

ATTACHMENT F

**TRANSCRIPTS OF ADMINISTRATIVE HEARING AND FEBRUARY 18, 2016
BOARD MEETING**

ADMINISTRATIVE HEARING
BEFORE THE BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the matter of the)
Accusation Against:)
)
)
SANTA CLARA COUNTY HEALTH)
AUTHORITY,)
Respondent.) AGENCY CASE NO. 2014-1087
) OAH Case No. 2015030359
and)
)
KATHLEEN KING,)
)
Respondent.)
)

Office of Administrative Hearings
1515 Clay Street, Suite 206
Oakland, California

---oOo---

Wednesday, August 26, 2015

9:00 a.m.

---oOo---

Reported by: Angel S. Love, CSR No. 13845

DIAMOND COURT REPORTERS
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Also present: Respondent, Kathleen King
Attorney at Law, Alison Hightower

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P R O C E E D I N G S

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ADMINISTRATIVE LAW JUDGE ANDERSON: We're on the record before the Board of Administration and the California Public Employees' Retirement System, in the matter of the appeal regarding membership exclusion of Foundation employees by Santa Clara County Health Authority and Kathleen King.

The agency number is 2014-1087, and the OAH number is 2015030359. Today's date is August 26th, 2015. It's about 9 o'clock. We're at the Oakland office at the Office of Administrative Hearings.

My name is Mary-Margaret Anderson. I'm an Administrative Law Judge, and I've been assigned to hear this matter. May I have the appearance of counsel beginning with the agency.

MR. PHILLIPS: Good morning Your Honor. Christopher Phillips on behalf of Complainant, CalPERS.

ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.

MR. PLATTEN: Good morning Your Honor. Christopher Platten and Mark Renner on behalf of Respondent, Kathleen King. Also present in the hearing today is Alison Hightower, counsel to the Santa Clara Health -- excuse me -- Health Authority, otherwise known as the plan.

ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. All

1 right, thank you very much. All right, so we talked a bit
2 off the record about our schedule. We have four witnesses
3 total. So let's go ahead and get started. Mr. Phillips,
4 did you want to go ahead and have your exhibits marked
5 or -- you handed me a binder.

6 MR. PHILLIPS: Sure, let's do that. So in
7 addition to the binder there's two other documents that I
8 was going to request, official notice of the Cargill
9 decision, which is the Metropolitan Water District of
10 Southern California, the superior court; and the other
11 document is a presidential decision by the Board of
12 Administration for CalPERS, Galt Services Authority and
13 city of Galt.

14 ADMINISTRATIVE LAW JUDGE ANDERSON: All right.
15 So, you've got in your binder here exhibits 1 through 16.
16 I'll mark the metropolitan water as 17 and the Galt
17 decision as 18. Official notice is taken of those two
18 decisions.

19 (Whereupon, Complainant's Exhibits No. 17 and 18
20 were marked for identification.)

21 MR. PHILLIPS: Thank you Your Honor. And then
22 getting into the exhibit packet, would you prefer that I
23 describe them for the record, each exhibit?

24 ADMINISTRATIVE LAW JUDGE ANDERSON: Well, let's
25 Just take -- I think some of them are offered for

1 jurisdiction only, right?

2 MR. PHILLIPS: Yes. The statement of issues and
3 the notice of hearing, Exhibits 1 and 2 are for
4 jurisdictional purposes only.

5 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay, so
6 those are admitted for jurisdictional purposes only.

7 (Whereupon, Complainant's Exhibits No. 1 and 2
8 were marked for identification and received
in evidence.)

9 ADMINISTRATIVE LAW JUDGE ANDERSON: And then --
10 You have -- Mr. Platten, have you had a chance to review
11 Exhibits 2-16?

12 MR. PLATTEN: We are familiar with them, Your
13 Honor. We have no objection.

14 ADMINISTRATIVE LAW JUDGE ANDERSON: No objection.
15 Okay. So we're just going to admit Exhibits 3-16. And we
16 won't need to read descriptions of those into the record.

17 (Whereupon, Complainant's Exhibits No. 3-16
18 were marked for identification and received
in evidence.)

19 MR. PHILLIPS: Thank you Your Honor and
20 Mr. Platten.

21 MR. PLATTEN: Thank you.

22 ADMINISTRATIVE LAW JUDGE ANDERSON: All right.
23 Do you have an opening statement?
24
25

OPENING STATEMENT

---oOo--

MR. PHILLIPS: Yes, and I'll be brief. We're here today, Your Honor, because in 2012 CalPERS performed a public agency audit of the first Respondent, Santa Clara County Health Authority. And -- so each of -- we're going to be dealing with a couple of entities today. And so for purposes of everybody's sanity, I think I'm going to be shortening Santa Clara County Health Authority, aka the plan, just to "Authority." There's another entity involved here, which is the Santa Clara County -- and I always -- over this. The Santa Clara Family Health Foundation inc., which I'm just going to shorten to "Foundation." So we have "Authority" and "Foundation."

So in 2012 the Office of Audit Services at CalPERS performed a Public Agency Review of the Authority And in that audit determined that there was an affiliated agency, which is the Foundation. And the Authority had been reporting a number of Foundation employees as Authority employees to CalPERS, and Ms. King is one of those employees.

So CalPERS issued its audit findings in a determination informing the Authority that these particular employees were improperly reported, and they should not have accrued membership status or service

1 credit. And the Authority and the individual Respondents
2 all appealed, and that's why we're here today.

3 Now, the evidence that will be put in the record
4 today -- I have the auditor who performed the audit here
5 to speak as well as the individual who made the
6 determination that these various employees were being
7 misreported. The evidence is going to show that the Bylaws
8 of the Foundation expressly state that it's a separate
9 entity, in fact it's a 501C3 non-profit organization.

10 According to the California Public Retirement
11 Law, which I'm going to be referring to as the "PEARL,"
12 for the most part 501C3 entities cannot be members. There
13 is a very small caveat in which a limited you can be, but
14 the Foundation is not one of those.

15 So the Bylaws of the Foundation describe the type of
16 entity it is. That it can't be a member entity. That it's
17 distinct and separate from the Authority. That its
18 ultimate powers are the Board of the Foundation. And these
19 two entities are affiliated in that they entered into a
20 service agreement, in which the Authority would provide
21 basically HR and payroll services for the Foundation.

22 And this is where things get tricky, there are a lot
23 of facts that Respondents will pull out today, which seem
24 to indicate there may be some sort of co-employment or
25 that Ms. King fits -- would be eligible for CalPERS

1 membership under the common law employment test as a
2 employee of the Authority rather than the Foundation, but
3 the documents certainly prevent -- prohibit that from
4 happening.

5 If in fact there was on a day-to-day basis control
6 exerted by the Authority over Foundation employees, that
7 would have been ultra vires and impermissible anyways. So
8 this service agreement that was entered into between these
9 two entities expressly state that they are separate
10 entities. That employees of one are not employees of the
11 other. I believe many of the facts that Respondents will
12 be pulling out today to demonstrate or to try and convince
13 you that the employment -- the common law employment test
14 has been met are really pursuant to this agreement that
15 the two entities entered into.

16 There's also evidence from individuals that work at
17 the Authority in a couple of incidences, which directly
18 undercut any argument that Foundation employees were in
19 fact employees of the Authority. There is an emission
20 by -- I believe the vice president of human resources for
21 the Authority, which says Ms. King was hired specifically
22 for Foundation purposes. And there's also a response to a
23 draft audit, which was issued by CalPERS and offered by
24 the CFO of the Authority, which admits that at least from
25 2009 on that Foundation employees were not reporting being

1 supervised or directed by the Authority.

2 So, the documentary evidence in this case is very
3 strong. And I think CalPERS position that Ms. King is in
4 fact not an employee of the Authority and was being
5 misreported by the Authority to earn CalPERS credit --
6 service credit, is a strong one. Thank you.

7 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Thank
8 you. All right. Mr. Platten, did you wish to make an
9 opening statement at this time?

10 MR. PLATTEN: I do Your Honor. Let me indicate
11 Mr. Renner, McBride later -- has a binder of presentation
12 to yourself and to opposing counsel, perhaps you should
13 share that first.

14 ADMINISTRATIVE LAW JUDGE: Yes, that's a good
15 idea. And I'm just going to address who's ever sitting in
16 that chair. So, that's not meant to ignore any other
17 lawyers, but whoever sits in that chair is talked to.

18 MR. PLATTEN: I don't know if it would be
19 appropriate to give counsel a moment off the record so he
20 could look at the binder and see if we could successfully
21 deal with it faster that way.

22 ADMINISTRATIVE LAW JUDGE ANDERSON: Well, we
23 don't have to do it now in any event. The only thing I'm
24 concerned about is duplicate exhibits. I don't like
25 duplicate exhibits. So, do you --

1 MR. PHILLIPS: I'm sure there's some.

2 ADMINISTRATIVE LAW JUDGE ANDERSON: I bet there
3 are some. So what I would like done is just to have
4 Respondent just go through and remove any duplicates
5 before they're offered. You numbered them --

6 MR. PLATTEN: They're all Bates stamped.

7 ADMINISTRATIVE LAW JUDGE ANDERSON: Oh, it looks
8 like just one giant exhibit. Well, I'll tell you what, why
9 Don't -- if someone has time they can go and glance
10 through there and omit any duplicates and we'll take that
11 up later. Okay.

12 MR. PLATTEN: Very good.

13 ADMINISTRATIVE LAW JUDGE ANDERSON: All right.
14 So whenever you're ready.

15 OPENING STATEMENT

16 ---oOo---

17 MR. PLATTEN: Thank you Your Honor. As counsel
18 has made clear, Your Honor is not aware this matter is
19 governed by the Public Authority Retirement Law for PEARL,
20 which authorizes CalPERS to determine and enter into
21 contracts for participating members to approve CalPERS
22 service benefits.

23 Government Code Section 222 defines a contract in
24 the agency. Government Code Section 226, Subdivision B
25 defines "an employee" as that individual who's employed by

1 public agency and contracts with CalPERS. Government Code
2 Section 20460 permits public agencies to make all
3 employees members of CalPERS under CalPERS contract. And
4 lastly, under Government Code Section 20125 the Board
5 determines who is and in fact an employee, but the Board's
6 determination is informed by the decision of California
7 Superior Court in the Metropolitan Water District versus
8 superior court case, which has been marked before you as
9 Agency Exhibit 17.

10 That case instructs that CalPERS is to use the
11 common law test with regards to employment. That test
12 means effectively where two independent agencies, in this
13 case Health Authority or Plan -- and forgive me, but we
14 might use the term "Authority" or "Plan" to reference the
15 same agency of Authority. And the Foundation may be
16 considered as one employee when the functional reality of
17 the two organizations show that the Authority or the Plan
18 governs the employer employee relations and activities.

19 This is a case where the facts are more than just
20 a contained and Administrative Services Agreement entered
21 into between the Foundation and the Plan. Rather, the
22 evidence will show that for well over five years the
23 Foundation and Ms. King made contributions on Ms. King's
24 behalf through the Authority or Plan for purpose of her
25 employment.

1 Her employment was governed entirely and
2 controlled by the Authority or Plan, not the Foundation.
3 Thus, the evidence will show among other things that it
4 was the Authority or Plan that issued the paychecks to
5 Ms. King and other employees of the Foundation, not the
6 Foundation. The evidence will show that Ms. King was in
7 fact hired by the Authority or the Plan to serve in her
8 position with the Foundation, not by the Foundation. The
9 evidence will show that Ms. King devoted her entire
10 employment to raising funds through the Foundation solely
11 for the Authority, not for the Foundation.

12 The evidence will show that the Foundation shared
13 office space, e-mail systems, office supplies, computer
14 servers, payroll administration, all human resource
15 services including employee relations matters with and for
16 the Foundation for a less than fair market value fee of
17 \$1,000 per month.

18 The evidence will show that the Authority or Plan
19 regulated pay increases for Foundation employees. In fact,
20 Agency Exhibit 14 submitted to you this morning
21 demonstrates that even when the Foundation which is --
22 wish to increase the compensation for an employee, it
23 required approval and signature by the HR director for the
24 Authority or the Plan. That is to say that the Foundation
25 did not have unilateral authority to raise an employee's

1 compensation.

2 The evidence will show that the Authority
3 approved employee evaluations conducted of Foundation
4 employees. The evidence will show that the Authority
5 provided all employee benefits including pension, health
6 coverage, life insurance, dental insurance, long-term
7 disability insurance for Foundation individuals, not the
8 Foundation.

9 The evidence will show that the Authority
10 controlled employee discipline and termination matters for
11 Foundation individuals designated as Foundation employees,
12 not the Foundation. The evidence will show that the
13 Authority conducted exit interviews of Foundation
14 employees, that's hardly an indicia that suggest that the
15 Foundation controlled the employment relations of those
16 two employees.

17 The evidence will show that the Authority
18 required Foundation employees to sign off on all of the
19 Authority's employee handbooks and policies and follow all
20 of the handbook and policy regulations and rules of the
21 Authority, not the Foundation. The evidence will show that
22 the Authority in several instances controlled transfer of
23 employees between the two organizations, not the
24 Foundation. The evidence will show that the Authority sent
25 out e-mails to all employees, which were direct and had

1 included individuals designated as Foundation employees.

2 The evidence will show that the Authority
3 conducted early office closings including those office
4 operations of Foundation employees, not the Foundation.

5 The evidence will show that the Authority conducted
6 training of Foundation employees or individuals designated
7 as Foundation employees for sexual harassment prevention,
8 HIPPA violations, fraud prevention and regulation of
9 health care solicitations, not the Foundation.

10 The evidence will show that the Authority allowed
11 the Foundation to use its in-house web designer at no cost
12 because of the inner relationship of the operations. The
13 evidence will show that the Authority directed the
14 Foundation to use the Authority's legal counsel including
15 in-house counsel, counsel to Santa Clara County, and
16 private counsel, not outside independent counsel selected
17 by or paid for by the Foundation.

18 In short, Your Honor, the evidence will show that
19 the common law employment test demonstrating a joint
20 employers situation existed in this case and that the
21 Respondent, Ms. King, is entitled to be determined as an
22 employee participant of CalPERS entitled to full credit
23 for the service credits earned through contributions by
24 the Authority, not the Foundation, and herself to CalPERS
25 for well over five years of her employment. With that we

1 will request that her Honor issue a decision rejecting and
2 reversing the determination of CalPERS and recommending
3 that Ms. King be determined to be an employee governed
4 under Government Code and entitled to participatory
5 benefits .

6 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Thank
7 you. Okay, Mr. Phillips, would you like to call your first
8 witness?

9 MR. PHILLIPS: I would, Your Honor. Complainant
10 calls Adeeb Alzanoon.

11 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Good
12 morning, sir. Please have a seat in the chair to my right.
13 Good morning.

14 THE WITNESS: Good morning.

15 ADMINISTRATIVE LAW JUDGE ANDERSON: Please raise
16 your right hand to be sworn.

17 (Time Noted: 9:23 a.m.)

18 ADEEB ALZANOON

19 Was thereupon called as a witness herein; and having been
20 sworn to tell the truth, the whole truth, and nothing but
21 the truth, testified as follows:

22 THE WITNESS: I do.

23 ADMINISTRATIVE LAW JUDGE ANDERSON: Please state
24 your name and spell it for us.

25 THE WITNESS: Adeeb Alzanoon. A-D-E-E-B,

1 A-L-Z-A-N-O-O-N.

2 ADMINISTRATIVE LAW JUDGE ANDERSON: Thank you.

3 MR. PHILLIPS: Good morning Mr. Alzanoon, how are
4 you?

5 THE WITNESS: Fine, thank you.

6 DIRECT EXAMINATION

7 BY MR. PHILLIPS:

8 Q. Good. Okay, so you work at CalPERS, correct?

9 A. Yes.

10 Q. Okay, and can you tell me what your current
11 position is?

12 A. Right now I'm a research specialist with the
13 research and policy unit. Prior to that I was a CalPERS
14 auditor for 15 years.

15 Q. Okay. So before we move on to your auditor
16 position -- your position now, what department is that?

17 A. It's called the Research Retirement and Policy
18 Unit, part of CalPERS. It's a newly established unit. It
19 deals with high-level issues that impact CalPERS and pose
20 a risk. We look into the laws. We look into the
21 regulations to make sure that it covers what we produce
22 outside, any documentation that we ask public agencies, or
23 regulations that we need them to follow, certain rules
24 based on policy and --

25 ADMINISTRATIVE LAW JUDGE ANDERSON: Mr. Alzanoon,

1 can I get you to raise your voice a bit. Our reporter has
2 to take down everything, and she has to be able to hear
3 you, as do we all.

4 BY MR. PHILLIPS:

5 Q. Okay. And so you mentioned before that you were
6 an auditor?

7 A. Yes, I joined the audits in 1999. I worked there
8 for 15 years through CalPERS as well.

9 Q. Okay. And you performed the audit on -- for the
10 Foundation --

11 A. Yes.

12 Q. I'm sorry for the Authority, is that correct?

13 A. Yes.

14 Q. Okay. Now can you describe for me in a general
15 since, not with respect to this matter, what duties you
16 performed as an auditor?

17 A. My position was a staff auditor, which is a group
18 class auditing, it's like a need auditor. So based on the
19 risk assessment that they perform every year -- which
20 agency's that cause a risk on CalPERS, we go and contact
21 those agencies, let them know that you have been -- based
22 on the budget here, based on the Board approval, you have
23 been selected based on risk assessment to be audited.

24 So, we contact the agency, we tell them that we're
25 coming to try to arrange a good time that works for both

1 of us, and we ask for certain documentation to be sent
2 beforehand. We prepare our in-house work at CalPERS, and
3 we go out and review, based on a review guidelines or you
4 can call it audited guidelines, certain standard test that
5 applies to all public agencies that we look at and
6 save. And so, we apply those processes or tests to every
7 agency. Part of it is membership, part of it is
8 compensation, other parts has to do with on sick leave
9 conversion. It's a list of many things that impact
10 CalPERS.

11 So, the audit is confined to issues that impact
12 CalPERS and members that are part of CalPERS. So, at the
13 agency we conduct an entrance interview with them, letting
14 them know what the scope is, what we're looking at, the
15 time period. Then we share with them. We ask for
16 explanations during the audit to explain certain things,
17 and then we conduct an exit when we come up with a
18 conclusion of what might be potential findings that we
19 might have.

20 And after the exit, we tell them to expect a draft
21 report. We issue a draft report and request their response
22 to the draft report to the finding, and we incorporate
23 that response in our draft. It becomes part of the final
24 report. And then after that the program area in CalPERS
25 that is in charge, for example in compensation or

1 membership, will follow up with the agency to make sure
2 that they comply or they implement the findings that we
3 have written in the report.

4 Q. Thank you. So, that sounds pretty complicated.
5 Do you have any special schooling in order to become an
6 auditor?

7 A. Well, I graduated -- I have a business degree in
8 management. The first job I got was with a CPA firms. I
9 was doing financial audits, of course it only requires
10 that your boss has to be a CPA. So it is basically -- my
11 experience of 15 years at CalPERS and three years in a CPA
12 firm. So a total of 18 years. Conducting partly for a
13 short time -- three years finance audits, and 15 years in
14 CalPERS conducting compliance audits. Which basically --
15 making sure that CalPERS's laws are being followed.

16 Q. And the audit for the Authority was performed in
17 2012, correct?

18 A. Yes.

19 Q. And you mentioned you became an auditor in 1999?

20 A. Yes.

21 Q. So you -- So this wasn't your first audit?

22 A. No. Actually, I have a -- probably the most
23 seniority in CalPERS as far as 15 years. So probably
24 conducted the most audits in that department.

25 Q. Okay, so let's get to why we're here today.

1 A. Yes.

2 Q. Can I have you turn to Exhibit 3 in front of you.
3 And this is the draft audit and cover letter, is that
4 correct?

5 A. Yes.

6 Q. Okay, so can you turn to -- let's see the third
7 page of the document, which is the table of contents
8 there, the audit. And can you just very briefly describe
9 the components of an audit and what you do to make this
10 document?

11 A. I probably touched on it a little bit before, but
12 what we -- what we do -- and we give a results in brief,
13 what our findings are. We note Authority for CalPERS to
14 audit or to get information from the agencies for CalPERS
15 purposes. The report also states the scope and then we
16 list the findings that were found during that review, and
17 they are not necessarily in a particular order, but we try
18 to highlight the ones that have the most significant
19 impact on CalPERS.

20 So there was a pay rate finding, which
21 is not the subject here, but we're saying that the pay
22 rates paid to employees were not according to public
23 available pay schedules.

24 The second finding I found few employees, based on
25 reviewing the employee roster, that next to their names it

1 showed "Foundation," exactly directed with Foundation.
2 Finance director, Foundation. So that caught my attention
3 and I started to look at what's the nature of -- what's
4 the Foundation, and what is the relation between those two
5 entities, which is something we do as a test. I'm going to
6 go briefly through those.

7 The third finding had to do with temporary
8 employees that were not brought into membership, and they
9 should have been brought into membership. And there was a
10 retired annuitant, according to the law the pay rate was
11 above what he was making when he was a regular employee.

12 And then we conclude. We state objectives, what
13 kind of test that we do to accomplish this audit, and we
14 state the responsibilities of all the employers; how they
15 have to comply by properly reporting members, pay rate,
16 membership categories. They are listed in page one.

17 Q. Okay, thank you. And so we're here today dealing
18 with finding two, is that correct?

19 A. Yes.

20 Q. Okay. Now, this document -- this draft document
21 is sent to the agency for review and comment?

22 A. Yes.

23 Q. Okay.

24 A. But before it's sent -- After the auditor usually
25 completes their work, which in this case it was me, it

1 goes through puberty to make sure that my conclusion -- my
2 findings stands ground. This one was reviewed and the
3 names are listed probably on the last page of the people
4 who reviewed this document. Then it is reviewed by the
5 senior management -- The manager -- sorry. The audit
6 manager, the senior manager, and then the chief of audits
7 before it is issued. So it goes through a multi-level of
8 review to make sure that we are accurate and we are
9 applying the correct criteria, and we have enough evidence
10 to pursue.

11 Q. Okay. Thank you. Then the next exhibit, Exhibit
12 4, is this letter -- the response that CalPERS received
13 after they reviewed the draft audit?

14 A. Yes.

15 Q. Okay. Did you see this letter when it came back
16 from the agency?

17 A. Absolutely. The first thing when it comes to the
18 chief's office, copy is forwarded to the auditor because
19 it's our duty to read it, analyze it, see if they agree or
20 disagree, then prepare the final report. So it is a
21 process that we have to look at it as an auditor. And if
22 the chief had questions I would be called in with the
23 manager to discuss it. So yes, I did see it.

24 Q. Okay, now do you know who David Cameron is?

25 A. I haven't met him, but his name was on the

1 employee roster and he is the -- the person in charge at
2 the Authority where I audited.

3 Q. Okay. Now, under "finding two" he writes a
4 paragraph in response to the draft audit. Do you agree or
5 do you have any basis to agree or disagree with the
6 information contained in that paragraph?

7 A. Based on what I have seen -- and I looked at the
8 documents when I was on site at the Authority, I don't
9 fully agree with that the -- that control and the
10 direction was from the hire date all the way up to 2009.
11 My determination -- based on the Foundation being a
12 separate entity and the chain of command in the
13 reporting -- that it's from the hire date for -- for the
14 subject here that we are.

15 Q. And "higher" as in -- Do you mean earlier date or
16 you mean "hire" as in "employed"?

17 A. When the employee was initially hired with the
18 Foundation.

19 Q. Got you.

20 A. I believe that that's the day where the control
21 has been always been through the Foundation.

22 Q. Okay.

23 A. So, they partially agree with my finding, but the
24 time span is different than what my conclusion is.

25 Q. Okay, so it appears that the -- that David

1 Cameron, the chief financial officer of the Authority, is
2 admitting that after -- beginning in 2009 and afterwards
3 that Foundation employees were not reporting, supervised,
4 directed or evaluated by the Health Authority?

5 A. Yes.

6 Q. That's correct, okay. Okay, so you received this
7 letter, did you -- Were you asked any questions by your
8 chief?

9 A. I don't recall the chief asking me, but probably
10 the manager did ask me, my direct manager.

11 Q. Uh-huh.

12 A. And we had a brief meeting, and we -- based on
13 the evidence and a few questions that he asked me about --
14 some documents that I produced for him from our
15 software -- And go ahead and issue the final.

16 Q. Okay, so the final audit, which is contained in
17 Exhibit 5, did that change any of your findings from the
18 draft audit? Actually I should be more specific. Did
19 finding two change from "draft audit" to "final audit"?

20 A. Nothing. We stated that our position remains the
21 same.

22 Q. So the response was from the Authority -- was not
23 persuasive?

24 A. No.

25 Q. Okay. So let's discuss now how you reached the

1 finding contained in finding number two. Why is it that
2 you concluded that the affiliated entities -- employees --
3 That the Foundation's employees were not employees of the
4 Authority and should not have been reported to CalPERS?

5 A. Part of our review of agency is to make sure that
6 only the entity that contracts with CalPERS is the entity
7 reporting their own employee -- only their employees. The
8 actual situation is wide spread and it is not unusual to
9 find an entity -- a city for example, and housing
10 authorities, and they have a particular relationship.

11 So part of the test that we do is to look at those
12 relationships between those two or the three entities to
13 make sure where the control lies, how much control. In
14 this case it was a standard test when I noticed that there
15 was a Foundation -- that it's affiliated agency.

16 The first thing we request is the Independent Auditor
17 Report. The Independent Auditor Report as a certified
18 accountant would have in the notes any relations between
19 the entity, their auditing and the affiliated agency.

20 Q. Okay, let me hold you right there. So what is an
21 "Independent Auditor Report"?

22 A. It is -- Usually it's a certified public
23 accountant that is required to issue financial status of
24 agencies. It has nothing to do with CalPERS. This is
25 something that the agency hires as an independent monitor

1 to produce the position -- the financial position of
2 agencies.

3 Q. And is it an obligation of a public agency, for
4 the fact that they are a public agency, that they need to
5 have these audits performed?

6 MR. PLATTEN: Objection, lacks foundation.

7 ADMINISTRATIVE LAW JUDGE ANDERSON: Sustained.

8 BY MR. PHILLIPS:

9 Q. Do all of the public agencies that you audit have
10 these independent auditor's --

11 A. Yes.

12 Q. -- audit reports?

13 A. Yes. And it's part of our review guidelines.

14 It's stated in one of the items. I don't recall which
15 one. "Obtain the CPA reports or the CalPERS reports for
16 the agency."

17 Q. Okay.

18 A. And I probably -- not getting the latest, but
19 they will give me the one before. So but, I have never
20 encountered in 15 years a public agency that does not have
21 a certified public accountant in documentation.

22 Q. Okay. So sorry to side track you there. So you
23 reviewed this Independent Audit Report, and what did that
24 tell you?

25 A. The purpose for reviewing that report was two

1 folds: one, to see if there's any big impact that might
2 negatively impact CalPERS, which I didn't see. The only
3 thing I saw is in the notes section the definition of the
4 relationship between the Authority and the Foundation. It
5 was mentioned in the CPA report as a separate entity, but
6 because their financial position is not part of the
7 Authority it was not even mentioned.

8 So it was not considered as a negative component. It
9 was not mentioned as an affiliated agency. It even stated
10 specifically that the Authority does not have any
11 controlling factor on the Foundation.

12 Q. Okay, well the Independent Auditor's Report is
13 behind Tab 9 in the packet in front of you, is that
14 correct?

15 A. Yes.

16 Q. Is that what this is?

17 A. Yes.

18 Q. And so you used this report as one of the pieces
19 of evidence in conducting your audit?

20 A. Piece of evidence, yes. But it is a standard
21 procedure that we look at it and see if there's anything
22 that might impact CalPERS. But yes, eventually was used as
23 an evidence to substantiate my finding that there are some
24 Foundation employees that are being reported as Authority
25 employees.

1 Q. Okay. And the note that you were just referring
2 to a minute ago, is that Note 5, which is on the fourth
3 page of that document, which is titled "Santa Clara Family
4 Health Foundation"?

5 A. Yes, Note 5.

6 Q. Okay. Now what is it within that section that is
7 important to you to substantiate your finding in finding
8 number two?

9 A. It talks about the relationship between the two
10 that is established during 2000. They established a
11 Foundation and then it states one sentence there that
12 says,

13 "The Bylaws of the Foundation require that no
14 more than 49% of the Foundation's Board of
15 Directors as appointed by Santa Clara County, may
16 be management or directors of the Health
17 Authority."

18 And then the very important sentence that comes after
19 that is that,

20 "The Health Authority does not have
21 Financial accountabilities for the Foundation. It
22 Has been included in the Health Authority's
23 Accompanying combined financial statements. It
24 Has not" --

25 I'm Sorry --

1 "It has not been included in the Health."

2 And this is a clear to me, as an auditor, looking at
3 all financial statements. When somebody's financial is not
4 part of the other then it's separate and complete. Along
5 with another thing that I looked at -- another evidence,
6 which is the service agreement.

7 Q. Okay, and we'll get to that in just a minute.

8 Okay, was there any other piece of this Independent
9 Auditor's Report which you think is important with respect
10 to finding number two in your audit?

11 A. No, that's the only thing. That the
12 relationship -- to establish the relationship. The audit
13 report failed to establish a commingled relationship.
14 That's the only thing.

15 Q. All right. So now back to my question of about
16 ten minutes ago. And what pieces of evidence did you come
17 across that led you to your finding number two? So we've
18 talked now about the Independent Auditor's Report, what
19 else is there?

20 A. Number one was the employee roster that showed
21 two executives, but two different titles. One with
22 Foundation, one for the Authority. So that really was a
23 smoking gun for me to see two executives. So I asked for
24 the org chart.

25 Q. Okay. And so, let's jump to the org charts, which

1 are located behind Tab 12. So what is important to you
2 about these org charts?

3 A. So the first question I ask is that "Okay, for
4 the org chart, where does the executive director of the
5 Foundation belong in the org chart?" He says, "No, they
6 have their own." So I ask, "Can I have it?" And they were
7 -- they supplied me with the org chart, which is the next
8 page.

9 Q. Who is "they"?

10 A. The Authority. Because again I was dealing with
11 the Authority because they -- the Authority has -- they're
12 doing the finance -- their doing the HR. They're hired by
13 the Foundation and they get reimbursed. So, it's kind of
14 that they were taken over all the -- the business side of
15 the Foundation. So most my communication is with the
16 Authority because they are the one under the review.

17 Q. Okay.

18 A. But because the employee roster included certain
19 names that I questioned, now we're jumping and like
20 bridging over that the Authority is reaching out and
21 getting me documents that belongs to the Foundation.

22 Q. Okay. So you asked where the executive director
23 of the Foundation is on the Authority's org chart and they
24 told you it's not on there?

25 A. Exactly.

1 Q. And they gave you a org chart for the Foundation?

2 A. Yes.

3 Q. Okay. And what did you determine after looking at
4 these two org charts?

5 A. That the reporting and the charity or the chain
6 of commands for the executive director is to the Board of
7 the Foundation, and it's not linked to the Board of the
8 Authority.

9 Q. Okay.

10 A. And all the employees below the executive, that
11 were the subject also of my finding, applies to them as
12 well.

13 Q. Okay. And so, why is that significant? Why is it
14 that the executive director and all of the other
15 Foundation employees, chain of command, ends with the
16 Foundation's Board of Directors?

17 A. That's the reporting structure that's in combined
18 with the Independent Auditor Report, in combination with
19 the service agreement showed that this entity is
20 completely separate. Not only separate entity for tax ID
21 purposes, it is separate and autonomous, meaning they are
22 a stand alone agency; therefore, their employees are
23 responsible for the Board -- the employees of the
24 Foundation are responsible for the Board of the
25 Foundation. There wouldn't be any Authority of the

1 Foundation over their employees, except with managing.

2 For example, vacation or sick leave, reporting --

3 basically the bookkeeping function by the Authority.

