said a little more than that, though,  
7 didn't they? It wasn't that -- wasn't that response  
8 qualified some?

9 A They did share the reasoning for the pay rate  
10 increases that were reported in the system. They gave us the  
11 information on that.

12 Q I'll point you to the exhibit. I think we're  
13 referring to 16. These were CalPERS' 16.

14 A The e-mails?

15 Q Yes.

16 A Okay.

17 Q Is this what you were -- part of what you were  
18 relying on when you said that the City made a representation  
19 to CalPERS that Mr. Bacon and Mr. Hurt were not promoted to  
20 the rank of captain? And I'm looking at the fourth e-mail  
21 down.

22 A The fourth e-mail.

23 Q Fourth e-mail in the chain.

24 A The one where it mentions the special salary  
25 adjustment resulting in the settlement agreement? Is that

1 what you're looking at?

2 Q Yes.

3 A In Jeremy Hammond's --

4 Q Correct.

5 A It says that Mr. Hurt, through the settlement  
6 agreement, to be compensated at a level -- top-step captain  
7 range but was not formally promoted.

8 Q Right. And what I'm asking you is that it doesn't  
9 simply say they were not promoted to the rank of captain.  
10 There's a quality there before promoted; right? It says,  
11 "...not formally promoted to the rank of captain."

12 A Right.

13 Q Does that mean anything to you in your determination  
14 when you're reviewing this -- this case?

15 A Yeah. It would ask -- it would present us to ask,  
16 maybe, for other documents to look at.

17 Q Was -- did that happen here?

18 A Yes, I think so. They ended up providing us the  
19 transcript as the settlement agreement.

20 Q Is there a requirement that there would have to be  
21 some formal badge pinning ceremony to make these individuals  
22 captains on paper in order for them to be paid according to  
23 the publicly available pay schedule?

24 A There's no specific requirement for promotion in the  
25 Government Code that defines pay rate.

1 Q Is there a specific requirement in the Government  
2 Code that defines captain?

3 A No.

4 Q Or lieutenant?

5 A No. It has to be pursuant to a pay schedule.

6 Q Did you perceive anything from the City that  
7 indicated to you that an individual has to have a Personnel  
8 Action Form submitted that says they are now the rank of  
9 captain in order to maintain that position?

10 A No. We rely on that information to be provided to  
11 us to make the determination -- to make a prudent  
12 determination. But it's not required in every case; so a lot  
13 of times we can use the application. The position will be  
14 notified -- will be indicated on there; and we can match that  
15 to what was reported in the system and match that against a  
16 approved, publicly available pay schedule. And there's no  
17 issue there.

18 So any time that something is outside of that limit  
19 on the pay schedule then we have to ask for other  
20 documentation in order to determine why. That's where they  
21 started to share all the information they gave us.

22 Q And so if a promotion to captain was informal, as  
23 opposed to formal, that wouldn't in and of itself mean that  
24 the pay rate received at the captain's level somehow can't be  
25 factored into the pension calculation?

1 MS. KAUR: Objection. Vague.

2 THE COURT: Overruled.

3 THE WITNESS: We primarily look at the pay rate that's  
4 reported to CalPERS and make sure that it meets the  
5 requirements listed in the Government Code and the  
6 regulations. So the extra documents that are provided by the  
7 agency is more of an explanation as to what happened and what  
8 transpired and let them explain to us the questions that  
9 we're asking. So it doesn't -- it's part of us making a  
10 determination. It's not the only thing to consider.

11 BY MR. BOLANDER:

12 Q Let me point you to Exhibit Number 11. And this is  
13 in CalPERS' 11.

14 A Okay.

15 Q And I think you testified on direct that this was a  
16 record of contacts between Darryl Hurt and CalPERS?

17 A Yes.

18 Q Is this a record of contacts between Darryl Hurt and  
19 CalPERS or regarding Darryl Hurt and CalPERS?

20 A It could be a variety of contacts or interactions.  
21 It could be interactions in our different work units at  
22 CalPERS that are reported in here. It could be a phone call  
23 from -- directly from the member. It could be a phone call  
24 directly from an agency -- or the agency that the member  
25 works for. It could be a beneficiary of the member calling

1 in about the member, like a spouse. It could be -- there's  
2 a -- there's probably some other interactions that could be  
3 captured from different places, yeah.

