

ATTACHMENT E

**TRANSCRIPTS OF ADMINISTRATIVE HEARING AND MARCH 16, 2016
BOARD MEETING**

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A P P E A R A N C E S :

Administrative Law Judge: COREN D. WONG
2349 Gateway Oaks Drive, Suite 200
Sacramento, California 95833

For Respondent: KNOX, LEMMON ANAPOLSKY LLP
BY: IAN J. BARLOW, ESQ.
300 Capitol Mall, Suite 1125
Sacramento, California 95814

For CalPERS: CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT
SYSTEM
BY: PREET KAUR
Staff Attorney
1300 I Street
PO Box 944255
Sacramento, California 94244-2550

Also present: Respondent Lee Turner Johnson
Nicole Silverman

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P R O C E E D I N G S

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ADMINISTRATIVE LAW JUDGE WONG: We are on the record before the Board of Administration, California Public Employees' Retirement System, in the matter of the appeal regarding death benefits payable upon the death of Grantland Lee Johnson by Lee Turner Johnson, agency Case No. 2015-0373, OAH No. 2015081045.

My name is Coren Wong. I am an Administrative Law Judge with the Office of Administrative Hearings.

Counsel, please state your appearances for the record, starting with counsel for CalPERS.

MS. KAUR: Preet Kaur.

MR. BARLOW: Ian Barlow for Respondent.

ADMINISTRATIVE LAW JUDGE WONG: Ma'am, are you Lee Turner Johnson?

THE RESPONDENT: I am.

ADMINISTRATIVE LAW JUDGE WONG: Very good. All right.

So opening statements. Mr. Barlow.

MR. BARLOW: Sure, your Honor. I know we did stipulate to brief opening remarks. Mine are maybe just a few minutes long, so just to give the Court a heads up.

ADMINISTRATIVE LAW JUDGE WONG: Sure.

MR. BARLOW: Your Honor, this is a tragic example of literally form over substance. It's about Grantland Johnson, a person who dedicated his life to public service, former

1 Secretary of Health and Human Services for the State of
2 California, simply not having turned in a final form before his
3 untimely death, a form that would have merely reflected what
4 CalPERS had been told by him all along.

5 CalPERS contends that Grantland Johnson's wife should
6 not receive his lifetime monthly benefits under Option 2 and
7 health and dental benefits because Grantland Johnson did not
8 rechoose his option and reselect Lee Johnson as his beneficiary.
9 But the evidence will show that Grantland Johnson was engaged in
10 ongoing efforts as far back as February 2013 to designate Lee
11 Johnson, his spouse, to whom he awarded power of attorney,
12 executor, and here the Respondent, as his new beneficiary.

13 And, indeed, the unique and exceptional circumstances
14 in this matter, under these unique and exceptional
15 circumstances, it would be manifestly unjust if Grantland
16 Johnson's intent and hopes for his wife weren't honored.

17 It's not a case where the member or the intended
18 beneficiary sat on their hands. Grantland Johnson had made it
19 abundantly clear to CalPERS what he was trying to accomplish.
20 After he retired, Grantland Johnson made an Option 2 election
21 designating his then wife and daughter as beneficiaries. But
22 the evidence will show that, as early as June 23rd, 2014, he
23 told CalPERS in no uncertain terms that he wanted his wife Lee
24 Turner Johnson to be named as the beneficiary of his CalPERS
25 retirement and all death benefits that were previously named for

1 his former wife Charlotte Bolton and his daughter Patrice Bolton
2 Johnson.

3 After he initiated the process, he received information
4 from CalPERS several weeks later that he had merely submitted an
5 incorrect or invalid form.

6 A short time later, in an effort to better understand
7 the process and make certain they were doing everything right,
8 Lee contacted CalPERS tell telling them Grantland Johnson was in
9 poor health. She contacted CalPERS from Grantland Johnson's
10 bedside at ICU. CalPERS in that conversation told them not to
11 worry, that Grantland's wishes would be honored no matter what.

12 Although again had the opportunity and had been clearly
13 informed what Grantland Johnson set out to accomplish, CalPERS
14 said nothing else about what would be required for him to
15 designate Lee Turner Johnson for Option 2 benefits.

16 Your Honor, the admissions here related from
17 inadvertence, mistakes, omissions and excusable neglect.
18 Grantland Johnson and Lee Johnson were acting reasonably and
19 diligently under these extreme circumstances. And Grantland
20 Johnson's intent is apparent.

21 Furthermore, the California Supreme Court has held that
22 equity should regard a beneficiary change as being effected
23 where insured attempted to comply with requirements designating
24 and expressed clear intent to change the beneficiary. He had
25 died before a final form could be submitted.

1 In another case, California Court of Appeal held --

2 ADMINISTRATIVE LAW JUDGE WONG: What's the cite for the
3 previous case you referred to?

4 MR. BARLOW: Let me get that for you, your Honor.

5 That case is Pimentel, P-I-M-E-N-T-E-L, versus Cosejo
6 Supremo de Unio Portgesa de Estado de California. Maybe it's
7 better if I provide the cite, which is 6 Cal. 2d 182.

8 Another case, the California Court of Appeal held that
9 CalPERS -- that a CalPERS member should be permitted to
10 redesignate his beneficiary for Option 2 benefits even where he
11 had not been awarded total entry in his retirement plan upon
12 dissolution. One of the few reported decisions relating to
13 Option 2 benefits and Option 2 beneficiaries.

14 In addition, we argue that --

15 ADMINISTRATIVE LAW JUDGE WONG: Counsel, there is no
16 point in citing cases if you don't give me the cite or the case
17 name at least.

18 MR. BARLOW: That would be In Re Marriage of Cooper,
19 160 Cal App 4,th 574.

20 ADMINISTRATIVE LAW JUDGE WONG: Hang on a second.

21 MR. BARLOW: Sure.

22 ADMINISTRATIVE LAW JUDGE WONG: 160 Cal App 4th?

23 MR. BARLOW: 574.

24 ADMINISTRATIVE LAW JUDGE WONG: Okay. Thanks.

25 Continue.

1 MR. BARLOW: In addition, we argue that principles of
2 substantial compliance, impracticability and impossibility due
3 to Grantland Johnson's untimely death, and CalPERS fiduciary
4 duty to provide timely and accurate information to its members
5 dictate that Grantland Johnson's clear intent should be
6 realized.

7 If you like, your Honor, I can provide cites for
8 fiduciary-related case law at this time or at the end of the
9 hearing, whatever you prefer.

10 ADMINISTRATIVE LAW JUDGE WONG: We can wait for that.

11 MR. BARLOW: Okay. The cruel irony, your Honor, is
12 that we are here talking about Grantland Johnson and are
13 fighting to ensure that his wishes that a government department
14 award benefits to help take care of his wife are carried out.

15 I think it's clear what Grantland Johnson would say if
16 he were here today. I think it's clear what he wanted for Lee.
17 And the evidence will show that there is little doubt that he
18 would have submitted a final election form selecting Lee as his
19 Option 2 beneficiary.

20 We ask that Respondent is designated as Grantland
21 Johnson's beneficiary for medical, dental and lifetime benefits
22 under Option 2.

23 Thank you, your Honor.

24 ADMINISTRATIVE LAW JUDGE WONG: Ms. Kaur.

25 MS. KAUR: Good morning, your Honor.

1 Mr. Johnson retired on November 16th, 2003. When he
2 retired, CalPERS in 2003 sent Mr. Johnson a letter informing him
3 that, in the event he wishes to change -- modify his option
4 benefits, he would need to send in a court order or a marriage
5 settlement agreement in the event there is a dissolution.

6 So Mr. Johnson was aware of these requirements in 2003.

7 He also contacted CalPERS in 2013 inquiring about
8 changing the beneficiary designation. However, he never filed
9 an application to modify his benefits in 2013.

10 Instead, he waited until August 7th, 2014, a year
11 later, to file his application to modify the option benefits.
12 Merely filing the application is not enough. The member must
13 elect the option benefit pursuant to Government Code Section
14 21462.

15 Upon election, once that form is processed, the
16 member's benefits will decrease, and also the beneficiary could
17 be changed by the member, as well. So this is a long process.
18 And it requires CalPERS to recalculate the benefits. And there
19 are specific deadlines for this process which is, in this case,
20 60 days.

21 And the member is notified of the timelines in the
22 publications. And the member is also notified regarding their
23 requirement to send in the marital settlement agreement or the
24 court order along with their application.

25 Here Mr. Johnson filed the application to modify the

1 option on August 7th, 2014; but he died on August 19, 2014,
2 before the application could even be processed. So pursuant to
3 Government Code Section 21462, he never elected an option.
4 Therefore, CalPERS cannot process his application.

5 And CalPERS did not make any promises to Mr. Johnson.
6 As you will hear the testimony of CalPERS staff, CalPERS never
7 promised any benefits to him.

8 And Ms. Johnson was provided the benefits that she was
9 entitled to. Ms. Johnson was provided the lump sum beneficiary
10 benefit. She was also provided a pro rata and -- the pro rata
11 benefits, as well as the community property allowance which was
12 being withheld. And there was also a lump sum accumulation of
13 contributions that was provided to Ms. Johnson. However,
14 CalPERS did not provide her the monthly option benefit which she
15 was not entitled to.

16 That's all, your Honor.

17 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow, your first
18 witness or exhibit.

19 MR. BARLOW: Yes, your Honor. As a first exhibit, we
20 wanted to submit the letter submitted to CalPERS by our office
21 on September 25th, 2015, noting what we believe are omissions in
22 the Statement of Issues that were submitted to this office.

23 ADMINISTRATIVE LAW JUDGE WONG: Okay. September 25th,
24 2015, letter will be marked as Exhibit A for identification.

25 //

1 (Whereupon, Respondent's Exhibit A
2 was marked for identification.)

3 ADMINISTRATIVE LAW JUDGE WONG: Are you asking that
4 this be admitted?

5 MR. BARLOW: Yes, your Honor, as part of the record for
6 today's proceedings.

7 ADMINISTRATIVE LAW JUDGE WONG: Ms. Kaur, any
8 objection?

9 MS. KAUR: Yes, I have objection, unless it's being
10 admitted for jurisdictional purposes.

11 ADMINISTRATIVE LAW JUDGE WONG: In what capacity are
12 you offering it, Mr. Barlow? For all purposes? Or just for
13 jurisdictional?

14 MR. BARLOW: To the extent the Office of Administrative
15 Hearings requested clarification or response to the Statement of
16 Issues, that's the capacity in which the letter was submitted to
17 the agency.

18 ADMINISTRATIVE LAW JUDGE WONG: We didn't make
19 requests, and we -- as far as I know, we never do. Isn't this
20 argument?

21 MR. BARLOW: It is -- well, it is, your Honor.

22 ADMINISTRATIVE LAW JUDGE WONG: All right. So I will
23 just leave it marked as Exhibit A. It's not admitted for any
24 purpose if it's argument.

25 All right. Mr. Barlow, your next exhibit or your first

1 witness.

2 MS. KAUR: Your Honor, my exhibits have numbers, as
3 well as letters, although they are marked 9-A, B, C. I suppose
4 just to prevent any confusion, could we mark it as Respondent's
5 exhibit.

6 ADMINISTRATIVE LAW JUDGE WONG: The letter? Yeah, it's
7 marked as Respondent's A. Why do you have numbers and letters?

8 MS. KAUR: I have subexhibits, so I thought it would be
9 best to put them in as letters.

10 ADMINISTRATIVE LAW JUDGE WONG: All right. That's
11 fine.

12 All right. Mr. Barlow, your first witness or your next
13 exhibit.

14 MR. BARLOW: Sure. Perhaps we can stipulate to the
15 notice of appeal being -- I won't enter it as an exhibit if --

16 MS. KAUR: I have it. I will introduce it as part of
17 the jurisdictional documents. I am not offering it for all
18 purposes.

19 MR. BARLOW: Okay. Why don't we submit it for all
20 purposes, just the notice of appeal that was submitted.

21 ADMINISTRATIVE LAW JUDGE WONG: The notice of appeal
22 will be marked as Exhibit B for identification.

23 (Whereupon, Respondent's Exhibit B
24 was marked for identification.)

25 ADMINISTRATIVE LAW JUDGE WONG: Are you offering it at

1 this time, Mr. Barlow?

2 MR. BARLOW: Yes, your Honor.

3 MS. KAUR: I have the same objection, your Honor.

4 ADMINISTRATIVE LAW JUDGE WONG: And what's that again?

5 MS. KAUR: I will agree to it based on jurisdictional
6 purposes, but this is more like a legal argument. And there is
7 references to statements that were made by CalPERS which would
8 be hearsay.

9 MR. BARLOW: If your Honor would prefer to incorporate
10 or -- if you would prefer for Respondent to include reference to
11 some of the case law or the legal argument as part of any
12 closing remarks or closing briefs, we could certainly handle
13 that way, as well.

14 ADMINISTRATIVE LAW JUDGE WONG: I mean, this is
15 argument.

16 MR. BARLOW: Right.

17 ADMINISTRATIVE LAW JUDGE WONG: So it will stay marked
18 as Exhibit B, but it's not admitted for any purpose.

19 Mr. Barlow, your next exhibit or first witness.

20 MR. BARLOW: Sure. I would like to call Respondent Lee
21 Turner Johnson as our first witness.

22 ADMINISTRATIVE LAW JUDGE WONG: Ms. Johnson, if I could
23 have you stand for one moment and raise your right hand.

24 THE WITNESS: Yes.

25 ADMINISTRATIVE LAW JUDGE WONG: You do solemnly swear

1 or affirm under penalty of perjury that the testimony you will
2 provide in this matter will be the truth, the whole truth and
3 nothing but the truth.

4 THE WITNESS: I so swear.

5 ADMINISTRATIVE LAW JUDGE WONG: Please have a seat.

6

7 (Time Noted: 9:22 a.m.)

8 LEE TURNER JOHNSON

9 Respondent in this matter, called to testify in her own
10 behalf, who, having been first duly sworn to testify to the
11 truth, the whole truth and nothing but the truth, was examined
12 and testified as follows:

13

14 ADMINISTRATIVE LAW JUDGE WONG: Please state and spell
15 your full name for the record.

16 THE WITNESS: My name is Lee, middle initial A, Turner
17 Johnson, Johnson with an H.

18 ADMINISTRATIVE LAW JUDGE WONG: If you would still
19 spell that, please.

20 THE WITNESS: The whole thing or Johnson? The whole
21 thing?

22 ADMINISTRATIVE LAW JUDGE WONG: Yes, please.

23 THE WITNESS: Lee is L-E-E. My middle initial is A.

24 And then Turner, T-U-R-N-E-R, space, no hyphen, and Johnson,

25 J-O-H-N-S-O-N.

1 ADMINISTRATIVE LAW JUDGE WONG: Very good. Mr. Barlow.

2 DIRECT EXAMINATION

3 BY MR. BARLOW:

4 Q Ms. Johnson, how long had you known Grantland Johnson
5 personally before you were married?

6 A I first met Grantland in 1996 when -- in the Bay Area
7 when he was the Regional Director of Health and Human Services
8 for Region 9 under President Clinton. And I was a Head Start
9 Director in Oakland at the Spanish Speaking Unity Council.

10 ADMINISTRATIVE LAW JUDGE WONG: You were Head Start
11 what?

12 THE WITNESS: Director in Oakland at the Spanish
13 Speaking Unity Council.

14 ADMINISTRATIVE LAW JUDGE WONG: Thank you.

15 Q BY MR. BARLOW: And did your relationship develop or
16 grow closer over the years?

17 A He was helping our company, both with Head Start
18 programs that I was taking on, and also with the -- he was -- he
19 was helping the company I worked for, both programmatically
20 regarding us taking on more Head Start programs, and also we
21 were involved in building the Fruitvale BART, B-A-R-T, capitals,
22 Transit Village.

23 So in his role as Region 9 -- Region 9 director --
24 Regional Director for Health and Human Services under President
25 Clinton, he was helping the company in these ways, along with

1 the City of Oakland.

2 So our relationship was a collegial and business
3 relationship starting in 1996, and I attended events that he
4 gave at the region with my boss, et cetera. And it did not
5 become a personal relationship until 2004.

6 Q And when did you and Grantland Johnson marry?

7 A We married in 2013 towards the end of the year, which
8 is why he didn't file that application until after the marriage,
9 of course. He could not.

10 ADMINISTRATIVE LAW JUDGE WONG: What was the specific
11 date?

12 THE WITNESS: We were married on October -- excuse
13 me -- November the 15th, 2013.

14 ADMINISTRATIVE LAW JUDGE WONG: Thank you.

15 Q BY MR. BARLOW: And before or around the time that you
16 decided to marry, did he ever discuss with you how he wanted his
17 affairs to be arranged upon his death?

18 A Yes. First of all, in 2012, he was having severe
19 health problems by then. And he wrote a will naming me as power
20 of attorney and as executor at that time regarding a number of
21 items of his business, including his grandmother's, and so on.

22 Also, for some years before we actually married, he
23 talked to me about wanting to be certain that I became his
24 beneficiary and to have his medical/dental benefits through his
25 CalPERS membership. And we talked about that for quite a few

1 years prior, at least three or four years prior to actually
2 marrying. He told me he wanted to be certain that I was taken
3 care of.

4 MR. BARLOW: Your Honor, at this time I would like to
5 introduce Exhibit C.

6 ADMINISTRATIVE LAW JUDGE WONG: Thank you. All right.
7 The final will and testament of Grantland Lee Johnson dated
8 March 2nd, 2012, and the notary acknowledgment will be marked
9 collectively as Exhibit C for identification.

10 (Whereupon, Respondent's Exhibit C
11 was marked for identification.)

12 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow.

13 Q BY MR. BARLOW: Do you recognize this document?

14 A I do.

15 Q And can you tell me what it is?

16 A It's Grantland's final will and testament, which he
17 wrote and was signed in March of 2012.

18 Q And --

19 A And he named me as power of attorney and executor in
20 it.

21 Q Okay. And this is the will that you were referring to
22 when you spoke a few moments ago?

23 A Yes, exactly.

24 Q Okay. And when did he first talk to you about
25 designating you as beneficiary for his CalPERS benefits?

1 A Well, he talked to me about it in that -- as I
2 mentioned, in that he wanted me to have that, and he wanted me
3 taken care of for some years before we were actually married.
4 And then when we were married, in 2013, we immediately sent --
5 he sent in and I was actually put on Delta Dental, I think it
6 was December of 2013.

7 And it took a couple more months, I think two or
8 three months, before I was put on medical, simply because
9 CalPERS, because of my age, wanted me to have Kaiser Senior
10 Health Advantage. So we effected that. And then I was added to
11 the medical plan -- I believe it was March, two thousand -- it
12 took a few months to get that settled -- 2014. I believe it was
13 March. I had been on the medical plan from then on and dental.

14 Q And around this time, did he also discuss with you his
15 wishes or intent to designate you as his beneficiary for his
16 Option 2 benefits?

17 A Absolutely, he did. We talked about it several times
18 in the years prior that he wanted to do that. For the last
19 five years, he had operations every single year, and so we were
20 in and out of hospital, and dialysis three times a week and
21 doctors all the time. And so it ended up getting extended, the
22 time before we actually were married.

23 Q And when you say the previous five years, what years
24 are you talking about?

25 A Well, he died in 2014. And certainly by -- the first

1 serious operation was at 2010 when they rebuilt his foot.
2 Because of diabetes, he had Charcot disease, and his foot came
3 apart. And so the first of five -- I'm so sorry --
4 life-threatening operations was then. But he survived.

5 And it was -- it's all right. I brought one with me.
6 I am so sorry. I am getting much better than I was.

7 The first was in 2010, November, on the item I
8 mentioned, and his kidneys failed at that time. The next few
9 years -- I don't know if you want the kind of information. If
10 you do, I can cite the operations. He was often bedridden and
11 immobile and a cast on his legs for 18 months. And the
12 operations go on and get more involved as time goes by,
13 including extra dialysis treatments, which I personally took him
14 to, no matter what my job entailed, every time, so that he would
15 not be alone, so he would not have to ride Paratransit because
16 he had congestive heart failure since when he was 40 -- about
17 44. I wasn't there then, but it was around 42, 44, he had, the
18 records say quintuple -- I always understood it to be
19 quadruple -- bypass at -- it wasn't Kaiser. It was, I think,
20 Sutter, the heart hospital here. Sutter or Mercy. He had that
21 done in his 40s. He was a congestive heart patient when I met
22 him. And he had diabetes.

23 So this -- part of the delay was that, every year, we
24 were in the hospital for operations. And also adjusting to
25 dialysis with all that entails, fistula cleaning. All of which

1 was hard on the heart. That's the reason.

2 We talked about it throughout that entire four years.

3 And he was very clear what he wanted. And he was very clear
4 that we were going to get to that as soon as he was -- we could,
5 as soon as -- and we did, you know.

6 Q Who was the designated beneficiary at the time?

7 A His wife Charlotte was the benefitted -- who he had
8 been separated from about -- by the time of the bifurcation, he
9 had been separated 11 years with no further cohabitation or
10 communal property. He had given her everything actually.

11 Q But he told you that he wanted to change the
12 beneficiary?

13 A Yes.

14 Q And were you with him when he started that process?

15 A Which process?

16 Q The process for attempting to change the beneficiaries
17 for Option 2 benefits?

18 A Absolutely. As I mentioned and you mentioned, he wrote
19 a letter in June, June 23rd. And then we did get the letter
20 back from CalPERS, I am sure somebody is going to show me that
21 stating it was inappropriate form because it was a letter.

22 And then he went -- we were married in November, as I
23 said. And then we had a big celebration in December,
24 December 8th.

25 And in that next two weeks, he was told -- this was the

1 fifth of the operations he was told that he was going to lose
2 his legs -- one leg if they did not operate immediately and do
3 an entire bypass down his leg. So within a week and a half of
4 our marriage, we were back in hospital again for -- and that two
5 surgeons came to us and said the risk of death is extremely
6 high.

7 Q Okay.

8 A So -- so he -- at that time, all I am trying to explain
9 is the next step of that was the form that they sent us back
10 that he would then sign.

11 Q We will get there.

12 A Okay. And it got delayed because we were in hospital
13 again until Christmas morning, when I brought him home. And
14 then he was immobile and bedridden for some months as a result
15 of that.

16 Q Okay.

17 A I'm sorry if I diverted there.

18 MR. BARLOW: I would like to introduce this letter as
19 Exhibit D.

20 THE WITNESS: Right.

21 ADMINISTRATIVE LAW JUDGE WONG: The December 12th, 2013
22 letter from Grantland Johnson will be marked as Exhibit D for
23 identification.

24 (Whereupon, Respondent's Exhibit D@ was
25 marked for identification.)

1 Q BY MR. BARLOW: Do you recognize this letter?

2 A I do.

3 Q Did you witness Grantland Johnson sign the letter?

4 A I did.

5 Q Did you witness Grantland Johnson -- were you there
6 when the letter was composed?

7 A Yes, I was, mm-hmm.

8 Q And if you wouldn't mind, what is the -- what is this
9 letter about?

10 A This is about, because we had been married the month
11 before, he was asking that I be added to his health plan. And
12 we were including the documents that they asked for, marriage
13 certificate, Social Security, birth certificate, et cetera.

14 Q Okay. And by "they," you mean CalPERS?

15 A Yes, mm-hmm.

16 MR. BARLOW: I would like to introduce a letter dated
17 June 23rd, 2014.

18 ADMINISTRATIVE LAW JUDGE WONG: The June 23rd, 2014
19 letter will be marked as Exhibit E for identification.

20 (Whereupon, Respondent's Exhibit E
21 was marked for identification.)

22 Q BY MR. BARLOW: Do you recognize this document?

23 A I do.

24 Q And what is it?

25 A It is a letter that Grantland wrote in this instance to

1 name me as his beneficiary with CalPERS retirement and all death
2 benefits, which he says here were previously named for Charlotte
3 and Patrice. That was the death benefit part.

4 And he states again, after we had already sent in a
5 marriage certificate, that we had been legally married on the
6 date November 15th and so on, that a court judgment on the final
7 property settlement would be following as soon as we received
8 it.

9 Q You were there when Grantland Johnson signed this will?

10 A I was.

11 Q You were there when the letter was composed?

12 A I was.

13 Q Did you discuss the letter with him at all as it was
14 being drafted or around the time that it was being drafted?

15 A Yes.

16 Q What did he say about it?

17 MS. KAUR: Objection. Hearsay.

18 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow.