4 Q. In reviewing the organization chart for the
5 Authority, did you find any Foundation employees?

6 A. No, sir. The Authority did not have any
7 Foundation listed under that org chart or report to any of
8 the directors listed below.

9 Q. Okay. So you mentioned "service agreement" a
10 number of times. So let's talk about that now. And that is
11 behind Tab 11. So you came across this document in your --
12 in doing the audit, correct?

13 A. Through inquiring about the Foundation I asked,
14 "Is there any kind of a contract?" Sometimes there are
15 employee loans, "the loaner" -- what they call when they
16 loan employees. They told me there was a service
17 agreement, that's how we structured our relationship. So I
18 said, "Can I have a copy of it?" And I was provided that
19 document.

20 Q. Okay. Now, this is an agreement between the
21 Foundation and the Authority, correct?

22 A. Yes.

23 Q. Now can you tell me why this document is
24 important to finding number two in your audit?

25 A. Going through the items -- few of them were

1 indicative of that we as a Foundation would like to retain
2 services of the Authority to rent a space, manage our
3 finance, hire people on our behalf. But there's clear
4 indications in many of the items that we are separate and
5 no one can interfere in each other's authority with regard
6 to employees. So that was -- to me, from looking at it and
7 from experience as well, that this is just a regular
8 service agreement for reimbursement of costs and it states
9 there that "we will reimburse you for costs." And I think
10 it's probably Exhibit A.

11 Q. Okay.

12 A. So whatever you incur for salaries for the
13 Foundation employees, the Foundation would reimburse the
14 Authority for that amount.

15 Q. Okay. Can I direct you to page three of the
16 agreement. And the second paragraph down. Is that an
17 important section for your purposes?

18 A. Absolutely.

19 Q. Now, can you read that section and then describe
20 why that is important?

21 A. "SEFHP, --

22 Which is the Authority,

23 "and the Foundation, are separate and independent
24 entities. The relationship between the Authority
25 and the Foundation is purely contractual. Neither

1 the Authority, nor the Foundation; nor the
2 employees, servants, agents or representatives
3 of either, shall be considered the employee,
4 servant, agent or representative of the other."

5 Should I continue?

6 Q. No, that's okay. And so, did that support
7 evidence that you were finding in other respects, such as
8 the things that we just discussed?

9 A. Yes.

10 Q. Okay. Now you described a host of duties that the
11 Authority was going to perform on behalf of the Foundation
12 pursuant to this contract. Where is that information
13 located?

14 A. If I recall it's in Schedule A.

15 Q. Okay.

16 A. And the reimbursement in Schedule B.

17 Q. Okay. So Schedule A begins on page five of the
18 document, correct?

19 A. Yes.

20 Q. Now, you were in the courtroom during the opening
21 statements, correct?

22 A. Yes.

23 Q. Did you hear Mr. Platten go through a laundry
24 list of services that the Authority provided on behalf of
25 the agency -- I'm sorry on behalf of the Foundation, in

1 support of the argument that Foundation employees were
2 actually employees of the Authority?

3 MR. PLATTEN: Let me interpose an objection.
4 That characterizes the opening statement suggesting these
5 were "services". That is not what I stated.

6 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. I'll
7 take his word as to what he said. So maybe you'll like to
8 rephrase the question.

9 BY MR. PHILLIPS:

10 Q. You listened to Mr. Platten's laundry list of
11 things that the agency performed on behalf of the
12 Foundation, correct?

13 A. Yes.

14 Q. Okay. Now, did any of those services -- any of
15 those duties that were performed by -- allegedly performed
16 by the Authority -- Are any of those new to you that you
17 hadn't read about in this service agreement?

18 A. No.

19 Q. Okay. So, did that sound to you like a recitation
20 of the agreement between these two entities?

21 A. To some extent, not exactly. But it is not new to
22 me to see a service agreement with two entities. Where one
23 entity has the capability of performing HR, finance --
24 based on an agreement that is done between the two.

25 Q. So an agreement like the one that we're reviewing

1 right now, this service agreement. There's nothing unusual
2 about it in your opinion?

3 A. No, I've seen it in many audits. That dictates
4 the relationship between two. And one of them for example
5 was a county, and a water district had three employees,
6 the county had a 150. They contracted with the county to
7 do the payroll to do -- implement any changes to the
8 payroll, pay rate -- but not approved. It was just
9 following orders from the water district says okay grant
10 the following, implement, make a change of this. So it's
11 just a contractual, financial -- as if you hire a
12 bookkeeper to do your paperwork rather than doing it
13 yourself.

14 Q. Now, in this service agreement did the Foundation
15 reserve any rights for itself? Such as overseeing the
16 performance of its employees, things of that nature.

17 A. I think it's -- it's in the agreement that we
18 oversee our employees. And the separation of who
19 controlled -- or who oversees which employees. And there's
20 no interchange. I have to --

21 Q. How about taking a look at paragraph six on page
22 two. And then can you read those first two sentences.

23 A. "The Foundation is responsible for monitoring
24 and overseeing the performance of the Authority
25 and any of its delegates. The Foundation has the

1 authority and responsibility to implement,
2 maintain and enforce the Foundation policies
3 governing the Plan or the Authority, duties under
4 the agreement or any delegation under it and or
5 governing the Foundation's oversight role;
6 conduct audits, inspection, and or investigations
7 in order to oversee the Authority's performance
8 and or that of its delegates of the duties
9 described in the agreement or any delegation.

10 "If any required by the plan or Authority to
11 take corrective actions, if the Foundation or an
12 applicable set of or state regulated determines
13 the correction -- correct of action."

14 And it goes on.

15 Q. Okay. So is that reservation of rights have any
16 importance to you?

17 A. Absolutely.

18 Q. Okay, and what is that?

19 A. That there is a clear separation who has
20 authority over what. And it emphasizes the issue that I
21 was looking into with the Independent Auditor Report --
22 confirms this is an autonomous, separate entity. So
23 separate entity by itself does not mean sometimes that
24 they are not commingled, but in this case it's separate
25 entity; and it confirms another fact, which is autonomous.

1 That the Foundation is autonomous.

2 Q. Thank you. Okay, so you reviewed contracts,
3 you've reviewed independent audits, you've reviewed org
4 charts, what other type of information did you use in
5 making your finding for finding number two?

6 A. I did inquire for other employees within the
7 Foundation because they were listed on the Authority's
8 employee roster. I wanted to find out the staff and how --
9 who are they reported to. So I send an employee employee
10 relationship questionnaire for one of the employees and it
11 came back that the reporting chain is to the director of
12 the Foundation.

13 Q. And is this Emily Hennessy that we're talking
14 about?

15 A. Yes.

16 Q. So you contacted the Authority?

17 A. Yes.

18 Q. Asked them to prepare a questionnaire on Emily
19 Hennessy?

20 A. Actually I prepared the questionnaire. They
21 provide me with the answers.

22 Q. Okay.

23 A. And the questionnaire is a standard
24 questionnaire, it's not like I could -- I could add some,
25 but I don't think I added anything in this case?

1 Q. Okay. And we'll get to that in just a minute.

2 A. Uh-huh.

3 Q. Can I have you turn to page -- I'm sorry, Tab 15.

4 And is this the response from the Authority giving you
5 back the filled out questionnaire?

6 A. Yes.

7 Q. Okay. And now this doesn't look like a typical
8 e-mail. Can you kind of describe for me what this document
9 is?

10 A. Well, this is an evidence copy that we use in our
11 software. It's called "teammate" at CalPERS. It's a smart
12 filing cabinet with hyper links and stuff, and it makes it
13 easy to link and to find the documents that we talk about.
14 So every sentence we talk about you click and you get the
15 hyper link. So this type of document -- if we're going to
16 get technical, is an snap shot of the e-mail. So this is a
17 copy screen and put on a word document, so I can put
18 notation on the word document: where did I get it from,
19 who provided the document, what's the purpose of this
20 document.

21 Q. Okay. And is that the information there at the
22 top?

23 A. Yes.

24 Q. That is information that you typed into the
25 system?

1 A. Yes.

2 Q. Okay. And in reviewing that information at the
3 top, is it correct that this was from Sharon Valdez, Vice
4 President of HR at the Authority?

5 A. Yes.

6 Q. Okay. Now there's also a couple of long lines --
7 arrows, down in the body of the e-mail that I don't think
8 are part of the e-mail itself, is that correct?

9 A. No they are not. These are my own making to show
10 the key words that I relied on, based on the response.

11 Q. Okay. Now, what does Ms. Valdez say in that last
12 couple of sentences there at the bottom with respect to
13 Ms. King?

14 A. It says,

15 "Kathleen King," --

16 If I pronounced it the right way --

17 "Thong Lee and Emily Hennessy were hired to
18 provide support exclusively for the
19 Foundation. The complete employment relationship
20 questionnaire and offer letter to Emily Hennessy
21 are attached per your request. The password will
22 be sent by a separate e-mail message."

23 Q. Okay. So, the vice president of human resources
24 for the Authority tells you in an e-mail that Ms. King was
25 hired to provide support exclusively for the Foundation,

1 is that important information to you?

2 A. Absolutely, that confirmed all of what I was
3 trying to prove: the relationships between those employees
4 and the -- of the Foundation and the Authority.

5 Q. So now let's turn to the next Tab, 16. And is
6 this the employment relationship questionnaire that was
7 attached to the e-mail that we just reviewed?

8 A. Yes.

9 Q. Okay. And now, this is in regards to Emily
10 Hennessy, correct?

11 A. Right.

12 Q. And was Ms. Hennessy one of these Foundation
13 employees or Authority employees?

14 A. On the employee roster it showed Foundation, and
15 it was confirmed to me that it was a Foundation employee.

16 Q. Okay. Now in response to question number 14, the
17 question is,

18 "Is his or her work directed, supervised or
19 Reviewed by anyone?"

20 And the response appears to be,

21 "The Foundation's Executive Director,
22 Kathleen King."

23 Is that important information to you?

24 A. Absolutely.

25 Q. And why is that?

1 A. I was trying to establish the link. You know,
2 between the staff and whom they report to. By establishing
3 the link to the executive director, that the chain of
4 command -- that those employees are not reporting for
5 example, to the Foundation executive director or to the
6 finance director of the Authority. So by telling me that
7 yes, this staff -- this employee, Hennessy, is reporting
8 to the executive director, I establish the chain of
9 command for the Foundation to confirm my --

10 Q. Okay. And according to the org chart that you
11 reviewed for the Foundation, that ends with the
12 Foundation's Board of Directors, correct?

13 A. Exactly.

14 Q. Does not go into the Authority?

15 A. That's it. There's no link.

16 Q. And then the response to question number 13,

17 "Does your agency --

18 Which means the Authority, correct?

19 A. Yes.

20 Q. "Does your agency have the right to control

21 How the individual does his/her work?"

22 And the response was "No", correct?

23 A. Correct.

24 Q. And does that have any importance to you?

25 A. Absolutely.

1 Q. And why?

2 A. Because the control is the major fact. If the
3 Authority is saying we don't have the control of means and
4 whys of the daily work or performing the work, then that
5 ends right there to me that this employee is not under the
6 control of Authority.

7 Q. So the Authority is representing to you with
8 respect to Ms. Hennessy that the Authority has no right to
9 control how she does her work. Ms. Hennessy reports to
10 Ms. King, does that also indicate to you that the
11 Authority does not have the ability to control Ms. King's
12 work?

13 A. Not that obvious. But based on the org chart,
14 based on all what I have read -- and I did not request an
15 employer employee relationship questionnaire for
16 Kathleen -- it doesn't answer that question directly. But
17 I established the chain of command based on a separate
18 entity. Based on a separate entity I didn't want to go
19 further because my conclusion at that time -- whom I'm
20 going to go to to answer that question about an executive
21 director that the Board has the authority of.

22 Q. Which Board?

23 A. The Foundation Board at that time. My conclusion
24 was, at that time, that the Foundation Board had authority
25 over the executive director. I didn't think there was

1 anyone in the organization -- if I -- unless I approached
2 the Foundation Board to go to answer the questions on the
3 control, because my conclusion was that person is under
4 the control of the Board.

5 Q. Got ya, that makes since. okay, can I have you
6 turn to Exhibit 14 now. And this appears to be an e-mail
7 thread between Ronald Cohn, who's reported on this e-mail
8 to be the chairperson of the Board of the Foundation, and
9 Barbara Elsea, who I believe is human resources at the
10 Authority, correct?

11 A. From the e-mail I can determine this, but I
12 haven't had in touch with her, so I cannot confirm. But
13 from the e-mail it says that SCFHP, and as we saw on the
14 agreement, this is their e-mail. But I haven't had any
15 contact with this person.

16 Q. Okay.

17 A. So I can't confirm that.

18 Q. Have you seen this document before?

19 A. Yes.

20 Q. Was this document produced as part of your audit
21 produced by the Authority?

22 A. I really don't remember.

23 Q. Okay. Do you remember if you used this e-mail,
24 the information contained in it, in reaching your
25 determinations?

1 A. I don't.

2 Q. Okay. In reviewing the document now and the
3 information contained in it, do you believe it supports
4 your finding number two?

5 MR. PLATTEN: Objection, relevance. After the fact
6 it calls for speculation.

7 ADMINISTRATIVE LAW JUDGE ANDERSON: Overruled.

8 THE WITNESS: It clearly emphasizes what I was
9 looking at and confirms my finding that Emily is -- or the
10 Board is directing the Authority to implement a pay raise
11 or a compensation for additional duties; which I probably
12 mentioned before that they have taken instructions from
13 the Foundation, and they cannot act solely on their own.

14 BY MR. PHILLIPS:

15 Q. Okay, so this demonstrates to you that the actual
16 Authority for a pay raise of a Foundation employee, is
17 coming from the Foundation Board?

18 MR. PLATTEN: Objection, leading.

19 ADMINISTRATIVE LAW JUDGE ANDERSON: Well,
20 overruled. Please try not to lead, Mr. Phillips.

21 MR. PHILLIPS: Okay.

22 BY MR. PHILLIPS:

23 Q. And does it matter to you -- I guess -- Is it
24 significant who executes the increase in pay, which
25 party? Meaning the Foundation or the Authority.

1 A. Well, knowing the specifics that the Foundation
2 does not have an HR, they have to authorize. And it's
3 clear it's an authority for the HR of the Authority to go
4 ahead and change the pay scale for that particular
5 employee. So, their just acting based on orders. The
6 Authority is acting based on instructions from the
7 Foundation Board, which emphasize that the control was
8 exercised by the Foundation not Authority.

9 Q. Was there any other information that you used or
10 relied on in reaching your finding number two?

11 A. I think I covered most of what I recall.

12 MR. PHILLIPS: Okay, thank you. I have no further
13 questions.

14 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.

15 MR. PLATTEN: Can we have a few moments, Your
16 Honor?

17 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. We can
18 take our morning break a little early. And let's break
19 till 10:35.

20 MR. PHILLIPS: Okay, thank You.

21 (A break was taken from 10:17 a.m. to 10:37 a.m.)

22 ADMINISTRATIVE LAW JUDGE ANDERSON: We're back on
23 the record. Mr. Alzanoon, come back up please. Okay,
24 Mr. Platten.

25

1 MR. PLATTEN: Thank you.

2 CROSS EXAMINATION

3 BY MR. PLATTEN:

4 Q. I want to make sure, sir, that I pronounce your
5 name correctly and forgive me, but it's important that I
6 give you that respect. I understand the pronunciation of
7 your last name is Alzanoon?

8 A. Yes.

9 Q. Very good. Am I correct?

10 A. You got it right.

11 Q. Again, you might want to speak up a little bit --

12 A. Yes.

13 Q. -- so that the court reporter can take down your
14 answers. You described for us how you went through the
15 audit of the Authority that is an issue in this case. And
16 you talked about the fact that you had certain guidelines,
17 do you have a copy of those guidelines with you?

18 A. I did not bring one with me.

19 Q. Do those guidelines include the determination set
20 forth in the supreme court case known as the "Cargill"
21 case with respect to the common employer of joint employer
22 test?

23 A. They do include a controlled -- and in case you
24 find an independent contractor and you try to prove that
25 that really is -- really an independent contractor or an

1 employee, so we apply that.

2 Q. This case doesn't present any issues about a
3 independent contractor though.

4 A. No.

5 Q. This is a question as to whether or not there's
6 any joint employment relationship. That is to say whether
7 or not the Plan or Authority and the Foundation are one in
8 the same with respect to control of employee terms of
9 conditions of employment, correct?

10 A. Yes, to some extent.

11 Q. All right. So -- And you didn't apply any of the
12 guidelines with respect to the agency test outlined,
13 "Cargill," with respect to common employer in this
14 situation?

15 A. Some of the Foundation employees, not to
16 Kathleen. Yes, I did apply the common law test.

17 Q. And in applying that test, can you tell me which
18 of the employees that you identified as Foundation
19 employees you spoke with?

20 A. If I spoke to any -- if you can rephrase -- did I
21 speak to employees themselves?

22 Q. Yes.

23 A. We don't really speak to employees themselves.
24 We have a point of contact. Usually it's either the
25 finance director or the HR director. We hope that we talk

1 to higher operate there.

2 Q. So you never spoke to Ms. King about facts that
3 she knew with respect to the Cargill test that's applied
4 to a joint --

5 A. That's not our standard procedure to speak to
6 employees.

7 Q. You never spoke to Emily Hennessy?

8 A. Again, the same answer. It's not our standard
9 procedure.

10 Q. So you didn't speak to anybody who was identified
11 to you as an employee of the Foundation with respect to
12 the Cargill test about common or joint employer?

13 A. I did not speak to employees.

14 Q. The basis of your review was essentially the
15 documents that you look at?

16 A. And the testimony by the staff of the Authority,
17 and my own assessment, and the due diligence that I took
18 to apply the membership test.

19 Q. So let's take a look at that, Agency Exhibit 16,
20 which you talked about, which was the employment
21 relationship questionnaire that you referred to the
22 Authority or the Plan, sometimes interchangeable referred
23 to as, with respect to Ms. Hennessy. You have that
24 document in front of you, sir?

25 A. Yes.

1 Q. And the question in this document that you
2 prepared, as I understand, on the second page -- I'm
3 sorry, but the way it's put together it's hard for me. I
4 think it's number nine, but I'm not certain. The question
5 is,

6 "Can the agency terminate the relationship at
7 any time?"

8 You see that question? The answer by the Authority
9 individual, Sharon Valdez, who's the HR representative for
10 the Authority was, "yes," correct?

11 A. Yes.

12 Q. That means that there was some sort of
13 relationship between the Authority and Ms. Hennessy?

14 A. Not necessarily.

15 Q. Oh I see. So, you followed up with Ms. Valdez to
16 try to explain what the answer was that she gave to this
17 question?

18 A. The determination was -- see this is not a one
19 question questionnaire. This is prepared as a multi
20 question and you -- based on the determination not one
21 factor can determine that.

22 Q. I understand sir.

23 A. We take the whole thing as a whole.

24 Q. I understand. My question is did up follow up
25 with Ms. Valdez with respect to her answer to question

1 number nine, which states that Ms. Hennessy was
2 effectively an employee?

3 A. Yes. I then called her on the phone, and it seems
4 from your responses through the independent -- the
5 questionnaire, that there seems to be no relationship, no
6 employee employer relationship with this individual and
7 the others that work for the Foundation. And that's going
8 to be listed in our draft report and you have an
9 opportunity to respond to the draft report.

10 Q. So that's what you told Ms. Valdez?

11 A. Yes.

12 Q. She didn't change her answer on that
13 conversation?

14 A. No.

15 Q. Okay, that is similar -- if you turn to the next
16 page on Agency Exhibit 16, question 25.

17 "Q. That you draft was in your opinion, is
18 the individual an employee of the agency, meaning again,
19 the Authority?"

20 And Ms. Valdez again answered "yes," and she never
21 changed that answer?

22 A. No.

23 Q. So it was your determination separate and apart
24 from which -- what Ms. Valdez provided to you that the
25 employees of the Foundation were not subject to the joint

1 employer rule under "Cargill"?

2 A. I do see that there are some contradicting
3 answers on the whole thing. And I think it's obvious for
4 all that there is some contradicting. The auditor's
5 assessment is to assess the whole situation in accordance
6 with other evidence that was provided. So that to me,
7 those kind of answers, when it contradicts with another
8 question, it's at the end I have my own determination that
9 I take.

10 Q. And your determination, just so we're clear, did
11 not include speaking with any of the affected employees
12 who you identified strictly as Foundation employees and
13 not joint employees?

14 A. Again, this is not our standard procedure to
15 speak to any of the employees; unless, the agency that
16 we're under audit says I would like to you meet with the
17 fire chief or I'm to meet -- but otherwise the subject --
18 our contact is with the person that was designated to be
19 spoken with.

20 Q. So your answer to my question is yes, you did not
21 speak to any?

22 A. I did not. Because it's not standard procedure.

23 Q. All right. Now you indicated or stated in
24 response to a question with regard to Agency Exhibit 3,
25 which was the "draft report." You were essentially the

1 author of this report, is that right sir?

2 A. Yes, I conducted the audits. I prepared the
3 reports.

4 Q. And your name is not listed on the document, is
5 that correct?

6 A. It should be.

7 MR. PHILLIPS: I'm sorry. We're looking at the
8 final or the draft?

9 MR. PLATTEN: Agency 3, draft.

10 THE WITNESS: It should be where the chief signed
11 it. My name should be there. Yep, page number seven on the
12 draft.

13 BY MR. PLATTEN:

14 Q. Yeah, that indicates that your CC or part of
15 staff. That doesn't indicate that you drafted the report,
16 correct?

17 A. Anyone that got involved reviewing, preparing --
18 would be listed on the staff that worked on this report.

19 Q. I understand, but it does not indicate that you
20 drafted the document, correct?

21 A. I prepared the findings.

22 Q. I understand sir, but this document does not
23 indicate that you in fact are the person who prepared the
24 report?

25 A. I really don't understand your question. But this

1 report here is prepared by me, reviewed through multi
2 level of review by management and everyone that puts
3 anything -- any changes in it after consulting with me
4 would put their name. So the chain is, as you see, I
5 prepared it, Adeeb Alzanoon, my peer review was Jose
6 Martinez, even though it doesn't say that. But you can see
7 that every report -- and it's online, that my manager at
8 that time -- Alan Feblowitz, Michael Dutil is the senior,
9 Cheryl is the chief -- assistant chief, I'm sorry. And
10 then Margaret is the chief of the decision.

11 Q. Let me put it this way sir. Did Margaret
12 Junker -- and it's spelled J-U-N-K-E-R --

13 A. Junker, yes.

14 Q. -- who's name is set forth as the signatory the
15 draft, did she speak to any of the affected employees of
16 the Foundation concerning the joint employer test?

17 MR. PHILLIPS: Calls for speculation.

18 MR. PLATTEN: I'm just asking if you know.

19 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay,
20 overruled.

21 WITNESS: Can you repeat the question.

22 BY MR. PLATTEN:

23 Q. Yes, sir. Did Ms. Junker speak to any affected
24 employees of the Foundation concerning the application of
25 the joint employer test called for under "Cargill"?

1 A. It could, but it doesn't come to me directly.

2 She would speak to the senior manager who presented the
3 report to her.

4 Q. My question, sir, is did she speak to any of the
5 employees? Let's take the particular, did she speak to
6 Ms. King?

7 A. Not a standard procedure.

8 Q. Did she speak to Ms. Hennessy?

9 A. No.

10 Q. Do you know if she spoke to any of the Foundation
11 employees that were affected by this determination?

12 A. No. Not standard procedure.

13 Q. Did Ms. Cheryl Dietz, D-I-E-T-Z, speak to any of
14 the employees?

15 A. No.

16 Q. Did Mr. Dutil? D-U-T-I-L.

17 A. No.

18 Q. Did Mr. Feblowitz? F-E-B-L-O-W-I-T-Z.

19 A. No.

20 Q. Did Mr. Martinez?

21 A. No.

22 Q. So no one to your knowledge at CalPERS has ever
23 spoken to the employees affected by this report with
24 respect the application of the joint employer test under
25 "Cargill"?

1 A. No.

2 Q. Now you walked us through what you reviewed or
3 your conclusions based on your review of Agency Exhibit
4 No. 4. That's the June 13th, 2013 letter to Ms. Junker by
5 David Cameron, you see that sir?

6 A. Yes.

7 Q. Did you speak to Mr. Cameron before he sent this
8 letter?

9 A. I don't remember if we had a final conference
10 call from CalPERS calling the Authority to inform them of
11 the final findings. Usually that's what we do if there's
12 any changes or any development, especially if you find
13 something and you come back after the audit. I cannot say
14 yes, definite, but I'm very positive if we go back to the
15 notes, which is back in 2012, there would be a
16 documentation of a meeting --

17 Q. I'm sorry Mr -- I didn't mean to cut you off sir.

18 A. No, no.

19 Q. Mr. Cameron is listed as the chief financial
20 officer for the Authority. Do you know, in that position,
21 does he have any job responsibilities over the
22 determination of terms of conditions of employment?

23 MR. PHILLIPS: Calls for speculation.

24 MR. PLATTEN: I'm asking if he knows.

25 ADMINISTRATIVE LAW JUDGE: Overruled.

1 WITNESS: Responsible?

2 BY MR. PLATTEN:

3 Q. You don't know one way or the other?

4 A. In that position, from my own experience,
5 somebody in that position, yes.

6 Q. But you don't know for a fact?

7 A. Don't know for a fact.

8 Q. So you have no idea whether or not Mr. Cameron
9 had any knowledge as to whether the Authority set terms
10 and conditions of employment for Foundation employees or
11 not?

12 A. He's in charge of Valdez, and if she dictates
13 certain things she refers to her boss.

14 Q. How do you know he's in charge of Sharon Valdez?

15 A. He's her CEO. He's her boss.

16 Q. How do you know that? Have you seen a job
17 description that says Ms. Valdez must report to
18 Mr. Cameron concerning the creation or regulation of
19 employee terms and conditions of employment?

20 A. Based on the employee roster -- I mean the org
21 chart, it shows that she reports to Cameron.

22 Q. Does the org chart lay out job duties and
23 descriptions?

24 A. No.

25 Q. Does it lay out job responsibilities?

1 A. No.

2 Q. It merely shows what the individuals are in
3 various positions within your organization by title,
4 correct?

5 A. Right.

6 Q. All right. Now, Mr. Cameron, on page one of his
7 document, appears to say that at least prior to 2009, the
8 Authority in fact supervised, directed and evaluated
9 Foundation employees, correct?

10 A. Yes.

11 Q. Okay, so you disagree with that -- that
12 statement?

13 A. I do.

14 Q. Okay. He's obviously contradicting your
15 conclusion then, correct?

16 A. (Nods head.)

17 Q. I'm sorry, you'll have to answer --

18 A. Yes.

19 Q. And then he goes on to say,

20 "however, beginning in 2009 that ended."

21 Did you ask Mr. Cameron the basis for that statement?

22 A. No.

23 Q. Do you know what the basis of that statement is?

24 A. No.

25 Q. And it also says that in 2009 a decision was made

1 by the Board of Directors the Foundation has changed the
2 reporting structure. Did you ask for any evidence as to
3 what he referred to there?

4 A. It was a response to the draft report. And it
5 does not really -- that her answer did not really change
6 the conclusion based on that answer.

7 Q. Are you familiar whether or not Mr. Cameron had
8 any oversight of reporting responsibilities with regards
9 to the HR operations at the --

10 A. As a CEO he should, but I don't know certainly.

11 Q. Is he in fact a CEO, chief executive officer or
12 the chief financial officer?

13 A. I have to look at my notes.

14 Q. Well let's see --

15 A. He was not the subject of the audit.

16 Q. Well let's take a look at the signature on page
17 two of Agency Exhibit 4. The signature line says he's the
18 chief financial officer.

19 A. Okay.

20 Q. That is different than the chief executive
21 officer?

22 A. Yes.

23 Q. Now you talked a little bit about Agency Exhibit
24 5, which was the final audit report. Again, this document
25 does not contain your signature page, is that correct?

1 A. It should -- not a signature, but it should say
2 the same thing on page seven.

3 Q. So again, there's nothing on the document that
4 identifies this as having been your product, your work
5 product?

6 A. I wouldn't be here if it wasn't mine. I am the
7 one who did the audit.

8 Q. My question, sir, is there's nothing on the
9 document that identifies you as being the producer of the
10 draft or the final report?

11 A. I don't know how to answer that question to tell
12 you the truth. This is my product. I have done it, and it
13 was reviewed.

14 Q. You did nothing to review any offers of
15 employment made by the Authority to hire individuals into
16 the Foundation?

17 A. I was provided similar documents, but it is not
18 part of my audit to ask him how do you solicit employment.
19 My audit is very focused on who's a member, who's not,
20 what's the pay rate, is it done within the guidelines. So
21 that's a little bit outreaching, and we don't go that way
22 to ask.

23 Q. Did you review the offer of employment to
24 Ms. King for her employment with the Foundation and with
25 the Authority?

1 A. I have a document that I looked at. It shows an
2 Authority to hire King, yes.

3 Q. That wasn't my question. My question was, did you
4 look at the offer letter that resulted in her employment?

5 A. If it's -- you're referring to the one in this
6 exhibit, yes. If there's something else, I don't know.
7 Thirteen I believe. Thirteen.

8 Q. Thirteen. And that is a document on Health Plan
9 or Authority letterhead, correct?

10 A. It's the Authority and they use the "Plan" as you
11 indicated in the beginning.

12 Q. And the Authority was offering employment to
13 Ms. King as an employee of the Foundation?

14 A. Yes.

15 Q. And that was signed by Barbara Elsea, E-L-S-E-A,
16 the HR director at the time for the Authority or the Plan,
17 correct?

18 A. Yes.

19 Q. Not by the Foundation?

20 A. They are acting on behalf -- no, not by the
21 Foundation, but they are contracted to do all the hiring.

22 Q. Well, that's an interesting question sir. Let's
23 take a look at administrative agreement -- services
24 agreement that you talked about, which is Agency 11. Can
25 you tell me where in that agreement it expressly says that

1 Authority is contracted to determine who to hire for the
2 Foundation?

3 A. Okay. If you go to Schedule A, "Administrative
4 Services," the first paragraph, number one, well the first
5 sentence says,

6 "During the term of the agreements the
7 Authority shall provide the following
8 administrative, financial and technical services
9 related supplies and office space."

10 Number one says,

11 "Administrative and management services, as
12 necessary, including but not limited to advise
13 and assistance in the management of the
14 day-to-day operations of the Foundation,
15 strategic planning, human resource services."

16 Q. The question, sir, was where in this document
17 does it say, expressly, that the Authority or the Plan
18 would be hiring employees for the Foundation?

19 A. It doesn't say that.

20 Q. It doesn't.

21 A. That's the human rights services that they
22 provide?

23 Q. It doesn't similarly say that the Authority would
24 determine the pay rates for employees designated as
25 Foundation employees?

1 A. It doesn't.

2 Q. It doesn't say that the Authority expressly would
3 regulate the pay increases for those employees?

4 A. The reimbursement -- if you want to ask me yes or
5 no, no. But it's the service agreement that says.

6 Q. Service agreement doesn't expressly say that the
7 Authority would approve employee evaluations of Foundation
8 employees, does it?

9 A. They didn't go to that detail, no.

10 Q. Doesn't say that the Authority would provide all
11 employee benefits for Foundation employees, does it?

12 A. I have to read it.

13 Q. Take a look.

14 A. The only specifics that I can see is in item
15 number eight. Where it talks about separate entity. And in
16 section -- in the recitals-- I'm sorry, the first page in
17 the recital, the paragraph before last when it says,

18 "In exchange for administrative services
19 provided in accordance with the terms of the
20 agreement, the Foundation would pay the Authority
21 at the rates and in accordance with the terms set
22 forth in Schedule B."