4 Q Would the City of Riverside have its own customer  
5 touch point report?

6 A The City would have its own notes as well, yes.

7 Q And when were you -- when did you get involved in  
8 this case?

9 A Sometime middle of last year, 2014, I was tasked or  
10 assigned.

11 Q Are you aware that I made a discovery request for  
12 all correspondence from the City of Riverside to CalPERS and  
13 from CalPERS to the City of Riverside regarding Darryl Hurt  
14 and Tim Bacon?

15 A I'm not aware of that, no.

16 Q Okay. So you didn't play any part in compiling  
17 documents to respond to that?

18 A No. Our legal department probably took care of  
19 that. I'm not sure.

20 Q Okay. Sorry to cut you off. But we have here a  
21 customer touch point detail or customer touch point report in  
22 Exhibit 11 that relates to Darryl Hurt. Is that accurate?

23 A Yes.

24 Q And then in Exhibit 10 or --

25 THE COURT: 12.

1 MR. BOLANDER: 12. All right. Thank you, your Honor.

2 THE COURT: You're welcome.

3 BY MR. BOLANDER:

4 Q In 12 that relates to Timothy Bacon.

5 A Yes.

6 Q And we don't have one that is specific to the City  
7 of Riverside's contacts with CalPERS?

8 A In here, no.

9 Q Okay. And --

10 A I've viewed them though.

11 Q Oh, you have reviewed them?

12 A I have reviewed the notes.

13 Q And those weren't provided in discovery?

14 A I don't know.

15 Q So there are specific notes from the City of  
16 Riverside asking questions to CalPERS regarding this Matter?

17 A Possibly. I didn't see anything.

18 In an agency's notes, you're going to have  
19 interactions captured on hundreds of members on hundreds of  
20 their employees and a variety -- or dozens of contacts at the  
21 agency -- somebody who's responsible for their health  
22 benefits, somebody who's responsible for recording payroll,  
23 somebody who's responsible for certain things at the agency  
24 that contact CalPERS to ask questions relating to so many  
25 different names. Interactions captured for an agency look a

1 lot different than -- can be a lot more complex than a  
2 member's record.

3 Q And you reviewed that for the timeframe that  
4 we're -- for the timeframe of 2010, 2011?

5 A From what I recall and what I reviewed in the  
6 system -- I looked at going back 20, 30 years at notes; and I  
7 didn't find anything that was -- well, I specifically went  
8 back at least five or six years to see if there was any  
9 record of any notes that mentioned this discussion about  
10 reporting higher pay rates due to a settlement. I didn't  
11 find anything.

12 MR. BOLANDER: Your Honor, I'd object to exclude any  
13 testimony regarding these CalPERS notes that I wasn't  
14 provided relating to City of Riverside. We can address that  
15 probably in briefing.

16 THE COURT: Before I issue that, sir, I would need a  
17 discovery request from you and all the proofs of service.

18 MR. BOLANDER: Okay. I just want to get it on the  
19 record now, and I'm sure we can take it up in the closing  
20 brief.

21 THE COURT: I can also leave the record -- well, we're  
22 leaving the record open anyhow to get written closing. But  
23 if there are those documents out there, which he's indicated  
24 there are from his testimony -- if you requested them and  
25 they weren't produced, I'm happy to leave the record open to

1 get those to you. And you may want to take additional  
2 testimony based upon that.

3 MR. BOLANDER: Okay. So I guess we'll figure out how to  
4 proceed when we conclude for the day.

5 THE COURT: Okay.

6 BY MR. BOLANDER:

7 Q So you heard Senator Roth testify today; correct?

8 A Yeah.

9 Q Do you have any reason to believe that he's lying  
10 about?

11 A Do I have any reason? No, no reason at all to think  
12 he would be making something up or lying.

13 Q Is every contact between an employer and CalPERS  
14 recorded in one of these customer touch point reports?

15 A Every single one? Probably not.

16 Q Had you received a -- or strike that.

17 If you found in the file a Personnel Action Form  
18 that said Tim and Darryl were formally promoted to the rank  
19 of captain, would that have changed your determination?