19 MR. BARLOW: This is being admitted for purposes of
20 intent, his intent. I am not admitting it for the specific
21 truth of the matter that is being asserted, specific statements
22 that were actually uttered.

23 ADMINISTRATIVE LAW JUDGE WONG: If you are trying to
24 show his intent, don't you necessarily need to rely on the truth
25 of the matter of his statements? Because that would be what

1 would be indicative of his intent.

2 MR. BARLOW: Not the exact choice of words or sentences
3 that were being uttered. Merely just we believe that his intent
4 can be communicated without seeking to admit the exact truth of
5 the statements that were being uttered or the exact statements
6 were being uttered.

7 ADMINISTRATIVE LAW JUDGE WONG: It will be admitted as
8 administrative hearsay.

9 Q BY MR. BARLOW: What did Grantland Johnson tell you
10 about?

11 A He simply wanted to get the letter in to make sure I
12 was added his as his beneficiary and for all retirement benefits
13 and any death benefits. He simply wanted to get the letter to
14 them.

15 Q Okay. And that's reflected -- based on your reading
16 the letter, that's what the letter reflects?

17 A Yes.

18 Q Okay. And after Grantland Johnson submitted the
19 letter on June 23rd, 2014, was there a response by CalPERS to
20 that letter?

21 A There was.

22 Q And --

23 A The next month, about a month later.

24 Q About a month later.

25 MR. BARLOW: Your Honor, I would like to introduce

1 July 25th letter as Exhibit F.

2 ADMINISTRATIVE LAW JUDGE WONG: The July 25th, 2014,
3 letter will be marked as Exhibit F for identification.

4 (Whereupon, Respondent's Exhibit F
5 was marked for identification.)

6 Q BY MR. BARLOW: Do you recognize this letter?

7 A I do recognize it.

8 Q Okay. And what do you recognize it as?

9 A It was a letter that was sent back about a month after
10 the letter we just looked at was sent in by Grantland.

11 Q Okay.

12 A At this time, we were already in the hospital for the
13 last 23 days of his life. The last 26 days of his life, 23 in
14 the hospital and three at home.

15 I didn't even see this letter until after -- if I did
16 see it, it was opened on a table and I believe -- this is the
17 only part that is blurry for me, only because I believe in this
18 there was one form, and it is one of the forms that we took to
19 the hospital for him to sign, along with the other form that I
20 got. But it was an extremely intense time. He was in the
21 hospital for 23 days, and I was not yet clear that he was dying.
22 Neither was he. But it was uncertain if he was going to survive
23 this one.

24 So this letter came, and I know that I opened it and
25 put it on a table and later, like, a few days, that was brought

1 to the hospital with the form.

2 Q This was the response letter --

3 A It was the response letter, as I understand it.

4 Q Okay. And can we read the text next to the first
5 bullet point there?

6 A "An incorrect or invalid form was submitted. Please
7 complete the enclosed form and resubmit."

8 Q Okay. Does the letter refer to an application to
9 modify life option beneficiary?

10 A No.

11 Q And does it refer to a modification of original
12 election at retirement form?

13 A No.

14 Q Does it provide any timelines within which any such
15 forms should be completed or submitted?

16 A No.

17 Q Okay. At this time, Grantland Johnson had already
18 submitted a letter informing CalPERS that he wanted to designate
19 you as his new beneficiary?

20 A Correct. June 23rd.

21 Q And in that letter, it states that CalPERS -- that he
22 wanted to name you beneficiary of his CalPERS retirement and all
23 death benefits?

24 A Yes.

25 Q And the form that is referenced at this letter, do you

1 see in the -- I'm sorry -- in the second paragraph, second
2 sentence, where it says, "Please review the information and
3 instruction sheet."

4 A Yes.

5 Q Okay.

6 MS. KAUR: I'm sorry. Okay.

7 MR. BARLOW: Before we get to that, I would like to
8 submit the Post Retirement Lump Sum Beneficiary Designation form
9 as Exhibit G.

10 ADMINISTRATIVE LAW JUDGE WONG: So the Post Retirement
11 Lump Sum Beneficiary Designation will be designated as Exhibit G
12 for identification.

13 (Whereupon, Respondent's Exhibit G
14 was marked for identification.)

15 Q BY MR. BARLOW: Do you recognize this document?

16 A I do.

17 Q Okay. And what is it?

18 A It's the Post Retirement Lump Sum Beneficiary
19 designation put out by CalPERS.

20 Q Okay. And you were with Grantland Johnson when this
21 form was being completed?

22 A I was.

23 Q And did you --

24 A Well, I signed where I am supposed to, but he signed.

25 Q And you witnessed Grantland Johnson sign this form?

1 A I did. I was with him.

2 Q On page 4 of the form, what appears on page 4 of the
3 form?

4 A Some information and instructions.

5 Q Okay. And is it your impression -- or do you know, was
6 this the form that was attached to -- that accompanied this
7 letter?

8 A I believe so.

9 Q Okay.

10 MR. BARLOW: At this time, your Honor, I would like to
11 submit Exhibit H, the Application to Modify Option and/or Life
12 Option Beneficiary.

13 ADMINISTRATIVE LAW JUDGE WONG: Okay. The application
14 to Modify Option and/or Life Option Beneficiary is marked as
15 Exhibit H for identification.

16 (Whereupon, Respondent's Exhibit H
17 was marked for identification.)

18 Q BY MR. BARLOW: Do you recognize this document?

19 A I do.

20 Q Okay. And what is it?

21 A It's the CalPERS Application to Modify Option and/or
22 Life Option Beneficiary.

23 Q Okay. And do you know around what time this form was
24 completed and submitted to CalPERS?

25 A It was completed at Kaiser in ICU.

1 Q Okay. What was Grantland Johnson's health like at this
2 time? Tell me about what was happening around this time.

3 A His health was in dire circumstance. They had been
4 trying to stabilize him for 23 days at that point. Not quite
5 23 -- about 20 days in the hospital. And by this time, they --
6 the doctors in endocrinology were beginning to tell him perhaps
7 he would like to go home for a week, in other words, to die.

8 However, Grantland was very, very totally mentally
9 clear and astute. He said to me -- we simply didn't expect he
10 was going to die this quickly. He told me, I want you to go
11 home and get the forms -- because he had been working with me to
12 be sure we had the forms. I want to have them here and I want
13 to sign them now.

14 MS. KAUR: Your Honor, I have the same belated
15 objection. Hearsay, in terms of statements made by Mr. Johnson.

16 THE WITNESS: Okay.

17 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow.

18 MR. BARLOW: Again, your Honor, it would be the same
19 response that this is -- we are not seeking to admit the exact
20 statements from Grantland Johnson or that those exact words were
21 uttered, but merely to show that that was his intent generally.

22 ADMINISTRATIVE LAW JUDGE WONG: All right. So to the
23 extent it's offered to show his intent, it is offered for the
24 truth of the matter asserted, so it will be admitted as
25 administrative hearsay only.

1 THE WITNESS: Okay. May I tell about them going to get
2 forms?

3 MR. BARLOW: Sure. You can proceed.

4 THE WITNESS: It might help if I add a couple
5 sentences, so it's not hearsay.

6 ADMINISTRATIVE LAW JUDGE WONG: It's still hearsay,
7 but --

8 THE WITNESS: Well, this is an actual action. Not by
9 Grantland.

10 ADMINISTRATIVE LAW JUDGE WONG: It doesn't take it out
11 of hearsay.

12 THE WITNESS: Would you wish me to say anything or not?

13 Q BY MR. BARLOW: We can just proceed.

14 A Okay.

15 Q Okay. So as -- did you contact CalPERS at this time at
16 all?

17 A I did.

18 Q Okay.

19 A With Grantland -- the form was complex, to me. And
20 Grantland said, Let's call them. We called. And he spoke with
21 the person first at CalPERS, and said what we were -- he was
22 filling out, and also said, "I give you permission to speak to
23 my wife."

24 So at that point, they spoke to me. And I asked some
25 simply clarifying questions about the form because I found page

1 2 at the top and then page 3 a little bit complicated, and I
2 wanted to be certain that whatever was being done by Grantland
3 and signed by Grantland was correct.

4 MS. KAUR: Your Honor, I have the same objection
5 concerning the testimony just provided, the hearsay objection.

6 ADMINISTRATIVE LAW JUDGE WONG: All right. Mr. Barlow.

7 MR. BARLOW: Your Honor, these are first person
8 accounts of her conversation with CalPERS.

9 ADMINISTRATIVE LAW JUDGE WONG: So to the extent the
10 testimony referred to what other people said, it will be
11 accepted for the effect on the listener rather than truth of the
12 matter asserted. The objection is overruled.

13 Q BY MR. BARLOW: And what did -- what did you express to
14 the CalPERS representative when you were on the telephone call?

15 A I said where we were, that we were in ICU at Kaiser.
16 And I said that the situation was not very good, you know, that
17 it appeared that my husband was towards end of life. And I said
18 that we were filling -- he was going to finish filling out this
19 form, but I needed help, because I wasn't entirely certain. I
20 needed clarification on what seemed complex.

21 Q As part of that telephone call, did you inform CalPERS
22 what was trying to be accomplished?

23 A Yes. I actually read to them, it was the Application
24 to Modify Option and/or Life Option Beneficiary, and expressed
25 my confusion about a section on page 2.

1 Q Did you express to CalPERS that this was part of an
2 effort of -- Grantland Johnson's effort to designate you as his
3 new beneficiary?

4 A Yes, that's exactly what this form is. It's
5 Application to Modify Option and/or Life Option Beneficiary.
6 Grantland is the one that said: Get -- I want to do it now.

7 Q And do you remember what -- what CalPERS response was?

8 MS. KAUR: Hearsay objection.

9 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow.

10 MR. BARLOW: This is -- I am not admitting it for the
11 truth of the matter asserted; only for purposes of the intent --
12 the impression made on the listener.

13 ADMINISTRATIVE LAW JUDGE WONG: So be accepted for that
14 purpose only. The objection is overruled.

15 THE WITNESS: I just want to say the gentleman on the
16 phone was incredibly kind and understanding and patient and
17 compassionate. I just want to make that statement. He was very
18 nice to me and helped me with the clarification of where it was.

19 Because I said at that point: Grantland, what is the
20 option? What is your option for this form?

21 Option 2.

22 And so I told the gentleman. And the gentleman walked
23 me through it and said: No, you don't belong -- you don't need
24 to put it there.

25 Then I said, I don't understand the 2W. And I just

1 don't understand that. I know it's hearsay, but I am going to
2 tell what you he said.

3 He said, Don't worry about that. We calculate that
4 internally.

5 I said, Thank you. And then I said, I am going to get
6 these -- my husband wants me to have these in the mail today.

7 He said, That's fine. Put them in the mail get them to
8 us.

9 And the last -- when I thanked the person, he said to
10 me: Don't worry. Your husband's wishes will be honored no
11 matter what.

12 I understand it's hearsay. I am just telling you, as
13 the listener, that's what was said.

14 Q You don't have to to --

15 A I'm just saying that's what was said.

16 ADMINISTRATIVE LAW JUDGE WONG: Ms. Johnson, the
17 editorials, we don't need.

18 THE WITNESS: All right.

19 ADMINISTRATIVE LAW JUDGE WONG: Just stick to the
20 facts.

21 THE WITNESS: The gentleman said -- I thanked him, and
22 he said: Don't worry. Your husband's wishes will be honored no
23 matter what.

24 MS. KAUR: Just for the record, objection. Hearsay
25 objection concerning the statements of Grantland Johnson, as

1 well as the statements of the CalPERS employee.

2 ADMINISTRATIVE LAW JUDGE WONG: The entire testimony
3 was accepted only for the effect on the listener on that.

4 Q BY MR. BARLOW: As part of that phone call?

5 A Yes.

6 Q So you informed CalPERS that Grantland Johnson was in
7 poor health?

8 A Very critical health.

9 Q And you informed CalPERS that what was trying to be
10 accomplished was to -- was for Grantland Johnson to designate
11 you as his new beneficiary for Option 2 benefits?

12 A Exactly.

13 Q At any point during that conversation did the
14 CalPERS -- did CalPERS inform you or mention a Modification of
15 Original Election at Retirement form?

16 A No.

17 Q Did they ever mention that a new election -- or
18 additional election form would have to be submitted?

19 A No.

20 Q Did they inform you that any additional steps would be
21 necessary after submitting the Application to Modify Life Option
22 Beneficiary form?

23 A No.

24 Q Were you told anything about the time within which
25 these forms had to be submitted or any additional forms had to

1 be submitted?

2 A No.

3 Q But you informed them that his -- but you informed
4 CalPERS that Grantland Johnson's health condition was dire?

5 A Very dire.

6 Q Was there anybody else in the room at that time?

7 A Yes.

8 Q Who was that?

9 A Herb Anderson, his best friend since grade 3, was
10 present, and went home and got the forms because they were at
11 home, and stayed with him in the hospital room after Grantland
12 signed. Because Grantland told me to go straight to the post
13 office. And so Herb stayed with him while I went to the post
14 office.

15 Q I want to refer you to the signature page of the
16 application form.

17 A Yes.

18 Q Do you see where Grantland Johnson's signature is?

19 A I do.

20 Q And you saw him sign that?

21 A I did.

22 Q Do you see the certification of participant statements?

23 A I do.

24 Q And did you discuss that statement or do you -- what
25 was understood -- what did you understand by that statement?

1 A We understood that this was the form that needed to be
2 signed.

3 Q Did you understand this was communicating that any
4 additional forms had to be submitted?

5 A No knowledge that there were any other forms.

6 Q So when it says that, "This form is a request to an
7 election form," you believed that that was the request for an
8 election form?

9 A Yes, the signature was to modify and elect his option.

10 Q But not a request for an additional form?

11 A No understanding that it was.

12 Q Okay. And after you hung up with the CalPERS
13 representative, did you have any conversations with Grantland
14 about --

15 A I simply told him what the gentleman said regarding
16 honoring his wishes. And, of course, and then simply he signed
17 and I took it to the post office.

18 Q Okay.

19 A Certified.

20 Q And when was the next time you heard from CalPERS after
21 that? Do you remember?

22 A Well, after Grantland died on August 19th, I knew it
23 took me a week or two to get to it with the funeral and
24 internment and -- but I knew that I needed to sign it -- send
25 the death certificate. That's just common sense. I don't

1 remember the exact number of days it took for the death
2 certificate to come.

3 But as soon as it came, so it was within two weeks at
4 the most, I called CalPERS to tell them that my husband had
5 passed away and to say that I knew I needed to send a death
6 certificate to them. And I didn't talk about death benefits
7 that time. I am really not certain which department I spoke to
8 at the time. But I did -- as per their instructions, I mailed
9 the death certificate in.

10 Q Okay.

11 MR. BARLOW: Submit the August 14th, 2014 letter as
12 Exhibit I, your Honor.

13 ADMINISTRATIVE LAW JUDGE WONG: All right. That letter
14 will be marked as Exhibit I.

15 (Whereupon, Respondent's Exhibit I
16 was marked for identification.)

17 Q BY MR. BARLOW: Ms. Johnson, do you recognize this
18 letter?

19 A I do.

20 Q And what is that?

21 A This letter said that they received the beneficiary
22 designation form, and was accepted. And it was the one for the
23 pro rata lump sum.

24 Q And what was happening at around this time?

25 A We were within a couple of days of bringing him home to

1 die. We were still in the hospital.

2 Q Okay. And by this time -- by this time, the
3 Application to Modify the Life Option Beneficiary, that
4 application had been completed and mailed?

5 A They were mailed at the same time, same day. Same
6 exact.

7 Q And on that letter, is there any reference to
8 Modification of Original Election at Retirement form?

9 A No.

10 Q Any reference to timelines within which any forms have
11 to be completed or submitted?

12 A No.

13 Q Does it state the process for designating a new
14 beneficiary is in any way incomplete?

15 A No.

16 Q On the letter, who is designated as the new
17 beneficiary?

18 A I am.

19 Q Did you think there was anything left to do at this
20 point?

21 A Not in terms of forms. I hadn't heard that from them.
22 But nothing in forms, I didn't think there was anything.

23 Q Was there any reference to an additional election that
24 had to be made in this?

25 A No, hm-mmum.

1 Q So at this time, you were under the impression that
2 Grantland Johnson's efforts to modify his beneficiary for Option
3 2 benefits -- you were under the impression that that process
4 had been completed and that he had done everything that he could
5 and was supposed to do?

6 A I understood it to be satisfactory and complete.

7 Q When was the -- let me take you to the community
8 property issues underlying the case and the dissolution between
9 Grantland Johnson and his former wife.

10 When was the hearing related to bifurcation and the
11 community property dispute between Grantland Johnson and his
12 former wife?

13 A It was in October 2013. I think it was the 13th --
14 October 2013 was the bifurcation and the reference to the
15 community property settlement.

16 Q Okay. And when was the judgment finally entered
17 relating to that community property settlement or the community
18 property settlement entered in that case?

19 A I didn't get the certified back until February 2014
20 because community property piece was not signed off on by
21 Charlotte Bolton until after his death.

22 Q And --

23 A And the court was backed up.

24 ADMINISTRATIVE LAW JUDGE WONG: Until after August 2014
25 or 2015?

1 THE WITNESS: You mean for the signature?

2 ADMINISTRATIVE LAW JUDGE WONG: Yes.

3 THE WITNESS: It was -- September 2014 is when she
4 signed after his death, and that then was submitted to the
5 courts late September, early October 2014. There was a backlog,
6 I was told by the lawyers, in the court. And so it did not --
7 the uncertified copy judgment came back in January.

8 But I did understand that I needed -- I sent that to
9 CalPERS, but was told I needed to send the certified. So we got
10 that in February 2014. And I immediately submitted it. There
11 had been a down-sizing of staff in the courts at that time.

12 MR. BARLOW: Okay. Your Honor, I would like to submit
13 the judgment as Exhibit J. I apologize this packet isn't --

14 MS. KAUR: You have all of her Social Security and
15 CalPERS numbers on here. You may want to redact those.

16 ADMINISTRATIVE LAW JUDGE WONG: There is a ton of stuff
17 in here that is going to need to be redacted on or something
18 needs to be done with it. Just about every document there is
19 stuff in there.

20 So this is the property judgment.

21 MR. BARLOW: That's correct, your Honor, and the
22 settlement agreement to the community property dispute.

23 ADMINISTRATIVE LAW JUDGE WONG: The property settlement
24 judgment will be marked as Exhibit J.

25 //

1 (Whereupon, Respondent's Exhibit J
2 was marked for identification.)

3 Q BY MR. BARLOW: Ms. Johnson, I would like to refer you
4 to what is page 8 of the settlement agreement attached to the
5 judgment.

6 A Okay.

7 Q And were you signatory to that settlement agreement?

8 A I was.

9 Q Is that your signature on the top signature line?

10 A It is.

11 Q And in what capacity did you sign that document?

12 A Well, I was his executor, and the attorney that was
13 handling this had me sign it as such.

14 Q Okay. What is noted next to your name?

15 A Attorney in fact.

16 Q Okay. Thank you.

17 And after the judgment was finally entered, what did
18 you do after that?

19 A Well, I wrote a letter to CalPERS because I was just
20 trying to get communication from them of where their process was
21 at.

22 Q Okay.

23 MR. BARLOW: And as Exhibit K, I would like to submit
24 Ms. Johnson's February 11th letter.

25 ADMINISTRATIVE LAW JUDGE WONG: That letter is marked

1 as Exhibit K for identification.

2 (Whereupon, Respondent's Exhibit K
3 was marked for identification.)

4 Q BY MR. BARLOW: Do you recognize that document,
5 Ms. Johnson?

6 A I do.

7 Q Okay. What is it?

8 A It's a letter that I wrote to CalPERS February 11th
9 regarding, you know, sending in the certified final judgment
10 that we just saw and other documents that would relate to the
11 calculation of payment to me from past retirement, lien, and
12 lump sum. And also mentioning that I was on the medical dental
13 plan and wanting to know where their process was at.

14 Q Were there any documents attached to this letter?

15 A No.

16 Q Okay. By this time, had you already submitted a copy
17 of the judgment to CalPERS?

18 A That was enclosed in this letter. That's actually what
19 was sent with this letter.

20 Q That's right.

21 A Yeah.

22 MR. BARLOW: As Exhibit L, I would like to submit
23 Ms. Johnson's February 14th, 2015 letter to CalPERS.

24 ADMINISTRATIVE LAW JUDGE WONG: That letter is Exhibit
25 L.

1 (Whereupon, Respondent's Exhibit L
2 was marked for identification.)

3 Q BY MR. BARLOW: Do you recognize this letter Ms.
4 Johnson?

5 A I do.

6 Q What is this letter?

7 A This is a letter I sent a few days later because I had
8 faxed in entirety the first time, the certified and so forth,
9 for efficiency of time. And I decided that it would be good to
10 mail hard copy.

11 Also, in those few days, I had been to Kaiser to pick
12 up my own medication and found out that I was no longer covered
13 by CalPERS according to Kaiser. Which was a shock to me. I had
14 no idea or had no communication to state that I would be taken
15 off medical dental. I thought it might be a glitch in the
16 computer system because they expressed to me it was the
17 beginning of the year, and sometimes at the beginning of the
18 year, CalPERS resets covered participants.

19 So it so happened I went to the dentist in those
20 three days, as well. And indeed, I wasn't covered by Delta
21 Dental either. So I sent this partly with a hard copy of
22 everything I faxed. Also because I wanted to know what was
23 going on.

24 And that is in the last paragraph that I state that.

25 Q Okay.

1 MR. BARLOW: As Exhibit M, I submit a CalPERS
2 February 17th letter.

3 ADMINISTRATIVE LAW JUDGE WONG: That letter is Exhibit
4 M.

5 (Whereupon, Respondent's Exhibit M
6 was marked for identification.)

7 Q BY MR. BARLOW: Ms. Johnson, do you recognize that
8 letter?

9 A I do.

10 Q And what is that?

11 A It's a letter from CalPERS to me stating that they did
12 receive the copy of judgment pertaining to Grantland Johnson's
13 property settlement and judgment and they stated that he had
14 been awarded the entire interest in his CalPERS pension. And
15 that they were removing the community property claim on behalf
16 of Charlotte Bolton's behalf.

17 Q Okay. As part of that letter, is there any mention of
18 a Modification of Original Election of Retirement form?

19 A No.

20 Q Is there any reference to the fact that additional form
21 needed to be submitted?

22 A No.

23 Q Does it state that any timelines related to any such
24 form should have been submitted?

25 A None.

1 Q That the process for him designating you as his
2 beneficiary was incomplete?

3 A None.

4 Q Aside from the March 4th -- aside from hearing from
5 CalPERS on March 4th that the request to designate you as
6 Grantland Johnson's beneficiary for Option 2 benefits was being
7 denied, do you ever remember anybody at CalPERS ever informing
8 you or him that both the member and the new beneficiary must be
9 alive on the date when the new election was to become effective?

10 A Before the March 4th letter?

11 Q Right.

12 A One phone call. A phone call that I made to Death
13 Benefits.

14 Q And when was that?

15 A The end of February.

16 Q February 2015?

17 A Yes.

18 Q Okay.

19 A I don't have the exact day of that phone call. But I
20 phoned to ask because, although I had received the letter about
21 the lump sum and me being named beneficiary, I hadn't received
22 anything else. When the final judgment came in with him being
23 named as complete owner of his benefits, I thought that I should
24 know something more about the rest of the forms he had sent in
25 and what the status was.

1 So I phoned and got ahold of Death Benefits. I spoke
2 to two people, an assistant, and then a woman, Ms. Day-Bolar,
3 but, I am not certain if she was the head of Death Benefits.
4 But she was definitely working there. And I spoke with each of
5 them. At that time in that call with Ms. Day-Bolar is the first
6 time I heard about an election form.

7 Q Okay.

8 A I had not heard of it prior.

9 Q Okay. And based on your relationship with Grantland
10 Johnson and what you know -- your knowledge of him, had
11 Grantland Johnson been aware of the requirement for sending or
12 submitting a Modification of Original Election at Retirement
13 form or any additional materials to effectuate his efforts to
14 designate you as his Option 2 beneficiary, what do you think he
15 would have done?

16 MS. KAUR: Objection. Calls for speculation.

17 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow.

18 MR. BARLOW: This is just an effort, your Honor -- this
19 is her impression of what -- this is her impression based on her
20 relationship with Grantland Johnson. I am not asking her to put
21 thoughts into the decedent's mind. It's just based on her
22 relationship with him.