23 Q. So your answer would be, no, that it doesn't
24 expressly provide that the Authority will determine the
25 benefits; including pension, health coverage, life,

1 insurance, dental insurance, long-term disability for
2 Foundation employees, that's not expressed here?

3 A. It's in Schedule B, number one. It says,
4 "For administrative, management, financial
5 and compliance services, the Authority calls for
6 staff salaries, plus associating general and
7 administrative expenses incurred including, but
8 not limited to, the Foundation pro rata share of
9 any insurance policies providing coverage to the
10 Foundation."

11 That is where everything that is paid by the Authority
12 is being reimbursed by the Foundation. Meaning that it's
13 service for hire

14 Q. But it doesn't expressly say that Authority will
15 set what those benefits are?

16 A. Not in the agreement.

17 Q. Nor does it expressly state that the employee or
18 the controlled employee discipline and termination matters
19 for Foundation employees?

20 A. We didn't look -- no, I didn't look further to
21 investigate that, but that's not part of the audit.

22 Q. Nor does it state that the Authority expressly
23 would conduct exit interviews for Foundation employees?

24 A. Correct.

25 Q. Nor does it state that the Authority would

1 require Foundation employees to sign off on the
2 Authority's policies and procedures as governing those
3 employees?

4 A. No.

5 Q. Nor does it state that the Authority, in several
6 instances, would control the transfer of employees between
7 the two organizations?

8 A. No.

9 Q. Nor does it expressly say that the Authority
10 would send out e-mails to employees -- both the Foundation
11 and the Authority, which those employees would be required
12 to follow?

13 A. No.

14 Q. Nor does it expressly say that the Authority
15 conduct all employee meetings inclusive of Foundation
16 employees with respect to terms and conditions of
17 employment?

18 A. No.

19 Q. Nor does it expressly say that the Authority
20 would determine hours of operation of the offices for
21 Foundation employees?

22 A. It's a joint office. So, no.

23 Q. Are you aware that the Authority and the
24 Foundation share the same e-mail address?

25 A. It's irrelevant to what I have --

1 Q. Are you aware of that?

2 A. I don't know. It's not something I ask for.

3 Q. Looking at this -- the Agency Exhibit 11, and the
4 signatures that's on page four of the document. It shows
5 signatory Leona, L-E-O-N-A. Butler, B-U-T-L-E-R. And
6 Ron -- and I'm not going to attempt to pronounce the last
7 name, which appears to be Polish in origin,
8 W-O-J-T-A-S-Z-E-K. Ms. Butler is listed as "president." Is
9 that president of the Foundation or president of the
10 Health Authority?

11 A. I don't know but I can --

12 Q. Are you aware at the time that Ms. Butler signed
13 this document she was the chief executive officer of the
14 Health Authority?

15 A. No.

16 Q. Are you aware at the time that the gentleman
17 signed on behalf of the Health Authority that he was the
18 treasurer of the Foundation?

19 A. No?

20 Q. Are you aware at the same time he was also the
21 chief financial officer of the Authority?

22 A. No.

23 Q. Are you aware at the time that Ms. Butler was
24 also the president of the Foundation?

25 A. No.

1 Q. So you're not aware that at the time both of
2 these individuals were both officers of the Foundation and
3 employees of the Authority?

4 A. No. As you can see from the date as well it's
5 2002. So it's beyond the scope of the audit.

6 Q. Did you speak to Ms. Butler as to her
7 understanding as to what this document provided?

8 A. No.

9 Q. Did you speak to the other gentleman who's
10 signatory?

11 A. No.

12 Q. Did you speak to any of the Foundation employees
13 for example, Ms. King, about the nature of the
14 relationship called for by this document between the
15 Authority and the Foundation?

16 A. No. It's not a standard procedure.

17 Q. Are you-- you stated I believe, sir, with respect
18 to agency Exhibit 15, that was your e-mail "snap shot." I
19 believe you referred to it as -- and if I'm using the
20 wrong term, please correct me -- that this was a snap shot
21 of an e-mail received from Sharon Valdez, Vice President
22 of human resources for the Authority, am I correct?

23 A. Yes.

24 Q. And it speaks to the employees that were listed
25 there. Who hired the employees that were listed there?

1 The Authority or the Foundation?

2 A. Which employees?

3 Q. The employees listed in the e-mail. The Health
4 Authority employees, Martha Avelar, A-V-E-L-A-R. Jane
5 Tyre, T-Y-R-E. Robin Toyle, T-O-Y-L-E.

6 A. It wasn't to talk of my question to her.

7 Q. So you're not aware that they are all hired by
8 the Authority?

9 A. Again, the Authority -- I concluded the Authority
10 is the only one that has a HR, and they are doing that for
11 all. They are doing the hiring, but there's a difference
12 between their employees and other employees.

13 Q. Despite the fact that Authority is not expressed
14 in the Administrative Services Agreement, correct?

15 A. It's not specific.

16 Q. You also talked about Agency Exhibit 14, which
17 was an e-mail from a Ronald Cohn, C-O-H-N; to Ms. Elsea.
18 Do you have that in front of you sir?

19 A. Yes.

20 Q. In the e-mail subject line it states that this
21 was a reminder that,

22 "I need written authorization from you"

23 From Cohn to Elsea,

24 "In order to set Ms. Hennessy's
25 compensation."

1 Now, your conclusion was this was merely mysterial, is
2 that correct? That is all that had to be done -- was a
3 document had to be signed by Ms. Elsea?

4 A. To -- in my experience, to impact or to inflict
5 any change in somebody's pay rate, whoever is in charge of
6 the finance department or the payroll, has to get some
7 kind of authorization as a documentation why a pay rate.
8 got changed.

9 Q. So that's conclusion based on your experience,
10 but you didn't speak to Mr. Cohn?

11 A. It's not a standard procedure.

12 Q. Mr. Cohn is still the president of the Foundation
13 Board of the state, correct?

14 A. I don't know.

15 Q. So you don't know if Mr. Cohn used the term
16 "written authorization" -- whether he meant administerial
17 duty or permission?

18 A. If the Board -- like Mr. Cohn belongs to the
19 Board of the Foundation and he's given authorization to
20 increase -- that means he has the control over that.

21 Q. You don't know what Mr. Cohn meant by using the
22 term "authorization?" Whether he meant Ms. Elsea was to
23 complete her administerial duty or Ms. Elsea had to agree
24 for that was done as a matter of authority?

25 A. It's obvious that Elsea is asking for his

1 permission. His permission -- can I make the change based
2 on the extra duties. So basically they are just complying
3 to be covered and cover the track and why we changed --
4 you know, give me the permission and I'll change it. This
5 is how I read it.

6 Q. That's how you read it?

7 A. Yes.

8 Q. But you don't know if that's what Mr. Cohn meant?

9 A. Unfortunately, we don't meet with everyone to see
10 -- to check on their intent. But based on the structure of
11 the two agencies and the separate entity and the service
12 agreement, they take orders from the Foundation -- what to
13 do with their own orders.

14 Q. Let's take a look at Agency No. 9. We talked a
15 little bit about that. That seemed to have an auditor's
16 report. By the way, you used the term "of art," I want to
17 make sure we identify that for the record. CAFR, which I
18 believe is C-A-F-R, that stands for Comprehensive Annual
19 Financial Report or Review?

20 A. Yes.

21 Q. And that is the similar thing that appears here
22 in Agency 9, the auditor's report. That would be
23 considered a CAFR?

24 A. In this particular -- might not be a CAFR.
25 Usually, you see a CAFR like in a city or a county because

1 they have a lot of multiple entities. This one I think
2 it's just a CPA report or financial report.

3 Q. As far as you are aware, does the Authority or
4 the Foundation produce anything that would be in your
5 opinion a CAFR?

6 A. I'm not sure.

7 Q. Okay. And you -- Can I direct your attention to
8 Note No. 5 on page 15 of this document, Agency No. 9. And
9 Note No. 5 provides, among other things, that it was the
10 Authority that formed the Foundation, that's the very
11 first sentence, correct?

12 A. Yes.

13 Q. Back in 2000?

14 A. Yes.

15 Q. And the Bylaws direct what percentage of the
16 Authority's members may serve on the Foundation's Board,
17 correct?

18 A. Yes.

19 Q. Oh, and I just wanted to be clear, Mr. Alzanoon,
20 you're not a certified public accountant, is that correct?

21 A. No, I'm not.

22 MR. PLATTEN: May I have just a moment, Your
23 Honor. Nothing further.

24 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay, any
25 redirect?

1 MR. PHILLIPS: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. PHILLIPS:

4 Q. Mr. Alzanoon, since the Foundation is not a
5 contracting agency with CalPERS, did you as an auditor
6 have authority to demand information from them directly or
7 speak to their employees directly?

8 A. Absolutely not.

9 Q. Okay. So, your communications regarding the
10 Foundation had to have gone through the Authority?

11 A. Yes.

12 Q. Okay.

13 A. Because they are the ones under contract with
14 CalPERS, it's my only outreach and authority within our
15 jurisdiction to talk to only agencies that contacted
16 CalPERS.

17 Q. Okay, so when Mr. Platten asked you the question
18 about did you talk to Ms. Hennessy yourself, you couldn't
19 have, is that correct?

20 A. I wouldn't have thought about it, and it would be
21 probably an outreaching and it violating some of our own
22 policy that our contact is the finance director and not
23 the employees of the agency. So I wouldn't have done that
24 anyway.

25 Q. Okay. And then can I have you turn to the final

1 audit, Tab 5 in the signature page that we were looking at
2 earlier, which I believe is page seven. Now down in the
3 bottom left corner, where your name appears with a number
4 of other CalPERS staff.

5 A. Yes.

6 Q. That's not a CC line, is it?

7 A. No.

8 Q. No, that -- is that indicating the staff that
9 worked on and participated in making this document?

10 A. Yes.

11 Q. Okay. So your name being on there designates that
12 you in fact worked on this document?

13 A. Yes.

14 Q. Okay. And I believe you testified to this before,
15 but I wasn't quite sure. The chain of individuals --
16 starting at the bottom going up under that list. Does that
17 essentially the -- the review chain?

18 A. Yes.

19 Q. Starting from you, who actually conducted the
20 audit, up to the chain of command?

21 A. Yes.

22 Q. And is that the same for the draft as well? How
23 that page works.

24 A. Yes, but with a correction. The chain of
25 command -- there could be someone above my name. There

1 could be a peer.

2 Q. Like Mr. Martinez?

3 A. Yeah, Jose is not my boss, but he's a peer;
4 that's the first review. And then Alan is my manager,
5 second eyes, basically. Peer review.

6 Q. Excellent, thank you. And lastly, I want to talk
7 to you about the service agreement one more time. So, Tab
8 11 please. Now Mr. Platten went through a list of things
9 that -- they were expressly contained in this
10 document. Now, he asked you if the authority to perform
11 performance reviews is contained in this document, and you
12 said "no." In reading the language I believe you cited
13 under Schedule A1, that first paragraph. Do you believe
14 that more general language contains that authority?

15 A. As I indicated, yes. That would have been
16 included, but --

17 Q. So administrative and management services, as
18 necessary, would include the right to perform exit
19 interviews?

20 A. Yes.

21 Q. What about the right to send out massive e-mails
22 to both Authority and Foundation employees?

23 A. That's included too. They share the same office.

24 Q. Okay. How about hours of operation?

25 A. Yes, we have the keys and door.

1 Q. Was there anything that Mr. Platten asked you, if
2 it was expressly in this document, that you wouldn't find
3 authority for under these more generally provisions?

4 A. I thought that number one is inclusive of all
5 needed operation to run or to administer and manage
6 employees. So, I found everything that was mentioned is
7 included in that one, and that's part of my conclusion.

8 Q. Okay. And you've seen these type of agreements
9 before, right?

10 A. Yes.

11 Q. Fairly common?

12 A. Yes.

13 Q. You reviewed a lot of them?

14 A. Yes.

15 MR. PHILLIPS: Ok. Thank you. I have nothing
16 further.

17 RE CROSS EXAMINATION

18 BY MR. PLATTEN:

19 Q. Two questions, Mr. Alzanoon. So it is your
20 opinion that the Authority had the empowerment to set the
21 terms and conditions of Foundation employees under the
22 Administrative Services Agreement?

23 A. They don't have an authority. They are
24 administering based on instruction from the Foundation,
25 not --

1 Q. Who did you determine actually set a compensation
2 for Foundation employees?

3 A. The Board of the Foundation.

4 Q. And did you look at documents in which the Board
5 passed resolution setting compensation?

6 A. Again, the Foundation was not the one under
7 audit. It would be voluntary for the Authority to provide
8 me with those documents, but the way I followed my
9 auditorial by establishing a separate entity, that was a
10 key factor. So I did not pursue going further. I could
11 have asked for minutes.

12 Q. So you have not reviewed any documents, let alone
13 talk to any Foundation Board members or employees with
14 respect to all the issues we've talked about: setting
15 compensation, transferring employees, conducting
16 performance evaluations, determining who's hired,
17 determining who's fired, conducting exit interviews. And
18 none of that was reviewed by you with respect to
19 Foundation minutes, board minutes or in discussions with
20 Foundation employees?

21 A. It's outside of the scope of my audit. My contact
22 was the Authority, and they provided me with enough
23 evidence to show that they are doing that for as an
24 administrative service and getting reimbursed based on
25 Note 5 in the Independent Auditor Report, which showed a

1 receivable of \$475,000 owed from the Foundation to the
2 Authority for administrative and --

3 Q. That's your testimony that that debt was for
4 administrative services?

5 A. It shows on the Independent Auditor Report.

6 Q. That talks about a receivable due?

7 A. Yes.

8 Q. It doesn't designated it for administrative
9 services, does it?

10 A. If you read the last sentence -- let me get to
11 it, hold on. Unless I misread it, but -- here, let me see.

12 Q. It shows -- If I may read it out to you while
13 you're looking at it?

14 A. Yes, I found it now.

15 Q. "The Health Authority accrued a receivable
16 due from the Foundation of \$470,798 and \$26,762
17 at June 30, 2010 and 2009 respectively for Health
18 Kids premiums and certain administrative cost
19 incurred."

20 You don't know what if any of that 470,798 or the
21 26,762 was administrative costs under the services
22 agreement?

23 A. Not specific, no.

24 Q. Thank you. Last question, Mr. Alzanoon. Is it
25 your testimony that CalPERS prohibits you, in conducting

1 your responsibilities as an auditor, from talking to
2 affective employees, such as the Foundation employees?

3 A. I did not say prohibit. Like I said, if the
4 Authority opted to include any of the employees in the
5 exits or at any time, we are more than happy to provide
6 information, but there's no prohibition. But I am
7 responsible for the agency under contract with CalPERS,
8 but I cannot overreach the authorities or the agency under
9 audit to request and talk to any of the employees.

10 Q. And you knew from Mr. Cameron's letter that -- at
11 least Mr. Cameron's opinion through the 2009 -- Foundation
12 employees were effectively Authority employees?

13 A. It is a -- kind of like a half-way admission.
14 Like, yes, we don't have control, but it's not from the
15 gecko, it's from this date. So, looking again at the org
16 chart and what I've seen, it did not change my opinion.
17 But this is a separate entity and autonomous all of what
18 is between the two is some kind of a relationship --
19 fundraising, in addition to service agreement to handle
20 their payroll administrative stuff.

21 Q. And just with respect, finally sir, with respect
22 to those org charts, which are Agency Exhibit No. 12.
23 Taking a look at 12, very first page. It's correct, is it
24 not sir, that the vice president of the human resources
25 for the Authority, otherwise nominated here as the Health

1 Plan, does not report to the chief financial officer,
2 Mr. Cameron, isn't that correct?

3 A. Yes.

4 Q. The VP for human resources reports instead of
5 Chief executive officer?

6 A. Absolutely.

7 MR. PLATTEN: Thank you. Nothing further.

8 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Thank
9 you Mr. Alzanoon. You can step down.

10 THE WITNESS: Thank you.

11 (Time Noted: 11:19 a.m.)

12 MR. PHILLIPS: At this time, Complainant would
13 like to call Ronald Gow to the stand.

14 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Come on
15 up. Okay, good morning.

16 THE WITNESS: Good morning.

17 ADMINISTRATIVE LAW JUDGE ANDERSON: Please raise
18 your right hand to be sworn.

19 (Time Noted: 11:20 a.m.)

20 RONALD GOW

21 Was thereupon called as a witness herein; and having been
22 sworn to tell the truth, the whole truth, and nothing but
23 the truth, testified as follows:

24 THE WITNESS: I do.

25 ADMINISTRATIVE LAW JUDGE ANDERSON: Please state

1 your name and spell it.

2 THE WITNESS: Ronald, R-O-N-A-L-D; Gow, G-O-W.

3 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. Thank
4 you.

5 DIRECT EXAMINATION

6 BY MR. PHILLIPS:

7 Q. Good morning Mr. Gow, how are you?

8 A. I think I'm okay.

9 Q. Okay, good. So you work for CalPERS, is that
10 correct?

11 A. I do.

12 Q. Okay, and what is your position?

13 A. I am a retirement program specialist 2 in the
14 membership analysis and design unit.

15 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay,
16 Mr. Gow, you need to raise your voice up.

17 THE WITNESS: I'm sorry.

18 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.
19 Retirement specialist 2?

20 THE WITNESS: In membership analysis and design
21 unit.

22 BY MR. PHILLIPS:

23 Q. Okay, membership analysis and design unit. All
24 right, can you explain for me a little bit what that
25 means?

1 A. I review a lot of different things -- results of
2 audits is one of those. I do a lot of work with
3 independent contractors. I handle safety and peace officer
4 issues. I also do national guard and military service
5 credit issues. I have a number of different roles there.

6 Q. So by "issues," what do you mean by that? Is this
7 situation like why we're here? There was an audit
8 findings, or is this some other issue?

9 A. When an audit finding involving membership comes
10 up, it's referred to my unit and then it's assigned. In
11 this case this one was assigned to me.

12 Q. And so, you review it for what purpose?

13 A. Depends on the findings. There's a lot of
14 different issues that can come to me. In this case, it was
15 people being reported from an affiliated entity.

16 Q. Okay. And so, if there has -- So help me fill in
17 the gap here. So if there's been an audit in findings
18 already done, why is it that CalPERS has you then review
19 the findings?

20 A. There's a lot of things that go on in a case that
21 may not come out of an audit. And not all of my work comes
22 from audits. I get it from a lot of different sources. So
23 basically, I go out and I try to ascertain all the
24 different facets of -- in the case of an audit. I get
25 stuff from audits -- the documents that the audit used to

1 make their finding. I may need more than that to make a
2 determination. I will go out and try to get more
3 information. And I also research the PEARL more for
4 specifically the memberships I -- because that's my area.
5 Where as audits is looking at a much broader picture.

6 Q. Okay. So you -- Would it be safe to say then that
7 you performed a legal analysis of the audit finding?

8 A. A "legal analysis," I don't think I would qualify
9 it as a legal analysis, no.

10 Q. Okay. Did you -- So, you made a determination
11 then in this matter, correct?

12 A. Right.

13 Q. Okay. And is Exhibit 6 the determination
14 letter -- Did you participate in that determination?

15 A. I did. The letter is the result of my review?

16 Q. Okay. And so, it is -- the document is signed by
17 Emily Perez DeFlores, is she your manager?

18 A. She is one above my manager.

19 Q. Okay. And did she receive your input in drafting
20 this letter?

21 A. She did.

22 Q. Now, you are a retirement program specialist 2?

23 A. Correct.

24 Q. Were you a retirement program specialist 1, prior
25 to that?

1 A. Yes I was.

2 Q. Any other positions held at CalPERS?

3 A. Well, I've been an RPS 1 or 2 for sometime, but
4 that's been through multiple units.

5 Q. Okay. So, that's more of a general
6 classification --

7 A. Yes.

8 Q. -- that you worked in many units?

9 A. Correct.

10 Q. Okay. So other than the membership -- I'm sorry,
11 was it membership analysis and design unit?

12 A. (Nods head)

13 Q. Other than that unit, what other units have you
14 worked for?

15 A. Prior to joining that unit, I was in compensation
16 review unit. And prior to that, I was in an older version
17 of the membership review unit that no longer exists today.

18 Q. How long have you been at CalPERS?

19 A. Twenty-two years.

20 Q. Okay. So you're pretty familiar with the PEARL?

21 A. For membership issues.

22 Q. Okay. So I know how things work, did you actually
23 draft this letter?

24 A. Pretty much, yes. I do my review, and as I'm
25 doing my review, I put together a summary, and then the

1 summary basically turns into a draft of this letter.

2 Q. Okay. So in the second paragraph of the letter,
3 it says that in July of 2013 there was a conference call
4 with David Cameron and Sharon Valdez. Did you participate
5 in that conference call?

6 A. I did.

7 Q. okay. Who else was on the phone from CalPERS?

8 A. I don't remember exactly at this time. I believe
9 Emily DeFlorez was one of them -- my manager, Kristen
10 Rollins, was one of them. And I don't remember who else
11 was in that.

12 Q. Okay. And is that typical that after an audit you
13 reach out to -- or not you, but CalPERS and the affected
14 agency then have a conference call?

15 A. It might be, yes. I wouldn't say "typical." It's
16 case by case.

17 Q. So in this situation, with respect to the
18 Authority, what were your specific marching orders or
19 instructions?

20 A. I had just gotten the audit report, and I was
21 reviewing that. I believe in this case it was actually the
22 Authority that requested the conference call.

23 Q. Okay.

24 A. And my interest in the call was determining the
25 status of the Foundation and the Authority; to determine

1 who was the employer.

2 Q. Okay. So with respect to finding two of the
3 audit, you wanted to get more information?

4 A. Correct.

5 Q. Okay. Can you tell me what happened on that
6 conference call in July of 2013?

7 A. I don't remember all of the call, but from my
8 part -- the parts that I was specifically looking for,
9 there was some back and forth discussion about the
10 control -- who controlled, and hiring and firing, etc.;
11 and I needed more information. I requested additional
12 information regarding the Foundation, and Authority agreed
13 to provide the Bylaws and some formation documents and
14 stuff like that.

15 Q. Okay. So, you then performed your own analysis
16 independent of Mr -- I'm sorry, Alzanoon?

17 A. Correct.

18 Q. Okay. And, what was your conclusion?

19 A. I concluded that the Foundation was a separate
20 entity from the Authority. And that the employees of the
21 Foundation were not employees of the Authority and should
22 not be reported to CalPERS.

23 Q. Okay. And so, you reached this conclusion after
24 the Authority was aware that CalPERS believed Foundation
25 employees were not Authority employees, and the Authority

1 was given the opportunity to provide you with documents to
2 support their position?

3 A. Correct.

4 Q. Were you in the room for the previous testimony,
5 is that correct?

6 A. Yes.

7 Q. Okay. Did you agree with Mr. Alzanoon's analysis
8 of the separate entities -- that the Authority and the
9 Foundation are separate entities?

10 A. Well, I reached the same conclusion.

11 Q. Okay, in reaching that conclusion, did you rely
12 on any additional evidence that was not discussed earlier
13 today?

14 A. I used the Foundation Bylaws, the Terms and
15 Agreement.

16 Q. Okay. So let's turn to those. I believe those are
17 Tab 10?

18 A. That looks familiar.

19 Q. So that document looks familiar to you?

20 A. It does.

21 Q. Okay. Now was this provided to you by somebody at
22 the Authority?

23 A. It came in after the conference call. I'm not
24 sure exactly who gave it to me.

25 Q. Okay, but it was as a result of the conference

1 call you received this document?

2 A. Correct.

3 Q. Okay. Now you mentioned that you relied
4 extensively on this document, what provisions are
5 important to you?

6 A. Sections 7 and 8 are the ones that I found most
7 interesting.

8 Q. Okay. And what do you mean by "interesting"?

9 A. As far as pertinent to my review.

10 Q. Okay. And what made them pertinent to your
11 review?

12 A. Section 7 defines the Board of Directors of the
13 Foundation and defines the powers and authorities of that
14 board.

15 Q. Okay.

16 A. And specific powers of the Board include hiring
17 the executive director and contracting out for services.

18 Q. Okay. So, are you on 7.2 where its subheading,
19 "Specific Powers"?

20 A. Yes.

21 Q. Okay. And then, Section A -- I'm sorry --
22 paragraph A under that.

23 "A point remove at the pleasure of the
24 Board."

25 Is that what you're referring to?

1 A. Correct.

2 Q. Okay. And now, why is it important that the
3 Foundation's Board have those powers in your analysis?

4 A. Well, when I'm looking to see who is the
5 employer, I want to see who has the authority to exercise
6 control over the employees to -- this tells me that the
7 Foundation Board has authority over the Foundation
8 employees.

9 Q. Okay. And so, you mentioned the word
10 "authorities." So I want to ask you a little tangent here.
11 So you're familiar with the common law employment test,
12 correct?

13 A. Correct.

14 Q. Okay. And is that -- when you refer to a
15 "authority" or "powers," is that what you're referring to,
16 your application of that test?

17 A. Partly, yes.

18 Q. Okay. Now what else in these Bylaws was important
19 for your analysis?

20 A. If I can find all my parts here. Section 8.1.

21 Q. Okay, Section 8 is "Officers" and 8.1 is
22 "Officers." What is it that's important to you in that
23 paragraph?

24 A. That it's assigning an executive director --
25 mainly used the one I was looking at. All of them are of

1 concern to me, just in the general since. I'm looking at
2 this agency to see who is an employee, but the ones that
3 were brought to my attention by the audit was the
4 executive director.

5 Q. Okay. And so, the fact that the Bylaws
6 specifically include the position of executive director
7 was important because that was --

8 A. Because it ties back to 7.2, that the Foundation
9 Board appoints the executive director and that the
10 executive director reports to the Board.

11 Q. Okay. And so chain of command then is important?

12 A. (Nods head)

13 Q. Okay, any other provisions in this document?

14 A. 8.5, which defines the powers of executive
15 director.

16 Q. Okay, and why are those powers important in your
17 analysis?

18 A. Because it shows -- again not only the chain of
19 command, but that the duties are those of the Foundation
20 under direction of the Board.

21 "Executive director shall have the necessary
22 authority and responsibility to operate the
23 corporation in all of its activities and
24 departments on a day-to-day basis."

25 Q. And then that sentence goes on subject to the

1 direction of the Board or its delegates, correct?

2 A. Correct.

3 Q. Okay.

4 A. I'm sorry, I started to omit a paragraph there.

5 Q. It's okay, I found you. All right, any other
6 provisions of this document that were important in your
7 analysis?

8 A. 7.17.

9 "The Board shall set the compensation of the
10 executive director's corporation."

11 Q. Okay. And is that again a chain of command issue
12 for you?

13 A. And it's a control issue.

14 Q. And a control issue, okay. The e-mail that was
15 discussed in prior testimony, which was at Tab 14, did
16 you -- have you seen this document before?

17 A. I believe so.

18 Q. Okay. Do you remember if this was a product of
19 the audit or of the conference call?

20 A. I believe this came from the audit.

21 Q. Okay. Does this document, in your opinion,
22 support section 7.17 of the Bylaws?

23 A. It appears to, yes.

24 Q. So in your reading of this e-mail thread, this
25 appears to be the Board approving a salary increase for a

1 Foundation employee -- the Board of the Foundation? I'm
2 sorry.

3 A. Right. It looks like actually a chain, it's not
4 one e-mail. It looks like Barbara Elsea requesting
5 authorization to change the payroll and Ronald Cohn from
6 the Board granting that authorization.

7 Q. Okay, back to the Bylaws. Is there anything --
8 any other provisions that you thought were important
9 enough to highlight now?

10 A. Actually, if I could go back to the letter, which
11 one was that again?

12 Q. Six.

13 A. Okay, rather than trying to search them down one
14 by one.

15 Q. Okay. If that's easier we can go that route.

16 MR. PLATTEN: So I'm sorry, which number are we
17 looking at now?

18 MR. PHILLIPS: We are back on the determination
19 letter, Exhibit 6.

20 MR. PLATTEN: Thank you.

21 THE WITNESS: Oh, okay. Yeah, 7.1. "General
22 Powers," I knew that was in there somewhere.

23 BY MR. PHILLIPS:

24 Q. Where are -- where is it that you are in the
25 letter?

1 A. Look back in the Bylaws, Section 7.1. And it
2 says,

3 "The Board may delegate the management of the
4 day-to-day operation of the business of the
5 corporation to a management company or to
6 any other person provided that the business and
7 affairs of the corporation shall be managed and
8 all of the powers exercised under ultimate
9 direction of the Board."

10 Q. That was Section 7.1 of the Bylaws?

11 A. Correct.

12 Q. So the -- Is it the fact that they can delegate
13 management -- day-to-day management that's important?

14 A. Right. That led to the other part of the review,
15 which was the Administrative Services Agreement.

16 Q. Okay. So, this section corroborates what was
17 contained in the services agreement?

18 A. Or alternately the services agreement
19 corroborates that the Board exercises their authority to
20 delegate.

21 Q. Okay, thank you. All right, so back to Exhibit 6,
22 your determination letter. There beginning in the fourth
23 paragraph down the page. You start to lay out government
24 code sections. Is it typical that in a determination
25 letter, Authority -- statute authority is provided to the

1 entity in which you are making a determination?

2 A. Yes.

3 Q. Now, under Section 20028 of the PEARL, an

4 "employee" is defined, correct?

5 A. Correct.

6 Q. Now, was it your determination that any of the

7 Foundation employees were employees of the Authority?

8 A. No, I concluded the opposite. They are not

9 employees of the Authority.

10 Q. Okay. Now you go on to cite code Section 20125,

11 which says the Board -- and that reference to the Board is

12 the Board of Administration Of the California Public

13 Employees' Retirement System, correct?

14 A. (Nods head)

15 Q. Okay. So,

16 "The Board shall determine who are employees

17 and is the sole judge of the conditions under

18 which persons may be admitted to and continue to

19 receive benefits under the system."

20 Now, why was it necessary to cite that code section?

21 A. Because that was specifically the issue at hand:

22 who wasn't an employee.

23 Q. Okay, and the fact that the CalPERS Board is the

24 sole judge of that?

25 A. Correct.

1 Q. But you're familiar with the "Cargill" case,
2 correct?

3 A. Yes, I didn't work that one specifically, but
4 I'm familiar with it.

5 Q. Okay, and you're familiar with the -- well the
6 Board is the sole judge. The test that's applied is the
7 common law employment test?

8 A. Correct.

9 Q. Okay. That's the next paragraph.

10 A. That sounded familiar.

11 Q. Okay, in reviewing your letter further, was there
12 any other information that you used besides the Bylaws and
13 the service agreement in order to reach your conclusion?

14 A. Well, I mean I reviewed pretty much everything
15 that had come to me from audits. I reviewed personal
16 documents and stuff, but Bylaws and the Administrative
17 Service Agreements were my primary ones. But yes, I pretty
18 much looked at everything that came from audits.

19 Q. To your recollection, was there any other
20 information that was provided to CalPERS as a result of
21 the conference call that you were involved with, besides
22 the Bylaws?

23 A. I don't remember what all was received. I
24 requested formation documents, which I believe included
25 articles of incorporation, but I don't think I used those

1 in my determination. I also looked at the Independent
2 Auditor's Report that it was referred to.

3 Q. Oh, okay. And was there anything other than Note
4 5 that has already been discussed that you found?

5 A. No, that was pretty much all in paragraph.

6 Q. Okay. And you have reviewed other agencies and
7 entities for membership issues for CalPERS, correct?

8 A. Correct.

9 Q. Could you estimate how many reviews and
10 determinations you've been involved with?

11 A. Several hundred.

12 MR. PHILLIPS: Okay. Okay, I have nothing
13 further. Thank you.

14 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay,
15 Mr. Platten.

16 MR. PLATTEN: Mr. Renner will conduct this cross
17 examination, Your Honor. Do you wish he sit in this seat
18 in front of the microphone? Or should I move the
19 microphone?