20 A If the Personnel Action Form stated that they were  
21 captain.

22 Q Yes.

23 A Possibly. But that wasn't what the record was.

24 Q Well, I'm asking you.

25 A As a hypothetical?

1 Q Yes. I mean, you said that --

2 A Sure. If anybody would retire as captain and  
3 they -- on their action form it said captain; then we would  
4 review it and try to make a determination based on that.

5 Q And that would have been something that would have  
6 altered the determination in this case?

7 A It could.

8 MS. KAUR: Objection. Vague as to "alter."

9 THE COURT: Let him -- both of you, please, let each  
10 other finish questions before you jump in with your  
11 objections.

12 Go ahead, Counsel, re-ask it.

13 BY MR. BOLANDER:

14 Q So in that hypothetical scenario, you're reviewing  
15 this file in preparation for your testimony today and you  
16 find a Personnel Action Form that says, "Tim Bacon promoted  
17 to captain" on whatever data it says or on the date the  
18 salary adjustment occurred, right. Same thing for Darryl  
19 Hurt. Does that change your determination in this case?

20 A This case?

21 MS. KAUR: Same objection.

22 MR. BOLANDER: Strike that. I keep saying  
23 "determination."

24 BY MR. BOLANDER:

25 Q What I mean is your assessment of the agency's

1 determination?

2 A In this case?

3 Q In this case.

4 A Would it change based on everything that's been  
5 given to CalPERS and to the analyst to make a determination?  
6 I don't think it would change it, no.

7 Q And why is that?

8 A Specifically because these are the bases of our  
9 determination. Government Code 20636, section (f),  
10 specifically excludes any pay increase or conversion of  
11 benefits that are in connection or anticipation with the  
12 retirement.

13 So what we were given was the transcripts that said  
14 there's a -- they're going to retire, and because of that  
15 they're going to get a pay rate increase at the end of  
16 tenure. And it specifically said a certain date of time they  
17 were going to get the pay rate increase. So determination  
18 would probably have stayed the same.

19 Q And you read the settlement agreement to indicate  
20 that retirement specifically in exchange for promotion?

21 A For a pay rate increase.

22 Q For a pay rate increase. Is there any circumstances  
23 where payment pursuant to a settlement agreement can be  
24 considered pay rate?

25 A I haven't seen one.

1 Q What if the employee were reinstated or went back to  
2 work in the higher classification?

3 A Then the same Government Codes and regulations would  
4 apply when they go to retire again. We would take a look at  
5 the same information, the same applications, the same  
6 documents.

7 If they were to reinstate and then do it all over  
8 again in five years, it would probably be even more of a red  
9 flag in a case like this where it's more intentional than  
10 nonintentional, which is probably -- I don't know.

11 Q Then let me refer you to Exhibit 3 of the --  
12 CalPERS' Exhibit 3.

13 A All right.

14 Q One moment. I'm sorry. Did -- is there -- in  
15 reviewing the file, did you find that the City did not  
16 make -- strike that.

17 Were all the employer contributions made consistent  
18 with the captain's rate that was paid?

19 MS. KAUR: Objection. Calls for speculation.

20 BY MR. BOLANDER:

21 Q In your review of the file?

22 THE COURT: Overruled.

23 THE WITNESS: I believe the earnings that were reported  
24 to CalPERS -- contributions are based off of that, I believe.  
25 They were paid by the agency, I believe. I think for their

1 police unit they pay the contributions for them. So I'm not  
2 in payroll or in -- so I don't know if they were late on any  
3 funds or contributions. I'm not sure.

4 BY MR. BOLANDER:

5 Q I think the question is more, you know -- assuming  
6 there was a formal promotion to the rank of captain, the  
7 retirement system would have gotten the same contributions  
8 from the City and from the member as it did under the  
9 circumstances as we sit here without the formal promotion?

10 A Right. The contributions that are reported to us  
11 and paid to us are based off the reported pay rates and  
12 earnings. So, therefore, when the agency reports that  
13 information, we intend to collect those contributions that  
14 match.

15 Q So there's no -- it's not your belief that providing  
16 if Tim Bacon or Darryl Hurt were provided the captain's level  
17 retirement, essentially, that that would create an unfunded  
18 liability?