23 ADMINISTRATIVE LAW JUDGE WONG: Well, you are asking
24 her to state what he would have done in the future. Isn't that
25 necessarily speculation?

1 MR. BARLOW: It's based on not necessarily what he
2 would have done in the future, but had he been aware of the
3 requirements all along, would he have complied with them?

4 ADMINISTRATIVE LAW JUDGE WONG: Again, isn't that
5 speculation? How is that not speculation?

6 MR. BARLOW: I mean, it goes to her impressions. I am
7 not asking her to necessarily state precisely what he did or --

8 ADMINISTRATIVE LAW JUDGE WONG: If it only goes to her
9 impressions, her impressions aren't relevant because she is not
10 the one who would be making the designation, so it would be
11 Mr. Johnson's.

12 MR. BARLOW: It's relevant to the extent that we are
13 trying to demonstrate, your Honor, that both the member and the
14 designated beneficiary were acting reasonably and diligently
15 throughout the entire course of the process.

16 ADMINISTRATIVE LAW JUDGE WONG: The objection is
17 sustained based on speculation.

18 MR. BARLOW: I have no further questions at this time,
19 your Honor.

20 ADMINISTRATIVE LAW JUDGE WONG: Cross-examination.

21 MS. KAUR: Thank you, your Honor.

22 If I could provide the witness our packet, your Honor,
23 in case I --

24 ADMINISTRATIVE LAW JUDGE WONG: Go ahead.

25 //

CROSS-EXAMINATION

1
2 BY MS. KAUR:

3 Q This is our packet. I may have you refer to this.

4 Ms. -- Mrs. Johnson, you testified that you contacted
5 CalPERS sometime in 2013, possibly February 2013, regarding the
6 beneficiary designation; is that correct?

7 A I didn't say that I did in 2013. I said I did in 2014.

8 Q In 2014. But you did testify there was some discussion
9 regarding changing the beneficiary designation about five years
10 prior to Mister --

11 A Four or so, yes. Several times.

12 Q If you could turn to in that binder I provided you, if
13 you could turn to Exhibit 8. And if you could look at page --

14 A Just a second. It's upside down. All the stuff
15 inside -- let me -- okay. The numbers are upside down from the
16 documents, but let me be sure I get the ones you want to me to
17 have. They are not in consort with mine.

18 MR. BARLOW: Mine are right side up.

19 THE WITNESS: Is that right? They are upside down.

20 MS. KAUR: I will provide you this.

21 THE WITNESS: I am now in 8 with it right side up.

22 MS. KAUR: I will take that back. That's an extra.

23 Q And if you could turn to page 8 on that Exhibit 8 and
24 the pages are numbered at the very bottom?

25 A I think mine are at the top.

1 Q But you want to look at the very bottom left corner.

2 A I see.

3 ADMINISTRATIVE LAW JUDGE WONG: Left corner or right
4 corner?

5 MS. KAUR: Right corner. I'm sorry.

6 THE WITNESS: I got it. All right.

7 Q BY MS. KAUR: So at the very bottom of this page, so
8 these are CalPERS notes. And at the very bottom of this page,
9 it states: "Member requesting change of beneficiary and tax
10 withholding." Do you see that entry?

11 A I do.

12 Q It's February 15, 2013.

13 A Mm-hmm.

14 Q Do you recall Mr. Johnson calling in concerning the
15 change of beneficiary?

16 A I do not, because in -- at that time, I was going to
17 work, and he was either at home or with someone looking out for
18 him. That's a call that he must have made when I was not there.

19 Q And during that time frame, let's say February 2013,
20 there was discussion -- there was discussion going on between
21 you and him concerning changing the beneficiary; is that right?

22 A Absolutely. We were preparing for our marriage and he
23 must have been trying to take care of it then, knowing that we
24 were soon going to be married.

25 Q And do you know whether he signed any forms or sent in

1 any forms to CalPERS during 2013 changing the beneficiary
2 designation?

3 A If he did, I don't know of them until the ones we have
4 presented today.

5 Q Okay.

6 ADMINISTRATIVE LAW JUDGE WONG: Do you know when the
7 dissolution action was -- marital dissolution action was filed?

8 THE WITNESS: I do. November 9th, 2013.

9 ADMINISTRATIVE LAW JUDGE WONG: Thank you.

10 THE WITNESS: That was the date was effective,
11 November 9th.

12 ADMINISTRATIVE LAW JUDGE WONG: So when was a summons
13 issued? So when was the action first filed? Do you know?

14 THE WITNESS: I have it at home. I know the final day
15 that it was effective was November 9th, and it was filed between
16 October 13th and then. I don't have it with me in my head. I
17 am so sorry.

18 ADMINISTRATIVE LAW JUDGE WONG: That's okay.

19 THE WITNESS: I apologize.

20 ADMINISTRATIVE LAW JUDGE WONG: So the November 9th,
21 what is that date?

22 THE WITNESS: That's the date the divorce became
23 effective, like so it was filed and endorsed.

24 ADMINISTRATIVE LAW JUDGE WONG: Is that termination --
25 because technically -- I understand what you are saying, but you

1 are technically misusing terms.

2 THE WITNESS: I know. I am not a lawyer. I am so
3 sorry.

4 ADMINISTRATIVE LAW JUDGE WONG: That's okay. I am
5 trying to determine. So what I am surmising from the evidence
6 thus far is there must have been -- because marital dissolution
7 often involves two things. One is the status, meaning the
8 status of being married and property. And it's very common for
9 people to bifurcate, and they will determine -- they will
10 determine the marital status first, to leave property --

11 THE WITNESS: That's what happened.

12 ADMINISTRATIVE LAW JUDGE WONG: So that's what
13 happened.

14 So I am surmising that November 9th, 2013 is when
15 status was terminated to make him no longer married?

16 THE WITNESS: Exactly right. Exactly right.

17 ADMINISTRATIVE LAW JUDGE WONG: Thank you. All right.
18 Ms. Kaur, please continue.

19 Q BY MS. KAUR: And just on that point, if you could turn
20 to Exhibit 9-0.

21 A Okay.

22 Q And then if you could look at the second page?

23 A Okay.

24 Q Would this in any way help clarify?

25 A Oh, yes, because it was -- it there is. It was filed

1 status only on October 21st. Shortly after we actually appeared
2 in Court for the bifurcation and attempt to do property
3 settlement.

4 Q And it appears there is effective date --

5 A November 9th, right there.

6 Q -- determination?

7 A Yes.

8 Q And just going back to the exhibit we were looking at
9 previously, Exhibit 8, and if you could now turn forward to page
10 7.

11 A Yes.

12 Q And the fourth entry from the very bottom starts about
13 death and then says "participant." And then it states: "Member
14 Grantland L. Johnson provided authorization to speak with Lee
15 Turner. Caller asked about death benefits."

16 A Yes.

17 Q Do you recall that -- making that call?

18 A I remember being with him and making it. I am -- yes,
19 actually, I remember a fair bit of the conversation.

20 Q And that is on October 24th, 2013; is that correct?

21 A Uh-huh.

22 Q And do you recall learning about the -- about
23 changing -- modifying the option benefit during that call?

24 A Well, there wasn't a discussion so much about forms
25 that day. What Grantland was asking that day was the details of

1 Charlotte's coverage and Patrice, because the actual death
2 benefit was divided at that time, the percentage to each. He
3 did not talk about medical/dental particularly that day. And
4 there wasn't a discussion about forms.

5 We hadn't yet -- this was in -- I'm sorry. I want to
6 look at the month again. October, right?

7 Q October 24th, 2013.

8 A Yes. We were preparing for our marriage and
9 completing -- this would have been probably a day or two after
10 the other was filed, you know, the status, bifurcation status.
11 And so he was asking to prepare. But there wasn't a discussion
12 about forms that day. There was a discussion about the pro rata
13 or the percentages that Charlotte and Patrice had. And he was
14 discussing -- he was deciding and discussing how he was going to
15 alter that.

16 Q Okay. It seems like the call was transferred. Were
17 you the one who spoke actually or was it Mr. Johnson?

18 A He spoke to begin with, and then wanted me to speak
19 with them. But we were together for the entire conversation and
20 it went back and forth. He would ask them something, but we
21 were both on the phone. If I recall, we actually had it on
22 speaker together.

23 Q Did you make a request for any forms?

24 A Well, we hadn't yet been married, so I made no requests
25 for forms. Nor did he.

1 Q You received the forms at some point; is that correct?

2 A Yes.

3 MR. BARLOW: Objection as to form. Ambiguous as to
4 which forms we are talking about.

5 MS. KAUR: I will clarify.

6 Q The form to modify your Option 2 benefit. You received
7 it -- you obtained that at some point; is that correct?

8 A Yes. The lump sum was sent with that letter, I
9 believe. And the modification was in a booklet.

10 Q It was in a booklet. Was the booklet mailed to you?

11 A I believe it was mailed to him. And it was at the
12 house. It wasn't mailed to me but it was mailed to him.

13 Q Do you recall, did you ever see the booklet? Did you
14 ever see the booklet?

15 A Which booklet?

16 Q The booklet you are referring to. You said the form
17 was in a booklet.

18 A I -- I'm not certain if it was Publication 60. I
19 believe it's called 60. That booklet, I saw. I took -- I
20 believe I took the form out of that booklet.

21 Q So it could have been -- it was a publication that you
22 took the form out of; is that correct?

23 A Yes.

24 Q You did not go online and print it out?

25 A No, I did not. That I know.

1 Q And you did not go into CalPERS to obtain that booklet;
2 is that correct?

3 A I did not.

4 Q And it's your understanding it was mailed to him at
5 some point?

6 A Yes.

7 Q And do you recall when you obtained that form out of
8 that booklet or when you first saw that booklet?

9 A It was in that summertime, the two months or so before
10 his death. We were in and out of hospital through June and
11 July, on top of four dialysis a week and constant doctor
12 appointments.

13 I cannot tell you the exact day or the exact
14 publication, but I know that I had one and I think it came -- I
15 am sure it came out of the book. I certainly didn't go on line
16 or go to the office. Nor did he. I know, indeed, it, was from
17 a publication.

18 I know, at some point, amidst him passing out
19 constantly at home and me CPR'ing him -- It was getting a little
20 bit intense the last couple of months. I know that I had them
21 and I set them aside in a folder.

22 Q And what triggered or what caused you to go get the
23 form from the booklet?

24 A The day that we were in ICU and he instructed me that
25 he wanted to sign those forms right then. I didn't want to

1 leave him. And so I asked his friend who was with us, would
2 he -- he offered actually to go to the house and pick them up.
3 I told him where they were.

4 And he brought them back to the hospital while --
5 because I did not want to leave Grantland. And then the process
6 of signing and calling CalPERS went on. And then I went
7 directly to the post office to certify mail them, and his friend
8 stayed with him until I got back from the post office.

9 Q So you were instructed by him to go get the form from
10 the booklet?

11 A Was instructed that he wanted to sign the forms right
12 away. He didn't say booklet. And he didn't say I had to get
13 them. But he wanted them done. And so we arranged it. I
14 didn't want to leave. And Herb went and got them.

15 Q Had you seen the forms in the booklet prior to that
16 date?

17 A Briefly. I mean, I realized they were forms. And I
18 put them aside.

19 Q Had you reviewed the booklet?

20 A No.

21 Q Do you have knowledge whether he reviewed the booklet?

22 A I am certain that he did not.

23 Q And how did you become aware that there was forms in
24 the booklet?

25 A Well, the publication I am thinking of said something

1 about post -- like I am not going to get this exactly right.

2 Post Survivor Benefits, something of that kind, was the title of
3 the booklet.

4 Q Maybe we can turn to Exhibit 11.

5 If you could look through that, does this look like the
6 booklet you reviewed or similar to the booklet?

7 A It was another booklet. It was a publication, a PUB
8 something that I recall having. But this is the Lump Sum
9 Beneficiary Form. And there is the -- there is the application
10 to modify. Those are the forms that I set aside.

11 Q There is also Exhibit 12, if you could look at that.
12 That's a publication that says PUB 60.

13 A That's the one I remember seeing. But I didn't have
14 time to go through it. I thought that the one application was
15 in this.

16 Q Okay. So Exhibit 11, which has the Changing Your
17 Beneficiary or Monthly Benefit After Retirement booklet?

18 A Yes.

19 Q That has the Application to Modify your Option or Life
20 Option Life Beneficiary; is that correct?

21 A That's what it says. Inside that packet you have
22 there, that's where you have them. And they are there.

23 Q And if you look at the very last page of this booklet,
24 which would be the back cover.

25 A Mm-hmm.

1 Q It says Pub -- PUB 98. Do you recall whether this
2 would be the publication you looked at?

3 A I didn't look at the publication. Somehow the
4 applications became apparent. I put them aside. I truly -- I
5 don't know whether this was mailed to Grantland and he got it.
6 But I didn't look at it.

7 And I know that the applications I found, I took them
8 out. In the state we were in, in the haste we were in, I took
9 them out and set them aside. I knew they were important. But I
10 did not read this publication. I don't even remember this
11 publication. And I know that he didn't.

12 Q Okay. And correct me if I am wrong, but it seems like
13 you stated that you took out the publication from the booklet
14 about two months before?

15 A I don't know it was two months before. I knew they
16 were in a booklet of some kind, true.

17 MR. BARLOW: Objection to the extent it misstates her
18 former testimony.

19 ADMINISTRATIVE LAW JUDGE WONG: Sustained.

20 I don't know if you finished your answer.

21 THE WITNESS: I am okay with what I said.

22 ADMINISTRATIVE LAW JUDGE WONG: Okay.

23 THE WITNESS: I can't shed more light on that.

24 ADMINISTRATIVE LAW JUDGE WONG: Okay.

25 Q BY MS. KAUR: And just to clarify, so Mr. Johnson

1 signed the Application to Modify the Option Benefit, that form
2 application, on August 7th, 2014?

3 A I think it was the 5th. I could be wrong. I think it
4 was the 5th. Yes, he did, in ICU.

5 Q And you said you took out the forms prior to him
6 signing these forms? You took them out of the booklet; is that
7 correct?

8 A I took them out of something, and they were in -- I
9 laid them on, I believe, a table. Could have been the office
10 table. I knew they were important. And with what was going on
11 with him that last six, seven weeks, it was critical and
12 somewhat chaotic. Because he was losing consciousness
13 repeatedly at home with me alone. So ambulances were coming. I
14 was CPR'ing him. The fact that I even saw them and put them
15 aside knowing that they were important was significant.

16 Q And do you recall when you put them aside?

17 A No. I know it was in a very short period before. It
18 wasn't two months before. I am sure of that.

19 Q So less than two months?

20 A Definitely.

21 Q Possibly less than a month?

22 A Possible. I am sorry. I don't know exactly.

23 ADMINISTRATIVE LAW JUDGE WONG: Ms. Kaur, is this a
24 good time to take our morning recess?

25 MS. KAUR: Sure, your Honor.

1 ADMINISTRATIVE LAW JUDGE WONG: Why don't we take
2 15 minutes. It's 10:30 according to the clock on the wall.
3 Let's come back at 10:45.

4 You may step down during the recess, Ms. Johnson. I
5 ask you return at 10:45. We are off the record until then.

6 (Recess taken.)

7 ADMINISTRATIVE LAW JUDGE WONG: Okay. Let's go ahead
8 and go back on the record. Let the record reflect that
9 Ms. Johnson has returned to the witness stand.

10 I remind you, Ma'am, you are still under oath.

11 And Ms. Kaur, if you would like to continue.

12 Q BY MS. KAUR: Mrs. Johnson, if you could please turn to
13 Exhibit 9-M, and that is Respondent's Exhibit E. This is the
14 letter dated June 23rd, 2014 you testified about earlier signed
15 by Mr. Johnson.

16 A Right.

17 Q Were you present when he signed this letter?

18 A Yes.

19 Q In terms of the contents of the letter, you testified
20 about the contents of the letter, that it states all the death
21 benefits are to be under your name. Is that correct?

22 A Correct.

23 Q The second paragraph states: "Judgment or marital
24 agreement will soon be filed and sent to you."

25 A Sent to him.

1 Q "Sent to you." This is drafted -- did you draft this
2 letter or did he draft it?

3 A He did. But I don't -- anyway, it says the court
4 judgment or marital agreement will soon be filed and sent to
5 you. Meaning to CalPERS, right? Not to me.

6 Q To CalPERS?

7 A Right, right. Okay.

8 Q You understand that to mean to CalPERS; is that
9 correct?

10 A That's what I understand.

11 Q And what is your understanding concerning sending in a
12 court judgment or marital agreement?

13 A That once the judgment was finalized, it would be
14 submitted to CalPERS.

15 Q And is that something you understood at that time on
16 June 23rd, 2014?

17 A Yes. The judgment had to be finalized and sent in.

18 Q How did you know that at that time on -- in June 2014?

19 A Because at the bifurcation, that had not been settled.

20 Q So in 2014, you were aware -- June 2014, you were aware
21 that a judgment or marital agreement needed to be sent to
22 CalPERS; is that correct?

23 A Yes.

24 Q And how did you become aware of that requirement?

25 A It was in one of the letters that we submitted that

1 there -- that they awaited a final judgment.

2 Q It was --

3 A CalPERS awaited a final judgment.

4 Q Which letters are you talking about?

5 A It may have been one of the letters that I sent
6 subsequently. I believe that I stated that. Because I was the
7 one that sent the final judgment later when it came back.

8 Q That letter was dated in 2015; is that correct?

9 A Uh-huh.

10 Q But this letter is dated June 23rd, 2014.

11 A Correct.

12 Q So this is before Mr. Johnson died?

13 A Correct.

14 Q So in June 2014, you were aware of the requirement that
15 you needed to send in a court judgment or marital agreement; is
16 that correct?

17 A Yes.

18 Q And what was your understanding? What did you need to
19 send that in for?

20 A Because once the judgment was sent in, they could
21 determine if Grantland was awarded all of his benefits.

22 Q And what would that do?

23 A Well, then he could determine what he would do with
24 them.

25 Q And how did you learn about that requirement?

1 A CalPERS had informed us, informed him, that the -- that
2 that state -- that step would not be complete until they got the
3 court judgment.

4 Q Which step would not be complete?

5 A The award. Him being awarded full or not full
6 allowance or ownership depended on the court judgment, the final
7 judgment of community property.

8 Q Okay. Just going back a little bit, you previously
9 discussed that you took out some forms from the publication and
10 you felt they were important and needed to be filled out. How
11 did you realize that those forms need to be filled out?

12 A The titles of them.

13 Q Did somebody point you to those forms?

14 A (Witness shakes head.) No. I found them. And I
15 really don't remember which publications. I certainly didn't
16 read that big one you referenced. But I saw them and, by the
17 titles, I knew they were important documents regarding
18 beneficiary designation.

19 Q If you could turn to Exhibit 9-I. And this is
20 Respondent's Exhibit G. You reviewed this before.

21 A Yes.

22 Q And you reviewed the last page, which is the
23 instructions page. Or you discussed it, testified to it
24 earlier.

25 Did you review the instructions with Mr. Johnson when

1 this form was filled out?

2 A Yes.

3 Q And what is your understanding of the instructions
4 provided under the first section under Instructions?

5 A Do you mean Part A? Is that what you are referring to?

6 Q Right before Part --

7 A Well, my understanding is, this was for the Post
8 Retirement Lump Sum Beneficiary designation. It states in there
9 that you can order or download matters, materials, but we
10 were -- did not have access to do that.

11 That's my understanding of the first part.

12 Q So was it your understanding that this particular form,
13 the Lump Sum Beneficiary Form was just for the lump sum
14 benefits?

15 A Yeah.

16 Q Is this something you discussed with Mr. Johnson?

17 A Yes.

18 Q And was it your understanding that you needed to file a
19 separate form for the option benefit?

20 A Well, there was a second form. We saw it and the title
21 indicated that, so we did it and it -- that's it.

22 Q Go ahead.

23 A No.

24 Q Did you ever review the publication with Mr. Johnson?

25 MR. BARLOW: Vague as to "publication."

1 Q BY MS. KAUR: The publication you are referring to or
2 you took the forms out of the publication.

3 A I want to clarify I said already on the record that I
4 am a little unclear which publication I took forms from. But I
5 did get these two forms and was aware that they were two forms
6 that pertained. So I can't speak to which publication.

7 And the rest of your question was?

8 Q Is, whichever publication you took the forms out of,
9 did you review that publication with Mr. Johnson?

10 A No, I did not.

11 Q Do you recall him -- ever seeing him review it?

12 A Not in front of me.

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

15 ADMINISTRATIVE LAW JUDGE WONG: Any redirect?

16 MR. BARLOW: Yes, your Honor, briefly.

17 REDIRECT EXAMINATION

18 BY MR. BARLOW:

19 Q Ms. Johnson, as you were setting aside the forms that
20 we have been talking about, the two forms, the lump sum
21 beneficiary form and the application to modify life option
22 beneficiary forms, why didn't you submit them as you set them
23 aside? Or why -- I'm sorry.

24 Why didn't you discuss them with Grantland Johnson
25 there and why were they not submitted at that time?

1 A Well, as I mentioned, I know that I just had those
2 forms a short number of weeks. I am sorry I can't tell you
3 exactly the number of weeks, but it wasn't a long time that I
4 had them or discovered them and put them aside. That was one
5 reason.

6 And also the last bit of June and into July had become
7 even more intense health considerations than had already been.

8 Q 2013?

9 A No. I am talking about 2014.

10 Q Okay.

11 A I am talking about the last few months of his life,
12 2014.

13 Q Mm-hmm.

14 A Because I know that I didn't have those forms for a
15 long time. You know, at whatever point I found them and set
16 them aside, it wasn't a long time. It was a matter of weeks,
17 you know.

18 And the reason that wasn't the priority at that moment,
19 even though he had sent the letter and we got the one back in
20 the mail, which we were going to get to, he was in hospital, in
21 emergency and in hospital, and for shorter periods -- or -- in
22 emergency and home. And then by July, he was in hospital for
23 23 days. So there was a period.

24 And the rest of the week, it wasn't like we had -- he
25 was at dialysis four times a week, and in doctors, and he was

1 recovering from a life-threatening surgery that happened in
2 December 2013 which rendered him bedridden, although absolutely
3 clear-minded, but bedridden. And I was transferring him. He
4 was in a wheelchair, and we were going to dialysis four times a
5 week and dealing with doctors, both outpatient and inpatient
6 procedures.

7 Q Do you recall when you first saw the Post Retirement
8 Lump Sum Beneficiary Designation Form and the Application to
9 Modify --

10 A Well, I recall that the Post Retirement Lump Sum came
11 in that letter, which I believe was -- I think it was July.
12 Isn't that the letter they sent back? And after we sent the
13 June 23rd, he signed that and got it in the mail.

14 And in July 25th, by which time we were in the
15 hospital, is when that form came back.

16 Q And was there discussion between you and Grantland to
17 get married before submitting those forms?

18 A We had been married the year before in November 2013.
19 So this wasn't until -- he sent the letter in to them after
20 that, after the marriage and after that surgery.

21 Q So was there a discussion between you and Grantland
22 Johnson to want to get married before submitting those forms?

23 A Well, we had to. Because we -- when we got married in
24 November, it was directly after his bifurcation. And we knew
25 that then we could go ahead and work with CalPERS, first of all

1 about having me on medical/dental, which we did.

2 Within about a month of the marriage, I was put on
3 Delta Dental. And a few months later, once I sustained Senior
4 Health Advantage status in Kaiser, I was put on medical about
5 March I believe of 2013.

6 But these forms, the one after he sent the letter in in
7 June, they then sent back the Post Retirement Lump Sum form.

8 Q Right.

9 A The one we are looking at right now. That came in July
10 of 2014. So it was only then that we focused and became aware
11 that there were these forms to sign and send in.

12 Q Okay. But Grantland Johnson -- you were aware that he
13 took other steps aside from -- were you aware of other steps
14 that Grantland Johnson took to acquire information about
15 designating you as beneficiary for Option 2 benefits?

16 A Other than talking with me and the phone calls we made
17 together, I only found out during this discovery that he had
18 called in February before, before we were married. Obviously,
19 at home, he was thinking of such things and trying to arrange to
20 get them in order. I wasn't privy to every one of the calls.
21 But I know that when I was, what he was trying to find out was
22 information about the way in which the benefits currently stood
23 and how he would go about changing them.