20 ADMINISTRATIVE LAW JUDGE ANDERSON: That's okay.
21 I can shift my face. The microphones aren't on, in case
22 you're thinking about that. That's only when we record
23 when we don't have court reporters. So don't worry about
24 that. He doesn't have to move. Okay, Mr. Renner.

25

1 CROSS EXAMINATION

2 BY MR. RENNER:

3 Q. Thank you. Sir -- I'm sorry, I did not get the
4 spelling of your last name.

5 A. G-O-W.

6 Q. All right. You talked at the beginning of your
7 testimony about what you had reviewed -- and let me make
8 sure I understand this procedure correctly. I believe you
9 stated that you reviewed generally everything that was
10 already relied upon in the audit report, is that correct?

11 A. Right.

12 Q. And then in addition to that, you reviewed the
13 Bylaws that were supplied to you after the conference call
14 with Mr. Cameron and Ms. Valdez, is that correct?

15 A. Correct.

16 ADMINISTRATIVE LAW JUDGE ANDERSON: Mr. Renner,
17 can you bring your voice up please.

18 MR. RENNER: Sure.

19 ADMINISTRATIVE LAW JUDGE ANDERSON: Then maybe
20 Mr. Gow will raise his voice and then we'll all be --

21 MR. RENNER: (Laughs) We can fight it out.

22 ADMINISTRATIVE LAW JUDGE ANDERSON: People start
23 talking softly and then they just -- it just starts going
24 down.

25

1 BY MR. RENNER:

2 Q. Now, that telephone conference with Mr. Cameron
3 and Ms. Valdez, was that the sole communication that you
4 had with anyone in the performance of your duties?

5 A. Anyone from the Authority you mean?

6 Q. Yes.

7 A. That would have been my only direct contact with
8 the Authority, yes.

9 Q. Did you have some indirect contact with the
10 Authority?

11 A. Just through the documents I was provided.

12 Q. But no e-mails, letters, or other forms of
13 communication between you and a representative of the
14 Authority other than that phone call?

15 A. None that I recollect, no.

16 Q. All right. And you testified about -- there was
17 discussion in that phone call about who had the authority
18 to hire and fire, but I didn't hear any testimony about
19 the substance of that. What was said with regard to who
20 had the authority to hire and fire?

21 A. I don't remember the specifics. It was pretty
22 general on that, which is why I requested additional
23 documents.

24 Q. Wouldn't that generally be an important
25 consideration in making your determination?

1 A. It is. That's why I requested the documents.

2 There was nothing substantive in the phone call.

3 Q. In other words, you didn't get anything
4 indicating one way or the other who got the authority to
5 hire and fire as between the Authority and the Foundation?

6 A. Not out of the phone call, no.

7 Q. All right. And you were speaking to one other
8 participant on the phone conversation -- was the director
9 of human resources for the Authority correct, Ms. Valdez?

10 A. There was a Ms. Valdez on the phone, correct.

11 Q. Then after the phone call they did send you a
12 list of bylaws, correct?

13 A. Correct.

14 Q. And those are the Foundation Bylaws, correct?

15 A. That's correct.

16 Q. You didn't have any contact with any
17 representative of the Foundation as opposed to the
18 Authority, correct?

19 A. No. I did not.

20 Q. And you relied upon the Bylaws that were supplied
21 to you by the Authority, that was apparently a Foundation
22 document, correct?

23 A. Correct.

24 Q. And I take it that just like the testimony with
25 Mr. Alzanoon, it wouldn't be considered within your

1 standard procedures for you to speak to an employee of the
2 Foundation, is that right?

3 A. That would be well outside my scope.

4 Q. But it would be permissible for you to ask for
5 the Foundation's document from a second entity and assume
6 that that document was accurate?

7 A. I would only ask for it from a contracting
8 entity. I wouldn't go to an outside entity, no.

9 Q. Now you said you relied -- you pointed here on
10 Section 7.1 and 7.2 copy of the Bylaws that were provided
11 to you, is that correct?

12 A. 7.1, 7.2, and the ones I previously mentioned.

13 Q. Well you did mention 7.1 and 7.2 in particular,
14 correct?

15 A. Correct.

16 Q. Now did -- And I believe you mentioned words to
17 the effect that you were relying on the language in 7.1,
18 regarding the Board having the power to delegate the
19 management of the day-to-day operations of the business of
20 corporation, is that correct?

21 A. Correct.

22 Q. Now, did you speak with anyone either from the
23 Foundation or the Authority about the actual operations of
24 these powers that are set forth in 7.1 and 7.2?

25 A. I did not.

1 Q. So you didn't ask -- this is the way the document
2 reads? Is this the way it actually works?

3 A. I did not.

4 Q. And you didn't ask for any examples about how the
5 reporting lines work with either the Authority or the
6 Foundation?

7 A. I don't understand your question.

8 Q. After you received -- well let me make this
9 simpler. After you received this copy of the Bylaws did
10 you have any conversations with anyone from either the
11 Authority or the Foundation about these Bylaws?

12 A. I did not.

13 Q. All right. So your understanding of these various
14 sections that you referenced is based entirely on your
15 reading them and your experience in doing what you do, is
16 that correct?

17 A. Correct.

18 Q. Now, in reviewing the audit that had already been
19 produced and then you looking at the Bylaws and relying on
20 your phone conversation, did you consider the application
21 of the legal doctrine of joint employer relationship?

22 A. No I did not.

23 Q. Was that outside the scope of what you been
24 instructed to do?

25 A. Joint employment has no meaning to me whatsoever

1 within the PEARL.

2 Q. All right. If I could direct your attention to
3 Section 8.1 in the Bylaws that were provided to you. I
4 believe you testified to the effect that you did rely
5 significantly on the content of that passage, correct?

6 A. To the extent of the executive director, yes.

7 Q. And again, you did not have any conversations
8 with anyone after you received these Bylaws about the
9 actual application of Section 8.1?

10 A. I did not.

11 Q. If I could direct your attention to Paragraph
12 7.17 of the Bylaws. I believe you testified recently -- I
13 think you attached some significance to that passage, is
14 that correct?

15 A. Correct.

16 Q. And, You did review the e-mail that is reflected
17 in the CalPERS Exhibit 14, correct?

18 A. Yes.

19 Q. That e-mail purports to show that the head of the
20 Foundation for the human resources for the Authority was
21 seeking approval for a pay increase for Emily Hennessy
22 from the chair of the Board of Foundation, is that your
23 understanding of it?

24 A. That's what I read, yes.

25 Q. All right. Now, did you review any other e-mails

1 or documents, or letters, or any other writings reflecting
2 the process for approving compensation increases for
3 Foundation employees?

4 A. I may have, but it didn't factor in my
5 determination because there was quite a stack of personal
6 documents and e-mails that I don't specifically remember.

7 Q. And so you don't remember one way or another
8 whether they indicated that the Foundation Board's
9 authority was needed for a Foundation employee's pay
10 increase?

11 A. No, that's what 7.17 says.

12 Q. Right, I know that's what it says. I'm talking
13 about actual instances of it happening. Exhibit 14
14 purports to show that the Foundation Board had to approve
15 the increase, you've now testified that there were other
16 documents regarding that same issue, but you don't recall
17 one way or the other whether --

18 A. I did not testify regarding that issue. I said
19 there were other e-mails and personnel documents. If they
20 regarded that issue I would have included them

21 COURT REPORTER: I'm sorry. You would have what?

22 THE WITNESS: I would have included them.

23 COURT REPORTER: Thank you.

24 BY MR. RENNER:

25 Q. Then I also misunderstood your testimony. What

1 where the other documents and e-mails that you were just
2 referring to?

3 A. Just e-mails and personnel documents.

4 Q. Were any of them regarding pay increases for
5 Foundation employees?

6 A. I don't specifically remember. If they were
7 pertinent to my review then I included them.

8 Q. Well if they involved pay increases for
9 Foundation employees they would be pertinent, wouldn't
10 they?

11 A. Presumably.

12 Q. So does that mean that this is the only document
13 you had seen regarding a pay increase for a Foundation
14 employee?

15 A. Or the only one that I saw that looked
16 applicable.

17 Q. Why would another one not be applicable?

18 A. It may not say anything that I need to know for
19 my review. Just because someone gets a pay increase
20 doesn't mean much to me, unless it is pertinent to what
21 I'm reviewing. I was specifically reviewing an audit
22 finding. So I had a lot of stuff that I was given that
23 didn't pertain to my review of that audit finding.

24 Q. Do you recall finding any other document, which
25 indicated that the Foundation Board had to give approval

1 for a pay increase for a Foundation employee?

2 A. Mainly in the Bylaws and in the Administrative
3 Services Agreement, as I said those were the two mains
4 that I used.

5 Q. But I'm talking about a specific application. An
6 increase of a particular employee.

7 A. Just that e-mail.

8 MR. RENNER: I have nothing further.

9 ADMINISTRATIVE LAW JUDGE ANDERSON: Redirect?

10 MR. PHILLIPS: No, Your Honor.

11 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay, thank
12 you Mr. Gow. You can step down. You're excused. All right,
13 we'll break for lunch till 1:15. we're off the record.

14 (A break was taken from 11:58 a.m. to 1:18 p.m.)
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***** AFTERNOON SESSION *****

---oOo---

ADMINISTRATIVE LAW JUDGE ANDERSON: Back on the
record.

MR. PLATTEN: We'll call Kathleen King.

ADMINISTRATIVE LAW JUDGE ANDERSON: Hello
Ms. King.

THE WITNESS: Hi.

ADMINISTRATIVE LAW JUDGE ANDERSON: Please raise
your right hand to be sworn.

(Time Noted: 1:18 p.m.)

KATHLEEN KING

Was thereupon called as a witness herein; and having been
sworn to tell the truth, the whole truth, and nothing but
the truth, testified as follows:

THE WITNESS: Yes I do.

DIRECT EXAMINATION

BY MR. PLATTEN:

Q. Ms. King, would you state your full name,
spelling your last name for the record.

A. Kathleen Mary King, K-I-N-G.

Q. And are you employed?

A. Yes.

Q. By whom?

A. The -- well now it's the Healthier Kids

1 Foundation.

2 Q. Prior to being called the Healthier Kids
3 Foundation, was the employer known by a different name?

4 A. Yes.

5 Q. What was that?

6 A. Santa Clara Family Health Foundation.

7 Q. And how long -- or should I ask it simply -- What
8 was your date of hire with the Foundation?

9 A. It was March 31st, 2008.

10 Q. And what position were you hired into?

11 A. As executive director of the Santa Clara Family
12 Health Foundation.

13 Q. What position do you now hold with the Healthier
14 Kids Foundation?

15 A. I'm CEO of the Healthier Kids Foundation.

16 Q. Is this the same business entity but the name
17 changed?

18 A. The mission is similar, but we do more than we
19 used to do.

20 Q. Well why don't you describe that for -- The
21 mission as a executive director with the Foundation. And
22 what is the mission as executive director with Healthier
23 Kids?

24 A. At the Santa Clara family Health Foundation, we
25 where the fundraising arm for the Santa Clara Family

1 Health Authority. So, we raised funds for all their
2 programs. And that would be -- the main program was
3 Healthy Kids, which was a non-state federal funded local
4 health program for kids. And then we raised money for
5 other programs in the Health Authority, do you want me to
6 give some examples?

7 Q. Certainly.

8 A. So, we brought in appropriation through Mike
9 Honda's office to help develop connection within the IT
10 system at Health Plan. We also worked with Cisco Systems
11 as the Foundation for the Health Plan to bring in all
12 their communication equipment. Cisco gave it to the
13 Foundation to give to the Health Plan. So it was all their
14 communication equipment so they could improve their
15 customer satisfaction results.

16 Q. When you use the term "Plan" or the term
17 "Authorities" are you referring to the same entity?

18 A. Yes.

19 Q. Okay, could you just briefly describe for the
20 Judge's benefit your educational background?

21 A. Mine?

22 Q. Yes.

23 A. I am a graduate of Santa Clara University with a
24 Bachelor of Science in business.

25 Q. Now, when you talk about the Authority or the

1 Plan, is that an organization that was developed by virtue
2 of an ordinance passed in Santa Clara County?

3 A. Yes, around 1997.

4 Q. Very good. I'd like you to look if you would at
5 the Respondent's exhibit binder. Looking at it -- it's
6 beginning Bates stamped page No. 1 through Bates stamped
7 page No. 11. Do you remember -- recognize this document?

8 MR. RENNER: Your Honor, can I provide a set of
9 exhibits for the witness? I don't think she has one.

10 ADMINISTRATIVE LAW JUDGE ANDERSON: Yes, yes.

11 THE WITNESS: Isn't it in that one?

12 MR. RENNER: Right. This is the one she's looking
13 for.

14 ADMINISTRATIVE LAW JUDGE ANDERSON: You can just
15 -- that can stay there, and he's going to bring you up
16 that binder.

17 THE WITNESS: Thank you.

18 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.

19 MR. PLATTEN: It's always much more pleasant if
20 you have the documents that I'm asking for in front of
21 you.

22 THE WITNESS: So, I'm looking for?

23 MR. PLATTEN: Pages one through eleven.

24 THE WITNESS: Right. This is the ordinance.
25

1 BY MR. PLATTEN:

2 Q. Do you recognize the document?

3 A. Yes.

4 Q. And how did you obtain a copy of this document?

5 A. Well, we have it within the package, but I had
6 seen it along time ago because it was on the county
7 website.

8 Q. And do you understand the ordinance to be
9 document -- created -- "The Santa Clara Health Authority"?

10 A. Yes.

11 Q. Or as otherwise known as the "Plan"? Similarly,
12 were you ever in possession of the Articles of
13 Incorporation for the Foundation separate from the
14 Authority or The Plan?

15 A. Yes, I had them.

16 Q. Looking at the binder in front of you, if you
17 could look at page stamped -- Bates numbers 12-15. Do you
18 recognize that document?

19 A. Yes.

20 Q. Can you tell us what that document is?

21 A. That is the Articles of Incorporation of the
22 Santa Clara Family Health Foundation.

23 Q. And when you were with the Foundation, did you
24 raise money for any other entity but for the Authority or
25 The Plan?

1 A. We only raised money for The Plan and to pay for
2 ourselves.

3 Q. Now, did Plan have a mission statement?

4 A. Yes.

5 Q. Take a look if you would in the binder again,
6 Bates stamped pages 16-19. I'll ask you if you recognize
7 those documents?

8 A. Yes, I think this is right off the website.

9 Q. These are the mission statements for The Plan or
10 the Authority?

11 A. Yes.

12 Q. And did Foundation have bylaws in condition to
13 the Articles of Incorporation?

14 A. Yes we did.

15 Q. Looking at Bates stamped pages 20-31, this is an
16 undated, unsigned copies of what is entitled "Bylaws of
17 the Foundation," do you recognize this document?

18 A. Yes.

19 Q. And, do you have any understanding of what this
20 document is?

21 A. I believe it's the original Bylaws, but when we
22 moved from the Health Authority we didn't get all our
23 documents from the Authority.

24 Q. We'll get to that move in just second to explain
25 what you mean by -- Did you ever see a copy of any signed

1 Bylaws dated at any point in time prior to 2013 -- or let
2 me rephrase the question -- Did you ever see a signed copy
3 of this particular document entitled "Bylaws," which is in
4 Respondent's exhibit -- Bates stamped pages 20-31?

5 A. No.

6 Q. Do you recall ever seeing this before? This so
7 called separation that you described in 2013?

8 A. I don't recall ever specifically looking for
9 this.

10 Q. Did you ever see what would purport to be advised
11 Bylaws for the Health Foundation dated sometime in 2011?

12 A. Yes.

13 Q. Take a look again in the binder in front of you,
14 Bates stamped pages 32-42. Do you recognize this document?

15 A. Yes.

16 Q. This purports to be on its face, "Foundation
17 Bylaws," dated May 6th, 2011 regrettably; however, this
18 too, is an unsigned -- otherwise undated document.

19 A. Right.

20 Q. How did you receive this document?

21 A. I received it in this package. But I did find a
22 copy in what came with us.

23 Q. "With us," meaning again, referring to a
24 separation of 2013?

25 A. Right.

1 Q. Now, did you ever see a signed copy of this
2 document?

3 A. I don't believe so.

4 Q. All right. So let's take a step back. We talked
5 about a separation that occurred in 2013. Can you tell the
6 judge what you mean by that?

7 A. So, around that -- Or when I started the
8 Foundation -- The plan was mostly children. So it -- when
9 we even left it was about 125,000 children in The Plan and
10 about 25,000 adults. And we were always mostly focused on
11 the children.

12 Q. Would you say "we," you're referring to?

13 A. The Foundation. Sorry. So the Foundation's
14 efforts in fundraising were probably 90% based on funding
15 for children. Mostly for this program called Healthy Kids,
16 which is a program that we raised funds for for years, and
17 it's mostly for undocumented children. The Health Plan has
18 decided to get -- to go into more combination of Medi-Cal
19 MediCare, which is seniors and children -- seniors and
20 Medi-Cal combined. And they were going more and more
21 towards adults and we decided the Foundation -- the Board
22 decided we really wanted to just -- we were the only
23 Foundation in our county focused on children's health. So
24 we decided we wanted to stay solely focused on children's
25 health.

1 Q. And results of that led to what?

2 A. We separated in June of 2013.

3 Q. Effective with the fiscal year beginning July 1,
4 of 2013?

5 A. Yes.

6 Q. Up until that point in time, from the date of
7 your hire -- from March of 2008 I believe you said?

8 A. Uh-huh.

9 Q. Until the separation as executive director or
10 CEO -- whatever your title was with the Foundation, you
11 were focused on raising money for kids health care for The
12 Plan?

13 A. Yes, and we raised other -- but I'd say about
14 90-95% of what we raised was for children --

15 Q. During this period of time, did you have a
16 Healthy Kids Foundation mission statement?

17 A. No. You mean Healthier Kids Foundation? No.

18 Q. Since the separation, have you set forth a
19 separate mission statement for Healthier Kids?

20 A. Yes.

21 Q. And turn if you would to the exhibit for the
22 Respondent, Bates stamped pages 43-44. Lastly, look at
23 that document. Can you just tell me first if you recognize
24 the document. And second, tell us what the document is.

25 A. This was our website explaining about us and

1 giving some background of how we were historically
2 started.

3 Q. So let's go back, we want to really focus,
4 Ms. King, on what you did while you were working with the
5 Foundation as opposed to Healthier Kids on behalf of the
6 Authority or the Plan, okay. Can you just describe to us
7 how that worked. How did it work? The Foundation raised
8 money for the Plan, what was the operation?

9 A. Well, I need to go back to when the Healthy Kids
10 was formed. So Healthy Kids was first formed in Santa
11 Clara county. It was to take tobacco tax money and utilize
12 that money -- originally, to insure children would not fit
13 in state and federal programs, which mostly were
14 undocumented. And the program was so successful that the
15 Foundation -- that the Health Plan ended up with over
16 13,000 children in that category.

17 So the issue was raising money beyond government money
18 or sales tax, but going after some actual foundation money
19 like Blue Shield, Packard Foundation -- where some of the
20 California -- were some of the -- So we would raise
21 whatever what was needed. Some of it would go directly to
22 the Health Plan; for example, the county money would go
23 directly for the Health Plan, but Emily, who worked for
24 me, did all the analysis of how much money, how many kids,
25 et cetera. And then, a portion -- maybe at the time, maybe

1 40-50% came from foundations that gave our foundation the
2 money so that we could pay the Health Plan for those
3 premiums.

4 Q. So you mentioned for this example -- I think you
5 said the Lucile Packard Foundation Grant, Packard being
6 spelled P-A-C-K-A-R-D. And these kinds of situations, can
7 you describe to the judge -- this involved joint
8 considerations with the Health Plan and the Foundation, or
9 was the Foundation simply raising money and turning it
10 over to the Health Plan?

11 A. No, it had to -- we had to work together because
12 one is we could only raise the funds that the Health Plan
13 could, in essence, put the children in the Plan. If they
14 didn't have enough capacity we couldn't -- we wouldn't go
15 out and raise money that couldn't be utilized for those
16 children and with -- for example, Packard, we would talk
17 to them together because the other issue was we wrote all
18 the reports once the results came in.

19 So we had to write up a grant saying what reports we
20 would supply based on what the Health Plan would do, and
21 then we would write the reports and we'd send them back to
22 Packard based on what the Health Plan did. And Packard
23 couldn't give directly to -- they only could give to a
24 nonprofit.

25 Q. So you would have to file a report for the

1 grant from Packard, validating what the Health Plan did
2 with the money, not the Foundation?

3 A. Right.

4 Q. Did you have to reduce some of these inner
5 relationships between the Foundation and the Plan to
6 writing, with respect to the Packard Foundation Grant?

7 A. I'm not sure.

8 Q. Was this strategy reduced to writing?

9 A. No.

10 Q. Well let me ask you take a look at your document
11 first. Look at document pages 53-55 of the Respondent's
12 exhibit.

13 A. I think you asked me did we just write the
14 report, no. We -- it was very much back and forth.

15 Q. Okay.

16 A. Because it had to be -- We could not take money
17 that the Health Plan couldn't agree that they would
18 utilize the way that Packard Foundation wanted it used.

19 Q. And was that because you were only raising money
20 for the Health Plan?

21 A. Correct.

22 Q. All right. So what is the document 53-55 in the
23 exhibit?

24 A. This was a discussion -- the CEO at the time
25 Leona Butler, recommended that it was time to -- we hadn't

1 done a strategic plan in a while, and we should ask
2 Packard to help pay for a strategic plan that would look
3 again at what the Health Plan and the Foundation is doing
4 together.

5 Q. Thank you, and this document represents what that
6 thought process was?

7 A. Right.

8 Q. This is a document put together both by the
9 Foundation and by the Health Plan?

10 A. Right, they chose the consultant together -- or
11 "we" chose the consultant together. The consultant
12 interviewed many Health Plan people and many -- some
13 Foundation -- there weren't many of us, and then many of
14 the community leaders.

15 Q. About what time -- What year was this document on
16 Bates stamped pages 53-55 put together, if you recall?

17 A. I think it was -- Must have been around 2008 or
18 '9 -- Probably finished in '9, I think.

19 Q. Now you identified a woman by the name of Leona
20 Butler, what was her position?

21 A. She was the CEO of the Health Plan when I
22 started.

23 Q. How long was she a CEO while were you employed at
24 the Foundation?

25 A. Probably close to two years.

1 Q. Was she replaced by someone else?

2 A. She was replaced by Elizabeth Darrow.

3 Q. Last name Darrow, D-A-R-R-O-W?

4 A. Uh-huh.

5 Q. I'm sorry, you'll have to say yes.

6 A. Oh, yes. Yes.

7 Q. And how long was Ms. Darrow the CEO of the Health
8 Plan with the Authority while you were still with the
9 Foundation?

10 A. She was the CEO until we left. She just retired
11 from the Health Plan two months ago.

12 Q. And again, you left in July of 2013?

13 A. Right.

14 Q. "You," referring to the Foundation?

15 A. Right.

16 Q. So, between the 2008 period -- your hiring in
17 March, to your leaving July 1, of 2013, your work
18 consisted of raising money solely for the Health Plan and
19 working in concert with the Health Plan because any money
20 you raised had to be extended through the Health Plan?

21 A. Yes.

22 Q. Otherwise, you wouldn't raise the money?

23 A. Right.

24 Q. Did you receive a offer letter for purpose of
25 your employment?

1 A. Yes.

2 Q. All right. This is an Agency exhibit, but for
3 easy convenience since the witness has in front of her the
4 packet without having redacted it, I'll have you -- ask
5 you to turn to what is in your packet, Ms. King, page 56.
6 It's Agency Exhibit 11, I believe -- 13 pardon me, Your
7 Honor. Agency Exhibit 13, this is a one page document
8 dated March 25, 2008, addressed to you from a Barbara
9 Elsea, E-L-S-E-A. Do you recognize the document, Ms. King?

10 A. Yes.

11 Q. Can you tell us what the document is?

12 A. The document is my offer letter to start with the
13 Santa Clara County Health Plan.

14 Q. Now I know the document letter comes on the
15 Health Plan letterhead, is that correct?

16 A. Right.

17 Q. But you were hired as the Foundation's executive
18 director, is that correct?

19 A. Correct.

20 Q. And midway through the document lists general
21 duties, and it says,

22 "In collaboration with the chief executive
23 officer of the Santa Clara Family Health Plan,
24 executive director's accountable for leading and
25 directing all the Foundation's fundraising

1 efforts."

2 You see that?

3 A. Yes.

4 Q. Is that referring to the kind of situation you
5 were just describing with the Lucile Packard Foundation
6 Grant?

7 A. Yes, that's exactly it.

8 Q. And that chief executive officer referenced in
9 this letter would have been Ms. Butler?

10 A. Yes.

11 Q. And I indicate -- or the letter -- excuse me,
12 indicates under the section entitled "Benefits." The last
13 sentence.

14 "This position is eligible for all benefits
15 afforded members of the --

16 Of -- excuse me,

17 "senior staff."

18 Do you read that?

19 A. Yes.

20 Q. What's that referring to?

21 A. Well there were certain benefits that the
22 executive staff in Authority or Health Plan -- that the
23 executive director was eligible for. So I think HR was
24 just making sure they referred to it.

25 Q. And lastly, with respect to Ms. Elsea's

1 signature, it reads underneath that, "Human Resources
2 Director." She was the human resources for whom?

3 A. For the Authority when I started.

4 Q. Was there ever during the time period of your
5 employment from 2008 through the end of June 2013 a
6 separate human resources director for the Foundation?

7 A. No.

8 Q. Now we've heard some discussion -- and we'll get
9 back to the offer letter and your employment in just a
10 second. We heard some discussion -- prior testimony about
11 an "Administrative Services Agreement" between the Plan or
12 the Authority and the Foundation, are you familiar with
13 that agreement?

14 A. Yes.

15 Q. Okay, can you -- You have the document, look at
16 the document. What I want to ask you is how did it really
17 work? What was the relationship between the Authority or
18 Plan and the Foundation? Talk about office space. How many
19 office space was afforded by the Plan to the Foundation?

20 A. We usually had two to three offices, but we'd
21 get -- we would get moved quite often depending on where
22 the Health Plan fit us in. But it usually was a couple of
23 offices.

24 Q. Who determined the location of the offices?

25 A. Usually the CEO of the Health Plan.

1 Q. Did anybody other than the Health Plan personnel
2 determine those locations?

3 A. No.

4 Q. What about e-mail systems?

5 A. We used the same e-mail system as the Health
6 Plan.

7 Q. Did you have the same dot address on your e-mail?

8 A. Yes, KK@SCFHP.com.

9 Q. So there wasn't a separate e-mail address for the
10 Foundation?

11 A. No.

12 Q. What about office supplies?

13 A. We used office supplies just like Health Plan
14 employees did.

15 Q. What about computer server or computer systems?

16 A. We used the Health Plan's servers. We did once
17 buy our own -- I think we did buy our own regular
18 computers on our desks, but everything else was the Health
19 Plan.

20 Q. And did you ask to make any changes in that
21 system or was that a system established by the Authority
22 or the Plan?

23 A. That was established by the Authority; in fact,
24 we had to buy exactly what they told us to buy, even for
25 the computer on our desks.

1 Q. Now with respect to the actual servicing of
2 payroll, were you issued your paycheck by the Foundation,
3 or was your paycheck issued by the Health Plan or the
4 Authority?

5 A. By the Health Plan.

6 Q. During the period of time that you worked,
7 between 2008, your date of hire, and the end of June 2013,
8 did you ever receive a paycheck from any entity other than
9 the Health Plan?

10 A. No.

11 Q. What about with respect to workers' compensation
12 benefits? Were you covered under a separate insurance
13 policy with the Foundation or under the Health Plan or
14 Authority's workers' compensation insurance?

15 A. The Health Plan's workers' compensation.

16 Q. What about with respect to any other insurance?
17 Life insurance? Anything else?

18 A. No. In fact, that I -- they had to make sure they
19 give me the executive level health -- or insurance, life
20 insurance.

21 Q. Is it the same level as the executives of Health
22 Plan?

23 A. Uh-huh.

24 Q. I'm sorry. Again, you have to say yes or no.

25 A. Oh, yes. Sorry.

1 Q. Thank you. This "service agreement," what did the
2 Foundation pay for any of these services -- any services
3 provided by the Plan or the Authority?

4 A. The whole time I was there, and I think it was
5 from the very beginning, It was a \$1,000 a month.

6 Q. Was there ever any evaluation made as to what the
7 fair market value of these services were?

8 A. No.

9 Q. How long had that agreement or that payment been
10 in place?

11 A. As far as I know, since the Foundation was
12 formed. But they didn't have employees till 2002. So I
13 guess from 2002 to when we left, I believe it was a \$1,000
14 a month.

15 Q. What about employee badges? Were any kind of
16 identification badges worn by employees?

17 A. They all said, "Santa Clara Family Health Plan."

18 Q. And we'll get into this a little bit later, but
19 when you moved, 2013, to a new location, was your rent a
20 \$1,000 a month?

21 A. No, it was substantially more than that.

22 Q. How about your costs for office supplies and
23 computer systems, greater than \$1,000 a month?

24 A. We're trying to control it. But yes, we do a lot
25 of printing.

1 Q. And the checks that are issued now, are they
2 issued under Healthier Kids Foundation or under the Health
3 Care or Authority?

4 A. Well their under Healthier Kids, but through
5 TriNet.

6 Q. So you hired your own Administrator?

7 A. Yes.

8 Q. And is that expense close to \$1,000 a month?

9 A. More.

10 Q. Let's talk about Health Plan as related to the
11 Foundation from '08 to mid 2013 about human resource
12 matters, okay. You've already talked about your particular
13 offer of employment. Were similar offers of employment to
14 Foundation employees also made by the Health Authority or
15 Plan?

16 A. Yes.

17 Q. Take a look if you would please at what is marked
18 as pages 57-59 of the Respondents exhibit. Let's look at
19 57 first. This is a letter dated April 7th, 2005,
20 addressed to Emily Hennessy. Again, from this Ms. Elsea.
21 Are you familiar with this letter?

22 A. I had it in my files. It happened before I was
23 there. But I'm familiar because I have it in my files.

24 Q. And similarly this letter, as with your letter,
25 refers to the offer being made on behalf of the Authority

1 doing business as the Plan for position with the
2 Foundation, is that correct?

3 A. Yes.

4 Q. And it also references benefit packages effective
5 July 1, 2005. Are you familiar with what benefit packages
6 Ms. Hennessy had while she was with the Foundation?

7 A. They were very similar to mine.

8 Q. So identical to the Health Authority?

9 A. Oh yes.

10 Q. And the next page, 58, is a letter dated August
11 17th, 2011, addressed to Ernesto Villalobos,
12 V-I-L-L-A-L-O-B-O-S; signed again on a second page, this
13 time by Sharon Valdez, V-A-L-D-E-Z, Human Resources
14 Director. Who is Ms. Valdez the human resources director
15 for?

16 A. The Health Authority.

17 Q. And again, this extended agreement on behalf of
18 the Authority DBA the Plan, as an outreach specialist.
19 Was Mr. Villalobos working for the Foundation issues
20 solely, or on the Plan issues solely or for both? What was
21 his job?

22 A. He was doing outreach to find people that needed
23 insurance. So, he would fund it by a grant we received.
24 But he was finding potential members that would go into a
25 health plan.

1 Q. So, funded by a grant. When you used the term
2 "we" you're referring to the Foundation?

3 A. Right.

4 Q. Funded by a grant through Foundation to get
5 members to go into plan for -- to go to a medical plan
6 with the Authority?

7 A. It could be either. It could be -- There's two in
8 our county. So it could go into either Blue Cross or Santa
9 Clara Family Health Plan.