19 A It could. I'm not an expert on actuarial  
20 evaluations, but it could still create an unfunded liability  
21 because I'm pretty sure -- from what I know on actuarial  
22 evaluations, one of their determinations that they use --  
23 information that they use is the -- not just the  
24 contributions that are reported paid by the agency but also  
25 pay rate increases that are not anticipated or not pursuant

1 to the public pay schedules or labor agreements. So if, for  
2 example, like, if a settlement agreement is -- not saying  
3 this is the exact scenario but if there's a contract or an  
4 agreement in place at the end of somebody's tenure that's a  
5 large increase, and it's not pursuant to the pay schedule and  
6 all the other employees are not getting the increase so the  
7 actuaries are not able to anticipate that or factor that into  
8 the cost that they give the agency for providing the benefits  
9 for a lifetime. So things that just come up at the end -- a  
10 pension spike or something that impacts a member's final  
11 compensation amount is going to potentially be unfunded in a  
12 variety of ways.

13 MR. OKAZAKI: Your Honor, I'm going to move to strike.  
14 He stated that he's not an expert in that area of actuarials.  
15 So I think the statement based on his own words lacks  
16 foundation.

17 MS. KAUR: I concur with that.

18 THE COURT: I'm going to overrule that. He basically  
19 said that this was his understanding. I understand he's not  
20 here as an actuarial.

21 MR. BOLANDER: And I'll just follow up with one  
22 question.

23 BY MR. BOLANDER:

24 Q But back to my original question, had they been  
25 promoted to captain, assuming formally promoted to captain

1 within the City and retired on the same days, the benefits  
2 system would have received the same funds from them -- from  
3 them and from the City as it did under the circumstances as  
4 it was, basically, if that makes sense.

5 A Yeah. I mean, we rely on the agency to report it  
6 correctly. So when they were reporting Mr. Hurt and Bacon as  
7 lieutenants, the contributions came in according to what they  
8 were reporting for that position. So when they started  
9 reporting higher pay, the contributions came in connection  
10 with that pay rate and everything matched.

11 Q Just to wrap it up but the contributions came in?

12 A I believe so, yeah. But in that letter we  
13 specifically asked the agency to back it out so they can  
14 recoup those contributions.

15 Q Do you know if that happened?

16 A Yeah, it hasn't happened.

17 Q The City has not recouped its contributions?

18 A They haven't backed out the payroll for Mr. Hurt and  
19 Bacon.

20 Q And in your experience when this is all said and  
21 done, if they request them, they will get them?

22 MS. KAUR: Objection. Leading.

23 MR. OKAZAKI: I'm sorry. What was the objection?

24 MS. KAUR: Leading and vague.

25 MR. OKAZAKI: I'd like to object as lacks foundation and

1 may call for speculation in terms what finance would do in  
2 terms of backing out payments.

3 THE COURT: Sustained.

4 MR. BOLANDER: That's all I have, your Honor.

5 THE COURT: Thank you.

6 Mr. Okazaki.

7 MR. OKAZAKI: Thank you, your Honor.

8

9 CROSS-EXAMINATION

10 BY MR. OKAZAKI:

11 Q Good afternoon, sir. I know it's been a long day.  
12 I appreciate you being here?

13 A No problem.

14 Q You work with agencies to ensure there's compliance  
15 with the PERS regulations; correct?

16 A Yes.

17 Q And you understand that PERS regulations can be  
18 relatively complex areas of law?

19 A Yes.

20 Q And, in fact, you have a whole book there just on  
21 PERS regulations and laws in front of you; correct?

22 A That's right.

23 Q Wouldn't want to leave home without it because you  
24 never know what you're going to be asked.

25 MR. BOLANDER: Let the record show it's about three to

1 four inches of thickness.

2 BY MR. OKAZAKI:

3 Q So you do the work that you do to avoid what you  
4 described as future issues down the road; correct?

5 A Potentially, yes.

6 Q Potential issues down the road and sometimes those  
7 issues do arise; right?

8 A Yes.

9 Q In fact, that's partially why we're here today?

10 A Yes.

11 Q So if an employer has a question, they can call you;  
12 right?

13 A Yes.

14 Q And part of your job is to ensure that those  
15 questions are answered for the county members that are  
16 assigned to you; correct?

17 A Correct.

18 Q Is there a reason that you know of why the Riverside  
19 County supervisor's not here today?

20 A No, I don't have a reason why. I was -- a part of  
21 our job duty is to witness these cases where our unit makes  
22 these determinations. So I was assigned to this case.