24 And I recall that what was he was doing was saying,
25 This is the way I am going to change them.

1 Q Around that time, was he able to get online and sit at
2 the computer and do research?

3 A He never used the on-line system with CalPERS ever.

4 Q Around 2014 was he able to physically sit at a computer
5 and do research on CalPERS website, download forms?

6 A What month did you say?

7 Q In mid 2014, when he was requesting these forms by --

8 A No, he was not. We had been in hospital right after
9 our wedding for a life-threatening surgery to save his leg. He
10 came home and was bedridden for about two months. At which
11 point they decided, since one area in his groin was not healing,
12 that they needed to open it up down to the first -- I can't
13 think of the medical term. There were four layers they had done
14 all the way down his leg. They had to open it. He had a wound
15 like this in his groin. We had in home nursing three times a
16 week to change it. And then they put on -- it's a dry pack.
17 It's something that suctioned -- debrides the wound to make it
18 heal. That went on through March, April, May.

19 He was transferring him, helping him in and out of the
20 shower when he could be covered, into a chair. And so he did
21 not go to the computer during that time, partly due to being on
22 antibiotic and insulin, so on and so forth. Whatever he did do
23 was, you know, working together, making calls, whatever. But he
24 wasn't mobile and at his computer.

25 Q But you were there when he drafted the June 23rd --

1 A I was.

2 Q -- 2014 letter?

3 A I saw him sign it.

4 Q As part of that letter, he made it clear what he was
5 attempting to accomplish with CalPERS?

6 A He was very clear.

7 MR. BARLOW: I don't have any further questions, your
8 Honor.

9 ADMINISTRATIVE LAW JUDGE WONG: Anything on recross?

10 MS. KAUR: Yes.

11 RECROSS-EXAMINATION

12 BY MS. KAUR:

13 Q You testified that you had to get married before
14 submitting the form. How did you -- how did you know about --
15 become aware of that requirement?

16 A Well, in one of the things we just looked at -- in
17 fact, it might even be in this one, but it's in a couple of
18 places. It says a dissolution or annulment of marriage or
19 termination cancels, you know, benefits. It's an automatic
20 canceling.

21 So we both knew that, before he could name me as a
22 beneficiary, that there had to be the dissolution of marriage
23 and, in this case, the final judgment of the property
24 settlement. We knew that.

25 Q Did you ever speak to a CalPERS staff who may have

1 informed you about that also?

2 A No. No. As I said, I didn't have any discussion
3 related to the final judgment and then the subsequent activities
4 until February 2015, when I called in to Death Benefits. And
5 then I testified to that, that conversation, where I was
6 actually told about an election form then. Prior, I had no
7 knowledge whatsoever or no discussion.

8 Q And if you could turn to Exhibit 8, page 7.

9 A Okay.

10 Q The fourth entry from the very bottom, fourth entry up,
11 we went over that note, where you --

12 A Right.

13 Q -- spoke to CalPERS staff concerning death benefits?

14 A Yes.

15 Q And that's October 24th, 2013?

16 A Yes.

17 Q And right above, there is a. Note, it's starts off
18 with Benefits Payments, then it states Participant, then it
19 says, "V took escalated call. Member requested copy of first
20 payment acknowledgement letter. Printed and mailed out." And
21 that is also dated October 24th, 2013.

22 Do you have any -- do you recall being present when
23 Mr. Johnson requested the first acknowledgement letter?

24 A I don't know what that is.

25 Q Do you recall him requesting any documents from them?

1 A All I recall was, as I said, that he talked -- he was
2 getting information about his current beneficiaries and the
3 percentages. Because it was kind of like he was finding that
4 out for sure, because he was then talking to me about how he was
5 going to change it. But I don't even know what that is. And I
6 have never seen it. Nor do I recall anything about that piece
7 of conversation. I am sorry. I don't know.

8 MS. KAUR: I don't have any further questions, your
9 Honor.

10 ADMINISTRATIVE LAW JUDGE WONG: Anything on redirect?

11 MR. BARLOW: No, your Honor.

12 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow, do you wish
13 to move the exhibits in that you have had marked?

14 MR. BARLOW: At this time, your Honor, if we could have
15 some additional time to perform redactions before moving them
16 into the record. I don't know if that --

17 ADMINISTRATIVE LAW JUDGE WONG: I don't know how you
18 are going have them redacted once they have been marked. I
19 mean, you are going have to do it here. You still could move
20 them in and do the redactions.

21 MR. BARLOW: Then yes, your Honor.

22 ADMINISTRATIVE LAW JUDGE WONG: Any objection to C,
23 which it is the last will and testament?

24 MS. KAUR: No, your Honor.

25 ADMINISTRATIVE LAW JUDGE WONG: C is admitted for all

1 purposes.

2 (Whereupon, Respondent's Exhibit C
3 was received in evidence.)

4 ADMINISTRATIVE LAW JUDGE WONG: Any objection to D,
5 which is the December 12th, 2013, letter?

6 MS. KAUR: No, your Honor.

7 ADMINISTRATIVE LAW JUDGE WONG: D is admitted for all
8 purposes.

9 (Whereupon, Respondent's Exhibit D
10 was received in evidence.)

11 ADMINISTRATIVE LAW JUDGE WONG: Any objection to E?

12 MS. KAUR: Is E the letter --

13 ADMINISTRATIVE LAW JUDGE WONG: June 23rd letter.

14 MS. KAUR: No.

15 ADMINISTRATIVE LAW JUDGE WONG: E is admitted for all
16 purposes.

17 (Whereupon, Respondent's Exhibit E
18 was received in evidence.)

19 ADMINISTRATIVE LAW JUDGE WONG: Any objection to F?

20 MS. KAUR: No, your Honor.

21 ADMINISTRATIVE LAW JUDGE WONG: F is admitted for all
22 purposes.

23 (Whereupon, Respondent's Exhibit F
24 was received in evidence.)

25 ADMINISTRATIVE LAW JUDGE WONG: Any objection to G?

1 MS. KAUR: Just to clarify, that's Post Retirement Lump
2 Sum Beneficiary Designation.

3 ADMINISTRATIVE LAW JUDGE WONG: G.

4 MS. KAUR: Yes.

5 ADMINISTRATIVE LAW JUDGE WONG: Admitted for all
6 purposes.

7 (Whereupon, Respondent's Exhibit G
8 was received in evidence.)

9 ADMINISTRATIVE LAW JUDGE WONG: H?

10 THE WITNESS: No objection.

11 ADMINISTRATIVE LAW JUDGE WONG: Admitted for all
12 purposes.

13 (Whereupon, Respondent's Exhibit H
14 was received in evidence.)

15 ADMINISTRATIVE LAW JUDGE WONG: Exhibit I?

16 THE WITNESS: No objection.

17 ADMINISTRATIVE LAW JUDGE WONG: Admitted for all
18 purposes.

19 (Whereupon, Respondent's Exhibit I
20 was received in evidence.)

21 ADMINISTRATIVE LAW JUDGE WONG: Any objection to J?

22 THE WITNESS: No objection.

23 ADMINISTRATIVE LAW JUDGE WONG: J is admitted for all
24 purposes.

25 //

1 (Whereupon, Respondent's Exhibit J
2 was received in evidence.)

3 ADMINISTRATIVE LAW JUDGE WONG: Any objection to K?

4 THE WITNESS: No objection.

5 ADMINISTRATIVE LAW JUDGE WONG: K is admitted for all
6 purposes.

7 (Whereupon, Respondent's Exhibit K
8 was received in evidence.)

9 ADMINISTRATIVE LAW JUDGE WONG: Any objection to L?

10 MS. KAUR: I have no objection.

11 ADMINISTRATIVE LAW JUDGE WONG: L is admitted for all
12 purposes.

13 (Whereupon, Respondent's Exhibit L
14 was received in evidence.)

15 ADMINISTRATIVE LAW JUDGE WONG: Any objection to M?

16 MS. KAUR: No objection.

17 ADMINISTRATIVE LAW JUDGE WONG: M is admitted for all
18 purposes.

19 (Whereupon, Respondent's Exhibit M
20 was received in evidence.)

21 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow, your next
22 exhibit or next witness.

23 I am sorry. Ms. Johnson, you are excused as a witness.

24 THE WITNESS: Thank you.

25 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow, your next

1 witness or exhibit.

2 MR. BARLOW: Sure. At this time, I would like to call
3 Mr. Herbert Anderson as a witness. And this is the witness for
4 whom we would like to contact via conference call.

5 ADMINISTRATIVE LAW JUDGE WONG: Off the record.

6 (Pause in proceedings.)

7 ADMINISTRATIVE LAW JUDGE WONG: Let's go ahead and go
8 back on the record.

9 Mr. Anderson, even though you are appearing by
10 telephone and I can't see you, if you would please stand and
11 raise your right hand and I will administer the oath to you.

12 THE WITNESS: Yes.

13 ADMINISTRATIVE LAW JUDGE WONG: Do you solemnly swear
14 or affirm under penalty of perjury that the testimony you will
15 provide in this matter will be the truth, the whole truth and
16 nothing but the truth.

17 THE WITNESS: I do.

18

19 (Time Noted: 11:10 a.m.)

20 HERBERT LAVANDA ANDERSON

21 Called as a telephonic witness by the Respondent, who,
22 having been first duly sworn to testify to the truth, the whole
23 truth and nothing but the truth, was examined and testified as
24 follows:

25

1 ADMINISTRATIVE LAW JUDGE WONG: Please have a seat.

2 And if you would state and spell your full name for the
3 record.

4 THE WITNESS: Herbert Lavanda Anderson. And Herbert is
5 H-E-R-B-E-R-T. Lavanda is spelled L-A-V-A-N-D-A. and Anderson
6 is spelled A-N-D-E-R-S-O-N.

7 ADMINISTRATIVE LAW JUDGE WONG: Thank you very much.
8 Mr. Barlow, if you would like to begin.

9 MR. BARLOW: Yes.

10 DIRECT EXAMINATION

11 BY MR. BARLOW:

12 Q Mr. Anderson, can you hear me okay?

13 A Yes.

14 Q Okay. Mr. Anderson, can you tell us how you know
15 Grantland Johnson?

16 A Well, we grew up together, first thing. First met
17 Grantland in the third grade, went through elementary school and
18 junior high -- nowadays called middle school. Then it was
19 called junior high. And then high school, Grant Union High
20 School. And then later on after high school, at American River
21 Junior College. And then he went off to -- he went to
22 Sacramento State. I went to UC Berkeley.

23 But in high school, I think that we probably became the
24 closest because we were debate partners. And so there was quite
25 a bit of time that we spent as partners and a lot of growth and

1 development took place at that time. That's basically how I
2 know him.

3 Q Okay. And were both of you close? Would you describe
4 yourself as being close --

5 A There is some interference. Is there paper rattling?

6 ADMINISTRATIVE LAW JUDGE WONG: Might be my typing.

7 Let me try to push this more over. There. But not too far.

8 See if that makes it any better.

9 Q BY MR. BARLOW: Mr. Anderson, did you remain close in
10 the weeks and months or even years prior to Grantland Johnson
11 passing away?

12 A Yes.

13 Q Okay.

14 A Yeah, we were -- we were very close. We spent, you
15 know, quite a bit of time together at his home. And, you know,
16 even I think one Christmas -- one Christmas we were in the
17 hospital together. We were both in the hospital. We spent lots
18 of time. So it was, you know, sadness and -- but, you know, we
19 had a good time together. You know, we spent a lot of time
20 together, yeah.

21 Q And during your times together, did you and Grantland
22 ever discuss what he wanted for Lee in terms of, you know, after
23 he passed away or what he had hoped Lee would receive after he
24 passed away?

25 MS. KAUR: Have a hearsay objection to the extent it

1 elicits testimony concerning statements made by Mr. Johnson.

2 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow.

3 MR. BARLOW: This is an impression on the listener.

4 And I am only asking for what --

5 THE WITNESS: I am having a little trouble hearing.

6 MR. BARLOW: Sorry, Mr. Anderson. We are discussing a
7 hearsay objection.

8 And my response is that I am submitting this to show
9 the impact on Mr. Anderson as listener and only trying to gather
10 his impressions.

11 ADMINISTRATIVE LAW JUDGE WONG: Well, what's the
12 relevance of his impressions?

13 MR. BARLOW: Well, the relevance would be to know
14 whether or not -- to learn additional detail about discussions
15 that he and Grantland Johnson had regarding Lee Turner Johnson's
16 care.

17 ADMINISTRATIVE LAW JUDGE WONG: To the extent the
18 information is elicited for the truth of the matter asserted, it
19 will be admitted solely as administrative hearsay. So okay.

20 Mr. Anderson, if you still recall the question after
21 all that, you can answer. Otherwise, I could have it read back.

22 THE WITNESS: Could you read it back, please.

23 ADMINISTRATIVE LAW JUDGE WONG: Sure. We will do that.

24 If you will read it back, please.

25 (Record read as requested.)

1 THE WITNESS: Yes. There were occasions that it was
2 discussed. And he told me that he wanted Lee to have his
3 retirement benefits, receive those benefits.

4 Q BY MR. BARLOW: And were you with him in the ICU in or
5 around October 2014, Mr. Anderson? August 2014. I am sorry.

6 A What was that date again?

7 Q Sure. In or around August 2014, were you in the ICU
8 with Grantland Johnson?

9 A Yes.

10 Q Okay. And who else was there with you in or around
11 that time in early August 2014?

12 A His wife, Lee Johnson.

13 Q And if I can take you back to if you remember a date in
14 around August 5th or 6th, 2014, do you remember what was
15 happening on that day?

16 A Well, I know that I was -- I was there. One of the
17 reasons I know I was there was because there was only a few
18 people that Lee would be comfortable leaving with Grantland.
19 She wanted someone with him all the time when he was in the
20 hospital. And that if -- the only way that she would leave to
21 either, you know, come home and take a shower or take care of
22 other, you know, business, would be if there was -- you know,
23 she would -- she would feel comfortable with me being there.

24 So I had come up -- I live in Oakland. So I had come
25 up and I had -- was there that morning. And so she was -- there

1 was a conversation about CalPERS, you know, documentation that
2 needed to be completed. And so I know that I actually went to
3 their house to pick up the documents. And, you know, while I
4 was there, it was -- we were on telephone. She was -- Lee was
5 explaining to me exactly where the documents were. I brought
6 those back to the hospital.

7 And that was -- I picked those up and brought them back
8 and they filled them out. And is that what you are referring
9 to?

10 Q Yes. Do you know what those documents were for?

11 A They were CalPERS document that was, you know, needed
12 to designate Lee as a beneficiary of his -- of his benefits.

13 Q And that was your understanding of what Lee Johnson and
14 Grantland Johnson were trying to accomplish with those forms?

15 A Mmmm... Well, they needed to be completed in order for
16 Lee to receive, you know, Grantland's benefits. I knew that
17 they were CalPERS documents and that they needed to be completed
18 in order for Lee to receive those.

19 And he -- you know, he -- you know, it was one of the
20 things that was very important to him. I know that. He wanted
21 to make sure that -- he was getting affairs in order to make
22 sure that everything was -- was done and completed.

23 I don't -- I don't -- are you asking me the technical
24 names of the documents, the forms, themselves? Is that what you
25 are --

1 Q No, Mr. Anderson. Unless you happen to recognize the
2 actual titles of the forms.

3 Do you recognize the Post Lump Sum Beneficiary
4 Designation? Do you recognize that as one of the forms being
5 completed that day?

6 A Yes. Lee had named off the forms to me while I was at
7 her house to pick them up.

8 Q Do you recognize the title of the form Application to
9 Modify Life Option Beneficiary?

10 A That sounds familiar.

11 Q And do you recall Ms. Johnson placing a telephone call
12 to CalPERS that day?

13 A Yes.

14 Q And what do you remember from that telephone call? Or
15 what did you hear as part of that telephone call that
16 Ms. Johnson placed?

17 MS. KAUR: Same objection. Hearsay.

18 ADMINISTRATIVE LAW JUDGE WONG: Hang on one second,
19 Mr. Anderson. There is an objection.

20 Mr. Barlow, your response.

21 MR. BARLOW: I haven't asked him about any statements
22 that were made. I am asking what he --

23 ADMINISTRATIVE LAW JUDGE WONG: You asked what he
24 recalls about the conversation. That would necessarily require
25 him to discuss what he heard.

1 MR. BARLOW: Well, your Honor, I am asking to the
2 extent that I am trying to glean his impression of the
3 situation. I am not admitting it for the truth of the matter
4 asserted or any specific statements that were conveyed over the
5 phone. Again, this is going to his impression of what the --
6 what process was being undertaken at the hospital room at that
7 time.

8 ADMINISTRATIVE LAW JUDGE WONG: His impressions of what
9 was going on are not relevant. So I will allow the testimony as
10 administrative hearsay.

11 Okay. Mr. Barlow, you can answer. Again, if you
12 remember the question, you can answer it. Otherwise, I can have
13 it read back.

14 THE WITNESS: Could you read it back, please.

15 ADMINISTRATIVE LAW JUDGE WONG: Sure.

16 If you would read it back, please.

17 (Record read as requested.)

18 THE WITNESS: There was a -- I overheard, mmmmm... or
19 at least from Lee's side... mmmmm... asking about the correct
20 procedures of filling out the documents or making sure that, you
21 know, what the documents that she had was -- was the correct
22 one.

23 And I heard her say that the -- whoever she was talking
24 to said that everything would just be fine and that it was okay;
25 and that, you know, as I said in the declaration, not to worry,

1 that Grantland's wishes would be honored.

2 MR. BARLOW: At this time, your Honor, I would like to
3 submit Mr. Anderson's amended declaration as Exhibit N.

4 ADMINISTRATIVE LAW JUDGE WONG: The declaration will be
5 marked as Exhibit N, as in Nancy.

6 (Whereupon, Respondent's Exhibit N
7 was marked for identification.)

8 MR. BARLOW: I don't have any further questions at this
9 time, your Honor.

10 ADMINISTRATIVE LAW JUDGE WONG: Okay.

11 Cross-examination.

12 MS. KAUR: And just for the record, your Honor, this
13 declaration, I object to.

14 ADMINISTRATIVE LAW JUDGE WONG: It hasn't been moved
15 yet.

16 MS. KAUR: I apologize.

17 MR. BARLOW: I would like to move -- well, I can wait
18 until -- if you prefer, your Honor, wait until after
19 cross-examination.

20 ADMINISTRATIVE LAW JUDGE WONG: Either way.

21 MR. BARLOW: I would like to move this document into
22 evidence as Exhibit N.

23 ADMINISTRATIVE LAW JUDGE WONG: Any objection to N?

24 MS. KAUR: Yes. I have objection to Paragraph 6 to the
25 extent it -- there is a discussion concerning statements made by

1 Ms. Johnson.

2 ADMINISTRATIVE LAW JUDGE WONG: So are you objecting
3 based on hearsay?

4 MS. KAUR: Yes, your Honor.

5 ADMINISTRATIVE LAW JUDGE WONG: Any other objections?

6 MS. KAUR: I don't have any other objections.

7 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow.

8 MR. BARLOW: Again, your Honor, these statements aren't
9 being submitted in the exact -- for the exact verbatim or truth
10 of CalPERS expressly saying not to worry or that the particular
11 statements that are included in the declaration; only to convey
12 that there was a discussion being had between Grantland Johnson,
13 the Respondent and CalPERS to communicate what was trying to be
14 accomplished and what the response to that was.

15 ADMINISTRATIVE LAW JUDGE WONG: All right. So Exhibit
16 N will be admitted for all purposes. Except Paragraph 6 will be
17 admitted as administrative hearsay only to the extent it's
18 offered for the truth of the matter asserted.

19 (Whereupon, Respondent's Exhibit N
20 was received in evidence.)

21 ADMINISTRATIVE LAW JUDGE WONG: Ms. Kaur,
22 cross-examination.

23 MS. KAUR: Thank you, your Honor.

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CROSS-EXAMINATION

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BY MS. KAUR:

Q Mr. Anderson, my name is Preet Kaur. I am an attorney for CalPERS. I am just going to ask you a couple of questions.

A What's your name again?

Q Preet Kaur. I am the attorney for CalPERS.

A Yes. Okay.

Q You testified that you went to the house to pick up some documents. When you went to pick up the documents, were you being instructed by Mrs. Johnson in terms of which documents you needed to pick up?

A Yes. And where to find them.

Q So were you on the cell phone when you were at the house?

A Yes.

Q And when you picked up the documents, were they just forms? Or was it a booklet?

A It was a -- it was a file or an envelope. I am not sure.

Q And do you recall -- did you look at the contents of the envelope?

A Yes.

Q And do you recall what was inside?

A There was some CalPERS forms as part of the file.

Q Anything else aside from the forms?

1 A I recall -- I think I recall there was -- may have been
2 a booklet or...

3 Q Do you recall the title of the booklet?

4 A No, I don't.

5 Q Do you recall what color it was?

6 A No, I couldn't say for certain.

7 Q Did you take the booklet back with you or did you just
8 take the forms only?

9 A I brought the file back.

10 Q On the booklet, do you recall seeing any dates?

11 A No.

12 Q And when you returned to the hospital, what did you
13 provide Mrs. Johnson?

14 A I handed her the information.

15 Q And what do you mean by "information"? The entire
16 file?

17 A Yes.

18 Q And did she take out the forms and the booklet from the
19 file? Or what happened?

20 A She took out the forms.

21 Q And did she start completing them or did Mr. Johnson
22 start completing the forms?

23 A I think that she started to complete them.

24 Q And is that when she decided to call CalPERS?

25 A There was a -- there was a conversation with CalPERS.

1 I am not sure of the sequence. I am not sure.

2 Q Do you recall her looking at the booklet when
3 completing the forms?

4 MR. BARLOW: Objection. We haven't established there
5 was even a booklet there.

6 ADMINISTRATIVE LAW JUDGE WONG: He guesstimated that
7 there was a booklet and he brought the entire file. So the
8 objection is overruled.

9 THE WITNESS: What was the question?

10 Q BY MS. KAUR: Do you recall Mrs. Johnson looking at the
11 booklet?

12 A I don't know if she looked at the booklet in
13 particular, no.

14 Q Do you recall Mr. Johnson looking at the booklet?

15 A No.

16 Q You don't recall? Or he did not look at the booklet?

17 A Mmmm... Grantland's eyesight was very poor at that
18 point.

19 Q So you don't recall him looking at the booklet; is that
20 correct?

21 A Correct.

22 MS. KAUR: I don't have any further questions. Thank
23 you.

24 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow, anything
25 further on redirect?

1 MR. BARLOW: Yes, your Honor.

2 REDIRECT EXAMINATION

3 BY MR. BARLOW:

4 Q Mr. Anderson, were Grantland Johnson and Lee Johnson
5 discussing the forms as they were being completed?

6 A Yes.

7 Q And at all times during which the forms were being
8 completed, were they both in the same room?

9 A Yes.

10 Q And you mentioned that Grantland Johnson's eyesight was
11 poor at around this time. Was that one of the reasons that Lee
12 Johnson was assisting him with the forms?

13 A Yes.

14 MR. BARLOW: I don't have any further questions, your
15 Honor.

16 ADMINISTRATIVE LAW JUDGE WONG: Recross?

17 MS. KAUR: No further questions, your Honor.

18 ADMINISTRATIVE LAW JUDGE WONG: Okay. Thank you very
19 much.

20 Is the -- can the witness be excused?

21 MR. BARLOW: Yes, your Honor.

22 ADMINISTRATIVE LAW JUDGE WONG: Okay. Mr. Anderson,
23 thank you very much. We appreciate your time today. And we
24 will go ahead and disconnect at this time.

25 THE WITNESS: Okay. Thank you.

1 ADMINISTRATIVE LAW JUDGE WONG: Take care.

2 MS. KAUR: Thank you.

3 ADMINISTRATIVE LAW JUDGE WONG: Bye.

4 All right. Mr. Barlow, your next witness or next
5 document.

6 MR. BARLOW: Yes, your Honor. At this time I would
7 like to call Mr. Abram.

8 ADMINISTRATIVE LAW JUDGE WONG: If you raise your right
9 hand.

10 Do you solemnly swear or affirm under penalty of
11 perjury that the testimony you will provide in this matter will
12 be the truth, the whole truth and nothing but the truth.

13 THE WITNESS: I do.

14 ADMINISTRATIVE LAW JUDGE WONG: Please have a seat.

15

16 (Time Noted: 11:34 a.m.)