10 Q. I see. The letter on the first page, the very
11 last line indicates that this offer of employment could
12 only be modified by human resources in writing. This
13 happened in 2011 while you were with the Foundation. Were
14 the provisions with respect to the offer drafted by the
15 Foundation or drafted by the Health Plan?

16 A. By the Health Plan.

17 Q. With respect to changes in employees' status,
18 during your ten year from 2008 through the middle of 2013,
19 were changes in employee status with respect to positions,
20 hours, compensation and benefits done by the Plan or done
21 by the Foundation?

22 A. By the Plan.

23 Q. And there's -- You were here -- present -- There
24 was some discussion about a letter that Mr. Cameron wrote
25 to CalPERS talking about a 2009 change of some sort. Is

1 there any change in any Administrative Services Agreement
2 or any of the operations between the Foundation and the
3 Authority or the Plan in the 2009 period?

4 A. No.

5 Q. Are you aware of any documents that express any
6 change in the relationship as to how employee terms and
7 conditions were determined by the Plan for Foundation
8 employees in the 2009 time period?

9 A. No.

10 Q. Was there change at some point in time however,
11 on the Foundation Board of Directors with respect to
12 Elizabeth Darrow?

13 A. Yes. So, Elizabeth resigned from the Board -- I
14 think it was in 2000. I can't remember if it was 2010 or
15 '11.

16 Q. We'll get to that a little bit later. She, as the
17 CEO of the Plan, sat on the Foundation Board?

18 A. Right.

19 Q. And she resigned from that position at some point
20 in time?

21 A. Right.

22 Q. Taking a look at what is Bates stamped pages
23 62-64. These are certain forms relative to Personnel
24 Action Notices or salary increase and wage change
25 forms. Are you familiar with the forms?

1 A. Yes.

2 Q. Can you tell the judge what the forms are all
3 about?

4 A. The forms are always used for any wage changes
5 and show which levels have to sign off on the wage
6 changes.

7 Q. And, in order to get the first document on page
8 62 -- Bates stamped 62 refers to you. To make any kind of
9 change in your compensation, did that require approval
10 from Ms. Elsea of the Plan?

11 A. Yes.

12 Q. How did it come about that there would be a
13 change of cost issue?

14 A. Well, Leona was the CEO, and Leona was concerned
15 when I started that I had no fundraising background.

16 Q. Again, this is Leona Butler?

17 A. Leona Butler.

18 Q. The CEO?

19 A. The CEO.

20 Q. Of the Plan --

21 A. Was concerned I didn't have any fundraising
22 background. So she and the Board agreed that in order for
23 me to take six months to prove that I could fund raise,
24 they would lower the salary by a pretty large amount over
25 the last person in the position, and then they would raise

1 it back if I proved myself. So, this was putting it back
2 where it had been before I was hired, based on the
3 feedback that I met the requirements of the position.

4 Q. So this was a concern raised by the CEO of the
5 Plan that you had demonstrated sort of on a probation --
6 it's my term not yours -- sort of on a probationary period
7 to see if you could perform?

8 A. Right, because she was concerned I didn't have
9 the exact background?

10 Q. And after a certain period of time she approved
11 it as indicated by her signature on this form?

12 A. She didn't sign this form, but she had HR sign
13 it.

14 Q. Yes. Looking at the next document, Bates stamped
15 page 63. Do you recognize this Personnel Action Notice
16 form?

17 A. Yes.

18 Q. Can you tell us how this came about?

19 A. Well, we were on the same schedule for any kind
20 of merit increases as the rest of the Authority.

21 Q. Again, when you say "we," you're referring to --

22 A. Oh, I'm sorry. The Foundation was on the same
23 merit increase schedule as the rest of the Authority. And
24 this was a yearly timing for increase. And so that's why
25 it says across the board; and the CEO of the Health Plan

1 and the HR of the Health Plan signed for that increase.

2 Q. Who determined what the amount of the
3 across-the-board increase would be? Is that determined by
4 the Authority?

5 A. You know, I think it was determined by the
6 Authority Board. I remember they had to agree to any kind
7 of increases for employees.

8 Q. So whatever Authority employees got or didn't
9 get, the Foundation employees got or didn't get?

10 A. Exactly.

11 Q. Turn to the next page, Bates stamped page 64.
12 This is a similar form -- actually it's a copy. It's the
13 identical form, if you need to look at it. I'd like you to
14 slip over to page 66, Bates stamped 66. This is a
15 different form from Ms. Hennessy. Do you recognize this
16 form?

17 A. Yes. Let me look, yes.

18 Q. Your signature appears on this document?

19 A. Yes.

20 Q. Was this an increase provided forward to
21 Ms. Hennessy?

22 A. Yes.

23 Q. And again, this is similar based upon a change
24 that occurred in the Plan or the Authority?

25 A. It was a promotion for Emily.

1 Q. And who determined the promotion?

2 A. I'm sure joint discussed it. I mean there had to
3 be an agreement on both sides.

4 Q. Okay. And if you turn to the next page, page 67.
5 This is a another salary wage change form from
6 Ms. Hennessy. Do you recognize this document?

7 A. This one is before I was the executive director.
8 Oh, I know. So this is one -- I was on the Board before I
9 was the executive director, and this is the one where
10 Emily had worked as CFO for the Health Plan for a certain
11 amount of months. And then, I had come in and had to fill
12 in as the executive director because the executive
13 director was out on a family leave of absence. And so,
14 Leona recommended that Emily should get a fairly good size
15 increase because she had been putting so much work in for
16 both organizations.

17 Q. So this is a recommendation again from the CEO of
18 the Plan or the Authority that the interim director
19 position being fulfilled by Ms. Hennessy at the Foundation
20 should receive an increase?

21 A. Yes, because it was substantial.

22 Q. Didn't come from anybody other than Ms. Butler,
23 the CEO of the Authority?

24 A. Well -- So Leona was on the Board, I was on the
25 Board; Leona made the recommendation, but the Board agreed

1 to it unanimously.

2 Q. All right, okay. Look at the next page please.

3 Bates stamped 68. And this is another Personnel Action

4 Form. Are you familiar with this form?

5 A. Yes.

6 Q. Now, your signature appears on the form?

7 A. Yes.

8 Q. This is an increase for -- again for Ms. Hennessy
9 in 2010?

10 A. Yes.

11 Q. And what did arise to this increase?

12 A. The Health Authority had decided what the merit
13 increase would be for every employee, and it was based on
14 the performance review; and Emily had received and exceeds
15 requirements on her performance reviews, so she fit within
16 this 3% increase.

17 Q. We'll get to performance reviews in a little
18 bit -- later, but just way of introducing a concept to the
19 judge, can you tell us who came up with the idea of
20 performance reviews?

21 A. At the Authority. It came from HR.

22 Q. All right, and did that then become applicable to
23 the Foundation employees?

24 A. Yes. We received training, we filled out the same
25 forms, we got the feedback before we gave it to the

1 employee, etc., yes.

2 Q. This is the same training as supervisors in the
3 Plan or the Authority received concerning how to fill out
4 the performance evaluation forms?

5 A. Yes.

6 Q. All right. Now looking still at this form, on
7 Bates stamped page 68. There's a signature at the very
8 bottom right-hand corner. Do you recognize that signature?

9 A. Yes, that's the -- Elizabeth Darrow, the CEO that
10 just left the Health Plan.

11 Q. So she had to have proven this increase as well?

12 A. Yeah.

13 Q. We skipped over one. If I may direct your
14 attention back to page 64. We talked about this briefly,
15 but I just want to also verify signatures on the bottom of
16 this Personnel Action form, which is also dated the same
17 date, but it includes two -- a date of February 7th, 2011.
18 It's interesting because it has a different date there,
19 but it refers to a change on 6-28-10. I assume that might
20 be by mistake, perhaps you can clarify that for me. But
21 who are the two signatures that appear on this document?

22 A. CEO of the Health Plan, Elizabeth Darrow, and
23 Sharon Valdez, the HR. I think she was director at that
24 time.

25 Q. And there's no approval signature by anybody from

1 the Foundation?

2 A . No, I don't know that they were aware.

3 Q. Again, this is an across-the-board increase that
4 applied to all employees, both of the Plan, the Authority,
5 and the Foundation?

6 A. Right.

7 Q. Turn if you would now, ma'am, which is Bates
8 stamped page 69. This is yet another Personnel Action form
9 again for Ms. Hennessy. This is for 2012. You see a
10 signature date of December 17th, 2012 in the bottom left-
11 hand corner of the form? Whose signature is that?

12 A. On the left that's Sharon Valdez.

13 Q. Do you recall what gave rise to this change in
14 compensation?

15 A. It was another merit increase.

16 Q. Another across the board, similar with the
17 Foundation Plan -- excuse me, Foundation and Health
18 Authority Plan employees?

19 A. Yes.

20 Q. Page 70, is for another employee, Mr. Villalobos.
21 This is dated August 1, 2012. Do you recall what gave rise
22 to this change in compensation from an hourly to a salary
23 position?

24 A. Yes, Ernesto started as a part-time person and
25 became a full-time person. And when he became a full-time

1 person, HR re-evaluated the position based on the job
2 description and said based on that job description he
3 shouldn't be hourly, he should be exempt; and set the
4 ranges that we should pay him within.

5 Q. Can you identify the signatures at the bottom of
6 the page? Beginning at the bottom left-hand side.

7 A. Christine O' Hare worked for -- or works for
8 Sharon Valdez.

9 Q. And HR at the Authority?

10 A. Yes.

11 Q. Okay. And on the right-hand side under direct
12 supervisor.

13 A. That's me.

14 Q. And there's one above your name as direct
15 supervisor.

16 A. That's actually Emily's signature.

17 Q. All right.

18 A. She was the manager.

19 Q. So this increase was bestowed upon Mr. Villalobos
20 pursuant to the Health Plan HR determination?

21 A. Yes.

22 Q. And if you'll turn finally to page 71. I think
23 this is our last Personnel Action Notice form. This is for
24 a Thomas Le, L-E; dated September 9, 2010. Are you
25 familiar with this document?

1 A. Yes, I think -- is this -- I think this is the
2 one I hired. We called him Thong. I believe it's when we
3 hired him.

4 Q. Thong is spelled T-H-O-N-G?

5 A. Yes.

6 Q. And who are the signatories of this document?

7 A. Yeah, it's offer letter. Brenda-- I don't know
8 Brenda, I believe she works for Sharon.

9 Q. Sharon Valdez in the Authority's HR department?

10 A. Yes.

11 Q. And also, there's another signature there. Can
12 you tell us who that is?

13 A. That is Elizabeth Darrow, the CEO of the
14 Authority.

15 Q. And again, Mr. Le's position was what?

16 A. He was an outreach specialist.

17 Q. Who did he work for?

18 A. He worked for Emily Hennessy.

19 Q. What was his job as an outreach specialist?

20 A. We had funding to help find children and families
21 that didn't have insurance and guide them to how to get
22 insurance.

23 Q. This would include guiding them in so that
24 insurance coverage -- under the Plan or the Authority?

25 A. Or Blue Cross.

1 Q. When employees received increases, was this
2 pursuant to Plan or Authority criteria?

3 A. It was always Plan criteria.

4 Q. Let me take a moment to look at page -- exhibit
5 for a second here. Just if you'll look at the other group
6 of documents, Ms. King, I'm looking at Exhibit 14. You
7 talked a little bit about it and I just want to make sure
8 we cover it completely. This again is having to do with an
9 increase for Ms. Hennessy prior to your employment in
10 2007. Is this again the interim director position increase
11 that you talked about earlier?

12 A. Yes.

13 Q. You explained how that came about. That was by
14 Ms. Butler's recommendation?

15 A. Yes.

16 Q. By the way, were you ever informed as to how the
17 Health Plan or Authority came up with this criteria for
18 determining compensation? Is that created internal, or do
19 they do it through some vendor?

20 A. We did a little bit of both.

21 Q. How did you get that explained to you?

22 A. Because I thought Emily Hennessy's position
23 should be re-evaluated. And I went to Sharon Valdez, the
24 HR director, and she used an outside contractor to
25 evaluate Emily's position. So I knew sometimes they use an

1 outside, sometimes they use internal.

2 Q. Was there ever an occasion, that you can recall,
3 when the Authority or the Plan made a determination
4 concerning what an individual's compensation should be at
5 the Foundation that was changed or in anyway not agreed to
6 by anyone?

7 A. Well, yes. I mean I went to Elizabeth and said,
8 "I know what my peers are making, I'm not making near
9 that." She pulled out a document where she had looked --
10 she had had it evaluated at the Health Authority and said
11 "I don't think we can offer you anymore salary, I can
12 probably offer you a week more vacation a year."

13 Q. As a result, did you get anymore salary?

14 A. No. And yeah, no.

15 Q. So Ms. Darrow's determination was final?

16 A. Right.

17 Q. Was there any occasion when the determination of
18 the Health Plan or Authority as to any other employee was
19 ever challenged and reversed that you're aware of?

20 A. No.

21 Q. Okay. Now, we talked a little bit about employee
22 evaluations. I'd like you to look back on the Respondent's
23 exhibit binder and Bates stamped pages 72, 85; this is a
24 employee performance evaluation document for
25 Ms. Hennessy. I'd just like you to take a look at it. My

1 question to you after you take a look at it is, are you
2 familiar with the document?

3 A. Yes.

4 Q. Have you seen it before?

5 A. Oh, yes.

6 Q. This is a document on the first page, Bates
7 stamped 72. In the upper left-hand corner appears the name
8 and the emblem of the Santa Clara Family Health Plan, is
9 that correct?

10 A. Yes.

11 Q. This was used on Ms. Hennessy, who worked for the
12 Foundation, is that correct?

13 A. Right.

14 Q. Did you perform any employee performance
15 evaluations during your ten year with the Foundation, from
16 your date of hire 2008 through the middle of 2013, that
17 was on any form or using any format other than that used
18 by the Authority or the Plan?

19 A. No.

20 Q. And were you given instructions, guidance,
21 training with respect to how the employee performance
22 evaluations were to be done?

23 A. Yes.

24 Q. By whom?

25 A. Who actually gave the training?

1 Q. Yes.

2 A. Sharon Valdez.

3 Q. With the Plan?

4 A. With me, yes.

5 Q. And were all employees of the Plan and Foundation
6 subject to the exact same employee performance review
7 documents such as that represented here in Bates stamped
8 pages 70 and 72?

9 A. I believe so. I don't know that there was
10 anything different.

11 Q. All right. And I notice that in the top line
12 there, it has Ms. Hennessy's name, and it goes through --
13 and in the comment section it talks about things that
14 Ms. Hennessy is interested in. Is this where the employee
15 puts down her thoughts about the performance evaluation?

16 A. Yes.

17 Q. And Ms. Hennessy's noted that,

18 "The Foundation promotes access to high
19 quality health care by supporting Health Plan
20 through resource development outreach."

21 Is that correct?

22 A. That was our mission statement, yes.

23 Q. And after this was filled out by Ms. Hennessy and
24 by the reviewer what happened?

25 A. I had to send it to HR, Sharon; and Sharon

1 reviewed it and then gave me feedback whether I could
2 present it to Emily or not.

3 Q. And after it was presented, what did you do with
4 it?

5 A. Then I think it went back -- Emily signed it, I
6 signed it -- it went back to HR to be signed.

7 Q. Was there ever an occasion where you filled out a
8 performance evaluation for a Foundation employee that was
9 not reviewed, completed and approved by HR with the Plan
10 or the Authority?

11 A. I filled out -- or Emily filled -- I forget if it
12 was Emily or I filled out one for an employee that
13 we thought we were supposed to fill out, and she was a
14 temporary so the feedback came back through HR that we
15 should not do an evaluation for a temporary.

16 Q. Did Ms. Valdez e-mail you from time to time as to
17 the status of whether you had performed all the
18 performance evaluations that were needed or not?

19 A. Yes. She sent it to all employees that needed to
20 complete theirs.

21 Q. So take a look if you would at Bates stamped
22 pages 86, 87. Do you recognize these e-mails?

23 A. Yes.

24 Q. These are e-mails from Ms. Valdez to all
25 employees, both the Plan or Authority and the Foundation?

1 A. Right.

2 Q. Instructing them that they have to get their
3 self-evaluation portion finished?

4 A. Right.

5 Q. And these performance evaluation plans that were
6 filled out by Foundation employees were identical forms
7 for the Plan or Authority employees?

8 A. Yes.

9 Q. Same metrics? Same operation?

10 A. Yes.

11 Q. All right. Did HR with the Plan also determine
12 when and if employees were successfully fulfilling their
13 obligation to fill out the performance evaluations by
14 e-mail?

15 A. Oh, yes. They told us that if we didn't have them
16 in on time.

17 Q. So take a look at Bates stamped page 88. This is
18 an e-mail from Ms. Valdez directed to all staff. When it
19 refers to "all staff" are those the employees of both the
20 Authority or Plan and the Foundation?

21 A. Yes.

22 Q. And this is entitled "A reason to celebrate" in
23 the case that everybody had turned in their self reviews
24 on time. That's referring again to employees of both the
25 Authority or Plan and the Foundation?

1 A. Yes.

2 Q. And again on 89. This is another reminder e-mail
3 to all employees, both the Plan and Foundation?

4 A. Yes.

5 Q. And you mentioned that you received instructions
6 from Ms. Valdez or training concerning how to fill out
7 evaluations. Have a look if you would at page 91. This is
8 an e-mail dated May 30th, 2012 from Ms. Valdez to you
9 regarding performance reviews. Do you recognize the
10 document?

11 A. Yes.

12 Q. And after receiving this e-mail, did she then
13 spend time with you instructing you and others how to fill
14 out the performance evaluation?

15 A. She did with me, personally.

16 Q. Similarly on the next page, Bates stamped 92, was
17 this further e-mail between Ms. Valdez and you concerning
18 how and what was to be done with respect to how the
19 performance evaluations were to be filled out?

20 A. Yes, I was trying to make sure I got the process
21 steps correct.

22 Q. And that was the process completed or constructed
23 entirely by the Plan?

24 A. Right.

25 Q. Now how would an employee of the Foundation go

1 about getting paid? Do they have to fill out a time sheet
2 or anything like that?

3 A. Originally, when I started it was a time sheet.
4 Within a couple of years it went to automated.

5 Q. Take a look if you would, Bates stamped page 118
6 in the Respondent's exhibit. Do you recognize this
7 document?

8 A. 118? Sorry.

9 Q. Yes.

10 A. Yes, this was when we did it manually.

11 Q. And at some point in time that changed to an
12 automated system?

13 A. Yes.

14 Q. Is that automated system put in place by the
15 Authority or the Plan?

16 A. Yes.

17 Q. And were there some difficulties with that
18 system?

19 A. At first.

20 Q. Okay, so take a look at the next page, Bates
21 stamped 119. This is a e-mail from Ms. Valdez -- April
22 18th, 2013; to all staff again. It says "All staff." Did
23 that include employees of the Authority or Plan and
24 Foundation?

25 A. Yes.

1 Q. And do you recall what the e-mail's about?

2 A. The e-mail's about -- you know, the first time
3 they go automated they have a little -- few problems and
4 letting us know that there'd be a few problems and please
5 be patient.

6 Q. So all problems with the time system were
7 experienced simultaneously by both Authority or Plan
8 employees and Foundation employees?

9 A. Yes.

10 Q. Now, we talked a little bit before about your
11 paychecks. You said you received your paychecks from the
12 Health Authority, is that correct?

13 A. Yes.

14 Q. Never from the Foundation?

15 A. Never from the Foundation.

16 Q. We have a number of examples of your paychecks
17 beginning on Bates stamped page 120 through Bates stamped
18 1-2 for you and other employees. Perhaps you just sort of
19 cruised through these. Do you generally recognize the
20 documents?

21 A. Yes.

22 Q. Now I noticed -- draw your attention to
23 particular -- to Bates stamped 125. Can you tell us what
24 Bates stamped 125 is?

25 A. It says it's not a check. It's probably just one

1 of my earning statements.

2 Q. Did you receive your paycheck automated?

3 A. Oh, yeah. Yes, it went automatically into my
4 account.

5 Q. So this confirmed that that paycheck for that
6 date of -- pay date of May 24, 2013 had been submitted by
7 the Health Authority on your behalf?

8 A. Yes, in fact you had to pull these up
9 electrically to have them.

10 Q. Now, looking down under the column on the left-
11 hand side of the document, Ms. King. It's labeled
12 "Deductions."

13 A. Uh-huh.

14 Q. You go down there about two-thirds of the way
15 through at the bottom and it reads "An, entry for PERS,"
16 P-E-R-S. Do you see that?

17 A. Yes.

18 Q. \$436.70, what does that represent?

19 A. Well the Health Plan was -- both had CalPERS and
20 401K.

21 Q. So is this -- that portion of your paycheck that
22 went to paid employee contribution, CalPERS for that pay
23 period?

24 A. Yes.

25 Q. In addition to that, were you aware that the

1 Health Authority or Plan was making contributions for you
2 to PERS as employer contributions?

3 A. Yes.

4 Q. And I'd like you to look at Bates stamped page --
5 correct here if I can -- I'm going to go back to an
6 earlier period of time, Bates stamped page 120. This is a
7 earning statement and confirmation of an automated payroll
8 payment to you for the time period of September 4th, 2009.
9 Do you see that?

10 A. Yes.

11 Q. And similarly this is -- reflects this is payment
12 made by the Health Authority, correct?

13 A. Yes.

14 Q. Did you ever receive a paycheck -- again -- and
15 pardon me if I've asked this question already -- From 2008
16 when you began to 2013, you and the Foundation separated
17 from the Health Plan -- from any entity for your work with
18 the Foundation by anybody other than the Authority?

19 A. No.

20 Q. And in each and every paycheck was a deduction
21 taken, as is reflected here on Bates stamped page 120 for
22 your contribution to PERS as well as the employer's
23 contribution?

24 A. Right.

25 Q. So for over five years -- from March of 2008

1 until the middle of 2013, each and every pay period,
2 contributions were being made both in terms of the
3 deductions from your paycheck and employee contributions
4 to PERS on your account?

5 A. Yes.

6 Q. I'd like you to take a look at Bates stamped page
7 133 in the Respondent's exhibits, and ask you if you
8 recognize this document?

9 A. It's Emily's W2.

10 Q. This is a form that's filed with the United
11 States Internal Revenue Code -- excuse me, Internal
12 Revenue Service, on behalf of Ms. Hennessy showing her
13 earnings for her employer in 2009, is that correct?

14 A. Yes.

15 Q. And who is this as the employer?

16 A. Santa Clara Family Health Authority.

17 Q. Similar to Ms. Hennessy, during the time period
18 that you worked from 2008 to mid of 2013, did you have W2s
19 produced by Authority on your behalf?

20 A. Yes.

21 Q. And on each and every occasion they reflect
22 Authority as your employer?

23 A. Yes.

24 MR. PHILLIPS: Judge, can I interject real quick.
25 I just noticed on this W2 there's a social security number

1 on there. So if these get entered into evidence, I think
2 redaction needs to happen.

3 MR. PLATTEN: That's correct, thank you Counsel.

4 ADMINISTRATIVE LAW JUDGE ANDERSON: All right.

5 So I'm going to redact the social security number with
6 this handy redaction pen that we have here, on page 133.

7 MR. PLATTEN: It will be the same for page 134,
8 Your Honor.

9 THE WITNESS: Can I ask that we take 127 out. My
10 accident. It looks just like my paycheck.

11 MS. HIGHTOWER: In terms of social security
12 numbers on page 71 --

13 ADMINISTRATIVE LAW JUDGE ANDERSON: Excuse me.
14 I'm sorry Counsel, I know you were identified for the
15 record, but you're not a party or on -- you know, you need
16 to tell Counsel if you have something to say, okay.

17 MS. HIGHTOWER: Sorry, Your Honor.

18 ADMINISTRATIVE LAW JUDGE ANDERSON: That's all
19 right.

20 BY MR. PLATTEN:

21 Q. Just with respect to 127, do you know what this
22 pay document refers to?

23 A. It's my husband's.

24 Q. Ah.

25 A. Sorry.

1 Q. And do you know what the purpose of the pay
2 document was for?

3 A. They used ADP too, and I probably just got it
4 mixed in with what I gave you.

5 Q. Completely unrelated?

6 A. Sorry.

7 ADMINISTRATIVE LAW JUDGE ANDERSON: It's all
8 right. So I'm going to just remove that.

9 THE WITNESS: Thanks.

10 MR. PLATTEN: Thank you, Ms. King.

11 BY MR. PLATTEN:

12 Q. When it came to employees being given time off,
13 the period of 2008 to the middle of 2013, who made the
14 determination whether or not an employee could have extra
15 time off?

16 A. Well, if it was my employee we -- once we went
17 automated it put it in into the system, and then I would
18 approve it based on how many hours they had. For me, I
19 would go to the CEO of the Health Authority say, "Is it
20 all right if I take vacation now?" -- up until I think it
21 was 2012. And then the CEO of the Health Plan said, "Well,
22 I think you should get approval from your Chair." So then
23 I would get approval from my Chair, it would go in to the
24 CEO of the Health Plan, the secretary would also approve
25 it, and then it would go to HR.

1 Q. So prior to the -- For your first four years of
2 employment, approval had to come through the CEO of the
3 Plan or the Authority?

4 A. Yes.

5 Q. So looking at what we Bates stamped, pages
6 135-137. Two questions, Ms. King. Number one, do you
7 recognize the documents? And number two, can you just tell
8 us what the documents are?

9 A. This was the first time that the CEO of the
10 Health Plan asked me to get approval from the Chair of the
11 Foundation. And then, pretty much followed the same
12 process.

13 Q. Now we've talked a little bit before about the
14 employee benefits that employees at the Foundation
15 received. I believe you told us that those benefits were
16 identical to what the Plan or Authority benefits for
17 employees was, is that accurate?

18 A. Uh-huh, yes.

19 Q. So looking as an example, take a look at Bates
20 stamped pages 138-153.

21 A. I think this is our employee handbook, or the
22 Health Authority's employee handbook.

23 Q. Was that the handbook applicable to employees in
24 the Foundation during the period of 2008 to 2013?

25 A. Yes, we had to sign that we had read it and

1 agreed to it.

2 Q. So look at 154. One more page, Ms. King. Is that
3 the signature that you had provided after you read the
4 handbook?

5 A. 154?

6 Q. Yes.

7 A. I think this page actually had to do with
8 accepting those using my husband's benefits and not
9 holding the Health Plan responsible for my benefits.

10 Q. Ah.

11 A. I think that's what this is.

12 Q. Effective upon the separation in 2013?

13 A. Yeah, I bet that's it because of the date.

14 Q. So previously would you have signed the health
15 book that -- we looked that up through page 153?

16 A. Yes, I'm pretty sure it was an
17 electronic-signature approach. So it went into the system.

18 Q. Now would it have been the same for anybody else
19 employed by the Foundation signing the Authority or Health
20 or Plan's health benefit book?

21 A. Yes.

22 Q. And all of your benefits that were provided to
23 anybody employed by the Foundation, between '08 and '13
24 when you separated, were consistent as those provided to
25 the Authority or the Plan?

1 A. Yes.

2 Q. Talk again about the separation on 2013,
3 effective July 1, 2013. The form that you signed that's
4 Bates stamped page 154, is this the point in time in which
5 you no longer could receive, from that point forward,
6 benefits pursuant to the Health Plan, Authority?

7 A. Yes.

8 Q. And just so we're clear when that separation
9 occurred, did that also mean there was a physical
10 separation that the Foundation folks left the offices of
11 the Health Plan or Authority?

12 A. Yes we actually moved out.

13 Q. Until that period of time, between 2008 your date
14 of hire and when that date occurred in 2013, were you
15 always in the same exact physical location as the Plan or
16 Authority?

17 A. In the same building, yes.

18 Q. Using the same e-mail address?

19 A. Yes, same card reader. Same security.

20 Q. That includes same postage or mailing address?

21 A. Yes.

22 Q. And the did the benefits that were provided by
23 the Plan/Authority to the Foundation employees -- besides
24 them being identical, were the enrollment periods the
25 same?

1 A. Yes.

2 Q. So looking at Bates stamped page 155. This is an
3 e-mail from Ms. Valdez; again, to all staff. That would be
4 inclusive to all Authority or Plan's staff as well as
5 Foundation's staff. This is a reminder about the
6 open-enrollment period that applies to both staffs at the
7 same point in time, 2013. Is that accurate?

8 A. Yes.

9 Q. And then benefits were confirmed through the
10 Health Plan for anybody inclusive of Foundation Employees?

11 A. Yes.

12 Q. Looking again, at the next page, Bates stamped
13 page 156. This is a form that is described as, "2012
14 Benefits Confirmation Statement, Santa Clara Family Health
15 Plan." Are you familiar with this form?

16 A. Yes, I believe it was the executive staff
17 insurance.

18 Q. And was this exact same insurance provided to the
19 executive staff at the Authority or the Plan?

20 A. Yes.

21 Q. Does that hold true for the life insurance as
22 well?

23 A. Yes.

24 Q. Looking at where it begins on page 157-162.
25 These talk about life insurance benefits that you were

1 afforded. And on page 157 at the bottom of the page,
2 there's a signature for the administrative contact with
3 respect to these benefits. Whose signature is that?

4 A. That's Sharon Valdez.

5 Q. So for purposes of any life-insurance questions
6 you had, those had to be directed to the HR director of
7 the Authority or the Plan?

8 A. Yes.

9 Q. Not to be granted on the Foundation's payroll?

10 A. Yes.

11 Q. And similarly through this document, these pages
12 157-162, again on 158; Ms. Valdez appears again as the
13 benefits administrator for the life insurance plan?

14 A. Yes.

15 Q. And that was for employees both of the Foundation
16 and the Authority or the Plan as well, is that correct?

17 A. Yes.

18 Q. When you wanted to make any changes with respect
19 to your final pay and how taxes would be taken out, did
20 that have to be done through consultation with the HR
21 people over at the Plan?

22 A. Yes.

23 Q. So looking at Bates stamps 159-160, are these
24 print outs that confirm that action was taken by the Plan
25 HR Department?

1 A. Yes.

2 Q. I note on both these pages in reference to the
3 "department." It talks about different departments. "Santa
4 Clara Family Health Plan Foundation," both on page 159 and
5 160. Do you see that?

6 A. Uh-huh.

7 Q. Doesn't say "a separate employer," just "separate
8 employers," is that accurate?

9 A. I didn't deal much with the departments, so.

10 Q. Nevertheless, the document doesn't reflect a
11 separate employer, does it?

12 A. No.

13 Q. And you were informed by the Plan through
14 Ms. Valdez that when the separation occurred in 2013 that
15 would be when you would be taken off of the Health Plan's
16 benefits including medical, vision, long-term disability
17 and life insurance, is that correct?

18 A. Correct.

19 Q. So looking at Bates stamp 161. That's a
20 document -- a memo -- inner office memo to you from
21 Ms. Valdez. Is that document received inferring to you
22 that would be the status of this?

23 A. Correct.

24 Q. Pages 162-164 covers a number of different other
25 benefit plans due to dental, etc.; CalPERS health on 168

1 and 171. Do you generally recognize these documents,
2 Ms. King?

3 A. Yes.

4 Q. And were these documents all handled, processed
5 and determined by the HR department under Ms. Valdez or
6 someone like her with the Plan or the Authority for any
7 Foundation employee?

8 A. Yes.

9 Q. Did any Foundation employee, from the period of
10 your employment of March of '08 through mid 2013, receive
11 any benefit package or any benefits, singular; other than
12 those benefits provided by employees -- or to employees of
13 the Authority or the Plan?

14 A. The one that was a temporary had a different
15 package because she was a temporary.

16 Q. Other than that, anyone?

17 A. No.

18 Q. Let's talk a little bit about employee discipline
19 determination. Were there occasions when you wanted to
20 discipline or terminate someone who was a Foundation
21 employee?