23 Q Okay. Have you spoken to -- well, strike that.

24 When a call comes in, then, employers are allowed to  
25 ask questions as it relates to questions of compensation

1     earnable; correct?

2             A     Yes.

3             Q     That would be an area in which an agency would be  
4     able to ask a question?

5             A     Yes.

6             Q     And that information is given to the agency for  
7     informational purposes?

8             A     Yes.

9             Q     And you testified that a phone call, then, is not a  
10    final determination.

11            A     Right.

12            Q     The information given on the phone call is not.

13            A     Right.

14            Q     And then you testified, then, that hopefully it's  
15    the right information.

16            A     Right.

17            Q     You would understand that -- that an agency, based  
18    upon information being provided by CalPERS in a complex area  
19    of law, it's not unreasonable for them to rely on the  
20    information that they've been given?

21            A     Sure. Correct.

22            Q     And you indicated that agencies that you work with  
23    know that your advice isn't final, but -- is that true?

24            A     Yeah, that's true.

25            Q     Okay. But if there were conversations between my

1 client, the City of Riverside, and some agent at CalPERS, you  
2 have no way of knowing whether or not the City of Riverside  
3 would have known that the information on that call was not  
4 final?

5 MS. KAUR: Objection. Calls for speculation. Vague.

6 THE COURT: Overruled. He's asking what his knowledge  
7 is.

8 THE WITNESS: I think it's fair for me to assume. I've  
9 been there eight years that conversations over the phone are  
10 not final.

11 BY MR. OKAZAKI:

12 Q Well -- but you wouldn't know whether or not the  
13 City of Riverside understood --

14 A Oh, no. I wouldn't be able to figure out what they  
15 understood.

16 Q And much like the objection, which was just made, in  
17 fact, if you were to try to know that, that would be merely  
18 speculating as to what the City of Riverside would have known  
19 or not; correct?

20 A Right.

21 Q Because the reality is you just don't know what  
22 would have occurred on this phone call; correct?

23 A Right.

24 Q You don't dispute that this phone call could have  
25 taken place; right?

1 A No.

2 Q In fact, you were testifying about Exhibits 11 and  
3 12, which are -- 11 and 12, yes, the customer touch point  
4 notes; correct?

5 THE COURT: Petitioner's.

6 MR. OKAZAKI: I'm sorry.

7 BY MR. OKAZAKI:

8 Q I'm referring to Petitioner's 11 and 12, which are  
9 the customer touch points reports that you referred to in  
10 your testimony.

11 A Right.

12 Q You're not -- by referring to those exhibits,  
13 though, trying to demonstrate that there was no call that  
14 Senator Roth referred to today; correct?

15 A I know I was asked if there was any record on those  
16 notes about something like that.

17 Q So, at most, you were trying to answer questions  
18 whether or not the call that Senator Roth referred to is  
19 noted in the report; correct?

20 A I believe so.

21 Q Okay. So the absence of any call related to  
22 Mr. Bacon and Mr. Hurt that Senator Roth testified to -- the  
23 absence of that in the report is not testimony in your behalf  
24 that no call ever existed?

25 A My testimony is based on the record that there was

1 no call or interaction captured that stated what --

2 Q But the absence -- I'm sorry. I didn't mean to  
3 interrupt you?

4 A No, that's fine.

5 Q The absence of a notation in the touch point reports  
6 is not definitive evidence that a call never took place;  
7 right?

8 A Right.

9 Q And in your testimony as well was that -- that  
10 you're not here today to say that Senator Roth is incorrect  
11 in asserting that a call took place?

12 A No, I'm not asserting that.

13 Q Okay. You refer to certain aspects of CalPERS' laws  
14 as it relates to final settlement pay as to prevent -- and I  
15 believe that that section under the Code of Regulations  
16 refers to final settlement pay as, for example, to prevent  
17 spiking; is that correct?

18 A That's one of the preventions, yes.

19 Q Do you believe that -- do you believe that Mr. Hurt  
20 was -- that filing for his retirement with CalPERS was  
21 intended to create an agreement by which he was trying to  
22 spike his pension?