17 KEVIN M. ABRAM

18 Called as a witness by the Respondent, who, having been
19 first duly sworn to testify to the truth, the whole truth and
20 nothing but the truth, was examined and testified as follows:

21

22 ADMINISTRATIVE LAW JUDGE WONG: If you would state and
23 spell your full name for the record, please.

24 THE WITNESS: Kevin, K-E-V-I-N, middle initial M, last
25 name Abram, A-B-R-A-M.

1 ADMINISTRATIVE LAW JUDGE WONG: Thank you.

2 Mr. Barlow.

3 MR. BARLOW: I would like to submit Exhibit O.

4 ADMINISTRATIVE LAW JUDGE WONG: Thank you. So Exhibit
5 O will be various entries of notes and conversations with
6 CalPERS.

7 (Whereupon, Respondent's Exhibit O
8 was marked for identification.)

9 DIRECT EXAMINATION

10 BY MR. BARLOW:

11 Q Mr. Abram, can I direct you to the August 6th entry --
12 first of all, I am sorry. Do you recognize the form that's in
13 front of you or the document that's in front of you?

14 A Recognize the materials that are contained, yes, as the
15 notes that would be contained in the participant's file, what is
16 called participant notes.

17 Q Can you explain what participant notes are.

18 A They are a summary of the interaction that we do with
19 the member contacts.

20 Q What does the Member Contact Center do?

21 A We take incoming calls from the public and from
22 members, and we assist with questions they have about CalPERS
23 retirement process or benefits, as well.

24 Q So part of your responsibilities as a CalPERS employee
25 is to answer questions?

1 ADMINISTRATIVE LAW JUDGE WONG: Hang on one second.

2 Why don't the lay a foundation as to who he is.

3 MR. BARLOW: Okay.

4 Q Mr. Abram, are you an employee with CalPERS?

5 A Yes, I am.

6 Q And what department do you work in?

7 A I work in the Member Contact Center.

8 Q Okay. As part of your responsibilities at the Member
9 Contact Center, do you interact with CalPERS members and
10 beneficiaries?

11 A Yes, we do.

12 Q And as part of those interactions, is it your
13 responsibility to answer questions that they submit to you?

14 A Yes.

15 Q Okay. And do some of those questions involve
16 designation of beneficiaries or redesignation of new
17 beneficiaries?

18 A Yes.

19 Q And do you instruct or help members or beneficiaries
20 understand what the process is for designating new
21 beneficiaries?

22 A Yes, we do. Yes, I do.

23 Q Okay. If I can direct you to the entry on August --
24 I'm sorry. October -- August 6th, 2014?

25 A Okay. I see that.

1 Q Okay. Do you remember speaking with Ms. Johnson on
2 that date?

3 A No, I don't recall the conversation.

4 Q Okay. Do you remember entertaining any calls relating
5 to Grantland Johnson's CalPERS benefits?

6 A No, sir.

7 Q Did you -- did you write the notes that are included
8 on -- in the August 6th entry?

9 A Yes.

10 Q I'm sorry. 2014 entry.

11 A Yes, they do contain my identification as the
12 representative who put those notes on that account.

13 Q Did you write those notes in that entry?

14 A Unless they have been altered, yes, these are the notes
15 that I put into the system. Because, again, it's identified by
16 my first initial and my last name.

17 But do I recall them specifically? I don't recall
18 typing them in specifically, no.

19 Q Is it -- typically, do you type out verbatim the
20 conversations that you have into this system when you are on the
21 phone?

22 A No, sir.

23 Q And so you don't capture every piece of information
24 that is discussed on the phone with a CalPERS member or CalPERS
25 beneficiary by you in that system?

1 A Correct.

2 Q Has anyone discussed that entry with you?

3 A It was brought to my attention when I was asked to be
4 present here. And they told me what I would be, you know,
5 testifying to. So I reviewed the notes.

6 MR. BARLOW: I don't have any further questions at this
7 time, your Honor.

8 ADMINISTRATIVE LAW JUDGE WONG: Cross-examination.

9 MS. KAUR: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MS. KAUR:

12 Q Mr. Abram, you stated you work at CalPERS?

13 A Yes.

14 Q How long have you worked at CalPERS?

15 A I have been at CalPERS four years now.

16 Q And where did you work before that?

17 A Before CalPERS?

18 Q Yes.

19 A I worked for the Public Works Compliance Program, which
20 is the joint labor management committee between NECA, National
21 Electrical Contractors Association, and IBEW, which is the
22 International Brotherhood of Electrical Workers. And I was a
23 labor compliance officer for them.

24 Q For your time with CalPERS during the four years, have
25 you always worked in the department you are currently working

1 in?

2 A No.

3 Q Where did you start out?

4 A I started in the mail room.

5 Q How long did you work there?

6 A About a year and three months.

7 Q Then you transferred or you applied for a promotion?

8 A I got a promotion, and it took me to the Member Contact
9 Center.

10 Q So you have been at the Member Contract Center for
11 about three years; is that correct?

12 A Contact Center.

13 Q Contact Center.

14 A Yes, it will be three years December 26th.

15 Q Did you receive some sort of training before you
16 started working there?

17 A Before I started working?

18 Q At the Member Contact Center. Did you receive
19 training, on-the-job training or any classes?

20 A Yes. There is a new hire training that all call center
21 representatives go through prior to taking public phone calls.

22 Q And you went through that training?

23 A Yes, I did.

24 Q And did you also receive on-the-job training?

25 A They do have periodic on-the-job training, yes.

1 Q And part of that training, is that when you learn to
2 document your -- to document the calls that you receive?

3 A Yes.

4 Q And if you could turn your attention to this exhibit
5 that you discussed earlier. We are looking at Respondent's
6 Exhibit O. And you reviewed the August 6, 2014 notes. And you
7 testified those notes were entered by you at some point; is that
8 correct?

9 A Yes.

10 Q So it starts out with: Per caller, inquiry about the
11 way to complete the application to modify option.

12 You don't identify who you spoke to; is that correct?

13 A Correct.

14 Q And why is that?

15 A Well, because when we get an incoming call, if we are
16 unable to verify who the caller is -- if you look to the left of
17 my entry, it says unable to verify caller. That's actually the
18 first entry I make in the system if I can't verify who is on the
19 phone. We have to get at least least two pieces of
20 identification to know who we are speaking with.

21 On this particular call, I wasn't able to identify the
22 caller because there was no information that could be identified
23 on the call. So you generalize who you spoke with by saying,
24 "per caller" or "customer."

25 So I choose to use "per caller."

1 Q But you knew who this call was about; is that correct?

2 Because you were able to enter the notes related to Mr. Johnson?

3 A Yes.

4 Q How did you know that?

5 A When an incoming call comes in and the caller puts in
6 any identifying information, that allows the member's account to
7 pre-populate for us. That's what happens. When I answer the
8 incoming call, there will be a pre-populated screen. It will
9 show the member's account information.

10 Q So these notes -- you wouldn't be able to tell from
11 looking at these notes who you spoke to?

12 A Right.

13 Q And from looking at these notes, could you tell us what
14 you assisted them with?

15 A Yes.

16 Q And what was that?

17 A Information on how to complete the form to modify life
18 option beneficiaries, and also the time frame that it would take
19 to process that incoming document.

20 Q So the last sentence, it says: "I assisted with
21 general information about completing the form and advised of the
22 time frame for processing."

23 A Yes.

24 Q And you are referring here to the Modified Option Life
25 Option Beneficiary; is that correct?

1 A That form, yes.

2 Q And based on your training and experience, what sort of
3 time frame would you be advising them about here?

4 A Well, the database we use for giving a time frame is
5 electronic. It changes. The program area that processes the
6 documents advises the call center what we can tell the member.
7 So at that time, my best guesstimate would have been 60 days.

8 Q And it could be different based on whatever the time
9 frame that program area has; is that correct?

10 A Yes, whatever the most current time frame is when I go
11 into the database during the call would be what I can quote.

12 Q And that's updated?

13 A Regularly. But I don't know if it's, you know, a
14 certain frequency.

15 Q So if the time frame during that time was 60 days, you
16 would have advised the 60 days; is that correct?

17 A Yes.

18 Q And in terms of assisting with completing the
19 application, do you go step by step? What do you do? How do
20 you assist them?

21 A Well, I go onto the public website. That's typically
22 where most members get their forms from if they didn't get it
23 mailed to them. I will put a copy of the most current form
24 mailed to the public -- it's on the public website. I will go
25 section by section through the form with the caller, letting

1 them know, if they have questions, what goes where on the form.
2 Sometimes the language confuses the caller. Our job is to
3 simplify it.

4 Q And once you assist them and advise them about the time
5 frame, would you be doing anything further, like processing the
6 application?

7 A No. I would just take my notes out of the conversation
8 and then close out the call.

9 Q So when the member, for example, fills out their
10 application and turns it in to CalPERS, does that come to you?

11 A No.

12 Q And for Mr. Johnson, did you ever process his
13 application or did his application ever come to you?

14 A No.

15 MR. BARLOW: Objection. Witness testified that he has
16 no recollection of ever speaking with Mr. Johnson.

17 ADMINISTRATIVE LAW JUDGE WONG: So what's the
18 objection?

19 MR. BARLOW: Misstates testimony.

20 ADMINISTRATIVE LAW JUDGE WONG: Overruled. The answer
21 will stand.

22 MS. KAUR: I have no further questions, your Honor.

23 ADMINISTRATIVE LAW JUDGE WONG: Redirect?

24 //

25 //

1 REDIRECT EXAMINATION

2 BY MR. BARLOW:

3 Q Mr. Abram, can you tell me what training you received
4 to be employed in the Member Contact Center?

5 A New hire training. That's the title of it. I mean,
6 it's an extensive training that goes on for weeks. And to be
7 very specific about all of the training, I wouldn't be able to
8 tell you every detail about it.

9 Q So are you trained in the required process for
10 designating a new beneficiary for Option 2 benefits?

11 MS. KAUR: Objection. Vague.

12 ADMINISTRATIVE LAW JUDGE WONG: Objection what?

13 MS. KAUR: Vague and ambiguous.

14 ADMINISTRATIVE LAW JUDGE WONG: Overruled.

15 You can answer the question.

16 THE WITNESS: Can you restate the question.

17 MR. BARLOW: Sure.

18 Q Are you trained -- do you receive training in CalPERS
19 process and requirements for a member to designate a new
20 beneficiary for Option 2 benefits?

21 A Yes.

22 Q And you mentioned that when a member calls into the
23 call center, or the contact center, that the member's account
24 information would pop up?

25 A Sometimes. Not everybody types in anything that can

1 pre-populate an account. Sometimes you don't get that.

2 Q And in this instance we are talking about, the August
3 6, 2014 entry, you don't remember -- do you remember the
4 member's account information popping up?

5 A No, I don't remember. But what I can attest to is the
6 only way I would have had access to leaving a note on the
7 account is if the account pre-populates. If I draw up the
8 account myself, I have to be verifying the account to do so.
9 There was no verification done.

10 Q And you testified earlier that you advised the
11 applicable time frames for -- that relate to applicable time
12 frames when people ask you -- when beneficiaries or members ask
13 you what would be required to submit particular application
14 forms. Do you remember discussing any time frames as part of
15 that call?

16 A No, sir.

17 Q You don't remember any -- you don't remember any part
18 of that call, correct?

19 A I don't.

20 Q You don't remember whether or not you advised Grantland
21 Johnson or Lee Johnson about what steps they needed to take to
22 effectuate Grantland Johnson's efforts to transfer or to
23 designate a new beneficiary for Option 2 benefits?

24 A That's correct.

25 MR. BARLOW: I have no further questions.

1 ADMINISTRATIVE LAW JUDGE WONG: Ms. Kaur, recross.

2 MS. KAUR: Yes.

3 RECCROSS-EXAMINATION

4 BY MS. KAUR:

5 Q Although you don't recall the exact conversation, but
6 based on the entry of notes, would it be correct to state that
7 you advised them of the time frame?

8 A Yes.

9 Q When you are assisting the member with completing the
10 application, as your notes indicate here, do you also notify
11 them about the documents that are required to be submitted with
12 that application, for example, the documents required to be
13 submitted with the modification of the option?

14 A Yes. Typically, we advise of what forms need to be
15 submitted with it for it to be accepted, which would be, we need
16 a copy of either the marriage certificate for the new spouse
17 and/or a dissolution of marriage or death certificate of the
18 previous beneficiary. Those items would be required. And I
19 would state that to a caller.

20 Q In that binder, if you could turn to Exhibit 9-U, is it
21 also your practice to reference -- for example, under Section 1,
22 point out to the member about the documents they would need to
23 submit?

24 A Yes.

25 Q So, for example, on 9-U, under Section 1, would you

1 point the member to that section in terms of the documents they
2 would submit for this particular form?

3 A Yes, I would.

4 MS. KAUR: I have no further questions, your Honor.

5 ADMINISTRATIVE LAW JUDGE WONG: Redirect?

6 MR. BARLOW: Yes, your Honor.

7 REDIRECT EXAMINATION

8 BY MR. BARLOW:

9 Q Again, you don't recall providing any specific
10 information about particular time frames as part of the call
11 that we are talking about, correct?

12 A That's right.

13 Q And a few moments ago, you were asked -- or you
14 testified -- you testified to the items that would be required
15 for a member to designate a new beneficiary, correct?

16 A Yes.

17 Q You didn't mention the final election form, did you, as
18 part of that statement?

19 A Well, no, that's not part of what is required with this
20 application. So no, that would not have been discussed during
21 this call.

22 Q Okay. And so you would not then have discussed
23 submitting a final election document as part of that call?

24 A Not that I recall.

25 Q And you wouldn't have discussed as a result any time

1 frames related to submitting a final election document?

2 A No. The times frames were for processing the
3 application to modify.

4 Q You also wouldn't have discussed as part of that
5 telephone call any reference to the fact that a member had to be
6 alive to submit an election document, the final election
7 document?

8 A No, sir.

9 Q Then you wouldn't have testified that a member would
10 have -- you wouldn't have informed the caller who was attempting
11 to designate a new beneficiary for Option 2 benefits that he had
12 to be alive on the effective date described in the election
13 document?

14 A No.

15 MR. BARLOW: No further questions, your Honor.

16 ADMINISTRATIVE LAW JUDGE WONG: Recross.

17 MS. KAUR: No, your Honor. Thank you.

18 ADMINISTRATIVE LAW JUDGE WONG: Okay. Just for my own
19 clarification, I think I understand your testimony, but when you
20 are talking about the pre-population of the screen --

21 THE WITNESS: Yes.

22 ADMINISTRATIVE LAW JUDGE WONG: -- when someone calls,
23 what I am imagining is, when a person calls the call center,
24 it's an automated system.

25 THE WITNESS: Right.

1 ADMINISTRATIVE LAW JUDGE WONG: And it asks for various
2 identifying information.

3 THE WITNESS: There are two things. They can use
4 either CalPERS ID number of the member or their Social Security
5 Number, and then that information will pre-populate the account
6 for us.

7 ADMINISTRATIVE LAW JUDGE WONG: Okay. And so in the
8 instance where the caller does not put in either information, is
9 that when you talked about the situation where the screen does
10 not pre-populate?

11 THE WITNESS: Yes, it will just be -- nothing will be
12 there.

13 ADMINISTRATIVE LAW JUDGE WONG: Okay. And you talked
14 about that, if I understood you correctly, that since you were
15 able to -- since you were able to enter the notes, then the
16 screen necessarily had to be pre-populated?

17 THE WITNESS: Yes.

18 ADMINISTRATIVE LAW JUDGE WONG: Could you explain why
19 that is.

20 THE WITNESS: Okay. Had I populated the account, had I
21 actually retrieved the account myself, it would have required
22 verification. So therefore, my note would not have been made
23 based on an unverified caller. It would have been based on my
24 verifying the information of the account holder as I brought up
25 their account. So therefore, I could assist them.

1 So based on it be being an unverified caller, there was
2 a pre-populated account that I had to leave a note on. When the
3 account does pull up, we are required to leave a note of the
4 interaction.

5 ADMINISTRATIVE LAW JUDGE WONG: So it's really based on
6 two pieces of information in the note: One, the fact that there
7 is a note; and two, the fact that you had indicated "unverified"
8 that indicates to you that it was pre-populated?

9 THE WITNESS: Yes, sir.

10 ADMINISTRATIVE LAW JUDGE WONG: Okay. Thank you.

11 Mr. Barlow, any questions based on my --

12 MR. BARLOW: No, your Honor.

13 ADMINISTRATIVE LAW JUDGE WONG: Mr. Kaur?

14 MS. KAUR: I have a couple of questions, your Honor.

15 ADMINISTRATIVE LAW JUDGE WONG: Go ahead.

16 REXCROSS-EXAMINATION

17 BY MS. KAUR:

18 Q From looking at this entry or -- do you ever recall
19 notifying the caller not to worry or that Mr. Grantland's wishes
20 would be honored no matter what?

21 A No, ma'am, I don't recall that.

22 Q Is that something you would inform the caller when
23 advising them or instructing them on how to fill out the
24 application? Are those the type of promises you would make to
25 them?

1 A No, ma'am.

2 MS. KAUR: I have no further questions, your Honor.

3 ADMINISTRATIVE LAW JUDGE WONG: Anything further on
4 recross or redirect?

5 MR. BARLOW: No, your Honor.

6 ADMINISTRATIVE LAW JUDGE WONG: Okay. Thank you very
7 much. You are excused.

8 Okay. Why don't we go ahead and stop for our lunch
9 break. Let's come back at 1:30.

10 So we have how many more witnesses?

11 MR. BARLOW: I don't have any more witnesses.

12 MS. KAUR: I have two witnesses.

13 ADMINISTRATIVE LAW JUDGE WONG: And this room is going
14 to be occupied in the afternoon. So when we come back we will
15 come back into -- we will be in courtroom B. If you want to
16 move stuff there, and then have the courtroom locked during the
17 lunch hour, that's fine. Or if you want to take your stuff with
18 you and then come back at 1:30, that would be fine, too.

19 We are off the record.

20 (Luncheon recess taken.)

21

22

23

24

25

1 AFTERNOON SESSION

2 ----oOo----

3 ADMINISTRATIVE LAW JUDGE WONG: Let's go ahead and go
4 back on the record.

5 Mr. Barlow, your next witness or next document?

6 MR. BARLOW: I have no further witnesses or documents,
7 your Honor.

8 ADMINISTRATIVE LAW JUDGE WONG: Do you wish to move
9 Exhibit O into evidence?

10 MR. BARLOW: Yes, I do, your Honor.

11 ADMINISTRATIVE LAW JUDGE WONG: Any objection to O?

12 MS. KAUR: Just looking to confirm Exhibit O was -- are
13 the notes, your Honor; is that correct?

14 ADMINISTRATIVE LAW JUDGE WONG: Correct.

15 MS. KAUR: I have no objection.

16 ADMINISTRATIVE LAW JUDGE WONG: O is admitted for all
17 purposes.

18 (Whereupon, Respondent's Exhibit O
19 was received in evidence.)

20 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow, do you
21 rest?

22 MR. BARLOW: Yes, your Honor.

23 ADMINISTRATIVE LAW JUDGE WONG: Ms. Kaur, your first
24 document or witness.

25 MS. KAUR: My documents. I would like to go over the

1 jurisdictional documents.

2 ADMINISTRATIVE LAW JUDGE WONG: Go ahead.

3 MS. KAUR: In the exhibit packet, Exhibit 1 is the
4 statement of issues dated August 26, 2015.

5 ADMINISTRATIVE LAW JUDGE WONG: Okay. Any objection to
6 1 for jurisdictional purposes?

7 MR. BARLOW: Not for jurisdictional purposes, no, your
8 Honor.

9 ADMINISTRATIVE LAW JUDGE WONG: 1 is so admitted.

10 (Whereupon, CalPERS Exhibit No. 1
11 was received in evidence.)

12 MS. KAUR: Exhibit 2 is the Notice of Hearing, and also
13 the proof of service.

14 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 2 for
15 jurisdictional purposes?

16 MR. BARLOW: No, your Honor.

17 ADMINISTRATIVE LAW JUDGE WONG: 2 is so admitted.

18 (Whereupon, CalPERS Exhibit No. 2
19 was received in evidence.)

20 MS. KAUR: Exhibit 3 is an Application for Retired
21 Member Payee Survivor Benefits of Lee Turner Johnson that was
22 received September 19, 2014.

23 ADMINISTRATIVE LAW JUDGE WONG: The application will be
24 Exhibit 3.

25 Any objection to 3 for jurisdictional purposes?

1 MR. BARLOW: No, your Honor.

2 ADMINISTRATIVE LAW JUDGE WONG: 3 is so admitted.

3 (Whereupon, CalPERS Exhibit No. 3
4 was received in evidence.)

5 MS. KAUR: Exhibit 4 is CalPERS letter to Mrs. Johnson
6 dated March 4th, 2015, denying option benefits.

7 ADMINISTRATIVE LAW JUDGE WONG: That letter is 4. Any
8 objection to 4 for jurisdictional purposes?

9 MR. BARLOW: No, your Honor.

10 ADMINISTRATIVE LAW JUDGE WONG: 4 is so admitted.

11 (Whereupon, CalPERS Exhibit No. 4
12 was received in evidence.)

13 MS. KAUR: And Exhibit 5 is letter of appeal from
14 Mrs. Johnson dated April 1st, 2015.

15 (Whereupon, CalPERS Exhibit No. 5
16 was marked for identification.)

17 ADMINISTRATIVE LAW JUDGE WONG: The letter is marked as
18 Exhibit 5.

19 Any objection to 5 for jurisdictional purposes?

20 MR. BARLOW: No, your Honor.

21 ADMINISTRATIVE LAW JUDGE WONG: 5 is so admitted.

22 (Whereupon, CalPERS Exhibit No. 5
23 was received in evidence.)

24 MS. KAUR: And I would like to now call my first
25 witness.

1 ADMINISTRATIVE LAW JUDGE WONG: Go ahead.

2 MS. KAUR: Robin Owens.

3 ADMINISTRATIVE LAW JUDGE WONG: All right. If you
4 would raise your right hand, please.

5 You do solemnly swear or affirm under penalty of
6 perjury that the testimony you will provide in this matter will
7 be the truth, the whole truth and nothing but the truth.

8 THE WITNESS: Yes.

9 (Time Noted: 1:35 p.m.)

10 ROBIN J. OWENS

11 Called as a witness by CalPERS, who, having been first
12 duly sworn to testify to the truth, the whole truth and nothing
13 but the truth, was examined and testified as follows:

14

15 ADMINISTRATIVE LAW JUDGE WONG: Please have a seat.

16 And if you could state and spell your full name for the
17 record, please.

18 THE WITNESS: My name is Robin J. Owens. That's
19 R-O-B-I-N, J., O-W-E-N-S.

20 ADMINISTRATIVE LAW JUDGE WONG: Okay. Ms. Kaur.

21 MS. KAUR: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MS. KAUR:

24 Q Are you prepared to testify, Ms. Owens?

25 A Yes.

1 Q And do you work for CalPERS?

2 A Yes, I work for CalPERS.

3 Q And which department or division do you work in?

4 A The division I work in is Benefit Services Division.

5 And I work in Unit 409, which is the Retirement Administration
6 and Support Unit.

7 Q And what is your job title there?

8 A I am an RPS-2, which is a Retirement Program Specialist
9 2.

10 Q And how long have you held that position?

11 A I have held that position almost three years.

12 Q And what are your duties? What exactly do you do?

13 A My unit, it works in a review and analytic capacity.
14 We are like program area experts, as well as subject matter
15 experts. And we review complex case work and make sure that
16 it's processed within the accordence of the Public Employees'
17 Retirement Law. And anything that is complex or a legal case
18 would come to my unit to review and analyze the case.

19 Q So exactly what sort of cases are you receiving?

20 A The entire gambit. So it could be anything from a
21 disability or industrial disability retirement adjustment, a
22 re-retirement, an optional member, a recalculation such as this,
23 which is modification of life option beneficiary, legislative
24 inquiries, anything from the government, anything that goes to
25 our board of administration for review.

1 Q And when you are looking at -- when you are processing
2 the case or the application, are you the one crunching the
3 numbers? What exactly are you doing?

4 A I would be the one that, after the number crunching
5 happened, I would be looking at the case from an analytical
6 standpoint, making sure that everything within that member's
7 history and documented in their file had been reviewed and that
8 the case was processed accurately.

9 Q And prior to your position as RPS-2, what position did
10 you hold?

11 A I was a Retirement Program Specialist 1. And that
12 involved me actually working these types of cases as my normal
13 daily workload.