22 A. Yes.

23 Q. And what happened? Who would you talk to about
24 that? What would you have to do?

25 A. One employee -- I don't know if I need to say the

1 name?

2 Q. That's not necessary.

3 A. One employee that worked for Emily was -- we
4 found out he wasn't actually where he said he would be for
5 outreach. So we were told he wasn't showing up. So we
6 went -- Emily -- we went to the HR, Sharon and discussed
7 it with her. She pulled in the Health Plan's legal
8 consultant to help, that was Alison. And a plan was put
9 together and the person was likely to be let go due to his
10 not being where he said he would be. And then he decided
11 to leave on his own.

12 Q. You said Alison. Is that Alison Hightower?

13 A. Yes, sorry. Alison Hightower.

14 Q. H-I-G-H-T-O-W-E-R?

15 A. Yes.

16 Q. And she's present today in court?

17 A. Yes.

18 Q. She's counsel for the Authority or the Plan.

19 A. Yes, on HR issues.

20 Q. And, were you limited by the advice that you
21 received from HR with the Authority or the Plan?

22 A. Yes, my experience is if someone's not working
23 out and they are leaving, the best option is to walk them
24 out the door. It's easier on morale, but the Health
25 Authority insisted that he work the two weeks.

1 Q. So looking at Bates stamped pages 172-180, these
2 are a series of e-mails. Do these represent internal
3 communications between you and Ms. Valdez and other
4 members of the Authority or the Plan with respect to how
5 discipline should begin?

6 A. And Emily too.

7 Q. Was there a background check policy that was
8 used?

9 A. Yes.

10 Q. Who developed that background check policy?

11 A. I have to guess that it was HR at the Authority.
12 They did all the background checks.

13 Q. Now, was the background checks performed for
14 anybody with the Foundation as well as with the Authority
15 or the Plan?

16 A. Yes, I mean they did one on me, so, yes.

17 Q. And did Ms. Valdez inform all staff members of
18 any changes to that policy?

19 A. I don't remember.

20 Q. Well let me have you take a look at what we
21 Bates stamped as page 181 in the exhibit. This is an
22 e-mail dated April 17th, 2013; to all staff from
23 Ms. Valdez regarding employee handbook policy change. Have
24 you looked at this? Do you recall whether or not
25 Ms. Valdez informed all employees of the Authority or Plan

1 and the Foundation regarding changes to the employee
2 handbook with respect to background checks?

3 A. Yes, because I remember that we had to
4 acknowledge that we read it.

5 Q. Again, with respect to any employee handbook, or
6 human relations, or human resources, human relations'
7 policies, did the Foundation have any HR related
8 relations' policies different than those that applied to
9 the Authority or Plan employees?

10 A. No.

11 Q. And were you required to adhere to those policies
12 as developed by the Plan or the Authority?

13 A. Yes.

14 Q. Again, Bates stamp 182, it's a follow up or
15 another e-mail on the same topic. I guess Ms. Valdez liked
16 to send it out more than once?

17 A. Uh-huh, yes.

18 Q. And did she remind employees frequently that they
19 had to log on and acknowledge the employee handbook?

20 A. Yes.

21 Q. Looking at Bates stamp 183, this is an e-mail
22 from Ms. Valdez on April 22nd, 2013; to all staff. Do you
23 recognize this e-mail?

24 A. Yes.

25 Q. Was this a frequent thing that Ms. Valdez did?

1 Updating and making sure employees with the Foundation and
2 the Authority or the Plan knew and acknowledged changes to
3 the policy and adhere to the policy?

4 A. Yes.

5 Q. Now, did there come a point in time when you
6 wanted to hire a temporary employee as a permanent
7 employee?

8 A. Yes.

9 Q. Do you recall that individual's name?

10 A. Jennifer Shelton.

11 Q. Can you spell the last name for the court
12 reporter.

13 A. S-H-E-L-T-O-N.

14 Q. And about what time was this?

15 A. It must have been 2012, 2013 because when we
16 moved she moved with us.

17 Q. Okay, and just tell the judge what happened in
18 this instance.

19 A. Well, we had funding, we wanted to hire her. The
20 Health Plan -- The Health Authority CEO said no, they
21 didn't want to add anybody to their head count. So they
22 said if you wanted to keep her you had to keep her as
23 temporary.

24 Q. Was she then kept as a temporary employee?

25 A. Yes.

1 Q. Did you have any choice in the matter?

2 A. No.

3 Q. Let's go back to Mr. Alzanoon again. For a moment
4 you identified him as an outreach individual or an
5 outreach manager?

6 A. Uh-huh.

7 Q. For the Plan?

8 A. Might have been a director, I think.

9 Q. All right. Did there come a point in time when he
10 was transferred from the Plan to work for the Foundation?

11 A. Yes, there's a little bit of background.
12 Elizabeth Darrow -- the Health Authority had a program
13 around outreach that funded much of the effort in the
14 schools, and when money was tight at the Health Authority
15 Elizabeth felt that should be picked up by the schools and
16 not the Health Plan.

17 And so she asked me to work with her to try and help
18 the schools understand that, and with that she asked me to
19 take on Felix as an employee because he was part of that
20 program with the understanding that we were trying to
21 reduce the program.

22 Q. Did Ms. Darrow have any instructions if
23 Mr. Alvarez worked that way, who he was to report to?

24 A. Yes, she asked that I would take him on and
25 manage him for -- I think his last year at the Authority.

1 Q. Did you have any choice in the matter?

2 A. I guess I could have insisted -- you know, but it
3 would have been tough.

4 Q. Why is that?

5 A. Well because we took all our direction from the
6 Authority, I mean we raised money for the Authority, we --
7 everything we did was for the Authority. So it would have
8 been tough. She could have made it very tough if I didn't
9 do it.

10 Q. Was she a member of the Board of the Foundation
11 at that point in time?

12 A. Yes, I believe she was.

13 Q. And looking just generally at what we Bates
14 stamped in the exhibit as pages 184-187, having to do with
15 this transfer of Mr. Alvarez from the Authority or the
16 Plan to Foundation. Are you familiar with the documents
17 set forth therein?

18 A. Only since we received them recently.

19 Q. And I noticed on -- from 185,86,87, all the
20 Personnel Action Notices, Ms. Darrow's signature or
21 someone from HR of the Plan, appears on each and every one
22 of the documents, is that correct?

23 A. Yes.

24 Q. Now were there other employees who were
25 transferred between the Foundation and the Authority or

1 the Plan?

2 A. There was Felix, and then there was -- I'm trying
3 to think. There was one more that went back and forth. Oh,
4 there was Melody Gellman.

5 Q. Could you spell that last name for the court
6 reporter.

7 A. Yeah, G-E-L-L-M-A-N.

8 Q. And tell us about the circumstances surrounding
9 Melody Gellman. Who did she transfer from and who did she
10 transfer to?

11 A. When I came to work for the Foundation she was
12 working for Emily Hennessy. I was not aware at the time
13 that she was the CEO of the Health Plan's daughter, which
14 was a little bit on the awkward side. And so --

15 Q. Just so we have the name straight, at that time
16 would have been who?

17 A. Now that was around 2008, so that would have been
18 Leona Butler.

19 Q. So Ms. Gellman was Ms. Butler's daughter --

20 A. Daughter.

21 Q. And she was working with Ms. Hennessy at the
22 Foundation?

23 A. Yes.

24 Q. Okay.

25 A. And it got to a point where the CEO of the Health

1 Plan, Leona Butler, felt it would be better that she work
2 for the Health Plan. I think Leona was just about leaving
3 around that time. And so Melody was transferred to the
4 Health Plan, Authority, and we were not allowed to hire
5 replacement.

6 Q. And that direction came from Ms. Butler moving
7 Ms. Gellman from the Foundation to the Plan?

8 A. I think so. I might have -- I can't remember if
9 it was Leona or Elizabeth. I'm not -- it's kind of in that
10 time when they were -- one was leaving and one was coming.

11 Q. But you were not able to hire a replacement for
12 Ms. Gellman at any rate?

13 A. No.

14 Q. And that was at the direction of whom?

15 A. I think it was Leona at the time.

16 Q. You talked about then Ms. Gellman and
17 Mr. Alvarez, was there ever any transfer of Mr. Villalobos
18 between the Foundation and the Health Plan?

19 A. No.

20 Q. Anyone else that you can think of?

21 A. No.

22 Q. Was there ever an occasion when you were told
23 that you -- you talked about one --

24 A. Can I go back when I was -- before -- just before
25 I was on the Board?

1 Q. Yes.

2 A. Emily Hennessy worked for the Authority doing
3 their finances when -- between when they had a CFO.

4 Q. Oh, okay. So she did interim work for both the
5 Foundation and for the Health Plan?

6 A. Right.

7 Q. All right. You told us one occasion, but were
8 there other times when you were told that the Foundation
9 couldn't hire anybody even though you had funding for that
10 individual?

11 A. Yes.

12 Q. And what occasions were those?

13 A. There's quite a few. I mentioned a couple near
14 the -- I think it was 2012 we had more funding to do
15 outreach to find families that needed insurance, mostly
16 children; and I was told I could not use that funding to
17 hire anyone that I should subcontract from another
18 organization to cover that work.

19 Q. And that direction came from whom?

20 A. Elizabeth Darrow, the CEO of the Health Plan.

21 Q. You've talked a little bit about some of the
22 e-mails on benefits and personnel self-evaluation forms
23 filled out by employees in which Ms. Valdez sent e-mails
24 to all staff including employees of the Authority or the
25 Plan and the Foundation. Did she do those kind of

1 e-mails -- all staff, on many many occasions for a lot of
2 different reasons?

3 A. Oh, yes. There would be where they -- were HR and
4 the CEO decided everybody could leave at noon on a Friday.
5 And I remember coming back at two thinking it's awful
6 quiet around here. And it wasn't until I opened my e-mail
7 that I realized they had let everybody go that day, and I
8 was the only one in building.

9 Q. Also occasions when there was an e-mail to all
10 staff regarding employee satisfaction surveys?

11 A. Yes, we were a part of that as well.

12 Q. Take a look if you would at what we Bates stamped
13 pages 188-190. My question again, do you recognize these
14 documents and are they all about e-mails to all staff
15 regarding employee satisfaction surveys?

16 A. Yes, we were part of that.

17 Q. So all employees, with respect to the employee
18 satisfaction survey, were treated the same regardless of
19 who dominated as between the Plan or the Authority and the
20 Foundation?

21 A. Yes.

22 Q. And what about with respect to holiday luncheons,
23 was that determination for all employees made by HR with
24 the Plan or Authority?

25 A. Yes, we were part of that.

1 Q. So turn if you would to Bates stamped page

2 193. Is that -- Do you recognize that e-mail?

3 A. Yes.

4 Q. This is an e-mail dated November 7th, 2012 from
5 Ms. Valdez to all staff regarding a change in date from
6 holiday luncheons. So the Authority or the Plan determines
7 when all employees would attend holiday luncheons?

8 A. Yes, the company picnics, the -- yes.

9 Q. Now, did there come an occasion when you
10 requested that employees receive money from the Health
11 Plan or the Authority to attend a turkey truck fundraiser?

12 A. Yes.

13 Q. And what happened on that occasion?

14 A. Well, I think it was three or four years we
15 received funding from the Santa Clara County Turkey Truck.
16 And it was whether the Health Plan would pay for the
17 employees to attend that raise because it benefited us.

18 Q. Benefited by raising funds?

19 A. Yes.

20 Q. And so you asked Health Plan to do what?

21 A. To fund the employees being able to run in the
22 race.

23 Q. And was that request denied or granted?

24 A. It was accepted and agreed to the first two years
25 and not the last year. So I think we might have funded the

1 employees, I think.

2 Q. So looking at what we Bates stamped as pages
3 191-192, this refers to 2012, the turkey truck. And these
4 are a series of e-mails as well as the turkey truck
5 announcements by and between you and Ms. Darrow. Do you
6 recognize these e-mails?

7 A. Yes.

8 Q. And what are these e-mails about and how does the
9 matter get concluded?

10 A. This was about how much we were receiving from
11 the turkey drive as the Foundation, and would the CEO of
12 the Health Plan still fund the employees running in the
13 race. And in 2012 she said yes.

14 Q. Were Foundation employees expected to adhere to
15 privacy policies of the Plan or the Authority?

16 A. Yes there's around -- health Plans, there's a lot
17 of confidentiality requirements; especially since you're
18 dealing with members. And so we have to meet the same
19 requirements as any other employee.

20 Q. Turning to page Bates stamped 194, this is an
21 e-mail dated January 22, 2013, from a Beth Paige; spelled
22 P-A-I-G-E, to all staff. Who is Ms. Paige?

23 A. She was the compliance officer at the time.

24 Q. For what entity?

25 A. Santa Clara Family Health Authority.

1 Q. And this is directed to all staff including
2 Foundation employees?

3 A. Yes.

4 Q. And what's it about?

5 A. It's about efforts. We had to make sure we made
6 around confidentiality. She's saying that there were some
7 privacy incidence, and that we all had to be very careful
8 about this.

9 Q. And we talked before about the benefits. HR
10 communicated with the Foundation employees at the same
11 time as they communicated with Authority Plan employees
12 concerning insurance benefits including health care. Did
13 that include CalPERS eligibility benefits?

14 A. Yes.

15 Q. Turn if you would to Bates stamped page 195, this
16 is an e-mail from Ms. Valdez to all staff dated March 6th,
17 of 2013. Do you recognize the document?

18 A. Oh, yes.

19 Q. And this is about -- again communicate from the
20 Plan or the Authority, the Health Authority -- that
21 issue -- CalPERS depended on eligibility?

22 A. Right.

23 Q. You talked about knowing when people were working
24 or not working. Were you also -- were there also occasions
25 when employees of the Foundation were expected to attend,

1 or required to attend I should say, meetings of all
2 employees of the Health Plan and Authority and discussed
3 particular issues concerning employee terms and
4 conditions?

5 A. Oh, absolutely.

6 Q. Turn if you would to what we Bates stamped 196.
7 This is an e-mail from a Shannon McNally, spelled
8 M-C-N-A-L-L-Y, dated January 23, 2012; again addressed to
9 all staff. Do you recognize this e-mail?

10 A. Yes, Shannon was the CEO's administrator.

11 Q. For the Health Plan?

12 A. For the Health Plan.

13 Q. And what's this e-mail about?

14 A. This is about an all hands meeting. And it's a
15 friendly reminder that we're all expected to be there.

16 Q. This is covering both the Foundation employees
17 and the Authority or Plan's employees?

18 A. Right.

19 Q. And similarly when there were reasons to
20 celebrate, Foundation employees -- also part of that from
21 HR directors?

22 A. Yes.

23 Q. Turn if you would to what we Bates stamped as
24 197, this is an e-mail from Ms. Darrow, dated April 25,
25 2013 to all staff regarding a celebration. Do you

1 recognize this e-mail?

2 A. Yes.

3 Q. Can you tell us what it's about?

4 A. This is the Health Plan and it's the first time
5 they met -- reached the number of 150,000 members. So it
6 was a pretty big deal.

7 Q. And 150,000 members are supported by funds raised
8 by whom?

9 A. Well, they either came through state and federal
10 funds or the funds we raised.

11 Q. "We," again meaning the Foundation?

12 A. Sorry, yes. The Foundation.

13 Q. And we've already discussed the fact that you
14 were surprised that on occasion the office would be closed
15 by HR for the Authority or the Plan. Having said that,
16 take a look if you would at what we Bates stamped as page
17 1998, this is an e-mail from Mrs. Valdez again to all
18 staff, dated may 23, 2013. Do you recognize the e-mail?

19 A. Yes.

20 Q. What was this about?

21 A. I think that was right before a three-day
22 weekend. And so Elizabeth would often decide she could
23 close early, just before a three-day weekend.

24 Q. Did the Plan also solicit employees of the Plan
25 and the Foundation to individually contribute to the

1 charity fundraising engaged in by the Foundation on the
2 Plan's behalf?

3 A. Yes.

4 Q. All right, turn if you would to what we Bates
5 stamped at 199, this is a form that appears on the
6 Foundation's letterhead, but it also has a trademark or
7 insignia if you will, or logo might be a better term, for
8 the Foundation in the upper right hand corner. You see the
9 document?

10 A. Uh-huh.

11 Q. Do you recognize this?

12 A. Yes.

13 Q. Well what's this all about?

14 A. This was -- we were asking the employees if they
15 also would like to give -- especially for the program
16 called Healthy Kids, which covered many undocumented kids.
17 And quite a few of the employees did give through their
18 paychecks to help give funding for those programs.

19 Q. And this solicitation went out to all employees
20 for both organizations at the same time from the Authority
21 or the Plan?

22 A. I believe so.

23 Q. Now in your position, during this time period of
24 your hire in 2008-2013, were you required to file with the
25 State of California what are known as Form 700s?

1 A. Yes.

2 Q. Would you tell the judge what Form 700 is.

3 ADMINISTRATIVE LAW JUDGE ANDERSON: Excuse me,
4 we're going to break.

5 MR. PLATTEN: All right, Your Honor.

6 ADMINISTRATIVE LAW JUDGE ANDERSON: And I know
7 what a Form 700 is because I file one too. But anyway
8 we'll be in recess till five after Three.

9 (A break was taken from 2:47 p.m. to 3:06 p.m.)

10 ADMINISTRATIVE LAW JUDGE ANDERSON: All right
11 back on the record.

12 MR. PLATTEN: Thank you.

13 BY MR. PLATTEN:

14 Q. Ms. King, we left off about to start a discussion
15 about forms, 700s. were you informed by someone at the
16 Authority or the plan that your position as the CEO of the
17 Foundation you would be required to file forms, 700s?

18 A. As the executive director, I was told to fill
19 them out.

20 Q. And as a result of that, did you receive a series
21 of e-mails or other documents from Plan or Authority
22 individuals directing you what to do and how to do it,
23 training and filling out the forms?

24 A. Yes, our county does it automated, so you have to
25 have a password, you have to go into the county program.

1 It wasn't so nice back then. It's a lot nicer now.

2 Q. So just directing your attention to what we Bates
3 stamped as pages 202-206 of the exhibit. I'll ask you to
4 take a look at those documents on those Bates stamped
5 pages and ask you if you recognize the documents, number
6 one. And number two, just tell us what the documents
7 represent?

8 A. One, was resetting my password, and I remember
9 saying "Well, why do I need to fill out 700 forms?"
10 Because I already knew from my being an elected official
11 what they were, and I was told by HR it's just a
12 requirement, as part of the executive staff you need to
13 fill out the forms, 700s.

14 Q. Who changed your password?

15 A. I think that Elizabeth Darrow's secretary had to
16 e-mail to get me a new password.

17 Q. That would be Shannon McNally?

18 A. Yes.

19 Q. Take a look at Bates stamped page 203. Is that an
20 e-mail confirming that --

21 A. Yes, but I don't know that she could do it
22 herself, I'm not sure.

23 Q. And you mentioned you had been an elected
24 official, can you tell the judge what your position was as
25 an official?

1 A. I was elected for eight years in the city,
2 Saratoga; and I was mayor twice, two years.

3 Q. And other than reminders from someone at the Plan
4 or the Authority, did you get any other separate
5 reminders, notices, calendars or anything with respect to
6 form 700s for Foundation employees?

7 A. No.

8 Q. That always came through the Plan or the
9 Authority's employees?

10 A. Yes, I was the only one that had to fill it out.

11 Q. We talked a little bit about some of the training
12 that the Plan or Authority employees state the Foundation
13 employees -- just to complete the loop, did that include a
14 training or authority on the Disaster Recovery Plan that
15 was in effect for the Authority or Plan and the
16 Foundation?

17 A. Yes.

18 Q. Take a look if you would at the Bates stamped
19 document, page 207; which is an e-mail again from
20 Ms. Valdez to all staff, dated April 23rd, 2013. Is this
21 an example of those kinds of notifications from the Plan
22 to Foundation employees and Plan employees about that
23 issue?

24 A. Yes.

25 Q. Did you also have Foundation employees receive

1 instructions from the Authority or Plan -- HR folks --
2 with respect to the employee requirements regarding
3 confidentiality?

4 A. Absolutely.

5 Q. Take a look at what we've marked as 2009-2015,
6 tell me if you one, recognize these documents; and two,
7 what they pertain to.

8 A. It's a confidentiality agreement, most -- I mean
9 all health plans have to have it because of the nature of
10 the day that their dealing with. So we had to sign it just
11 like any other employee.

12 Q. And did you also receive -- Foundation employees
13 receive from the Health Care Authority similar training
14 and information with respect to security and privacy?

15 A. I believe so, I don't remember the exact
16 training.

17 Q. And going back to Bates stamped page 2008, I see
18 the 208, seems like 2008, but it's only 208. Memorandum
19 from Beth Paige of April 16, 2013. This was addressed to a
20 number of individuals that included both Health Plan
21 individuals and Foundation individuals?

22 A. Yes.

23 Q. And it's in regards to security and privacy
24 training for all departments referring to the Foundation
25 among others as a department?

1 A. Right.

2 Q. What were the other departments?

3 A. Well there was HR, there was finance, there was
4 patient involvement; there was working with the
5 physicians -- those kind of departments.

6 Q. And with respect --

7 A. And compliance.

8 Q. With the respect to the employee, Terms of Use
9 and employment, all departments were treated alike?

10 A. Yes.

11 Q. Did you also have Foundation employees receive
12 the same training from the Health Plan or Authority with
13 respect to sexual harassment?

14 A. Yes.

15 Q. And that would be -- if I could direct your
16 attention please ma'am, to pages 217-219 of the exhibit.
17 Again, first do you recognize these documents, series of
18 e-mails?

19 A. Yes.

20 Q. Second, can you tell us what it's about?

21 A. Yes, I think if I remember right a funder asked
22 me to meet with them, I had signed up for the harassment
23 reduction training and had to miss it to meet with the
24 funder. And so, the HR vice president was telling me how I
25 could do it in another way. I could do it online.

1 Q. Did you comply?

2 A. Yes.

3 Q. And again we talked previously about HR staff or
4 the Authority or the Plan directing all staff including
5 Foundation employees about developmental training and
6 performance appraisals. Taking a look at what we Bates
7 stamped as 216, that's an e-mail from Ms. Valdez to all
8 staff on that issue. It's just another example of that
9 kind of training that was provided to all departments?

10 A. Yes.

11 Q. And you also received training from the Plan or
12 Authority HR with regards to compliance with the HIPPA
13 Act?

14 A. Uh-huh, yes.

15 Q. And documents with respect to that appear on
16 pages 220-222. Asking you to take a look at those pages,
17 do you recognize those pages?

18 A. Yes.

19 Q. Do these constitute some of the e-mails back and
20 forth between the Authority or Plan, HR department or
21 other administrative employees to all employees in all
22 departments --

23 A. Yes, the compliance officer was responsible for
24 making sure we all took the training.

25 Q. Was the training also provided to all department

1 employees, both Health Plan and Foundation Plan employees,
2 with respect to the regulation of solicitations to
3 consumers?

4 A. Oh, absolutely.

5 Q. Is that otherwise known as the "Knox Key
6 Requirements"?

7 A. I believe so.

8 Q. Okay, what were those requirements?

9 A. Well there's -- for the work we were doing we
10 were outreaching to families, and we didn't -- because we
11 were Health Authority employees you're not -- the state
12 will not allow you to market your plans. So you can go out
13 and talk about if there are options and if there are
14 plans, but you cannot encourage someone who needs health
15 care to take the one which specifically worked for --

16 Q. Even though that was the only plan you raised
17 money for?

18 A. Right.

19 Q. And so you had to comply with that prohibition?

20 A. Right. And it actually didn't make a lot of since
21 to me because we were trying to just make sure people got
22 coverage, but the Health Authority felt we had to meet the
23 same requirements as their employees did, which was how
24 careful you have to be to not market one plan over another
25 because we were a two-plan county.

1 Q. So I want to ask you a couple more questions
2 about -- not just about employee relations but inner
3 relations between the Foundation and the Health Plan -- a
4 couple of other areas. Was there ever an occasion when the
5 Foundation department was allowed to use the Authority
6 in-house web designer for Foundation work?

7 A. Yes, when I first started the Health Plan had
8 their own web designer, and we utilized her to develop
9 our -- to upgrade our website.

10 Q. And were you charged for her services?

11 A. No.

12 Q. How about with respect to legal counsel? were you
13 ever given instructions with respect to what legal counsel
14 had to use?

15 A. I can't remember if we were given instructions,
16 maybe it was before my time. I just knew we always used
17 the Health Plan -- when the Health Plan had internal we
18 used theirs. When it came to HR we used Alison Hightower.
19 When it came to some other things we used counsel.

20 Q. I'd like to direct your attention to what we
21 asked to be marked as Respondent's Exhibit 2. Your Honor,
22 it's in the back of the binder, it's a separate three-page
23 document. Counsel has it in the back of his binder as
24 well. It's a document entitled, "Santa Clara Family Health
25 Foundation to the Board of Directors Meeting Tuesday

1 November 18, 2008; 9 a.m." Do you have that in front of
2 you, Ms. King?

3 A. Yes that's the one in the back.

4 Q. This document reflects that it's the minutes of
5 the meeting of the Board of Directors and indicates under
6 "Staff Present" that you were present at that meeting on
7 November 8, 2008, do you recall?

8 A. Yes.

9 Q. Is that true?

10 A. Yes.

11 Q. Looking at the second page of the document under
12 paragraph five entitled, "Bylaws Committee Report." I'd
13 like to direct your attention to two entries, paragraph
14 number six and paragraph number eight; just take a moment
15 -- take a look at those, let me know when you are finished
16 reviewing them.

17 A. Yes.

18 Q. Having reviewed this, does this refresh your
19 recollection with respect to any directions that the
20 Foundation Board gave to use counsel -- general counsel
21 with the Health Plan, any issues relative to creation or
22 provision of Bylaws for the Foundation?

23 A. I can't remember -- I mean Health Plan members
24 were on the Board, and it was just understood that we
25 would use the general counsel in the Health Plan.

1 Q. Was there ever an occasion in your experience,
2 from 2008-2013, when you used legal advice counsel not
3 otherwise directed by the Plan or the Board?

4 A. No.

5 Q. Also asking questions concerning inner
6 relationship with business operations, did the Foundation
7 ever get involved in negotiating on behalf of the Plan for
8 lease arrangements?

9 A. Yes.

10 Q. Take a look if you would at what has been Bates
11 stamped Exhibit 1 page 225. This is a one-page document
12 entitled "Amendment to Lease" between a Lessor, Cha Cha
13 Enterprises; C-H-A, C-H-A, Enterprises LLC; and Lessee,
14 Santa Clara County Health Authority DBA Family Health
15 Plan. You see the document, Ms. King?

16 A. Yes.

17 Q. Do you know how this document came to be?

18 A. Yes, the lease was entered into by the previous
19 CEO, Leona Butler.

20 Q. Of the Plan?

21 A. Of the Plan. And it was fairly expensive. It was
22 about \$15,000 a month for maybe four or 5,000 square feet.
23 And so, the CEO of -- the new CEO suggested that I go try
24 and work with the lessee -- lessor -- the owner to see if
25 I could convince them to reduce the rent for the last

1 year. And we talked about how we helped children and
2 families and help them understand their health coverage
3 and their -- get health insurance and the owner's decided
4 to reduce the rent -- the rent in half per month.

5 Q. So you negotiated lower rent for the Health Plan
6 or Authority?

7 A. Yeah, I was kind of pleased I made that happen.

8 Q. You did this at Ms. Darrow's direction?

9 A. Yes.

10 Q. And just so we cover all the pages of Exhibit 1
11 here at least. You did mention previously that among
12 counsel that you were directed to use included county
13 counsel, again occurred in 2011. Was that Miguel Marquez?

14 A. Yeah -- I don't remember, it probably was.

15 Q. Well let me refresh your recollection. I'll ask
16 you to look at what we Bates stamped 223 and 224, series
17 of e-mails by and between yourself and Ms. Darrow. And you
18 see the reflected -- if you would ma'am, on 223 the e-mail
19 at the bottom is CC to a Miguel Marquez, spelled
20 M-A-R-Q-U-E-Z. Does that refresh your recollection?

21 A. It was actually -- I think I remember it was
22 actually written by Elizabeth Pianca, but she worked for
23 Miguel, so yes.

24 Q. And Pianca is P-I-A-N-C-A for the reporter, is
25 that correct?

1 A. Yes.

2 Q. And Miguel was county counsel at the time?

3 A. Yes.

4 Q. And so you used Mr. Marquez at the direction of
5 the Health Plan to resolve whatever legal issue that was
6 involved?

7 A. Actually Elizabeth asked them to look at the
8 issues of my working for the Authority plus being an
9 elected official and running for a second term -- and then
10 she shared it with me.

11 Q. And the matter was resolved at that point?

12 A. Yes.

13 Q. Now, I just want to make sure we cover what led
14 to a separation in 2013 after you been there some five
15 plus years so the judge has an understanding of how that
16 came about. You indicated earlier that this began
17 sometime -- or there was an issue that was raised sometime
18 in 2012. Can you tell us what that issue was?

19 A. The new CEO was moving the Health Plan more into
20 other product lines like Medicare, and seniors, and people
21 with disabilities. And so we went into another strategic
22 plan, and that was to discuss did we want to go the same
23 route that the Health Plan was going. And we decided we'd
24 rather continue just being focused on children.

25 Q. And did this occur at or around the same time

1 that the CEO of the Health Plan or the Authority,
2 Elizabeth Darrow, resigned from the Board of Directors?

3 A. I think she resigned around that time or just
4 before that time.

5 Q. Take a look if you would at Bates stamped pages
6 226 and 227; 226 is an e-mail from Ms. Darrow, a number of
7 individuals including yourself, dated May 17th, 2012,
8 referencing Bates stamp 227, which is a letter dated May
9 17th, 2012 to Ms. Darrow to the Foundation Board of
10 Directors regarding designation. Does that refresh your
11 recollection that this was all happening at around the
12 same time?

13 A. It was awkward because the CEO of the Health Plan
14 was dating the Chair of the Foundation.

15 Q. At some point in time did the Board of Directors
16 including the Chair make a determination that the
17 Foundation will terminate this Administrative Services
18 Agreement with the Health Authority?

19 A. Was there a time? When we decided to move, yes we
20 would of.

21 Q. Asking you to look at Bates stamped page 228,
22 this is a letter addressed to Ms. Darrow from you dated
23 April 26, 2013. Do you recognize the document ma'am?

24 A. Yes.

25 Q. Can you tell us what the document is?

1 A. This was when we decided that we would separate.
2 The idea was it would be better to separate on the end of
3 the fiscal year than any other time. So we were asking to
4 make the separation earlier than what would have been the
5 notice in the administrative agreement.

6 Q. And did that leave the conversations by and
7 between your offices and the CFO of the Plan or Authority
8 about how the move would occur and what would happen with
9 respect to issues in the move?

10 A. Yes, there were a lot of questions about what
11 could we take, you know a lot of it was our documents were
12 on their server; and so there was a lot about that.

13 Q. So looking at Bates stamped pages 229-230, which
14 is a e-mail trail -- May 28th and May 27th. My
15 understanding Mr. Cameron and Ms. Hennessy, which are
16 photocopied on these e-mails, represented some of the
17 questions that had to be resolved at some point and time?

18 A. Yes.

19 Q. And subsequently after the separation -- or I
20 should say -- excuse me, preparation for the separation --
21 at that time were the Bylaws of the Foundation actually
22 amended in early 2013?

23 A. I think they weren't amended till after we left.
24 Am I wrong on that?

25 Q. Let's take a look and refresh your recollection

1 if you would looking at Bates stamped pages 231-241. This
2 is a document that's entitled "Bylaws of Santa Clara
3 Family Health Foundation." Bottom right hand corner of the
4 document is says, "Amended as of January 8th, 2013" And
5 remarkably this is the only document we have that's
6 actually dated and signed by the folks at the end of
7 it. Does this refresh your recollection of the Bylaws
8 actually truly amended only in 2013?