23 MS. KAUR: Objection. Vague. Calls for a legal  
24 conclusion. Speculation.

25 THE COURT: Overruled.

1 THE WITNESS: I don't think they were, probably. If  
2 that was their intention -- I don't know if that was their  
3 intention or not.

4 BY MR. OKAZAKI:

5 Q When you say "they," you're referring to Mr. Hurt  
6 and Mr. Bacon?

7 A Right.

8 Q Okay. Final settlement pay -- are you familiar with  
9 the definition that it also would try to prevent such things  
10 as a "golden parachute"?

11 A Right.

12 Q Do you know what a "golden parachute" is?

13 A Right. That's one of the forms of possible final  
14 settlement.

15 Q And in reporting their retirement to -- well, when  
16 the City of Riverside reported their final retirement --  
17 well, strike that.

18 When the City of Riverside reported their  
19 compensation earnable, you don't believe that there was an  
20 effort by the City of Riverside to try to give these  
21 gentlemen a "golden parachute"; is that right?

22 A A "golden parachute" -- I don't -- there are so many  
23 different definitions of "golden parachute." There's so many  
24 different terms which --

25 Q But you're familiar with the different terms; right?

1 A Somewhat, yeah.

2 Q Okay. And that's not what you're saying occurred;  
3 right?

4 A We're saying that the pay rate that was reported  
5 wasn't going to be used in their retirement calculation  
6 because it was specifically excluded and because it was  
7 specifically reported to us in connection with the separation  
8 of service and retirement. So that was our -- part of our  
9 basis for determining not using it.

10 Q Okay. That's what you're saying. But what  
11 you're -- what you're not saying is that City of Riverside  
12 was reporting this to try to -- because of a -- because it  
13 was a "golden parachute."

14 A I think they were reporting it because of the  
15 settlement agreement.

16 Q Okay. I need you to answer the question though.  
17 And I --

18 MS. KAUR: Objection. Asked and answered.

19 THE COURT: No, he's not answering the question. He's  
20 dancing around it; so --

21 THE WITNESS: I apologize.

22 MR. OKAZAKI: I would, otherwise, move to strike. But  
23 I'll try one more time.

24 BY MR. OKAZAKI:

25 Q So all I'm trying to get is some clarification. You

1 know what a "golden parachute" is; right?

2 A Sure. Yes.

3 Q You testified that there's various forms of it and  
4 you understand within the definition of final settlement pay  
5 there's a reference to an example of a final settlement pay  
6 would be a "golden parachute"; right?

7 A Right. Or any pay -- any pay rate increase.

8 Q Okay. And would you agree that the City of  
9 Riverside's reporting of Mr. Hurt and Mr. Bacon's  
10 compensation earnable was not an effort to try to get them a  
11 "golden parachute"; isn't that correct?

12 A I don't want to say what their intention was; so --

13 Q I'm not asking -- again, what -- you're not making  
14 the assertion that this was an effort for the City of  
15 Riverside to provide a "golden parachute"; correct?

16 A I'm not asserting that, no.

17 Q Okay. Thank you. CalPERS -- CalPERS had all new  
18 sorts of regulations come about -- certain pension reforms  
19 that were initiated under Governor Brown's  
20 administration; correct?

21 A I believe so.

22 Q And those came about after this period of time in  
23 which the settlement agreement went into place; right?

24 A You're talking about PEPRA?

25 Q Yes. It's fair to say that PEPRA regulations, for

1 example, got rid of the ability to purchase air time and  
2 other various regulations; correct?

3 A That's correct.

4 MS. KAUR: Objection. Irrelevant.

5 THE COURT: Overruled. He's laying some foundation.

6 BY MR. OKAZAKI:

7 Q And since that time of this legislation, CalPERS has  
8 been more vigilant in trying to look at -- ensuring that  
9 compensation earnable meets the regulations of CalPERS law.  
10 Do you agree?

11 MS. KAUR: Same objection. Speculation.

12 THE COURT: Overruled.

13 THE WITNESS: I would agree. That regulation impacts  
14 any members hired after January 1, 2013.

15 BY MR. OKAZAKI:

16 Q When Senator Roth testify today about a conversation  
17 that occurred before PEPRA -- when he says that it was his  
18 understanding that this settlement agreement would work out,  
19 so to speak -- assuming this took place before PEPRA -- his  
20 testimony didn't really surprise you, did it?