14 Q And when you are saying "these type of cases," what do
15 you mean?

16 A The calculation of retirement benefits, the adjustment
17 of retirement benefits, including disabilities and industrial
18 disabilities and any recalculations and that kind of number
19 crunching.

20 Q And how long did you hold that position for?

21 A That would be almost four years.

22 Q And what did you do prior to that?

23 A I was a benefit program specialist. That would be the
24 journey level in the class, and learning the basic calculation
25 of retirement and the basic adjustments.

1 Q And what would you -- what were you exactly doing?

2 What were your duties in that position?

3 A As simple as entering in application information, and
4 then processing the calculations of basic service retirements
5 and basic adjustments.

6 Q Adjustments such as recalculation of an option benefit?

7 A No. More like additional service credit or payroll
8 came in for the member, and just recalculating their allowance.
9 Very kind of basic calculation work.

10 Q And how long did you hold that position for?

11 A A little over a year and a half.

12 Q And what sort of employment were you in prior to that?

13 A Marketing.

14 Q Was that with CalPERS?

15 A No.

16 Q Another agency?

17 A Not a State agency. Private.

18 Q Aside from your experience, was there any training you
19 received for your current position?

20 A Yes. So we have a lot of training. But each
21 specialized calculation or process or procedure, there is, you
22 know, a pretty in depth training that that goes along with that.
23 So for the recalculation or the modification of life option
24 beneficiary training, that was a two-week training.

25 Q So you mentioned you worked on cases involving

1 modification of an option benefit; is that correct?

2 A Correct.

3 Q So in your department, how is such an application
4 processed? If you can walk us through from the beginning to the
5 end of when an application comes in, where does it -- into
6 CalPERS, and what happens?

7 A So, when an application for a modification is coming
8 into CalPERS, a generation of a work flow which is alerting the
9 program area that there is an application for a particular
10 member to be reviewed, would be logged.

11 And then once it was logged, it's kind of a first in,
12 first out process. So we would begin review of the application,
13 and make sure that all the necessary documents were included
14 with the application materials. And then we would be making
15 note if there wasn't a complete application. So if any of the
16 documents were not attached to the Modification of Life Option
17 Beneficiary Application, we would be making note of the items
18 that were not there, and then send the appropriate response
19 letter.

20 So it could be: We need additional forms; we are
21 unable to process because we don't have these forms. So almost
22 like a rejection letter, instructing the member that, in order
23 to continue the process, we need these additional items before
24 we can even give them the next step, which is the election form.

25 Q And what is the election form?

1 A The election form is an estimate of the benefits that
2 would be selected by the member for their new beneficiary. So
3 we would take into account the member's age at that time and the
4 beneficiary's age at that time, and then we would provide the
5 member pretty much most of the options. So Option 1, 2, 2W, 3,
6 and 3W. At that time, we would let them know exactly what their
7 allowance would be if they made the option selection.

8 Q So you would be giving them actual numbers of what
9 their allowance and what the beneficiary will receive --

10 A Absolutely.

11 Q -- for each option, which is Option 1, Option 2, Option
12 2W, Option 3, Option 3W; is that correct?

13 A That's correct.

14 Q Could they elect to have additional options provided to
15 them?

16 A Yes. And that would be selected on that Modification
17 of Life Option Beneficiary form.

18 Q So once the election form -- so is that election form
19 sent out to the member?

20 A Yes. If all the documents are received that we need,
21 then we would process the estimate. And that's the election
22 document for the member. And they would be required to return
23 that form to us within 30 days of receipt. And they would need
24 it notarized.

25 Q So it has to be signed and notarized?

1 A Yes. Because it is a life option selection.

2 Q Just going back a little bit, you said there is a work
3 flow that is created. Once the work flow is created, is that
4 application assigned to a particular staff person?

5 A Oh, yes. The work flow would be assigned to a staff
6 person, and they would have a certain time frame to review it
7 and process that work.

8 Q And who -- what sort of staff person would that be
9 generally assigned to --

10 A That would be calculation and adjustment staff.

11 Q Would that be that be a retirement program specialist?

12 A Yes.

13 Q And Specialist 1 or --

14 A A Specialist 1 or a Specialist 2 could do that work, as
15 well.

16 Q And in terms of the time frame of providing the
17 election form to the member, what is that time frame?

18 A 60 days.

19 Q Why does it take so long?

20 A It's a manual calculation. In order to process this
21 work, we have to determine the beneficiary's age, the member's
22 age. And then we would use actuarial factors, option factors
23 for those ages, to come up with the reduction for the new
24 allowance.

25 And that would be for, you know, all of the options

1 that I had previously mentioned. So Option 1, you know, through
2 Option 3W. So that's all manually processed. And that's why we
3 require the 60 days. Plus it's not just one application. They.
4 Are coming in quite often.

5 Q When you say "manually processed," it's not some
6 numbers you put into the computer; is that correct?

7 A Some of it is. But some of it is also manually
8 generated. You actually have to go look up those option factors
9 because it's based on when that member originally retired.

10 Q And in 2014, do you recall what the time frame was for
11 completing -- for providing the election form to the member once
12 the application comes in?

13 A It's 60 days.

14 Q And when the program specialist is reviewing the
15 application, is there a legal framework they are following in
16 terms of what documents are required or what other factors are
17 considered?

18 A Yes.

19 Q And what is that legal framework?

20 A So based on the Government Code 21462 or, if they are
21 on unmodified allowance, that would be 21464.

22 ADMINISTRATIVE LAW JUDGE WONG: What was the last
23 number?

24 THE WITNESS: 4. 21 --

25 ADMINISTRATIVE LAW JUDGE WONG: The whole number.

1 THE WITNESS: 21614.

2 ADMINISTRATIVE LAW JUDGE WONG: And the first number
3 was what?

4 THE WITNESS: Same three, and last is 12.

5 Q BY MS. KAUR: Can you repeat it for clarification. The
6 first one was?

7 A 21612, and then 21614.

8 ADMINISTRATIVE LAW JUDGE WONG: Thank you.

9 THE WITNESS: Thank you.

10 Q BY MS. KAUR: Are you referring to possibly 21462?

11 A Oh, yeah. 21462. Sorry.

12 Q And that's for the option benefits; is that correct?

13 A Yes.

14 ADMINISTRATIVE LAW JUDGE WONG: So which one -- what
15 are the correct statutes?

16 THE WITNESS: 21462, 21464.

17 ADMINISTRATIVE LAW JUDGE WONG: Okay. Thanks.

18 Q BY MS. KAUR: And how did the members become aware of
19 this process in terms of the time frames?

20 A So in our Publication 98, which is Changing Your
21 Monthly Option Benefit, that publication actually has a lot of
22 information inside of it. And the time frames for processing is
23 in that publication, as well as what documents are needed,
24 depending on the qualifying event that is being used to change
25 that option.

1 Q And you mentioned qualifying events. So there are
2 particular requirements when -- or particular, let's say, events
3 when a member can change or modify their option after
4 retirement; is that correct?

5 A Correct.

6 Q What are those events?

7 A Death of the beneficiary, remarriage or divorce.

8 Q And where does that come from, that requirement? Which
9 code section?

10 A That 21462.

11 Q So those would be the only three reasons when you would
12 be processing these modifications to the option benefit; is that
13 correct?

14 A That is correct.

15 Q San when does a member initially elect their option
16 benefit?

17 A At retirement.

18 Q So if you have a binder in front of you, if you could
19 please turn to Exhibit 6. This is a service retirement
20 application of Grantland Johnson. Is this the application he
21 would have elected his option in?

22 A Yes, so the service retirement election application,
23 the member would elect at that time their option benefit.

24 Q That's when initially for the first time they elect
25 their option benefit; is that correct?

1 A That is correct.

2 Q If you could turn to page 1 -- I'm sorry. Page 2.

3 A Okay.

4 Q So here Section C, Option Election, he has elected
5 Option 2; is that correct?

6 A That is correct.

7 Q And this allows them to also name their beneficiary; is
8 that correct?

9 A Yes, that's correct.

10 Q And he has named Charlotte Bolton as his beneficiary;
11 is that correct?

12 A Correct.

13 Q This application also allows them to elect
14 beneficiaries for other death benefits, as well; is that
15 correct?

16 A Yes.

17 Q If you could turn to the next page, so Section D, it
18 states, Retired Death Benefit, and under it, there is the Lump
19 Summary Retired Death Benefit Beneficiary. What sort of death
20 benefit is that?

21 A The Lump Sum Retired Death Benefit is a contract
22 benefit that could be anywhere from 500 to \$3,000.

23 Q So this is different from the option benefit; is that
24 correct?

25 A It's completely different. It's a separate benefit.

1 ADMINISTRATIVE LAW JUDGE WONG: What do you mean by a
2 "contract benefit"?

3 THE WITNESS: The contracted benefit is, as an
4 employee, you have a contract of benefits that you are entitled
5 to at retirement based on what your employer contracts for
6 benefit-wise from CalPERS. And so there are levels within that
7 that your employer can contract for in terms of the amounts of
8 the lump sum.

9 ADMINISTRATIVE LAW JUDGE WONG: So for State employees,
10 since there is no contract with the State employee, are you
11 referring to the collective bargaining unit agreements?

12 THE WITNESS: Yes. But we call them, you know, benefit
13 groups. It's an internal process for us to determine what level
14 of benefit the member is entitled to based on their employer.

15 ADMINISTRATIVE LAW JUDGE WONG: Thank you.

16 Q BY MS. KAUR: So this is a lump sum death benefit; is
17 that correct?

18 A Yes.

19 Q So it's one amount that the member's beneficiary would
20 get upon their death; is that correct?

21 A Yes.

22 Q And here he has named -- Mr. Johnson named his Patrice
23 C. Bolton Johnson, daughter; is that correct?

24 A Yes.

25 Q And is this something -- is this benefit something that

1 your unit processes?

2 A No.

3 Q Who deals with the Lump Sum Retired Death Benefit?

4 Which unit?

5 A That would be Forms Administration.

6 Q And what do they do?

7 A They receive these lump sum forms, as well as direct
8 deposit forms. And basically, no change to the member's
9 allowance or benefits; it's just to update information.

10 Q And in terms of, if a member wanted to change their
11 beneficiary, do they have to go through the same process as the
12 option benefit? Or could -- are the events the same? Like, can
13 they only change it if there is marriage, dissolution and death
14 of a beneficiary? Or can they change it whenever they want to
15 for the lump sum retired death benefit?

16 A The lump sum can be changed at any time.

17 Q And to change the beneficiary for the lump sum death
18 benefit, do they have to go through that whole application
19 process which is applicable to option -- the option election?

20 A No.

21 Q What do they need to do?

22 A They can fill out the lump sum election form, and they
23 can make their change there.

24 Q And does that need to be notarized?

25 A No.

1 Q And then the next section is concerning survivor
2 continuance. Is that a death benefit also?

3 A Yes.

4 Q What is that?

5 A That is a payable benefit that's a lifetime benefit to
6 the applicable survivor. So they would receive a benefit that
7 could be 25 percent of the allowance, up to 50 percent of the
8 allowance, depending on what the member has been contracted to
9 receive.

10 Q So that's a monthly benefit?

11 A Yes.

12 Q If they are eligible to receive it?

13 A If they are eligible to receive it.

14 Q And who -- is it just the spouse that is eligible only?

15 A It could be an unmarried child under the age of 18. It
16 could be a dependent parent who they pay -- the member would pay
17 for over 50 percent of their, you know, living expenses. Or it
18 could be a disabled child who was disabled prior to the age of
19 18.

20 Q And in terms of a spouse, this asks, Will you be
21 married at least one year prior to your retirement date? So to
22 qualify, does the spouse have to be married one year prior to
23 their retirement date?

24 A Yes.

25 Q And if you could turn to Exhibit 7.

1 And just to back up, are you familiar with
2 Mr. Johnson's case?

3 A Yes.

4 Q And did you review his file with your department, with
5 your unit?

6 A Yes, after we were -- in response to this case, yes.
7 But not at the original processing of the case.

8 Q You were not the person assigned to process his
9 application to modify the benefit; is that correct?

10 A That's correct.

11 Q And when you reviewed his file -- well, are you
12 familiar with this document?

13 A Yes.

14 Q And can you tell us what it is.

15 A This document is a letter that is generated that lets
16 the member know, once they have retired, when they should expect
17 to receive their allowance, what their option is, how much they
18 will be receiving, when they will be receiving it.

19 And it also gives them information regarding the other
20 allowances, so the beneficiary allowance and the survivor
21 allowance, more specifically, is what would happen upon their
22 death and what they would need to do.

23 Q So this letter is dated December 4th, 2003. And there
24 is a section, the second section, it's labeled
25 Beneficiary/Survivor Allowance. And I would like to turn your

1 attention to the second paragraph under that section.

2 So this paragraph, what does it notify the member?

3 A It notifies the member if their beneficiary
4 pre-deceases them or if they want to modify their election upon
5 marriage after retirement and if a former spouse was named, what
6 we would need from the member in order to make a modification.

7 Q So it also tells them -- so in terms of what we need,
8 it tells them that we need the legal separation -- if there is a
9 legal separation, we need the court order; is that correct?

10 A That's correct.

11 Q And it also instructs them, to request a modification,
12 to contact the Benefit Services Division; is that correct?

13 A Yes.

14 Q About a recalculation?

15 A Yes.

16 Q And so this is a letter that Mr. Johnson was sent in
17 2003; is that correct?

18 A Yes.

19 Q And if you could go to the next exhibit, Exhibit 8. If
20 you could turn to page 7, and the fourth entry from the bottom
21 up, the Benefits Payments. And then it says Participant.

22 And then it says: "V took escalate call. Member
23 requested copy of first payment acknowledgement letter." And
24 this is -- this note is dated October 24th, 2013.

25 The first payment acknowledgement letter, the exhibit

1 under page 7, is this the first payment acknowledgement letter?

2 A Yes.

3 Q So this is the copy of which Mr. Johnson requested; is
4 that correct?

5 A Yes.

6 Q And just to finish off with what the note says, it
7 says, "Printed and mailed out."

8 So if --

9 MR. BARLOW: Objection. I want to insert an objection,
10 belated objection, based on hearsay. To the extent that this
11 entry represents a request that was made by Grantland Johnson
12 typed by somebody else, somebody with no firsthand knowledge to
13 the entry is testifying as to what was requested.

14 ADMINISTRATIVE LAW JUDGE WONG: Ms. Kaur.

15 MS. KAUR: Well, Ms. Owens has knowledge about these
16 Touchpoint Notes from CalPERS. And Ms. Owens has knowledge
17 about how these notes are kept.

18 ADMINISTRATIVE LAW JUDGE WONG: How does that not make
19 it hearsay?

20 MS. KAUR: We are just trying to demonstrate that these
21 documents were requested -- or there is a record CalPERS has
22 that these documents were requested.

23 ADMINISTRATIVE LAW JUDGE WONG: Why does it matter
24 that -- okay. All right. So the objection is overruled. The
25 note will be taken as evidence of the effect on the listener,

1 which would be the person who took the notes, rather than the
2 truth of the matter asserted.

3 So the objection is overruled. The answer will stand.

4 Q BY MS. KAUR: And so after we send the letter -- after
5 CalPERS sends the letter to the member notifying them of their
6 service retirement, such as the letter under Exhibit -- under
7 Exhibit 6, does CalPERS actively check whether the marriage has
8 annulled or whether the beneficiary has died? Do we pull up the
9 public records?

10 A No.

11 Q So is it upon the member to notify CalPERS and request
12 the sufficient forms to modify either election option?

13 A Yes.

14 Q And in this instance, were we -- was CalPERS contacted
15 by the member requesting information -- requesting information
16 to modify their election option?

17 A Based on the notes, yes.

18 Q So the member would have to request the forms or the
19 publication from CalPERS; is that correct?

20 A Yes.

21 Q We wouldn't just automatically send any publications to
22 them -- well, we wouldn't send any publications concerning
23 modifying their option benefits; is that correct?

24 A That's correct.

25 Q And if you could turn to Exhibit W, 9-W.

1 This document is dated February 15, 2013. And the
2 middle it says, "Per your request, see attached customer
3 packages/forms." And it's referring to Publication 98.

4 Why would this document have been generated?

5 A Due to member request is why we would send this.

6 Q Is this some sort of a cover sheet that would have been
7 generated and sent out with the publication?

8 A Yes.

9 Q So the member has to make this request; is that
10 correct?

11 A That's correct.

12 Q And if you could turn to Exhibit 9.

13 ADMINISTRATIVE LAW JUDGE WONG: Exhibit 9?

14 MS. KAUR: Yes. Just Exhibit 9.

15 Q Can you tell me what this document is.

16 A This is the member's document file.

17 Q And is this online?

18 A Yes.

19 Q It's a database that is kept online; is that -- by
20 CalPERS; is that correct?

21 A That is correct.

22 Q And what is a document file?

23 A The document file contains pretty much the history of a
24 member's interaction, in terms of forms and documents, with Cal
25 MyCalPERS and with CalPERS as a whole. So could be when they

1 first came into membership with us, those documents would be
2 there up until, you know, they end their membership.

3 Q So these are forms or documents that were sent in to
4 CalPERS or documents that are sent out from CalPERS; is that
5 correct?

6 A Yes. Every document that we send to a member would be
7 in here.

8 Q Does it capture every single document?

9 A Maybe not prior to, like, 1993.

10 Q And is the member able to review these documents? Do
11 they have access to this?

12 A No, they do not have access to this.

13 Q And if you could turn to page 4 of this document. And
14 the handwriting I have marked handwritten 9-W, which references
15 Exhibit 9-W, which we were discussing. So this states:

16 Template cover sheet for publication and bulk distributions.

17 So this is referencing the cover sheet that was
18 generated for Publication 98. Is that correct?

19 A Yes.

20 MR. BARLOW: Objection, your Honor. We don't know who
21 made these notes. Template cover sheet for publication and bulk
22 distributions isn't referenced anywhere on the exhibit to which
23 that's referenced next to this entry.

24 ADMINISTRATIVE LAW JUDGE WONG: Are you objecting to
25 the document or the testimony?

1 MR. BARLOW: The testimony. The witness's ability to
2 testify to the fact that 9-W is what is represented by this
3 entry.

4 MS. KAUR: Maybe I can clarify.

5 ADMINISTRATIVE LAW JUDGE WONG: Why don't you lay a
6 foundation.

7 MR. BARLOW: Or that any of these exhibits correspond
8 with the entries in this log.

9 ADMINISTRATIVE LAW JUDGE WONG: If you are objecting to
10 the testimony, then your last objection is overbroad because she
11 hasn't talked about any of the other entries.

12 MR. BARLOW: I will limit it to 9-W.

13 Q BY MS. KAUR: In terms of corresponding, if you look at
14 the -- so if you look right next to 9-W, it says, "MyCalPERS
15 0410." Can you tell me what that is.

16 A Yes. So that's a form that is generated when you
17 select a publication to be sent to a member. And when you
18 select the form or publication, it automatically does a date
19 stamp when you do that, which is -- and it pre-populates the
20 name of the document.

21 Q So the 0410 that -- also, if you look at Exhibit W,
22 9-W, on the very bottom of MyCalPERS 0410, that is shown there;
23 is that correct?

24 A Yes.

25 Q Is that the document number?

1 A Yes.

2 Q Is that how you match --

3 A Yes.

4 Q -- what the document is to that entry?

5 A Yes.

6 Q And if you could turn to Exhibit 9-U. And can you tell
7 me what this document is.

8 A This is the Application to Modify Life Option or Life
9 Option Beneficiary.

10 Q And that at the top is dated February 15, 2013; is that
11 correct?

12 A Yes.

13 Q And if you go back to Exhibit 9, page 4. For 9-U, it
14 says "MyCalPERS 1197." Do you also see that number on Exhibit
15 U, at the very bottom left corner of page 1?

16 A Yes.

17 Q And this is something that CalPERS would have sent out;
18 is that correct?

19 A Yes.

20 Q And how do you know that?

21 A Because I have seen it sent, and I have generated these
22 myself.

23 Q So the -- so on Exhibit 9, page 4, next to where --
24 next to 9-U where it says, Application to Modify Option or Life
25 Option Beneficiary, then it has a date February 15, 2013. It

1 has "outgoing." Does that mean it would have been sent out?

2 A Yes.

3 Q And if you could turn to Exhibit 9-U, this form is also
4 available online; is that correct?

5 A Yes.

6 Q And is this the form that would also be part of
7 Publication 98?

8 A Yes.

9 Q And this is the form that the member initially -- this
10 is the form that the member fills out to modify their option
11 benefit; is that correct?

12 A Yes.

13 Q And is this form updated by CalPERS?

14 A Yes.

15 Q How often?

16 A Fairly regularly. At least once a year.

17 Q And how does a member know which documents to submit
18 along with this form?

19 A The form has what documents we need in the
20 instructions. But it also in the publication details what
21 documents are required, depending on what qualifying event the
22 member is selecting regarding the option change.

23 Q And when you say the form has instructions on what
24 documents to provide, are you referring to the text under
25 Section 1?

1 A Yes.

2 Q And how does a member know that this is just an
3 application, just the start of that process?

4 A In the publication, it references the election
5 document, but in addition --

6 MR. BARLOW: Sorry. Objection to the extent it calls
7 for speculation on behalf of what a member knows after reading
8 this.

9 ADMINISTRATIVE LAW JUDGE WONG: Ms. Kaur.

10 MS. KAUR: I can change the question.

11 ADMINISTRATIVE LAW JUDGE WONG: Okay.

12 MS. KAUR: I can restate?

13 ADMINISTRATIVE LAW JUDGE WONG: Okay. Go ahead.

14 Q BY MS. KAUR: So how does CalPERS notify the member
15 that this is just the start of the process, this is just an
16 application to initiate the process of changing your option
17 benefit?

18 A The publication references the election document in
19 addition in Section 5, which is a certification of the member.
20 It basically says that this is a request for an election form to
21 modify, and that it won't be processed until all of the
22 completed election form has been submitted to CalPERS. And
23 since this isn't the election form, that's stating that this is
24 just a request.

25 Q And are you referring to page 2 of this document, and

1 Section 5 under Certification of Member, it reads: I understand
2 this form is a request for an election form to modify my option
3 and name a new beneficiary/{beneficiaries}. I further
4 understand that my new option beneficiary change will not be
5 processed until the properly completed election form is
6 submitted to CalPERS."

7 Is that what you are referring to?

8 A Yes.

9 Q And if you could turn to Exhibit 11. Can you point us
10 to where there is information in this booklet concerning the
11 changing the option benefit and notifying the member of the
12 process.

13 A Okay. So on Page 21, at the bottom of the page.

14 Q And you are referring to the last page that starts,
15 "Within 60 days of CalPERS receiving your application"? Is that
16 what you are referring to?

17 A Yes.

18 Q And this whole -- this page starts off with: How to
19 change your option or life option beneficiary. Does this
20 instruct the member on how to go about to change their option
21 and what the triggering events are?

22 A Yes.

23 Q And this is Publication 98; is that correct?

24 A That is correct.

25 Q Aside from the booklet and the letter, the service

1 retirement letter, sent to the member, such as the letter under
2 Exhibit 6, how else does CalPERS notify its members about the
3 process to change the option beneficiary?

4 A Just by their request. They would have to initiate the
5 request. There is no other way that we would send it out.

6 Q Taken by -- what do you mean by initiating their
7 request? Are you saying, if they call and say, This triggering
8 event is happening?

9 A Well, yeah. Yes. Like, if the member calls and says,
10 I want to report the passing of my beneficiary, that would be,
11 you know, an opportunity to, you know, ask the member if that
12 beneficiary was a life option beneficiary and if they would like
13 the publication to explore their options. But usually, that is
14 something initiated by the member.

15 Q And if you could turn to Exhibit 9-M. So this is a
16 letter by Mr. Johnson to CalPERS. And he is informing CalPERS
17 that he wants Mrs. Johnson to be named as the beneficiary with
18 CalPERS retirement, and all death benefits. He sent this to
19 CalPERS and there is a PO Box on here.

20 Once he sent it, where would this have been routed to?

21 A Forms and -- Forms Unit.

22 Q That's a unit that is different from yours; is that
23 correct?

24 A That's correct.

25 Q And what do they do?

1 A They process changes for the lump sum death benefits or
2 direct deposit, things that don't require any reduction or
3 change to the member's allowance.