9 A. Yes, they were. This was around having a new
10 Executive Board so that you could make decisions between
11 meetings, If we had to move quicker than normal. So I
12 think that's the main change that occurred in this
13 document.

14 Q. Almost done, Mrs. King. We have a couple of more
15 questions. I'd like to take a look at the Agency exhibit
16 binder for a moment please. And directing your attention
17 to that binder to the Independent Auditor's Report, which
18 I believe is Agency Exhibit No. 9. And in particular,
19 ma'am, I'd like you to look on page 15 and direct your
20 attention to the top of that page to what is marked as
21 Note No. 5. Are you with me?

22 A. Uh-huh.

23 Q. That note reads in the last sentence,

24 "The Health Authority accrued receivable
25 due to the Foundation of 470,798 and 26,762 of

1 June 30, 2010 and 2009, respectively the Healthy
2 Kids' premiums and certain administrative costs
3 incurred."

4 To your understanding, does that refer at all to any
5 debt incurred for administrative services performed on the
6 Administrative Services Agreement between the Authority or
7 Plan and the Foundation?

8 A. I don't know if I could pinpoint exactly what the
9 administrative costs are, but it goes back to the CEO of
10 the Health Authority starting the Foundation. And what
11 would happen would be she would put children into her
12 plan, Healthy Kids, and document it and then the
13 Foundation would get a receivable for those children. And
14 there were a couple of years where she put she had more
15 children on the Plan than fundings we raised. And so that
16 became receivables to the Plan because frankly, there was
17 more kids than we had funding for.

18 Q. Did you as the chief executive officer for
19 Foundation ever pay a bill to the Health Authority, of any
20 one year, \$26,000 because the Administrative Services
21 Agreement?

22 A. No, because it was 1,000 a month, so that's not
23 that. But when the Foundation started the Health Plan used
24 to give the Foundation a million dollars a year to pay for
25 their -- to pay for themselves, and then use the rest for

1 the premiums. And when money got very tight in the Health
2 Plan, they stopped doing that. So not only did we stop
3 receiving any funds for ourselves from the Health Plan,
4 but we also received this big receivable because of the
5 number of kids the Health Plan put into their plan.

6 Q. Even though there was not funding to cover them?

7 A. Even though there was not funding. I think the
8 hope was that we would be able to raise the funds after
9 the fact and pay off that receivable.

10 Q. I'd like to direct your attention to Agency
11 Exhibit No. 11, this is the Administrative Services
12 Agreement. And go to the very last page in the agreement
13 before the scheduling, which is page four. This is the
14 page with the signature -- signatures on it, and I just
15 want to confirm something that was raised in cross
16 examination earlier. These -- document appears two
17 signatures, one is Leona Butler, President; and dated June
18 6th, 2003, her signature. She was the president of what?

19 A. Well at the time she was the president of the
20 Health Plan, the Authority; and the president of the
21 Foundation.

22 Q. Was she also at that time as chief executive
23 officer of the Authority?

24 A. Yes.

25 Q. And then it shows on behalf of Santa Clara County

1 Health Authority signature by -- again, I'm not going to
2 try to manage the pronunciation of the name Ron W., dated
3 June 6th, 2002; and he's listed as treasurer/CFO. At that
4 time he was the treasurer to what organization?

5 A. He was the treasurer of the Foundation and he was
6 the CFO of the Health Authority.

7 Q. So just so we're clear on this, this document,
8 orderly signed on behalf of the Foundation and the
9 Authority, was signed by two individuals; both of whom
10 were employed by the Authority?

11 A. Yeah, they were on -- They were also on the Board
12 of the Foundation.

13 Q. Lastly ma'am, we did not cover Bates stamps
14 92-117, it relates to something you did talk a little bit
15 about -- was an effort to get a pay increase for
16 Ms. Hennessy. Do you recall that?

17 A. Yes.

18 Q. And without going through all these documents,
19 can you just explain to the judge what the issue was with
20 Ms. Hennessy. What were your attempts to give her a pay
21 increase and what happened?

22 A. Well, when you -- When Emily speaks you will know
23 she's very remarkably. And she was doing many functions.
24 So I went to HR and said, "What grade level does she fit
25 in?" Because I thought she was under paid, and they

1 actually said she was in a lower grade than I thought she
2 fit, based on her job description.

3 So then HR agreed that they would go out and do an
4 assessment through a third party, and they -- when they
5 did that assessment they didn't put in all that we raised
6 because a lot of what we raised went directly to the
7 Health Plan. So any of the funds -- more than half our
8 funds went directly to the Health Plan even though we did
9 all the reporting, all the making sure we met everything,
10 etc.

11 And so they -- when they went to get the study done
12 they put in that we raised a lot less than what I felt
13 should be put in -- that we raised. And so they came back
14 and said nope, she didn't fit to get a raise.

15 Q. And so did she get the increase that they
16 intended she get, or did she get the increase that she
17 desired?

18 A. I think she got the merit increase that they gave
19 first, and then I went back with this and then -- I didn't
20 get to go anywhere with it.

21 Q. So looking precisely -- just one page out of that
22 scan of packets from Bates stamp 92-117. Look if you would
23 at page Bates stamped 107. This is an e-mail from
24 Ms. Valdez to all staff, which talks about merit increases
25 at that point in time in 2012. It has certain ratings,

1 what an increase for an individual would be based on file
2 ratings. You see that?

3 A. Yes.

4 Q. The scale?

5 A. Uh-huh.

6 Q. So, just so we're clear, you attempted to get
7 Ms. Hennessy an increase greater than what these ratings
8 would have otherwise provided?

9 A. Right.

10 Q. And you failed?

11 A. Right.

12 Q. And she had to take -- plans that she had to
13 take -- given to all the other employees of the Plan?

14 A. Right.

15 MR. PLATTEN: Thank you, nothing further.

16 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay, cross
17 examination?.

18 MR. PHILLIPS: Yes, Your Honor.

19 CROSS EXAMINATION

20 BY MR. PHILLIPS:

21 Q. Hi, Ms. King.

22 A. Hi, Mr. Phillips.

23 Q. So forgive me, I'm a little fuzzy still on this
24 move that happened in 2013. So you physically moved out of
25 the location that you were sharing with the Plan, correct?

1 A. Yes.

2 Q. Okay, and you -- at that time ended the service
3 agreement that we've been discussing, correct?

4 A. Yes.

5 Q. And you hired a new administrator, like a payroll
6 administrator?

7 A. Yes.

8 Q. Okay. And so then your checks were being cut by
9 somebody else?

10 A. After we moved out of the Authority, yes.

11 Q. Okay. So, while you were still under the service
12 agreement, before the move, were your checks and payroll
13 done because of the service agreement?

14 A. They were done because we were employees. I mean
15 we were employees of the Authority so we got our paychecks
16 when everybody else got their paychecks.

17 Q. Okay, so when the move happened, how did you not
18 become employees of the Authority?

19 A. Well, okay. So the moves at the end of 2013, and
20 we say we want to break away, and we move and -- they
21 actually did exit interviews just like we were any other
22 Authority employee. And the exit interview was this -- you
23 can go for Cobra if you want, and this is how long you'll
24 have your benefits and all that; just like any other
25 Health Authority employee -- here's how you sign up for

1 Cobra retirement, that was also presented during my exit
2 interview.

3 Q. So the move happened in the middle of 2013?

4 A. At the end of May.

5 Q. At the end of May, okay.

6 A. But I think we actually moved at the end of May,
7 but our paychecks went to the end of June or June 28th or
8 something because of the pay period.

9 Q. So, other than a physical move and going through
10 an exit interview process, did anything change with
11 respect to the governing documents of the Foundation?

12 A. Yes, I mean we -- you have to change -- you move,
13 you change your -- you send in your Articles of
14 Incorporation again with your new address. We went ahead
15 and developed that strategical plan around just working
16 with children. So I mean it didn't happen the exact day,
17 but it happened after we moved.

18 Q. Okay, so you updated the Articles of
19 incorporation, but -- so what you're telling me is that
20 prior to the move you're an employee?

21 A. Yes.

22 Q. You move -- you physically move. You go through
23 an exit interview process and you update your address with
24 the secretary of state, and there's a whole new company
25 and entity that employs people all on their own now?

1 A. Yes, I mean it's the same. It's a 5013C and we
2 changed our name, and we had to put everything in place
3 that we used to get through the Health Authority. So
4 enroll workman's comp, all that, we had to put in place.

5 Q. Right, what you had agreed to in the service
6 agreement?

7 A. No, I mean it's what we got as an employee. I
8 mean the service agreement I didn't really look at very
9 much till after we left, but -- so I don't know that it
10 was ever based on that service agreement.

11 Q. So you're telling me that all of the functions
12 that the Authority provided -- the HR, the payroll, the
13 training -- you never understood those to be pursuant to
14 the service agreement while you were still -- what you
15 considered to be employees?

16 A. Are you asking me if I thought it was just
17 because of the service agreement? I mean this was a very
18 symbiotic relationship. We raised all the money, we raised
19 132 million for the Health Plan; and in exchange, we were
20 employees. And they did all these things for the
21 Foundation because we were part of the same organization,
22 so.

23 Q. So when you were doing -- I forget off the top of
24 my head which party informed the other of the notice to
25 terminate that agreement, do you remember?

1 A. We did.

2 Q. The Foundation gave notice to the Authority --

3 A. Authority.

4 Q. -- that the service agreement was going to be
5 terminated?

6 A. Right.

7 Q. And you asked for it to be done on a quicker
8 timeline, right?

9 A. Right.

10 Q. To try to coincide with the fiscal year?

11 A. Yes.

12 Q. So I thought you just told me that you never
13 really looked at that service agreement until after the
14 move?

15 A. Well, I said I didn't look at it very much. I
16 mean I did have to look at it to see what were the
17 requirements on what I needed to give the Health Plan. So
18 I looked at the dates and wrote it based on that.

19 Q. Okay, and what was your understanding that once
20 that agreement is terminated, what services would the
21 Foundation then have to provide on their own?

22 A. Well, I knew once we moved out of the building it
23 wasn't likely they were going continue to do payroll. I
24 didn't think our insurance would remain the same, you know
25 they made it very clear we were going to be terminated as

1 employees along with the moving. So it's anything you need
2 for any business.

3 Q. Was it your understanding that you needed to
4 terminate that service agreement in order to move?

5 A. I think actually -- I think Elizabeth Darrow
6 reminded me. I can't remember if she reminded me in
7 writing, but I remember her reminding the Board -- you
8 know, if you're going to separate, we need something that
9 refers to the -- this document, and we went and looked it
10 up.

11 Q. And Ms. Darrow -- you just said "reminded the
12 Board." The Board of the Foundation?

13 A. I can't remember if it was in a letter, or an
14 e-mail, or she came and said it at the Board. It might
15 have been both, but I remember her telling us.

16 Q. But when you just used the word "Board," you're
17 referring to the Foundation's Board?

18 A. Right.

19 Q. Okay. Now was she also a member of the Board, the
20 Foundation's Board?

21 A. She was until -- I forget the dates in here, but
22 I think it's 2011, something like that. 2011.

23 Q. Do you know when she became a member of the
24 Board?

25 A. When she became the CEO of the Health Plan.

1 Q. Which was approximately?

2 A. I think she became the CEO in early 2010.

3 Q. Okay. So there was a period of time -- maybe a
4 year, maybe more, where she was both CEO of Authority and
5 a Foundation Board member?

6 A. Yes, maybe. Yes, a couple of years.

7 Q. Was it difficult for you to distinguish which hat
8 she was wearing when you would have conversations with her
9 as the CEO of the Authority or as a Board member of the
10 Foundation?

11 A. No, Because everything we did was for the Health
12 Plan. So it with wasn't like well, I'm doing this because
13 I'm a Board member, and I'm doing this because I'm the
14 CEO. I mean it was -- we were that tied that she didn't
15 need to make it clear.

16 Q. So you said that phrase a few times now. That
17 everything you did was for the Authority, to raise money
18 for the Authority. But I believe that you've also
19 mentioned that part of the Foundation's mission was to go
20 out and get people enrolled into health plans whether it's
21 Authority or the other plan in the county, is that
22 correct?

23 A. Yeah, the Health Plan did that also. I mean they
24 had staff that did that too.

25 Q. So there was at least a portion of the

1 Foundation's job and mission to support the community at
2 whole rather than raise money for the Authority, is that
3 correct?

4 A. Well, we couldn't have done it without the
5 Authority agreement. And the Authority agreed it would be
6 a good idea if we did that outreach and accepted the money
7 to hire the staff because they didn't want to hire anymore
8 staff to do it.

9 Q. And you said that we couldn't do it. What
10 prevented you from doing that without Authority
11 permission?

12 A. You know -- I mean I work in the building, the
13 CEO decides what I make, the CEO decides pretty much my
14 livelihood, what we could raise money for, would I go up
15 against her on that? I don't think I'd take in the money
16 and hire people without her permission because how was I
17 going to hire them? I mean I don't know how I'd hire them,
18 I didn't even hire a temp without the Health Authority
19 saying it was all right. So I don't know how I would have
20 done that.

21 Q. So your offer letter -- and it's in two places,
22 it's either 56 in front of you or it's also CalPERS
23 exhibit --

24 A. That's okay it's easier to get to 56.

25 Q. Okay. Now, that document indicates that you

1 report to the Board of Directors of the Santa Clara Family
2 Health Foundation, is that correct?

3 A. Yes, but also in "Duties" it says I do it with
4 the CEO.

5 Q. In collaboration?

6 A. Right.

7 Q. Right. So you collaborate with the CEO, but you
8 report to the Foundation Board?

9 A. Uh-huh.

10 Q. Correct. And then the org charts, which is
11 Exhibit 12 of the CalPERS packet. The org chart for the
12 Foundation, the executive director, there's a straight
13 line to Santa Clara Family Health Foundation Board of
14 Directors, is that correct?

15 A. That is this org chart that the Health Authority
16 put together.

17 Q. Okay, so by their own instruction it appears that
18 you report to the Foundation's Board and not the
19 Authority's CEO, correct?

20 A. By the -- By this org chart it looks this way.

21 Q. Okay, and by the offer letter for which you got
22 employment, it appears that way as well, correct?

23 A. Did I read it that way are you asking? No, I did
24 not read it that way. I've been on the Board for two
25 years, and I knew exactly how things ran between the

1 Health Authority and the Foundation.

2 Q. Would you consider that a bully relationship?

3 A. A bully?

4 Q. Right. Bully and victim.

5 A. No, no. It was a very -- I think it was pretty
6 symbiotic. I mean, we were not -- we were not there to
7 raise money for any other organization but the Health
8 Authority, and what they were doing was excellent. When
9 they started, one out of every six kids did not have
10 insurance in the county. Now they're at 95%. So no, I
11 didn't feel that way.

12 Q. I certainly don't mean to imply that the job that
13 the Foundation performed or that the Plan performed --
14 there's anything wrong with that. There's a very noble
15 mission. But the relationship between the Foundation and
16 the Authority appears to me that it doesn't follow the
17 governing documents, and I'm asking your opinion on that.

18 A. Okay, did it follow it? No. Was it bullying? No.
19 If you knew me better you would know that I don't get
20 bullied; so, I'm sorry. I mean Chris knows me, I'm not the
21 type to get bullied, no.

22 Q. So you described a couple of situations in which
23 you wanted Ms. Hennessy to receive an increase in pay, in
24 which you wanted additional staff to support your efforts
25 in gaining subscribers to health insurance, which were all

1 denied. Do you believe that you had the authority to make
2 those decisions without going to the CEO of the Authority?

3 A. Did I have the Authority? No.

4 Q. Do you think that the Foundation Board of
5 Directors had the authority to make those decisions?

6 A. They had the Authority in collaboration. I don't
7 think any -- I don't think they would have done it without
8 an agreement from the Authority.

9 Q. But you allowed the Authority to direct those
10 decisions rather than the entity for which you reported
11 to, the Board of Directors for the Foundation?

12 A. I guess you could put it that way, it was the way
13 things had always worked.

14 Q. Okay. Can I have you flip to Exhibit 11 in the
15 CalPERS packet, the "Administrative Services Agreement."
16 And then in paragraph eight, which is the second one --
17 second paragraph down on page three. It reads the very
18 first sentence,

19 "SC --

20 I'm sorry --

21 "SCFHP, which is the Authority, and the
22 Foundation are separate and independent
23 Entities."

24 Do you agree with that?

25 A. Now I do. If you mean when this was written, no.

1 Q. How about the next sentence?

2 "The relationship between the Authority and
3 The Foundation is purely contractual."

4 A. No, I don't agree with that.

5 Q. Do you agree with it now?

6 A. Now that we're separated, yes.

7 Q. Okay. And does --

8 A. I mean --

9 Q. -- does the Foundation --

10 A. we're still friends and everything. We still see
11 each other if that's what you mean

12 Q. -- still raise money? It's important for only one
13 of us to talk at a time so the court reporter can get
14 everything that's said.

15 A. Okay, sorry.

16 Q. But I appreciate your joke nonetheless. So the
17 Foundation still raises money for the Authority?

18 A. No, we do not.

19 Q. You do not?

20 A. No.

21 Q. So there is no connection between Foundation and
22 Authority anymore?

23 A. We still have some contracts with some cities
24 that were developed when we were still part of the
25 Authority, and we have a contract to finish paying those

1 off.

2 Q. Now before the move -- well during the period --

3 ADMINISTRATIVE LAW JUDGE ANDERSON: (Sneezes)

4 MR. PHILLIPS: Bless you.

5 ADMINISTRATIVE LAW JUDGE ANDERSON: Thank you.

6 BY MR. PHILLIPS:

7 Q. During the period of time which you considered
8 yourself an employee, did the Foundation ever incur debt?

9 A. Yes.

10 Q. Did they ever incur debt from an entity other
11 than the Authority?

12 A. I don't think so. I'm pretty sure we never did.
13 I can't think of any debt, no.

14 Q. Okay. So now can I have you turn to Exhibit 4 of
15 the CalPERS binder. And I believe you testified earlier,
16 and if I'm wrong in this a little summary, please correct
17 me, that you essentially didn't know what Mr. Cameron was
18 talking about when he mentioned that in 2009 there was
19 some sort of change and that prior to 2009 the Foundation
20 employees were correctly reported but then after 2009 that
21 they were not, and Mr. Cameron agrees with CalPERS's
22 determination, is that correct?

23 A. Yes, I mean that's what this letter says.

24 Q. Right. Now, you have no idea what he's
25 referencing here?

1 A. No, I don't. I can't think of some situation that
2 occurred around then that would have made a difference.

3 Q. And in 2009 you were the executive director of
4 the Foundation, correct?

5 A. Yes.

6 Q. Were you also a Board member at that time?

7 A. Yes.

8 Q. Did you have any input on this letter?

9 A. No.

10 Q. Okay. Did you have any input on the audit?

11 A. Not one bit. All the documents were taken off the
12 server.

13 Q. What does that mean?

14 A. Well we shared a server, so the Health Plan went
15 and got the documents themselves.

16 Q. Oh.

17 A. They--

18 Q. The Authority reached into the server and got
19 Foundation documents?

20 A. Yes.

21 Q. Got ya. So you said that with some disgust, why
22 that attitude?

23 A. Well I think some of this could have been cleared
24 up if someone had spoke to us directly. So it's
25 disappointing this is -- I could be working on a grant

1 right now. So that's where I'm having a hard time.

2 Q. And I could certainly be doing other things as
3 well.

4 A. (Laughing) I'm sorry.

5 Q. (Laughs) So, did you feel that the Authority then
6 overstepped "their authority" in getting and providing
7 CalPERS with the Foundation documents?

8 A. I don't know about that. They were -- they came
9 to me and asked me for some documents, but they needed
10 them like in the next 24 hours, and we were right in the
11 middle of a big fundraising event. And so they said,
12 "well, we'll just go get them." And then there was no
13 other real discussion about it at all.

14 Q. Now you said that we may not be here if you had
15 been included from the gecko, as far as the audit
16 essentially, is that correct?

17 A. No, I didn't -- I'm not -- I don't mean that, I
18 just think some of these things could have been cleared up
19 right then instead of this.

20 Q. Okay. Can I have you turn to the Bates stamped
21 document, 62.

22 A. So that's in the big binder?

23 Q. Yes. And this is the salary/wage change form?

24 A. Uh-huh.

25 Q. Now I believe you testified earlier that you said

1 Barbara had approved this. I just kind of want to walk
2 through the bottom third of this document because to me it
3 appears that Ronald Cohn approved as the executive and it
4 was received by Barbara. Is that how you understand this
5 document?

6 A. I saw a few e-mails on this, and Leona Butler
7 went to Barbara -- Leona Butler being the CEO of the Santa
8 Clara Family Health Plan -- and said put this through,
9 this change. And Barbara as the HR director said, "Well,
10 I'd like Ron Cohn to send an e-mail and come sign the
11 form." So I remember Ron coming in that day to sign the
12 form.

13 Q. Okay. Do you have any idea why Barbara would want
14 Ron to sign the form?

15 A. I think because she wanted to know it also came
16 from the Board Chair as well as the CEO of the Health
17 Plan.

18 Q. And so I believe earlier you testified that in
19 2012 -- I think it was -- regarding a pay increase the --
20 it changed for you. You no longer got approval from the
21 Authority CEO. Instead you got -- you needed to get
22 approval from the Chair of the Board of the Foundation.
23 Is that correct?

24 A. No, that was on my vacation. So I would also go
25 to the CEO to say, you know, I'm going to take this

1 vacation. One time it wasn't okay with the CEO of the
2 Health Authority, so I always made sure I checked with the
3 Health Authority's CEO.

4 Q. Oh, so that was out of courtesy then?

5 A. Well, no. I mean, I think I had -- I don't know.
6 I don't think it was courtesy so much as approval. I
7 didn't go -- I never went to anyone outside of the Health
8 Authority for approval on my vacation, and everyone had to
9 have approval of one level up.

10 Q. Right. And so -- I'm sorry -- And so what changed
11 in 2012 where you were directed to get approval from the
12 Board, the Foundation Board, rather than the Authority
13 CEO?

14 A. Well Elizabeth asked me to first, get the Chair
15 of the Board to say yes, and then send it back to her
16 secretary and then her secretary would send it into HR.

17 Q. Okay. So I get the change, I'm asking about the
18 "why." Do you know why?

19 A. No. I mean, she just -- I asked why, and she
20 said, "I just think you should also check in with him."

21 Q. Okay, is it maybe because that's whom you are --
22 you report to, the Board?

23 MR. PLATTEN: Objection, calls for speculation.

24 MR. PHILLIPS: If you know.

25 ADMINISTRATIVE LAW JUDGE ANDERSON: Overruled.

1 THE WITNESS: Could you ask it again, I'm sorry.

2 BY MR. PHILLIPS:

3 Q. Could it be because you actually are supposed to
4 report to the Board and not the CEO of the Authority?

5 A. If you're ask -- I assumed she just wanted to
6 make sure they both were clear on what was happening.

7 That's what I assumed.

8 Q. Can I have you flip a couple pages up to 66,
9 please.

10 A. In the big binder right?

11 Q. In the big binder, yeah. And this is the
12 promotion form for Ms. Hennessy, is that correct?

13 A. Uh-huh.

14 Q. Okay. And so I'm going to ask you a very similar
15 question -- down regarding the bottom third of this page,
16 under "Approvals," so you signed there correct, on that
17 first line?

18 A. Uh-huh.

19 Q. As the director --

20 A. -- yes, I'm sorry.

21 Q. Did you make this decision on your own?

22 A. To promote Emily?

23 Q. Yes.

24 A. I'm sorry, I really don't remember.

25 Q. Okay. Do you remember any of the details around

1 this promotion? I realize it's six years ago now.

2 A. I think it was taking Emily from -- I'm not sure,
3 I thought it was maybe taking Emily from a manager to a
4 director, but I'm going to be guessing if I say that.

5 Q. Okay. Do you remember -- Is this something that
6 Ms. Hennessy came to you and asked for? Did she request
7 this? Was it something you came up with?

8 A. I know she didn't request it. I don't know. I'm
9 going to guess we had a discussion.

10 Q. Well I don't want you to guess.

11 A. Then I don't remember. But I know Emily didn't
12 ask for it.

13 Q. Okay. So, when the move happened in 2013 --

14 A. Uh-huh.

15 Q. -- that coincided with the termination of the
16 service agreement?

17 A. Right.

18 Q. Okay. So at the termination of the service
19 agreement your benefits changed?

20 A. Correct.

21 Q. Okay, your office location changed?

22 A. Correct.

23 Q. Your e-mail address changed?

24 A. Correct.

25 Q. The fact that you no longer could use Authority

1 office supplies and had to supply your own was different?

2 A. Yes.

3 Q. Did you also have to either purchase or lease new
4 servers?

5 A. We did a little bit of both, yes.

6 Q. And what about computers?

7 A. The Health Plan agreed that we should take our
8 own -- the computers we had on our desks.

9 Q. The ones that you had bought?

10 A. Yes.

11 Q. And you mentioned that you have a new
12 payroll third-party provider, like ADP or something?

13 A. Yes, we use TriNet.

14 Q. TriNet, okay. How about life insurance?

15 A. We have some life insurance through TriNet.
16 TriNet I believe, yes.

17 Q. Okay. And so there was some discussion about
18 "across-the-board merit increases," am I right?

19 A. Yes.

20 Q. At the time of a merit increase, it would happen
21 both for Authority employees and for Foundation employees,
22 correct?

23 A. Yes.

24 Q. Would you consider it more efficient for the
25 Authority to perform merit increases for all the

1 individuals that it provides payroll services for at the
2 same time?

3 A. Are you saying do I think that's the way they
4 should do it?

5 Q. Well I'm asking -- I guess in a way, I'm asking
6 if you think it's more efficient for an entity, any
7 entity, to perform merit increases or other changes at the
8 same time for all of the individuals that it performs
9 payroll services for?

10 A. I would say theoretically, yes. I never found it
11 to exactly work that way, but there's logic to it.

12 Q. Okay. Well theoretically according to the Bylaws
13 and the org chart you reported to the Board of the
14 Foundation, correct?

15 A. According to the org chart.

16 Q. Okay. And lastly -- I think I'm almost done.
17 You -- Not you -- the Foundation paid the Authority \$1,000
18 a month for the services provided under the service
19 agreement, correct?

20 A. Yes.

21 Q. Now that you have moved, do you pay the same
22 amount in order to receive all these different services
23 that were being provided by the Authority?

24 A. I wish I did, but no.

25 MR. PHILLIPS: Okay, thank you. No further

1 questions.

2 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay, any
3 redirect?

4 MR. PLATTEN: Very briefly.

5 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.

6 REDIRECT EXAMINATION

7 BY MR. PLATTEN:

8 Q. What do you pay currently?

9 A. I don't know, Emily might be better at answering
10 it. But I would guess it's closer to 15 to 18,000 a month.

11 Q. When it comes to setting the compensation of the
12 new Healthier Kids Foundation, who makes determination of
13 what the compensation will be? Is it you or is it the
14 Administrator of TriNet?

15 A. We do.

16 Q. Who makes the determination as to what the
17 benefits provided to the employees is? Is it you or is it
18 TriNet?

19 A. We do.

20 Q. Who makes determinations of how the performance
21 evaluations are conducted? Is it you or is it TriNet?

22 A. We do.

23 Q. Who makes the determination as to when people may
24 take vacations? Is It you or is it TriNet?

25 A. We do.

1 Q. Who makes the determination as to when employees
2 are disciplined? Is it you or is it TriNet?

3 A. We do.

4 Q. Now, you talk about the one time vacation
5 request -- wasn't okay with -- I believe you said the
6 Authority CEO, did you take a vacation when it wasn't
7 okay?

8 A. The concern on Leona's part was that -- the
9 CEO -- was that more than one of us was going to take a
10 vacation at the same time, so we had to kind of work
11 around each other's schedules.

12 Q. So you didn't take a vacation that you
13 anticipated?

14 A. I did, but shortened. We all worked it out.

15 Q. Very good. And lastly, you had some difficulty
16 recalling when Ms. Darrow resigned. Just to refresh your
17 recollection, if you'll turn to Bates stamp 266, with your
18 answer of cross examination was you thought maybe 2011.
19 Looking at Bates stamp 226 in Respondent's exhibit, does
20 that refresh your recollection as to the date that
21 Ms. Darrow resigned from the Foundation Board? 226 and
22 227.

23 A. Oh, I'm sorry I went to 266.

24 Q. 226 and 227.

25 A. It's a year later. Sorry, 2012.

1 MR. PLATTEN: Very good. I'd like to move into
2 evidence Respondent's Exhibit 2, which is the three-page
3 document for minutes of the meeting, November 18th, 2008.

4 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay, I
5 haven't marked that. I was wondering what was going to
6 happen with that.

7 MR. PLATTEN: I think I'd suggest we refer to it
8 as Respondent's 2. The binder would be Respondent's 1.

9 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay well I'm
10 going to change that to -- somewhat. I'm going to call
11 this Exhibit B.

12 (Whereupon, Respondent's Exhibit B was marked
13 for identification.)

14 MR. PLATTEN: Very good.

15 ADMINISTRATIVE LAW JUDGE ANDERSON: All right.
16 And then, I'm going to call your exhibit, Exhibit A.

17 MR. PLATTEN: Very good.

18 ADMINISTRATIVE LAW JUDGE ANDERSON: And then
19 there will be pages through that.

20 MR. PLATTEN: Thank you.

21 (Whereupon, Respondent's Exhibit A was marked
22 for identification.)

23 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.

24 MR. PLATTEN: I have a few more pages to go
25 through with another witness, Your Honor. So we'll deal

1 with that admission at that time.

2 ADMINISTRATIVE LAW JUDGE ANDERSON: All right.

3 MR. PLATTEN: No further questions at this time
4 for Ms. King.

5 ADMINISTRATIVE LAW JUDGE ANDERSON: All right.
6 Any recross?

7 MR. PHILLIPS: Yes. It will be under one minute,
8 I promise.

9 RECROSS EXAMINATION

10 BY MR. PHILLIPS:

11 Q. Did you contract with your payroll provider to
12 perform any other services besides payroll?

13 A. You mean after we moved?

14 Q. Yeah, after the move?

15 A. Oh, well TriNet is all our health benefits, all
16 our payroll, some education in there that we use them for.

17 Q. Okay, but I guess did you -- you didn't contract
18 with them to provide management services or HR services,
19 did you?

20 A. No, we used a different consultant for HR.

21 MR. PHILLIPS: Okay, thank you.

22 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay, thank
23 you. And you can step down.

24 (Time Noted: 4:12 p.m.)

25 ADMINISTRATIVE LAW JUDGE ANDERSON: So while she

1 does that, and I know we have one more witness, can I ask
2 Counsel if either of you were going to make oral-closing
3 argument or if you were going to file briefs?

4 MR. PLATTEN: File briefs, Your Honor.

5 MR. PHILLIPS: I would prefer oral.

6 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay, but --
7 all right. Well think about this, if you want to do that,
8 that's fine. We'll come back tomorrow for you to make oral
9 closing, and they'll be submitted to file it as a brief,
10 and you can file a written reply. So think about that, and
11 you can decide. All right, your next witness.

12 MR. RENNER: We call Emily Hennessy.

13 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay,
14 Ms. Hennessy come on up. Okay have a seat.

15 MR. RENNER: Ms. Hennessy, are you currently
16 employed --

17 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay, just a
18 moment. Please raise your right hand to be sworn.

19 (Time Noted: 4:13 p.m.)

20 EMILY HENNESSY

21 Was thereupon called as a witness herein; and having been
22 sworn to tell the truth, the whole truth, and nothing but
23 the truth, testified as follows:

24 THE WITNESS: I do.

25 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay, please

1 state your name and spell it for the record.