21 A No.

22 Q Okay. The -- there was a lot of questions earlier  
23 today with Lieutenant Hurt about the promotional process by  
24 which captains -- or I think to some extent even lieutenants  
25 go through -- with the Riverside Police Department -- you

1 were present for that; correct?

2 A Yes.

3 Q As in your position as a retiree program specialist  
4 with CalPERS, you don't review promotional processes that are  
5 done internally to determine whether or not they're  
6 sufficient for any sort of evaluation of whether or not a  
7 person has been adequately promoted; right? Do you?

8 A No.

9 Q Is there anything that you noted in terms of your  
10 review of this case that you felt that the City of Riverside  
11 did incorrectly?

12 MS. KAUR: Objection. Vague.

13 THE COURT: Do you understand the question?

14 THE WITNESS: (No audible response).

15 THE COURT: Okay. Overruled.

16 THE WITNESS: I don't feel like they did anything  
17 incorrect.

18 BY MR. OKAZAKI:

19 Q You reviewed -- you reviewed this Matter; correct?

20 A Yes.

21 Q And, in part, you were reviewing whether or not it  
22 appears to you that the compensation that was reported is  
23 truly compensation earnable; correct?

24 A Our determination is that it wasn't compensation  
25 earnable.

1 Q But you reviewed this to determine that.

2 A Right.

3 Q And in so doing, you reviewed the actions of City of  
4 Riverside?

5 A Yes.

6 Q And is there anything in the actions of the City of  
7 Riverside, as part of your review process, that you  
8 determined somehow failed to comply with PERS regulations?

9 MS. KAUR: Same objection.

10 THE COURT: Overruled.

11 THE WITNESS: We found that the pay rate that they  
12 reported and in turn was out of compliance. And based on our  
13 determination, it was out of compliance.

14 BY MR. OKAZAKI:

15 Q And other than that, you found no other issues with  
16 the City of Riverside's actions?

17 A No.

18 Q Do you know what it means to act in good faith?

19 A Sure.

20 Q Do you think that, based upon the settlement  
21 agreement, the City reported the information to PERS in good  
22 faith upon its understanding of the agreement?

23 MR. BOLANDER: Objection. Calls for speculation.

24 THE COURT: Sustained. It's also a legal conclusion.

25 Sustained.

1 BY MR. OKAZAKI:

2 Q Sir, you -- you --

3 MR. OKAZAKI: If I could have just a moment.

4 THE COURT: Yeah, take your time.

5 MR. OKAZAKI: Thank you, your Honor. I have nothing  
6 further.

7 THE COURT: Redirect?

8 Let's go off the record.

9 (Recess)

10 THE COURT: Sir, I remind you you're still under oath.

11 Redirect, Counsel.

12 MS. KAUR: I don't have any questions, your Honor.

13 THE COURT: Any recross?

14 Thank you, sir, you are released.

15 MR. BACON: We could have done that before the break.

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

17 (Discussion off the record)

18 THE COURT: We've had a discussion off the record  
19 regarding the touch point involving discussions between PERS  
20 and the City of Riverside. On June 24th at noon, we're going  
21 to have a conference call. I'll issue an order. Counsel are  
22 going to work together to narrow the scope of request of any  
23 communication between City of Riverside and PERS that are  
24 documented by PERS and will let me know if there's an issue  
25 regarding discovery. So I'll deal with that at that time.

1 MS. KAUR: And at that time, your Honor, can we set the  
2 dates for closing arguments?

3 THE COURT: Right. He'll tell me whether or not he  
4 needs to call additional witnesses or if any party needs to  
5 based on the documents produced. And if not, we'll get a  
6 briefing schedule for closing arguments.

7 MS. KAUR: And the -- in terms of calling additional  
8 witnesses, can that be limited to the touch point notes?

9 THE COURT: I don't know what they're going reveal; so  
10 don't want to issue that right now. We'll figure that all  
11 out on June 24th as well.

12 MS. KAUR: Okay.

13 MR. BOLANDER: That's fine with us, your Honor.

14 MR. OKAZAKI: So stipulated.

15 THE COURT: Okay. Perfect. Thank you. Talk to you all  
16 on the 24th. We're off the record.

17 (Hearing concluded at 4:05 p.m.)

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