4 Q And if you could turn to Exhibit 9-L. Do you recognize
5 this document? It's dated July 25th, 2014. It's from CalPERS.

6 A Yes.

7 Q And can you tell us what it is.

8 A This is what we would send if an incorrect or
9 incomplete form was submitted for a lump sum beneficiary.

10 Q So is this sent as a result of Mr. Johnson's June 23rd,
11 2014 letter?

12 A Yes.

13 Q And if you could turn to Exhibit 9-K, can you tell us
14 what this document is.

15 A This is the Post Retirement Lump Sum Beneficiary
16 Designation form.

17 Q Is this something that would have been sent along with
18 that letter?

19 A Yes.

20 Q And why would this have been sent?

21 A Because the letter indicated death benefits which would
22 be associated to the Post Retirement Lump Sum Beneficiary
23 designation.

24 Q If you could turn to Exhibit 9, page 1. And the second
25 entry, which I labeled as 9-K, the MyCalPERS number on there is

1 0773. That's -- if you look at the exhibit under 9-K, is that
2 the number that you see on the bottom right corner?

3 A Yes.

4 Q 0073. So that is the Post Retirement Beneficiary
5 Designation. And there is a date there, which is July 25th,
6 2014, and it's "outgoing." So that means it was sent out; is
7 that correct?

8 A Yes.

9 Q And also on July 25th, 2014, if you look right above
10 that entry, the justification for absence of spouse or
11 registered domestic partner signature, was that also sent out?

12 A Yes.

13 Q And then the next entry on top of that is "incoming."
14 What does that mean?

15 A That's when we receive the form from the member.

16 Q And if you could look at Exhibit 9-I. So this is the
17 form we would have received from Mr. Johnson; is that correct?

18 A Yes.

19 Q And this is to change the lump sum beneficiary
20 designation; is that correct?

21 A Yes, that's correct.

22 Q And would that go to your department?

23 A No.

24 Q Were where would that go?

25 A That would be going to the forms area to process the

1 change.

2 Q And if you could turn to Exhibit 9-H. That is the
3 Application to Modify Option or Life Option Beneficiary. That
4 is Mr. Johnson's application.

5 Would that have come to your department?

6 A Yes.

7 Q And is there any indication in terms of when that came?

8 A There is a stamp in the left corner indicating the time
9 it came in and the date it came in. And it's also stamped.

10 Q So if you look at Section 1 on the right-hand side, the
11 marriage certificate is underlined. Is that a notation you
12 would have made or somebody at CalPERS would have made?

13 A No. We image the documents as they are received.

14 Q So that would have been made by the member or whoever
15 sent the application in; is that correct?

16 A Correct.

17 Q Not by CalPERS?

18 A No.

19 Q And there is also a note under Section 2 which says --
20 in handwriting, it says: -- there is an arrow going up, and it
21 says, "On file at CalPERS" with "Medical/Dental" underlined. Is
22 that also a note CalPERS staff would not have made?

23 A Right.

24 Q So once your unit receives this, what was done with
25 this application?

1 A So it was logged by the unit, and then assigned a staff
2 member for review.

3 Q If you could turn to Exhibit 13.

4 ADMINISTRATIVE LAW JUDGE WONG: What exhibit?

5 MS. KAUR: 13.

6 Q Do you recognize this document?

7 A Yes.

8 Q Can you tell me what it is.

9 A That is the log entry for Member Grantland's case.

10 Q It starts off with ID. That's been redacted. Would it
11 have his CalPERS ID on there?

12 A Yes.

13 Q The next box says "last two." What is that?

14 A That's how the work is distributed, is by the last two
15 digits of the member's CalPERS ID.

16 Q Distributed among staff?

17 A Yes.

18 Q And then, of course, the next box has the name. And
19 the next box has "Date R-E-C-E"?

20 A Date received.

21 Q Which is August 7th, 2014; is that correct?

22 A Correct.

23 Q And the next box says, "Date Assigned." What's that
24 mean?

25 A That's the date it was assigned to staff to work and

1 review.

2 Q Which is 9/11/2014; is that correct?

3 A Yes.

4 Q And the next box says, "Staff Assigned." And the box
5 underneath it is blank. What does that indicate?

6 A That would indicate that a staff member who was
7 assigned the case and --

8 Q Why is it blank here? Was anybody assigned to this
9 case?

10 A There was a staff member assigned to the case based on
11 the participant notes.

12 Q Can you point us to the participant notes and let us
13 know where that is.

14 A So that would be page 5 of Exhibit 8. And it would be
15 the fourth one down from the top.

16 Q The one that starts off with "Service Retirement," and
17 then says "Participant," then states: "Member passed. Unable
18 to process modification of option."

19 ADMINISTRATIVE LAW JUDGE WONG: What date is the entry?

20 THE WITNESS: September 15th, 2014.

21 ADMINISTRATIVE LAW JUDGE WONG: Got it.

22 Q BY MS. KAUR: And so there as name on here. Is that
23 the person that was assigned?

24 A Yes.

25 Q Jennings?

1 A Yes.

2 Q So did this person work on the file?

3 A Yes.

4 Q Do you know what they did?

5 A They reviewed the file. And at that time, the member
6 had passed.

7 MR. BARLOW: Objection. Calls for speculation as to
8 what this other person did to review the file.

9 ADMINISTRATIVE LAW JUDGE WONG: Ms. Kaur.

10 MS. KAUR: Well, if she reviewed the file and reviewed
11 the notes in the file, that wouldn't be speculation. I could
12 ask her further questions to clarify how she obtained that
13 knowledge.

14 ADMINISTRATIVE LAW JUDGE WONG: Okay. Go ahead and
15 clarify.

16 Q BY MS. KAUR: So how do you know what was done? What
17 work was done on -- by the staff person?

18 A Well, unless he reviewed the case, he wouldn't have
19 known the member had died. So he reviewed the case. And on the
20 participant's file, it was noted that he had passed away.

21 Q And the next box says, "Date sent for checking." I am
22 looking at Exhibit 13, the log. What does that box mean, "Date
23 sent for checking"?

24 A Modification of life option beneficiary work must be
25 reviewed and checked by another trained technician, another

1 trained staff member, to corroborate and to approve the review
2 that the other person had made. And so it had been sent from
3 Mr. Jennings to the checking on September 12th, 2014.

4 Q And the next box says, "Date letter." What does that
5 mean?

6 A That would be, if we had all the information, the date
7 a letter was generated and sent to the member. And that letter
8 would be either a rejection letter saying we need additional
9 information or the election document letter.

10 Q So this box is blank. What does that mean?

11 A It means that he was unable to complete the processing
12 of this case due to the untimely passing of the member.

13 Q So a letter is not sent -- a rejection letter is not
14 sent by your department if the member dies before --

15 A No.

16 Q -- the letter is generated?

17 A No. We do not send the rejection letter.

18 Q You wouldn't send it to the beneficiary either?

19 A No.

20 Q And if you could turn to the next page, there is a box
21 that states, "Member Elected Y/N." What is that?

22 A So once we send the election document to the member,
23 they have a 30-day time frame to return it back to CalPERS. And
24 if the member elects, then we would receive -- receive that
25 document back within the time frame with whatever option the

1 member had selected for the new beneficiary if they elected or
2 if not. If, in 30 days, they don't, we would put an N there.

3 Q If they don't elect within the 30 days, what happens?

4 A Nothing. They continue along with the same benefits
5 that they had since retirement.

6 Q So you don't process their application further?

7 A No. They haven't elected.

8 Q If, after the 30 days, they decide they want to elect,
9 what do they have to do?

10 A Restart the process.

11 Q Submit a new application?

12 A Yes.

13 Q And next to that box is the next box, "Staff Assigned."
14 What does that mean?

15 A So then it would go -- it would be assigned again to
16 staff to complete the process, which would be to actually make
17 that election happen.

18 Q And then, "Date Assigned," what does that indicate?

19 A That would be the date that the staff was assigned the
20 actual case.

21 Q And "Date Sent for Checking." What does that mean?

22 A After the staff member completed the election with the
23 new option, then it would be sent for checking, for another
24 trained staff person to review and sign off that everything
25 is -- looks good to make that change.

1 Q And then the next box, it states, "Days Processed," and
2 there is a date of September 15, 2014. What does that indicate?

3 A That indicates that there is nothing more that we can
4 do on this case. It's either been completed or we are unable to
5 complete it.

6 Q And the Miscellaneous Notes. It says: "Member
7 deceased." What does that indicate?

8 A That indicates that the process stops due to the death
9 of the member.

10 Q And here for Mr. Johnson, the application didn't go any
11 further. It was -- the election form was not sent out because
12 he passed away. Is that correct?

13 A Yes.

14 Q And if you could turn to Exhibit 14.

15 So you indicated previously that the member would send
16 in the election form electing an option. Are there instances
17 when the members decide not to go forward with the application
18 and not to change their option?

19 A Yes.

20 Q And can you tell us what this document under Exhibit 14
21 is.

22 A This document is a representation of how many
23 applications came in during, like, a time frame from August 2012
24 to January of 2014. And it's the total number of modification
25 of life option beneficiary applications that we received.

1 Q And is that under -- so the total number -- if you look
2 at the second column, it says, "Total Recalc of Options
3 Applications Received." And if you go down all the way, it
4 says, "Total 723."

5 Are those the total number of applications CalPERS
6 received?

7 A Yes, that's the total number of applications.

8 Q By members requesting that their option benefit be
9 modified; is that correct?

10 A That's correct.

11 Q And the next column, it states, "Total Members
12 Elected." What does that mean?

13 A That is the total number of members who actually
14 completed the election document and returned it to CalPERS
15 within the 30 days.

16 Q That's 337; is that correct?

17 A Yes.

18 Q The next column, it says, "Total Not Elected." What is
19 that?

20 A That's the total number of members we sent the election
21 document that did not return the election document.

22 Q That is 386; is that correct?

23 A Yes.

24 Q So it seems like -- then the next column, at the very
25 bottom, it says 47 percent -- 47.63 percent. What does that

1 indicate?

2 A That indicates an average percentage of members who do
3 not -- where they actually elect to make that change.

4 Q So just because CalPERS or your unit receives the
5 application to modify the election benefit doesn't mean the
6 member will actually go through and elect -- actually go through
7 and modify their option; is that correct?

8 A Yeah, that's right.

9 Q And based on your experience and knowledge, why is
10 that?

11 A There is two reasons. One is that member does incur
12 another reduction to the allowance based on the new information.
13 And sometimes that reduction -- the member does not want to
14 change to that new amount to provide for this new beneficiary.

15 And the other, it could be that they simply are unable
16 to make the 30-day time frame.

17 Q And your unit didn't send Mr. Johnson a letter
18 informing him that the application is not going to be processed,
19 didn't send a letter to the beneficiaries. But was another unit
20 responsible for contacting or being in communication with the
21 beneficiary concerning the death benefits?

22 A The Death Unit would be responsible for contact
23 regarding the benefits payable.

24 Q And in terms of the lump sum beneficiary designation,
25 if you could turn to Exhibit 9-G.

1 Exhibit 9-G, this document doesn't notify Mr. Johnson
2 concerning his option benefits; is that correct?

3 A That's correct.

4 Q This is just notifying him concerning the lump sum
5 benefits; is that correct?

6 A Correct.

7 Q And was this sent out by your department?

8 A No.

9 Q Which department would this have been sent out by?

10 A Forms.

11 Q Is that the department that processes the lump sum
12 beneficiary designations?

13 A Yes.

14 Q And you state -- you testified that Mr. Johnson's
15 application was not processed further because of -- because he
16 passed away; is that correct?

17 A Yes.

18 Q And is there a statutory scheme that your department is
19 following when they stop processing the application because of a
20 member's death?

21 A Yes. The member wasn't alive to make the election.

22 Q And which statute or which code section are you looking
23 at -- is your department looking at when they make that
24 determination?

25 A The 21462.

1 Q And what does that require?

2 A That requires that the member -- once the election
3 document has been provided with the amounts, that he elect what
4 that option is going to be for the reduction. He then would
5 have to physically write in that he is aware that this is going
6 to be his new allowance, and then it would be notarized.

7 Q So here Mr. Johnson had initially when he retired
8 elected Option 2. He is not required to once again elect Option
9 2 when he modifies his option; is that correct?

10 A That's correct.

11 Q He could elect any other option?

12 A Mm-hmm, yes.

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

15 ADMINISTRATIVE LAW JUDGE WONG: Cross-examination.

16 MR. BARLOW: Yes, your Honor.

17 CROSS-EXAMINATION

18 BY MR. BARLOW:

19 Q Ms. Owens, you mentioned that applications are --
20 applications to modify option or life option beneficiaries are
21 basically taken care of on a first come, first served basis.
22 Those that are logged first in are the first out?

23 A Yes.

24 Q Okay. So what is your procedure -- what is CalPERS'
25 procedure for situations that require exceptional timing, where

1 timing is of the essence? In other words, where CalPERS has
2 been informed that the member that is trying to effectuate a
3 change in beneficiary designation may die?

4 A Well, it would be expedited.

5 Q So it's not necessarily logged first in, logged first
6 out?

7 A Not if we were informed that there were extenuating
8 circumstances.

9 Q In this case, you were informed that there were
10 extenuating circumstances?

11 A No.

12 MS. KAUR: Objection. Calls for -- misstates the
13 witness's testimony.

14 ADMINISTRATIVE LAW JUDGE WONG: The form of the
15 question. Objection is overruled. It's a leading question. So
16 it's a yes or a no answer.

17 Q BY MR. BARLOW: Are you saying CalPERS was not informed
18 there were extenuating circumstances here?

19 A Not based on the application.

20 Q Was CalPERS ever informed that Grantland Johnson was in
21 poor health, dire health?

22 MS. KAUR: Objection. Calls for speculation.

23 Q BY MR. BARLOW: At the time that he was attempting to
24 modify his beneficiary?

25 MS. KAUR: Objection. Calls for speculation.

1 ADMINISTRATIVE LAW JUDGE WONG: To the extent you know
2 whether or not CalPERS was, you can answer. To the extent you
3 don't know, don't guess.

4 THE WITNESS: I don't know.

5 Q BY MR. BARLOW: You mentioned that you would let a
6 member know if there was anything incomplete about their
7 Application to Modify Life Option Beneficiary?

8 A Correct.

9 Q And you made reference to a letter dated January 23rd
10 from Grantland Johnson earlier in your testimony. Do you
11 remember that letter?

12 A Which letter?

13 Q I'm sorry. June 23rd, 2014, at Exhibit 9-M.

14 A Yes.

15 Q Can you read the first paragraph of that letter.

16 A "I want my wife Leanne Turner Johnson to be named as
17 the beneficiary with my CalPERS retirement and all death
18 benefits previously named for Charlotte Bolton and Patrice
19 Bolton Johnson."

20 Q Does that not suggest to you that he was attempting --
21 his intent was to change his beneficiary from Charlotte Bolton
22 and Patrice Bolton Johnson to Leanne Turner Johnson?

23 A For the death benefits, sure.

24 Q Doesn't it say for "all death benefits"?

25 A A survivor and an option benefit, to me, are different

1 than a death benefit. To me, a death benefit would specifically
2 mean the lump sum beneficiary for the death benefit.

3 Q And I would like to refer to you CalPERS' August 14th,
4 2014 letter previously marked as Exhibit I, Respondent's Exhibit
5 I.

6 MS. KAUR: I'm sorry?

7 MR. BARLOW: Exhibit I.

8 Q Do you see that letter?

9 A Yes.

10 Q At that time Grantland Johnson had already submitted an
11 application to modify, correct? His beneficiary?

12 A Yes.

13 Q Okay. Is there anything in that letter that informs
14 him that there is anything that is incomplete with respect to
15 his efforts to modify his beneficiary?

16 A Well, this is regarding the lump sum designation form;
17 not the modification form.

18 Q So at this point, there still has hasn't been --
19 there's no communication as part of that letter that informs him
20 that his effort or application to modify the beneficiary is
21 incomplete, correct?

22 A Correct. It hadn't been assigned.

23 Q You also testified that the application to modify
24 lifetime beneficiary form is updated once a year?

25 A The publication?

1 Q The application.

2 A The publication.

3 Q The publication is updated once a year. But you don't
4 inform members of the changes, if there is a change in the
5 publication?

6 A The change is mostly verbiage, how the information is
7 arranged; not necessarily a decrease in information, but maybe
8 the way that it's laid out or designed.

9 Q Turn your attention to Exhibit 9-U.

10 You mentioned that this was the form that was included
11 in Publication 98, correct?

12 A Yes.

13 Q And can you read the identification number at the
14 bottom of that form?

15 A MyCalPERS 1197.

16 Q Okay. I want to call your attention to what is
17 Respondent's Exhibit H.

18 MS. KAUR: I'm sorry? Exhibit?

19 MR. BARLOW: Exhibit H. I think there is a
20 corresponding exhibit for CalPERS, as well.

21 Q What is the code at the bottom of the left-hand corner
22 of that form?

23 A PERS 01M0014DMC913.

24 Q So this application to modify has a different code
25 associated with it than the one that was actually purportedly

1 sent to Mr. Johnson?

2 A Yes.

3 Q And why is that?

4 A The form that was submitted by Mr. Johnson was included
5 in the Publication 98. That was the version that was in effect
6 in September of 2013 and forward until the next revision.

7 Q So Exhibit H, which you just looked at, was a version
8 that was in effect prior to that?

9 A No. This is a -- just the actual application separate
10 than the PUB. The publication has all of the forms for a number
11 of different processes for changing different things after
12 retirement. This is specific to -- when I say "this," I mean
13 MyCalPERS Document 1197 is specific to the application to
14 modify, and just the application itself; not the publication.

15 Q Are there differences between the forms?

16 A Minimal.

17 Q What do you mean by "minimal"?

18 A It could be font size, the bar code. The content is
19 probably pretty much the same.

20 Q So can you confirm what version or that this Exhibit H
21 came from the Publication 98 that was referenced earlier in your
22 testimony, the one that was mailed to Grantland Johnson in or
23 around February 2013?

24 A I don't know.

25 Q Okay. I want to turn your attention to Exhibit 7,

1 please. And can you read the -- well, is there anything in this
2 letter, particularly the first page, that informs a member that
3 he or she must be alive to make an election to change the
4 beneficiary?

5 A Well, it does say, "Upon your death, benefits will be
6 paid to your beneficiary in accordance with the designated
7 indicated on your retirement election document."

8 Q Right. But is there any language here that expressly
9 says you must be alive to make an election?

10 A No.

11 MS. KAUR: I have a belated objection in terms of the
12 objection. It's unclear whether you are referring to election
13 at retirement or modifying the election.

14 MR. BARLOW: To modifying the election.

15 Q Is there anything that says, in order to modify the
16 election, that you have to be alive to make it?

17 Are we still reading through Exhibit 7?

18 A Mm-hmm.

19 Q Do you have the same Exhibit 7?

20 A Oh, I am looking at Exhibit 11.

21 Q I was only referring you to Exhibit 7.

22 A Oh. I misunderstood.

23 Q So is the answer --

24 A There is nowhere in Exhibit 7.

25 Q That informs a member that he or she has to be alive in

1 order to effectuate a change in beneficiaries for Option 2
2 benefits? Correct?

3 A Right.

4 Q Turn your attention to Exhibit 9-W. Can you tell me to
5 what entity the Publication 98 that was purportedly attached to
6 this was sent?

7 A The Estate of Grantland Johnson.

8 Q And does that suggest to you that -- would CalPERS have
9 had some understanding that this was being sent to a deceased
10 member or a member who was facing death?

11 A No. There are estates and trusts that members receive
12 their mail or CalPERS-related information care of.

13 Q Including members who are -- die or are about to die,
14 could die?

15 A I guess.

16 Q Okay. And couldn't an executor of the will sign an
17 election form, somebody who has power to sign on behalf of the
18 member or former member?

19 A If we had a power of attorney on file for this member.

20 Q And did you have a document from Grantland Johnson
21 expressing to CalPERS that there was an executor of a will in
22 place?

23 A I don't know.

24 Q You mention also that Publication 98 has all the forms
25 included for effectuating a change in beneficiary?

1 A For a modification, yes.

2 Q So that -- that -- that must also include the
3 Modification of Original Election of Retirement form correct?

4 A Yes.

5 Q And where was that form included in this packet?

6 A So Exhibit 11.

7 Q And where is there a document entitled Modification of
8 Original Election at Retirement?

9 A It's not called original election at retirement. It's
10 called Modification of Life Option Beneficiary.

11 Q Where is there a document that is entitled Modification
12 of Life Option Beneficiary?

13 A It's on page 23. It says Application to Modify Option
14 and/or Life Option Beneficiary.

15 Q So a member is supposed to understand modification of
16 original election retirement document to be the same as
17 Application to Modify Option and/or Life Option Beneficiary?

18 A I don't know what the member would understand. This is
19 the application that we would need for that change.

20 Q So this is the application that CalPERS represents will
21 be sent back to the member with recalculated retirement
22 allowances?

23 A No. This is the application for the member to receive
24 an election document. Election documents are created by
25 calculation staff. And they include the new allowance

1 information. That wouldn't be in a publication.

2 Q So you are telling me that the way this sentence should
3 read: Within 60 days after CalPERS has received your
4 application and the necessary documentation, we will mail you
5 the application?

6 MS. KAUR: Which page are you referring to?

7 THE WITNESS: Page 21.

8 ADMINISTRATIVE LAW JUDGE WONG: 21 of what?

9 MR. BARLOW: Publication 98, Exhibit 11.

10 MS. KAUR: Page 2 -- where are you?

11 MR. BARLOW: It's the final paragraph.

12 Q From what I understand, you are telling me that the
13 modification of original election retirement document is the
14 same as the Application to Modify Option and/or Life Option
15 Beneficiary form?

16 A No. I never said they were the same thing. The
17 application is the application and the Modification of Original
18 Election at Retirement is the document that CalPERS would send
19 to the member with the reduced allowances for several different
20 options.

21 Q Okay. Well, let me walk back through it. I asked you
22 initially whether all the forms a member would have to complete
23 to effectuate a modification to his or her beneficiary were
24 completed -- were included in Publication 98. You said yes.

25 Then I asked you where the modification of the original

1 election retirement form is.

2 A And that is a separate document.

3 Q Where is it in Publication 98?

4 A It's not in Publication 98.

5 Q So all the forms that one would be required to submit
6 are not included in Publication 98?

7 A They are included for 98 for the application for -- to
8 begin the process.

9 Q Turn your attention back to -- can you remind me what
10 exhibit includes the -- the completed application to modify --
11 here it is. Exhibit 9-H.

12 A 9-H.

13 Q Can you read the Certification of Participant Statement
14 below -- above Mr. Johnson?

15 ADMINISTRATIVE LAW JUDGE WONG: You want her to read it
16 to herself? Or what are you asking her to do?

17 MR. BARLOW: I guess, is there any conceivable way --

18 ADMINISTRATIVE LAW JUDGE WONG: Speculation. "Any
19 conceivable way." I will tell you right now it's speculation.

20 MR. BARLOW: Okay.

21 ADMINISTRATIVE LAW JUDGE WONG: And/or argumentative.

22 Q BY MR. BARLOW: Could you read the certification to
23 mean that this application is the request for an election form?

24 ADMINISTRATIVE LAW JUDGE WONG: Are you asking her if
25 she personally could read? Or anybody, someone else could read

1 it that way?

2 MR. BARLOW: Her personally.

3 ADMINISTRATIVE LAW JUDGE WONG: If she personally. You
4 are asking her if she could read it that way.

5 MR. BARLOW: Yes, to avoid any potential speculative.

6 ADMINISTRATIVE LAW JUDGE WONG: That's speculation.

7 Because you are saying, "could you"?

8 MR. BARLOW: I guess, your Honor, I am asking her --

9 ADMINISTRATIVE LAW JUDGE WONG: I know what you are
10 trying to ask. It's probably speculation. But if you could
11 think of a way to word it that it's not speculation, then you
12 could do so.

13 Q BY MR. BARLOW: Do you read the statement under
14 Certification of Participant as: I understand that this form is
15 a request for an election form to modify or interpreted as -- I
16 understand this form is a request for a separate or additional
17 election form to modify?

18 MS. KAUR: Objection. Vague and ambiguous.

19 ADMINISTRATIVE LAW JUDGE WONG: Sustained. I am not
20 sure what you are -- I am not sure what you are asking.

21 MR. BARLOW: Sure, your Honor. I am merely pointing
22 out that this statement could be read to -- could be understood
23 as --

24 ADMINISTRATIVE LAW JUDGE WONG: Then that's argument.

25 MR. BARLOW: Okay. Well, I was merely asking the

1 witness whether or not she has interpreted the statement to mean
2 that.