2 THE WITNESS: Emily Hennessy, last name
3 H-E-N-N-E-S-S-Y.

4 ADMINISTRATIVE LAW JUDGE ANDERSON: And that's
5 Emily with a "Y"?

6 THE WITNESS: E-M-I-L-Y.

7 ADMINISTRATIVE LAW JUDGE ANDERSON: Thank you,
8 okay.

9 DIRECT EXAMINATION

10 BY MR. RENNER:

11 Q. Are you presently employed?

12 A. I am, yes.

13 Q. And what's your position?

14 A. I am the VP of finance and programs for Healthier
15 Kids Foundation --

16 Q. And how many people are employed in that
17 organization right now?

18 A. Fourteen.

19 Q. And do your duties for the Healthier Kids
20 Foundation -- different in any substantial way from your
21 required duties for the Santa Clara County Health
22 Foundation?

23 A. Absolutely, yes.

24 Q. In what way are they different?

25 A. Well, my roll with Healthier Kids Foundation is

1 operating programs totally independent of being programs
2 and projects of the Health Authority?

3 Q. When you were with the Health Authority what was
4 your position -- or the Health Foundation, what was your
5 position there?

6 A. I was the director of finance. That's when I had
7 a number of different titles and positions. But I left
8 when I separated in June of 2013 with my title being
9 director of finance.

10 Q. Or is it also called CFO?

11 A. For the Foundation? Sure, yes.

12 Q. If I could direct your attention to the white
13 binder, look at page 242 in the lower right hand corner.

14 ADMINISTRATIVE LAW JUDGE ANDERSON: Before you
15 ask a question about that -- Ms. Hennessy, I totally
16 missed your title. It went by me really fast.

17 THE WITNESS: Oh, I'm sorry. My current title is
18 vice -- or VP of finance and programs for Healthier Kids
19 Foundation.

20 ADMINISTRATIVE LAW JUDGE ANDERSON: Thank you.
21 Okay, go ahead Counsel.

22 BY MR. RENNER:

23 Q. Let me back up for just a second. So when were
24 you first hired by the Foundation?

25 A. I was hired by the Authority in may -- on May

1 8th, 2005.

2 Q. And that was done through the offer letter that
3 Ms. King had previously talked about in her testimony?

4 A. Yes.

5 Q. If you could take a look at the binder just to
6 confirm that, page 57.

7 A. Yes, that is the offer letter.

8 Q. All right. And then I believe Ms. King also
9 covered the area of you were hired under a certain
10 position then promoted after that?

11 A. Correct.

12 Q. All right. And then -- So if you could go back to
13 page 242 in the white binder, can you identify that
14 particular page?

15 A. Sure, this is an analysis that I did regularly,
16 that looked at all the funding that the Foundation raised
17 for the Authority's programs and projects, which as you
18 can see --

19 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay,
20 Ms. Hennessy --

21 THE WITNESS: I'm sorry, I'm talking too fast. I
22 know I'm taking too fast.

23 ADMINISTRATIVE LAW JUDGE ANDERSON: Can't do it.
24 Can't do it. Ok, "analysis that I did for --

25 THE WITNESS: For -- that looked at all the funds

1 that were raised since the inception of the Foundation and
2 that were particularly for programs and projects of the
3 Authority. So I use this to work in conjunction with the
4 CFO and the CEO of the Health Plan so that we could make
5 sure that they see what funding is coming to them, what
6 the responsibilities are for fulfilling the grant
7 requirements for this funding, and then how we can work
8 together to report back to the funders.

9 BY MR. RENNER:

10 Q. So these columns on page 242, as you go across
11 the page in categorizing various expenditures, do those
12 describe the expenditures of the Foundation or of the
13 Plan, or is that not even an accurate question to ask?

14 A. These are actually a combination. So some of the
15 funding would go -- the Foundation was responsible for
16 providing stewardship for and recording on, in addition to
17 obtaining, securing; it is here that the funds directed --
18 went directly to the Health Authority. And then there's
19 also funds in here that weren't able to be going to a
20 public agency and had to go through a 501C3 nonprofit,
21 that then will also include it here. So it's a mix of the
22 two, of all of that funding.

23 Q. But they're both funds that were obtained in one
24 way or the other by the Authority?

25 A. By the Foundation.

1 Q. I meant by the "Foundation."

2 A. Yeah. (Laughs)

3 Q. And -- But then, some of the funds go directly to
4 the Authority and some go to the Foundation, or through
5 the Foundation --

6 A. Correct. But all of the funding that ended up
7 going to the Authority that was secured by the Foundation
8 was typically marketed by me after I was hired. So even if
9 it resided and went directly to the Health Authority, I
10 worked in conjunction with the CFO of the Health Plan to
11 be able to make sure that those funds were accurately
12 spent on what we said that we were going to spend it on,
13 and they were accounted for and reported accurately back
14 to the funders.

15 Q. And the purpose of that was that you would obtain
16 money from various entities, maybe even persons, who would
17 grant money to the Authority, but they needed some kind of
18 road map as to what it was going to go towards and what it
19 was actually being used for?

20 A. Correct, because the Authority didn't really have
21 the staff to really manage all of these different
22 programs. Their finance staff wasn't really -- weren't
23 experts in sort of grant management for some of these
24 funds, which again, some of them came to the Foundation
25 and some of them went directly to the Health Plan. In the

1 end, the Foundation was responsible for all of the funds
2 and making sure that they were spent on the right program
3 and that we reported back to the funders on these funds.

4 Q. So can you give an example of who these funders
5 might be?

6 A. Sure. So let's just take the Healthy Kids
7 Program, which used to be 13 million dollars a year. So
8 there would be 3 million from the county, there would be
9 2.1 million from the city of San Jose and then there would
10 be some small funding that probably acquitted to anywhere
11 between 2-6 million a year that was coming from health --
12 large health organizations.

13 Q. Private organizations?

14 A. Private organization. So like the California
15 Endowment, the California Wellness Foundation, the David
16 and Lucile Packard Foundation, the First 5 Santa Clara
17 County, which is also local --

18 COURT REPORTER: Excuse me, can you slow down
19 just a little bit, I'm sorry.

20 THE WITNESS: Sorry. I'm sorry. where was I?

21 COURT REPORTER: David and --

22 THE WITNESS: David and Lucile Packard
23 Foundation --

24 COURT REPORTER: Thank you.

25 THE WITNESS: The First 5 Santa Clara County,

1 local foundations like the -- Community Foundation and of
2 course a lot of individual donors and corporate donors.

3 BY MR. RENNER:

4 Q. And did all of those entities require that you
5 reported back to them in some manner or some form how the
6 money was being spent?

7 A. Yes.

8 Q. By the Authority?

9 A. Yes.

10 Q. So this presumably must have required a great
11 deal of close monitoring on your part as to what the
12 Authority's work was and what its operation was, correct?

13 A. Yes, correct.

14 Q. Can you take a look at pages 243-245, please. Do
15 you recognize that?

16 A. Yes, this is my work.

17 Q. Okay. And so, can you explain just briefly as
18 possible, what does this mean? Why is it that you produced
19 this budget?

20 A. The Health Authority came to me and said, "we
21 wanted to start this program called Healthy Workers, but
22 we needed some seed money to develop and keep what was
23 feasible to implement it full blown." So this was me
24 sitting down with a couple of funders in determining, in
25 conjunction with Authority, whether or not they would be

1 interested in funding a health coverage program for adults
2 that didn't -- that were left out of ACA, the Affordable
3 Care Act.

4 And so this first 243 refers to a budget that I put
5 together in conjunction with the Health Authority because
6 all of these funds were going to be spent on -- were going
7 to be ran through the Health Authority for their staff to
8 implement these costs. So I was being passive for this
9 money, but work -- would work in connection with the
10 Authority, and the Finance Department and the Program
11 Department to make sure that these were spent
12 appropriately.

13 Q. And where would these funds be coming from?

14 A. So these were coming from a hospital and from
15 health organizations. Both of those had to run funds
16 through 5013C and could not direct their funds to the
17 Health Authority.

18 Q. Because it was a public agency?

19 A. Correct.

20 Q. If you could direct your attention to pages
21 246 -- if you could kind of look at it as a whole group of
22 series of e-mails, 246-256. Well, let me stop at 253 just
23 to try to make it a little bit easier. A couple of these
24 e-mails are in sequence, other ones are at different
25 times?

1 A. Yes.

2 Q. So who is David Claude?

3 A. So David Claude is the controller for the county
4 health and hospital system. He was in charge of monitoring
5 the 3 million and releasing payments to Health Authority
6 for their portion of the Healthy Kids' premiums on a
7 monthly basis.

8 Q. And so, is that money money that goes through the
9 Foundation to the Authority?

10 A. That money went directly to the Health Authority.

11 Q. And so, what was the Foundation's roll with
12 respect to this because you're on most of the e-mails?

13 A. Sure. So I would actually look at what was being
14 charged to the county to draw down that 3 million a year,
15 and I would communicate directly with the controller at
16 the health and hospital system to ask them how much was
17 the balance and to invoice them on behalf of the Health
18 Authority for them to then cut a check once a month that
19 went directly to the Authority.

20 Q. So you're basically creating a system where
21 you're invoicing the county on behalf of the Authority, is
22 that accurate?

23 A. Yes, and I was asked to do that by various CFOs
24 of the Health Authority.

25 Q. Okay. Is there anybody in particular you can

1 identify on these e-mails, these series of e-mails, that
2 would have been the person that had asked you to do that?

3 A. They're probably -- Oh, on 249, the person, Laura
4 Watkins, that was on maternity leave, and she stood in.
5 She was a contract person that stood in part time for my
6 job. Dave Cameron, who was at that time and still is the
7 CFO of the Health Authority, and he's copied on that
8 e-mail, 245.

9 Q. And so did he direct you to prepare these
10 invoices or at least oversee the system that you prepared
11 invoices?

12 A. Yes.

13 Q. All right. And if you could look at 254-256,
14 please.

15 A. Yes.

16 Q. Do you recognize that?

17 A. Yes, I prepared them on behalf of the Health
18 Authority.

19 Q. And can you briefly explain what these pages
20 represent?

21 A. Sure. This represents what is charged. So on
22 behalf of the Health Authority I would charge the
23 Foundation for premiums each month that were due from
24 funds that went directly to the Foundation that then
25 needed to be released to the Health Authority.

1 So this is an invoice that I prepared and had Dave
2 Cameron, the CFO of the Health Authority sign. And behind
3 it, 255 and 256, are the back of the analysis that I got
4 from the day that that was available through the Health
5 Authority on the membership of this particular program,
6 Healthy Kids.

7 Q. And this was -- But the source of this money that
8 this particular program was talking about is who?

9 A. So this is actually to the Foundation. So I would
10 invoice on behalf of the Health Authority to the
11 Foundation what was owed each month by the Foundation to
12 the Health Authority for the Healthy Kids' premiums.

13 Q. Oh, so this is not directly tied to any
14 particular grantor?

15 A. These cities -- so under "The Purpose" where it
16 says "Funding Source," this is keeping track of who's --
17 who is being charged or who is paying for certain children
18 that are enrolled in the Healthy Kids program.

19 Q. So those -- the fundings -- all right. On the
20 left-hand side those are all the fundings --

21 A. Yes, and that matches --

22 ADMINISTRATIVE LAW JUDGE ANDERSON: Hey, hey --

23 COURT REPORTER: Thank you.

24 ADMINISTRATIVE LAW JUDGE ANDERSON: Slow down and
25 not talk over one another either, please.

1 BY MR. RENNER:

2 Q. If you could direct your attention to pages 257
3 and pages 258. Do you recognize those?

4 A. Yes.

5 Q. And what are these e-mails discussing?

6 A. So this was an appropriations grant that we got
7 for an online portal that connects patients within a
8 health system to the Health Plan so that we can exchange
9 of medical information between the Health Plan, the
10 patients and the providers. And we secured the funding for
11 this and this -- communication is checking in with
12 Elizabeth Darrow, the CEO of the Health Plan, around
13 working with her staff to account for the funds that were
14 part of this --

15 Q. And so, what is it -- where was this
16 appropriations grant coming from?

17 A. It came from Mike Honda's office.

18 Q. So it was federal money?

19 A. Uh-huh.

20 Q. And it was for a very specific program to deal
21 with --

22 A. Yes.

23 Q. -- developing --

24 A. Of the Health Authority.

25 Q. Right. And the purpose of the subject matter

1 being discussed on 258, I'm talking about the approved
2 budget of expenditures. What is the Foundations's role
3 with respect to going over those numbers and its
4 relationship with the Authority?

5 A. Sure. So I had to work in conjunction with Health
6 Authority staff to get these figures. I gave an account of
7 these on a regular basis to them and let them know where
8 they were on the spending. But I did not come up with
9 these numbers because it was the Health Authority's
10 responsibility for carrying out the objectives that were
11 placed in that Federal Appropriations Grant.

12 Q. If you could direct your attention to 259 and
13 260, please. Have you seen those e-mails before?

14 A. Yes.

15 Q. Okay, and what is this discussion about "Funding
16 Allegation?" What does that mean?

17 A. So this refers back to -- can I refer back? This
18 refers to the documents 255 and 256 that I prepared on
19 behalf of the Health Authority. This e-mail is from an
20 accountant of the Health Authority who was new and was
21 asking me to provide this to her so that she knew where
22 the funding was going to come from for Healthy Kids.

23 Q. And what is the -- I may not have grouped these
24 properly. Directing your attention towards the page 261 --
25 is part of 260, correct?

1 A. Yes.

2 Q. That's an attachment?

3 A. Uh-huh.

4 Q. Well, maybe not an attachment but a copy, paste
5 under the e-mail?

6 A. Uh-huh.

7 Q. And so what is this "First 5 Program?" And what
8 do these discussions in this e-mail mean?

9 A. Sure, this is a project that the Health Plan
10 asked the Foundation to find funding for, and this is
11 communication between Elizabeth Darrow and myself around
12 the Health Authority's staff being able to implement
13 these. The second page on 261, which is the actual terms
14 of the grant, and this is Elizabeth approving that this is
15 doable by her staff.

16 Q. All right, so your basically saying if we mapped
17 out a program that looked like this, that's on page 261,
18 could the Authority carry out that program?

19 A. Yes.

20 Q. And so giving her prior approval to you going and
21 attempting -- not you personally, but the Foundation
22 attempting to obtain the funds to carry out the program?

23 A. Correct, and this indicates that Elizabeth Darrow
24 approved the scope of work --

25 COURT REPORTER: That was -- last word?

1 THE WITNESS: Elizabeth Darrow approved.

2 COURT REPORTER: The scope of work for --

3 THE WITNESS: The scope of work for the grant.

4 COURT REPORTER: Okay, thank you.

5 BY MR. RENNER:

6 Q. Now if I could direct your attention again to a
7 whole series of e-mails, some of which because of the way
8 e-mails print out you might have to read backwards to put
9 them in chronological order, pages 262-270. So to try and
10 make it simpler, I believe the discussion starts around
11 269 and 270 and then goes forward --

12 A. Yes.

13 Q. -- to the earlier pages. Do those look familiar?

14 A. Yes.

15 Q. All right, can you explain what these e-mails are
16 talking about?

17 A. Sure. So, the -- this e-mail correspondence is
18 between Kathleen, with myself being copied, between Health
19 Plan staff around coordinating what needs to be included
20 in terms of data in this Federal Appropriations Report,
21 progress report. So it looks as if Kathleen is asking the
22 Health Authority's staff for data for her to include into
23 the report.

24 Q. All right. And if I could direct your attention
25 to 26 or -- excuse me, 271-273. Again, are you familiar

1 with these e-mails? Do you recognize them?

2 A. Yeah, the 271 is a different conversation than
3 272 and 273. There are two different --

4 Q. Correct.

5 A. -- subject matters.

6 Q. Yes. Can you just very briefly describe the
7 subject matter in 271.

8 A. This -- I -- This relates to the Health
9 Authority, for their Healthy Kids program had generated a
10 surplus over consecutive years, and so they created a
11 reserve for time for future years where the Foundation
12 could not raise the funding and they would then supplement
13 with this reserve. And so this is a correspondence between
14 Kathleen and Dave Cameron, the CFO of the Health Plan,
15 around what that balance would be or what his forecast
16 would be for the balance at the end of the given year.

17 Q. Right, and then 272, 273. The subject matter of
18 those e-mails is what?

19 A. This is very similar to the earlier ones with
20 David Claude, who is the controller at the county health
21 and hospital system --

22 Q. So you mean it might have made more sense if I
23 actually threw those in here -- there?

24 A. Yeah, it's the same subject matter where I'm
25 asking him for the balance on behalf of the Health

1 Authority to figure out how much funds to draw down out of
2 that 3 million that they would grant us every year, the
3 Health Authority I should say.

4 Q. I'm going to skip right over 274,275 and go back
5 to one of them. If I could direct your attention to 276,
6 and it's a -- the pages following through 280. Now,
7 Ms. King testified very briefly about the subject matter
8 of regulation of solicitation of members to a health plan,
9 do you recall that?

10 A. Yes.

11 Q. And at one point I believe she referred to Santa
12 Clara County being a "two-plan county" --

13 A. Two-plan county.

14 Q. Is that some kind of term of art that you
15 understand?

16 A. Yes.

17 Q. What does that mean?

18 A. So every county has an option to have one or two
19 health plans participate in their Medi-Cal program. So as
20 being administratives of the benefits, Medi-Cal recipients
21 in Santa Clara County -- they have to be a two-plan county
22 where it's Anthem Blue Cross or Santa Clara Health Plan.
23 And in essence, that means that enrolling into Medi-Cal --
24 can choose to have their benefits administered by either
25 of those two health plans.

1 Q. All right. And then, what are the constraints on
2 a health plan soliciting membership? As far as you know.

3 A. They can't. So there are marketing and outreach
4 rules set in place by the Department of Health Care
5 Services that require health plans to have the other
6 health plan be available if they're marketing their health
7 plan, or they're doing outreach to attract new enrollees
8 into their health plan for Medi-Cal.

9 Q. And so, did the Foundation employees or staff
10 perform any kind of outreach activities?

11 A. Yes.

12 Q. And for instance what would they be?

13 A. So we -- we would go out there and identify
14 uninsured children and have them enroll into a health
15 coverage plan that they were eligible for.

16 Q. But what would be the nature of that program,
17 being the "outreach"?

18 A. The nature of it?

19 Q. You're not getting random phone calls, right?

20 A. No, to identify uninsured children and help them
21 enroll, that was the intent and nature of it.

22 Q. And using -- By staging events or something?

23 A. Participating in other events because we didn't
24 necessarily host our own events because the Health
25 Authority did not host their own events because you had to

1 have the other health plan be apart or participate.
2 Instead, we were asked by community organizations to
3 participate in their events, such as health fairs, to
4 identify uninsured children and help them enroll into
5 health coverage.

6 Q. All right, so given that background can you
7 explain what this e-mail on 276 is talking about?

8 A. Yes, so we -- the Foundation -- For any event
9 that we participated in for outreach to identify uninsured
10 children, we would adhere to the same regulations that the
11 Health Authority had in place, which meant we had to get
12 all of our flyers approved by the Department of Health
13 Care Services. And we also had to send -- every time we
14 were being asked to participate in any sort of event, we
15 would have to get approval before we could attend that
16 event. And we were prohibited just like the Health
17 Authority of doing any outreach at primary care
18 facilities, which includes clinics, hospitals, things of
19 that sort.

20 Q. Well, are those prohibitions on what you can do
21 during outreach? Is that something that applies to a 5013C
22 fundraising organization?

23 A. Typically, no.

24 Q. So why did the Foundation undergo this process?

25 A. Because we were employees of the Health

1 Authority, and we were to adhere to all of their
2 compliance regulations just like any other Authority
3 employee.

4 Q. Were you directed by the Authority to do that?

5 A. Absolutely, yes.

6 Q. And so can you explain in those e-mails following
7 281 through roughly 288, discussing flyers and outreach.
8 The context of those e-mails, why were these
9 communications necessary?

10 A. Because we were adhering to the compliance
11 regulation of the Health Authority. So these e-mails
12 are -- I was submitting a list of outreach events or
13 potential outreach events that the Foundation staff would
14 attend and having the compliance director of the Health
15 Authority send it to the state for approval. And then this
16 is her communicating back to me that the state had
17 approved -- our -- The Foundation's participation in
18 events.

19 Q. And so would it be accurate to say that the
20 Authority was treating the Foundation as simply an arm of
21 the Authority for purposes of whether you needed to comply
22 with these prohibitions?

23 A. Yes.

24 Q. If you could please take a look at pages 289 and
25 290, do you recognize those e-mails?

1 A. Yes.

2 Q. And again you have to read these backwards for
3 them to make since, but there's a discussion about
4 sending checks to various schools or school districts,
5 correct?

6 A. Correct. So, this relates to the Foundation being
7 the entity that housed funding for school districts for a
8 health plan program called "The School Outreach Program,"
9 and once that school outreach program closed then we had
10 to discuss it with Elizabeth to approve -- Elizabeth
11 Darrow, CEO of the Health Authority -- to approve the
12 release of these funds back to the school districts.

13 Q. And then these particular e-mails we're talking
14 about are checks getting back to the school districts,
15 correct?

16 A. Yes.

17 Q. And in the final e-mail, which starts at the top
18 of page 289, it says,

19 "Elizabeth wanted it in the mail today, ASAP,"
20 do you recall anything about what this e-mail is
21 discussing?

22 A. Yes, we didn't get them out fast enough so she --

23 Q. Fast enough according to whom?

24 A. Elizabeth Darrow.

25 Q. And I take it you did in fact send them out at

1 her direction of that particular day?

2 A. Yes, correct.

3 Q. If you could please take a look at pages 293 and
4 294, would it be accurate to say that those e-mails are
5 discussing the topic that we were just discussing about
6 the Foundation treating itself -- Foundation employees
7 treating their outreach activities as being indistinct
8 from Authority activities for purposes of attempting to
9 attract members to a health plan?

10 A. Yes.

11 Q. All right, and the same thing goes to -- if you
12 could switch back to page 275, you were the author of this
13 e-mail, correct?

14 A. Yes.

15 Q. And that discusses the same general topic we've
16 been discussing, correct?

17 A. Yes, getting the Department of Health Care
18 Services approval for outreach -- participating in
19 outreach events.

20 Q. Right, despite the fact that the Foundation is
21 for the most part a fundraising organization?

22 A. Correct.

23 Q. Let me switch. You don't have to look at the
24 binder. Do you know what the current rent is your
25 paying -- that Healthier Kids Foundation is paying right

1 now?

2 A. Yes, we pay 54 hundred dollars a month.

3 Q. Do you have any estimate as to how many square
4 feet that is?

5 A. Twenty-four hundred square feet, roughly.

6 Q. And now Ms. King testified as to how many feet
7 she thought that the Foundation had within the Authority's
8 facility, do you have any estimate as to how many square
9 feet of office space you occupied?

10 A. It varied depending on the number of staff --
11 that the Foundation had, but I would say anywhere between
12 maybe 500-1,000, roughly; give or take a few square
13 footage.

14 Q. Okay. Prior to your employment with the
15 Foundation and the Authority, what was your employment
16 history?

17 A. I used to work at a legal nonprofit in San
18 Francisco prior to being hired by the Health Authority,
19 prior to that, I was in school; prior to that, I used to
20 work at a community foundation in San Francisco. So the
21 better part of the last 18 years have been spent in public
22 or nonprofit settings.

23 Q. With the -- Mostly with administration and
24 financial affairs?

25 A. Not fundraising -- grant making a little bit,

1 uh-huh.

2 Q. The price that the Foundation was paying to the
3 Authority under the Administrative Services Agreement was
4 \$1,000 a month, correct?

5 A. Uh-huh.

6 Q. Do you have any estimate as to what the fair
7 market value would be for those kinds of services at the
8 time that agreement was in effect?

9 A. For the square footage, the HR, the legal, the
10 office supplies, IT support, which probably is about
11 \$20,000 maybe a month.

12 Q. And what would you base that figure on?

13 A. What we're paying currently.

14 Q. Okay. Do you have approximately the same size
15 staff now as you did during the period that you worked
16 with the Authority?

17 A. No, we are a lot larger than we were when we were
18 the Health Authority. We have 14 employees now. We were --
19 at most I think we were 4FTE when we were under the Health
20 Authority.

21 MR. RENNER: I have nothing further.

22 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.

23 Mr. Phillips, cross exam?

24 MR. PHILLIPS: Yes.

25

1 CROSS EXAMINATION

2 BY MR. PHILLIPS:

3 Q. Hi Ms. Hennessy.

4 A. Hello.

5 Q. Who did you report to?

6 A. I reported to the executive director of the
7 Foundation.

8 Q. Ms. King?

9 A. Ms. King and a predecessor before that.

10 Q. Right, because you were hired in 2000 --

11 A. In 2005.

12 Q. Five, okay. Now you mentioned a couple of times
13 in response to a question "It was because we were
14 employees of the Authority," have you ever read Government
15 Code Section 20028?

16 A. No.

17 Q. Okay. So your definition of "employee" is based
18 on what understanding?

19 A. The offer letter abiding by all of the
20 requirements of any other Health Authority employee. And
21 that extends from attending required management trainings,
22 adhering to all the HR regulations that they put in place,
23 and also my day-to-day operations that I was raising
24 money; responsible for stewarding those monies and
25 reporting back to funders based on the directors of the

1 Health Authority -- of their senior staff.

2 Q. So you mentioned like the "management training,"
3 now do you have a third party who provides training for
4 the Foundation now?

5 A. I mean outside of trying to have any certain
6 standards, HR -- we do it internally. We find experts that
7 come in and do it for our staff -- for ourselves and our
8 staff.

9 Q. Do you consider TriNet your employer?

10 A. No.

11 Q. Do you consider these third parties that come in
12 and train your staff employers?

13 A. No.

14 MR. PHILLIPS: I have no further questions.

15 ADMINISTRATIVE LAW JUDGE ANDERSON: Any redirect?

16 MR. RENNER: Yeah, I have to cover a brief area
17 in which I didn't cover originally.

18 MR. PHILLIPS: That's beyond the scope of cross
19 examination Your Honor.

20 ADMINISTRATIVE LAW JUDGE ANDERSON: Well you know
21 that doesn't apply to APA, I'm sure you do, Mr. Phillips.
22 Overruled, go ahead.

23 REDIRECT EXAMINATION

24 BY MR. RENNER:

25 Q. Are you aware -- well first of all, have you been

1 enrolled in CalPERS?

2 A. Yes.

3 Q. And beginning when?

4 A. May 2005.

5 Q. All right. Now, to your knowledge were any other
6 Foundation employees enrolled in CalPERS?

7 A. Every single one of them.

8 Q. All right. To your knowledge is anyone who was an
9 employee of the Foundation since retired and is drawing
10 CalPERS pension based --

11 A. Yes.

12 Q. -- in part on their years of service for the
13 Foundation?

14 A. Yes, I know of two.

15 Q. Who were those?

16 A. Craig Walsh, former executive director and
17 Melanie Gellman, who was our --

18 Q. And you know for a fact that they are retired and
19 drawing CalPERS pension?

20 A. I do.

21 MR. RENNER: All right. Only one other matter,
22 Your Honor, I'd like to move into evidence Respondent's
23 Exhibit A.

24 ADMINISTRATIVE LAW JUDGE ANDERSON: Is there any
25 recross examine of the witness?

1 RECROSS EXAMINATION

2 BY MR. PHILLIPS:

3 Q. Are you aware of those two individuals that are
4 retired were given determination letters from CalPERS
5 relating to whether or not they were appropriately
6 enrolled as members?

7 A. I am not aware of that.

8 MR. PHILLIPS: That's it.

9 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay, thank
10 you Ms. Hennessy, you can step down.

11 (Time Noted: 4:50 p.m.)

12 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay, back to
13 the exhibits. So, I've marked this Exhibit A, all of your
14 exhibits, except B. And then, did you want to just try
15 moving all of A in and see if Mr. Phillips has any
16 objections?

17 MR. RENNER: Yes, that was my intent.

18 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay.
19 Mr. Phillips, do you have any objections to anything in
20 here?

21 MR. PHILLIPS: Well, there was a number of
22 documents that weren't discussed. We skipped over -- and I
23 would appreciate those not being in the record. And then
24 there's a number of them that I have relevance objections,
25 but I don't think that there's anything other than

1 relevance. And I have no objection to Exhibit B.

2 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay well, I
3 will need those called out to me in order to rule on that,
4 and I don't know if you agree that some weren't discussed.
5 Do you want to withdraw some or what? I don't know.

6 MR. RENNER: I think it would be accurate to say
7 that there were probably three or four pages out of the
8 290 that no witness was questioned on. I think that's
9 correct. On the other hand, I'd like to point out that I
10 attempted to get a stipulation as to exhibit -- not have
11 to go through this, and we agreed that we provide them to
12 each other by last Thursday, which I did, and we never saw
13 anything until this morning.

14 ADMINISTRATIVE LAW JUDGE ANDERSON: Well, you
15 know I didn't make any order or anything, so there's
16 nothing I can really do about that.

17 MR. RENNER: I understand that, Your Honor.

18 ADMINISTRATIVE LAW JUDGE ANDERSON: But I mean I
19 find this method -- I'm trying to work with the method
20 that you used, and it's very difficult. I don't know if
21 Mr. Phillips can call out the pages that he is objecting
22 to?

23 MR. PHILLIPS: I mean it's nothing other than
24 relevance. So to make this easy for everybody I can
25 withdraw those objections.

1 ADMINISTRATIVE LAW JUDGE ANDERSON: All right,
2 Exhibit A is admitted.

3 (Whereupon, Respondent's Exhibit A was received
4 in evidence.)

5 MR. RENNER: Your Honor, I need to point out that
6 page 71 of Exhibit A should be redacted. There is an
7 inadvertent social security number on it.

8 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. There
9 it is, all the way at the top. Okay that's redacted.
10 Anything else with that?

11 MR. RENNER: No, Your Honor.

12 ADMINISTRATIVE LAW JUDGE ANDERSON: All right.
13 So Mr. Phillips, have you decided how you want to proceed
14 with closing?

15 MR. PHILLIPS: So in the event that I want to
16 give an oral closing, there's still going to be briefing?

17 ADMINISTRATIVE LAW JUDGE ANDERSON: Yes.

18 MR. PHILLIPS: Then I will just stick with
19 briefing.

20 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay. All
21 right, so we're going to go off the record for the moment.
22 I'll get the court reporter form for you and you can
23 discuss your briefing schedule -- the briefing schedule.
24 We're off the record.

25

1 (A break was taken from 4:54 p.m. to 5:02 p.m.)

2 ADMINISTRATIVE LAW JUDGE ANDERSON: So then back
3 on the record. So the briefing schedule, the opening brief
4 from Respondent will be due October 7th, from Complainant
5 October 28th, and any reply briefs November 4th. So the
6 record will close November 4th with the proposed decision
7 due in 30 days after that. So it takes a while.

8 MR. PLATTEN: I'd like to express my appreciation
9 to the judge, to the court reporter and to opposing
10 counsel for helping get this through --

11 ADMINISTRATIVE LAW JUDGE ANDERSON: Okay, thank
12 you very much.

13 MR. PHILLIPS: Thank you.

14 ADMINISTRATIVE LAW JUDGE ANDERSON: Your very
15 welcome. Okay, that concludes the hearing. Off the record.

16 (Whereupon, the proceedings Concluded at 5:03 p.m.)

17 ---oOo---

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

I, Angel Love, a Certified Shorthand Reporter of
The State of California, do hereby certify that I am a
disinterested person herein; that I reported the foregoing
hearing in shorthand writing; that I thereafter caused my
shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel of attorney for any of the parties to said hearing, or in any way interested in the outcome of the said hearing.

IN WITNESS WHEREOF, I have subscribed this certificate
at Oakland, California, on this 17th day of September,
2015.

Angel Love, CSR NO. 13845