3 ADMINISTRATIVE LAW JUDGE WONG: You could ask her if
4 she interprets it to mean that.

5 Q BY MR. BARLOW: Do you interpret the statement to mean
6 that this form is a request for an election form? Emphasis
7 on --

8 ADMINISTRATIVE LAW JUDGE WONG: Do you interpret that
9 statement as saying this is the form you need to change your
10 election? Is that basically what you are asking?

11 MS. KAUR: And --

12 ADMINISTRATIVE LAW JUDGE WONG: To make the change?

13 MR. BARLOW: That's essentially correct, your Honor.
14 Essentially, that this is the form; not a request for an
15 additional form.

16 ADMINISTRATIVE LAW JUDGE WONG: So do you understand
17 that certification to be saying that?

18 THE WITNESS: No.

19 MR. BARLOW: Okay.

20 ADMINISTRATIVE LAW JUDGE WONG: Let's go ahead and take
21 our afternoon break. It's almost 3:15 by clock on the wall.
22 Let's come back at 3:30.

23 Ms. Owens, you can can step down during the break. I
24 ask you return at 3:30. We are off the record until then.

25 (Recess taken.)

1 ADMINISTRATIVE LAW JUDGE WONG: Back on the record.

2 Let the record reflect that Ms. Owens is back on the witness
3 stand.

4 And I remind you that you are still under oath.

5 Mr. Barlow.

6 MR. BARLOW: Yes, your Honor.

7 Q You testified earlier that when there are extenuating
8 circumstances, CalPERS protocol -- for example, what I mean by
9 "extenuating circumstances" is when a beneficiary expresses to
10 CalPERS or CalPERS is informed that the -- by the member that he
11 or she is in poor health or that CalPERS becomes aware the
12 beneficiary is in poor health, is attempting to designate a new
13 beneficiary. That would be considered an extenuating
14 circumstance?

15 A Yes.

16 Q And in those circumstances, CalPERS makes an effort to
17 expedite the process?

18 A Yes.

19 Q I want to turn you to Exhibit 9-H.

20 You noted that this application was received on
21 August -- by CalPERS on August 7th, 2014, correct?

22 A Yes.

23 Q It wasn't processed until over a month later, correct?

24 A Correct.

25 Q Okay. And is that what you mean by "expedited"?

1 A No.

2 Q Okay. So you would agree that this application was not
3 expedited?

4 A Yes.

5 Q Okay.

6 A I would agree.

7 Q And had CalPERS been informed that the member, as you
8 said -- as I mentioned before, was in poor health and was
9 attempting to designate a new beneficiary, that would be
10 considered an extenuating circumstance?

11 A Yes.

12 Q Okay. You also mentioned that no rejection letter is
13 sent when an election is not properly effectuated. Is that
14 correct?

15 A I don't think I stated that specifically.

16 Q That no rejection letter is sent when the election
17 process is not completed?

18 MS. KAUR: Objection. Vague, ambiguous.

19 THE WITNESS: I don't think I understand.

20 ADMINISTRATIVE LAW JUDGE WONG: Overruled.

21 THE WITNESS: What you are saying?

22 Q BY MR. BARLOW: When a member attempts to modify his
23 beneficiary and hasn't completed the process for electing the
24 new beneficiary, submitting his election form, the election
25 document that we have been talking about, you mention that no

1 rejection letter is sent in response; is that correct?

2 A If you are talking about if we sent an election
3 document and the member hasn't returned the election document?
4 Is that what you are referring to?

5 Q Mm-hmm.

6 A No, we don't send them a letter saying, We haven't
7 received an election document from you.

8 Q Why don't you inform members when the process for
9 effectuating an election hasn't been properly completed?

10 A We can't assume that we know why they didn't make an
11 election.

12 Q But can you inform them that the process has not been
13 completed?

14 A The process isn't completed because they haven't
15 returned the election form.

16 Q And you don't notify them that this form is
17 outstanding, that your effort to modify has not been successful?

18 A The election document, that form that we send to
19 members, says in it that it must be returned within a certain
20 time frame; otherwise, your election is not made. So that's
21 pretty clear.

22 Q Well, when an application is incomplete or doesn't have
23 all the attached documents, you let folks know -- you let the
24 member know that the application is incomplete, correct?

25 A Correct.

1 Q But when a member attempts -- when a member is now
2 attempting to complete the election form, you don't notify the
3 member that the election hasn't been effectuated, correct?

4 A No. We don't let them know that they didn't return the
5 form for the election.

6 Q So why do you let a member know in one instance, but
7 not another, that a process hasn't been completed properly?

8 A There is -- the action to complete the election is on
9 the member's plate. It's their selection. It's their decision
10 whether or not to move forward. We can't, as helpers, assume
11 that we understand the reasons why or why not they haven't made
12 the election. We aren't going to ask them: Was it a reason of
13 it was too much money, too great a reduction for you? We don't
14 make those assumptions. If they don't return it, we don't ask,
15 Why didn't you return it?

16 Q The application is on a member's plate, correct?

17 A Are you talking about the application --

18 Q To Modify Option or Life Option Beneficiary.

19 A If they want it to be.

20 Q Right. And in that application, they have to select
21 option choices. There is a box for Option 2W, Option 1
22 combined, a specific percentage to designate for a beneficiary,
23 for example. These are all choices that member has to make.

24 I am just trying to understand why in one instance
25 where a member is attempting to complete a process to effectuate

1 a change in beneficiary, you are willing to inform the member
2 that the process is not complete, the application hasn't been
3 completed; but when it comes time to electing a new option or
4 changing the beneficiary in the form of an election document,
5 the final election form, why CalPERS won't inform the member
6 that the process has not been completed?

7 A The Option 4 types that you mentioned, those are
8 separate. We already tell them that we are going to provide
9 them all the other options. Those Option 4 types are only if
10 they want to know what those are. We are already telling them,
11 We are going to give you pretty much all the options. And it's
12 up to you, if you want to make the selection, to make the
13 selection. But we are not going to force them to make the
14 selection.

15 Q Right.

16 A Only as a vessel to inform the member of the reductions
17 that they would be accepting if they selected those option
18 elections. And it's completely voluntary that they fill out the
19 election document. And it's completely voluntary if they return
20 the election document.

21 Q And the application is completely voluntary, as well?

22 A Absolutely.

23 Q Okay. So all I am getting at is why CalPERS draws a
24 distinction between what it's willing to inform its members of
25 in this process. The last step that has to be completed,

1 according to CalPERS, is to submit this election form that you
2 testified as not included in Publication 98. If that's an
3 important step, why wouldn't CalPERS inform the member that the
4 process for completing the election form hasn't been -- isn't
5 done, hasn't been completed? Why is that not a policy of
6 CalPERS?

7 ADMINISTRATIVE LAW JUDGE WONG: She doesn't set CalPERS
8 policy. You are really getting argumentative.

9 MR. BARLOW: I apologize.

10 Q And I apologize if I have asked this before. But
11 has -- are you aware whether or not CalPERS had Grantland
12 Johnson's will on file?

13 A I am not aware.

14 Q Okay. And what department would have that information
15 in CalPERS for purposes of processing an application to modify
16 beneficiary?

17 A I don't know why we would need a will.

18 Q Okay. Would it -- so would it be material to CalPERS
19 if the member had designated another person as being an executor
20 of his estate for purposes of an application to modify his
21 beneficiary? Would that be important information?

22 A It wouldn't be pertinent.

23 Q And why do you say that?

24 A Because the member needs to be the one to make the
25 election.

1 Q So there is really no process for circumstances where a
2 member isn't alive to make an election?

3 A Not for my part of this process, no.

4 Q And what do you mean by for your "part of this
5 process"?

6 A Well, the -- the activity of the member being alive is
7 why it would come to my area to process.

8 Q Okay. So if it was impossible for a member to actually
9 submit an election form due to an untimely death, who would
10 handle that scenario? Would that not come to your department?

11 A If the member is deceased, it would not come to my
12 department to process.

13 Q Okay. What department would that go to?

14 A It would go to Death.

15 Q And if CalPERS had been informed that the -- there had
16 been a process for attempting to designate a new beneficiary, it
17 still wouldn't go to your department?

18 A If the person was alive. If the member was alive. But
19 we don't process death benefits. Death benefits are processed
20 by the Death Unit.

21 Q Right. And here we are not talking about the
22 effectuation of death benefits. We are talking about attempts
23 to modify a beneficiary.

24 A The member has to be alive in order for us to process
25 an option to change a beneficiary.

1 Q Right. But if it's impossible for the member to submit
2 that election form due to death, is that not --

3 A They wouldn't --

4 Q Is that a circumstance that does not come within your
5 purview even though it has to do with designating a beneficiary?

6 A It wouldn't be in my purview.

7 Q And turning your attention to Exhibit 14, did you
8 create this chart?

9 A No.

10 Q But you testified to the calculations made on the
11 chart?

12 A Yes. I reviewed the log that these were pulled from
13 and the calculations.

14 Q And who created the chart?

15 A A manager in the Calculation and Adjustment Section.

16 Q And so did you review the circumstances of each of
17 these applications and the circumstances under which certain
18 members elected or did not elect to modify the option or their
19 beneficiary?

20 MS. KAUR: Objection. Vague as to "circumstances."

21 ADMINISTRATIVE LAW JUDGE WONG: Go ahead and rephrase.

22 Q BY MR. BARLOW: Did you review the specific
23 applications that are -- that were tallied to develop this
24 chart, 723?

25 A No.

1 Q So can you tell me whether or not any of these
2 applications encompassed the extenuating circumstances that we
3 have been talking about at today's proceeding?

4 A Not to my knowledge.

5 Q And so you don't know then that if somebody had
6 communicated to CalPERS on several occasions an intent to
7 designate a new beneficiary, submitted an application, whether
8 or not that particular person would have not elected or decided
9 to finally elect to modify or not modify his option or
10 beneficiary?

11 A No.

12 Q Under circumstances where a member submits an election
13 to only change his or her beneficiary, but remain under the same
14 option, are there situations where that member may not
15 experience any kind of reduction in monthly benefits?

16 A No. We are talking about an entirely new calculation.
17 The calculation that was done at retirement was based on those
18 ages of the member and the beneficiary at retirement. The new
19 election is based on the member's current age and the
20 beneficiary's current age. It's entirely different calculation.

21 Q And there is no calculation where that would result in
22 the monthly benefits remaining the same or even increase?

23 A I don't know. It's doubtful.

24 Q And what if the member was actually older at the time
25 that he submitted an election form and the new beneficiary was

1 even older than the previously designated beneficiary? Would
2 that result in a reduction in allowances or monthly benefits to
3 the member?

4 A It could.

5 Q Do you know for sure?

6 A It would depend on the specific circumstances.

7 Q Do you know under these circumstances exactly what the
8 calculations would have been?

9 A No.

10 Q Yet the benefits were denied, correct? Yet CalPERS
11 decided to deny Grantland Johnson's request to designate a new
12 beneficiary for his Option 2 benefits and for health and medical
13 benefits, correct?

14 A We didn't have a complete election document to process.

15 Q The request was -- was he granted Option 2 -- was
16 Respondent granted Option 2 lifetime monthly benefits and health
17 and dental?

18 A We didn't give Mr. Grantland an election document to
19 proceed with the election because he wasn't awarded 100 percent
20 of his CalPERS retirement benefits.

21 Q Grantland Johnson --

22 A At the time that he submitted his application to
23 modify.

24 Q Grantland Johnson submitted an application to modify,
25 correct?

1 A Yes.

2 Q Grantland Johnson submitted an application designating
3 Respondent as the new beneficiary for his Option 2 benefits,
4 correct?

5 A No.

6 Q An application?

7 A No. The application didn't say specifically what
8 option he wanted to select. It was a request for an election
9 document. The election document would have all of the different
10 options available to him.

11 Q Are there options noted on the application?

12 A Yes. It says that there are Options 1, 2, 2W, 3W would
13 be provided. And if you wanted Option 4 benefits specifically,
14 that he could also mark those.

15 Q Okay. And were you present earlier today when
16 Grantland Johnson contacted CalPERS on how to properly complete
17 the form, the application to modify?

18 A Yes.

19 Q And you heard as part of that testimony that there was
20 a statement made that he was selecting or attempting to select
21 Option 2?

22 MS. KAUR: Objection. Refers to hearsay testimony.

23 ADMINISTRATIVE LAW JUDGE WONG: Well, I guess whether
24 she heard it or not isn't hearsay. So that's overruled.

25 THE WITNESS: I know that he wanted to change his

1 option.

2 Q BY MR. BARLOW: To change his option or his
3 beneficiary?

4 A Well, it could be his option or beneficiary. The
5 modification form would handle either of those.

6 Q You said you knew that he wanted to change his option?

7 A Based on his request for the option life beneficiary.

8 Q Okay. Let me restart. You knew that Grantland Johnson
9 submitted an application to designate a new beneficiary,
10 correct?

11 A Or option, yes.

12 Q And you heard testimony earlier that -- you heard
13 testimony earlier in the proceedings where Grantland Johnson
14 expressed -- or as part of the conversation between Respondent
15 and CalPERS, that Option 2 was the option that Grantland Johnson
16 desired. You were here for that, correct?

17 A I was here for that. I don't remember it specifically
18 saying Option 2.

19 Q Okay. Yet we are here today because Respondent was
20 denied Grantland Johnson's lifetime Option 2 benefits and health
21 and -- medical and dental benefits, correct?

22 A Yes.

23 Q Okay.

24 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow, you need to
25 move it along. We are going in circles.

1 MR. BARLOW: I have nothing further.

2 ADMINISTRATIVE LAW JUDGE WONG: Redirect.

3 MS. KAUR: I have a few questions.

4 REDIRECT EXAMINATION

5 BY MS. KAUR:

6 Q You testified about circumstances when an application
7 is expedited in your unit, an application such as the option --
8 application to modify the option?

9 A Yes.

10 Q And for the application to be expedited, does the
11 member notify your unit?

12 A Yes.

13 Q And if the -- and how are you notified?

14 A It could be by phone call from the member saying, Could
15 you please expedite this request for the election document?
16 They could write "expedite" on the application.

17 Q And if it's expedited, does your unit take less than
18 the allotted time, which is 60 days?

19 A Yes. We would do our best to expedite it as quickly as
20 possible.

21 Q Here the application you testified was not expedited;
22 is that correct?

23 A That's correct.

24 Q And why is that?

25 A It wasn't made clear to us that the member needed this

1 expedited.

2 Q If it had been made clear to you that the application
3 needs to be expedited and a staff person was assigned, what
4 would have been done?

5 A They would have reviewed the application for complete
6 documents and then made a determination whether or not an
7 election document would be sent or a letter.

8 Q And you testified earlier that you reviewed
9 Mr. Johnson's file with your unit; is that correct?

10 A Yes.

11 Q And based on your review of the documents in that file,
12 would an election form have been sent out under the expedited
13 process? Would Mr. Johnson have been provided an election form
14 to elect an option based on your review of the file?

15 A No.

16 Q And why is that?

17 A Because we didn't have the marital settlement or the
18 judgment awarding him 100 percent of his CalPERS retirement
19 benefits.

20 Q So even if he -- even if he were alive, you would --
21 CalPERS would not have sent out the election form based on the
22 documents that were submitted. Is that correct?

23 A That's correct.

24 Q What would have been sent out?

25 A We would have sent a letter requiring him to submit the

1 documents of the awarding of his CalPERS retirement, that
2 judgment, and he would have to submit a new application.

3 Q So you would have to restart the process over again?

4 A Yes.

5 Q And just to clarify, if you could turn to Exhibit 9-H,
6 that's the Application to Modify the Option or Life Option
7 Beneficiary.

8 Unlike the service retirement application, where the
9 member is electing their option, in this application, the
10 Application to Modify the Option and Life Option Beneficiary, is
11 the member actually making an election?

12 A No.

13 Q What are they doing?

14 A They are requesting an election document.

15 Q So is that -- they are requesting they be provided the
16 amounts that they would receive if -- you know, under different
17 beneficiary or different option; is that correct?

18 A Yes, that's correct.

19 Q So here, when Mr. Johnson submitted this application,
20 he is not actually marking options he is electing; is that
21 correct?

22 A Right. He is not.

23 Q And if you could turn to page 2 of this document, under
24 Section 3, it says: We will provide 1, 2, 2W, 3 and 3W. If
25 these do not meet your needs, you can request one of the

1 approved Option 4 types shown.

2 What does this mean?

3 A What this means is, we will automatically provide you
4 pretty much all of the most popular options. And only if you
5 wanted something that is very specialized would you need to make
6 a selection of an Option 4 type.

7 Q And if you could turn to Exhibit 11, and turn to page
8 22. This is Publication 98, page 22, CalPERS Exhibit 11.

9 The first paragraph, the last sentence states: "You
10 and your new beneficiary must be alive on the effective date."

11 Is this how CalPERS notifies the member that they need to be
12 alive to elect -- make an election?

13 A Yes.

14 Q Modify their election?

15 A Yes.

16 Q And based on your experience and understanding, what is
17 the reason why they need to be alive?

18 A They need to be alive to not only make the election and
19 receive the reduction to the allowance, but it's not really --
20 well, it's a valid election because they are alive.

21 Q And what is the effective date? What does that mean?

22 A The effective date is one of the dates that we provide
23 in the election document. We tell the member that it has to be
24 returned within the 30 days, and that their new reduced
25 allowance would be effective on a particular date of a warrant.

1 Q So your effective date means the date their new
2 option -- the modified option is effective; is that correct?

3 A Correct.

4 Q And if you could turn to the next page in the same
5 exhibit where we are. And if you could also turn to
6 Respondent -- Respondent's Exhibit H, which you were provided
7 earlier. And that would also be CalPERS Exhibit 9-H, which is
8 the Application to Modify the Option or Life Option Beneficiary
9 submitted by Mr. Johnson.

10 So Exhibit H, on the very bottom -- as you testified
11 earlier, on the very bottom of page 1 on the left-hand corner,
12 it says, PRS01M0014-DMC, and in brackets, it says 9/13. What
13 does the 9/13 indicate?

14 A That indicates the revision date of the publication.

15 Q And what is that year?

16 A That's September of 2013.

17 Q And if you could go to the publication, the form which
18 I pointed to you earlier in the publication is under Exhibit 11.
19 And if you could look at the Application to Modify Option or
20 Life Option Beneficiary Form. At the very bottom left corner,
21 it also reads PRS01M0014-DMC, in brackets, it says 9/13. Is
22 that the same version as the form that Mr. Johnson submitted
23 under Respondent's Exhibit H and CalPERS Exhibit 9-H?

24 A Yes.

25 Q So Respondent's Exhibit H, which is the application to

1 modify submitted by Mr. Johnson, was taken out of a publication;

2 is that correct?

3 A Yes.

4 Q And how do you know that?

5 A Because these are the revision dates and this is the
6 form number associated with that publication and that
7 application.

8 MS. KAUR: I have no further questions, your Honor.

9 ADMINISTRATIVE LAW JUDGE WONG: Recross?

10 MR. BARLOW: Yes. Quickly, your Honor.

11 RE CROSS-EXAMINATION

12 BY MR. BARLOW:

13 Q At Exhibit 9-H on page 2, do you note that -- do you
14 see that there -- that the options, the checked boxes under
15 Option 4 types, are all crossed out?

16 A Yes.

17 Q You see the initials GJ next to that?

18 A Mm-hmm, yes.

19 Q And it's true also that you testified that
20 modifications don't always result in reductions; is that
21 correct?

22 A I don't know.

23 Q You don't know.

24 And based on your experience, how would a member know
25 that they had to contact CalPERS directly to inform CalPERS that

1 there were extenuating circumstances involved?

2 A I don't know if I totally understand your question.

3 Q You mentioned that there had to be some kind of written
4 notice provided to CalPERS that there were extenuating
5 circumstances. Is that not correct?

6 A I also said they could, you know, contact us via phone,
7 I mean.

8 Q Any form of communications?

9 A Any form of communication to let us know specifically,
10 yeah.

11 MR. BARLOW: I don't have any further questions, your
12 Honor.

13 ADMINISTRATIVE LAW JUDGE WONG: Redirect?

14 MS. KAUR: No, your Honor.

15 ADMINISTRATIVE LAW JUDGE WONG: Okay. I have some
16 clarifying questions.

17 So if you go to Exhibit 6, page 2, it's the original
18 Application for Service Retirement.

19 THE WITNESS: Yes.

20 ADMINISTRATIVE LAW JUDGE WONG: So I am taking it,
21 under the options, you have to pick either Option 1, Option 2,
22 Option 2W, Option 3, Option 3W, unmodified allowance, or one of
23 the Option 4s. Is that correct?

24 THE WITNESS: Correct.

25 ADMINISTRATIVE LAW JUDGE WONG: Is the unmodified

1 allowance -- so would that result in the largest monthly benefit
2 to the member?

3 THE WITNESS: Yes.

4 ADMINISTRATIVE LAW JUDGE WONG: And so what's -- what's
5 the difference between Option 2 and Option 2W?

6 THE WITNESS: Option 2 provides a pop-up option where a
7 member could pop up to the unmodified allowance upon qualifying
8 event. 2W is a slightly higher allowance, but there is no
9 pop-up option.

10 ADMINISTRATIVE LAW JUDGE WONG: Okay. And is that the
11 same difference between 3 and 3W, as well?

12 THE WITNESS: It is.

13 ADMINISTRATIVE LAW JUDGE WONG: So in this case, since
14 Mr. Johnson passed away before he was able to effectuate the
15 change, what happened -- back up.

16 So when he died, did he, in essence, die with having
17 elected Option 2 with his previous wife as his beneficiary?

18 THE WITNESS: Yes.

19 ADMINISTRATIVE LAW JUDGE WONG: And so did his previous
20 wife receive the Option 2 benefits?

21 THE WITNESS: I wouldn't be privy to that.

22 MS. KAUR: Your Honor, I will have my next witness
23 testify concerning that.

24 ADMINISTRATIVE LAW JUDGE WONG: Okay. So I was going
25 to ask Ms. Owens -- I guess by way of offer of proof, what do

1 you anticipate the witness saying? Because I have further
2 questions for Ms. Owens, but they may be best saved to the other
3 witness. I am trying decide who to save them for.

4 By offer of proof, what do you anticipate your next
5 witness saying with regard to whether or not the ex-wife
6 received the Option 2 benefits?

7 MS. KAUR: My next witness will testify regarding --
8 well, she will testify that the ex-wife did not receive the
9 benefits. She was removed.

10 ADMINISTRATIVE LAW JUDGE WONG: Then by -- will that
11 witness also testify about what happened, if anything, with the
12 difference -- since the Option 2 benefits were never paid to
13 anyone, but Mr. Johnson received a reduced monthly allowance,
14 was anything given to his estate to make up the difference had
15 he not chosen Option 2?

16 MS. KAUR: Yes, she will.

17 ADMINISTRATIVE LAW JUDGE WONG: Thank you.

18 Anything further based on my questions, Ms. Kaur?

19 MS. KAUR: No, your Honor.

20 ADMINISTRATIVE LAW JUDGE WONG: All right. Mr. Barlow?

21 MR. BARLOW: No, your Honor.

22 ADMINISTRATIVE LAW JUDGE WONG: Okay. Thank you very
23 much. You are excused.

24 All right. Mr. Kaur, your next witness.

25 MS. KAUR: Shayne Day-Bolar.

1 ADMINISTRATIVE LAW JUDGE WONG: Raise your right hand,
2 please.

3 You do solemnly swear or affirm under penalty of
4 perjury that the testimony you will provide in this matter will
5 be the truth, the whole truth and nothing but the truth.

6 THE WITNESS: I do.

7 (Time Noted: 4:07 p.m.)

8 SHAYNE DAY-BOLAR

9 Called as a witness by CalPERS, who, having been first
10 duly sworn to testify to the truth, the whole truth and nothing
11 but the truth, was examined and testified as follows:

12

13 ADMINISTRATIVE LAW JUDGE WONG: Please have a seat.

14 And if you would state and spell your full name for the
15 record, please.

16 THE WITNESS: Shayne Day-Bolar. S-H-A-Y-N-E, D-, as in
17 dog, A-Y - B-, as in boy, O-L-A-R.

18 ADMINISTRATIVE LAW JUDGE WONG: B-O-L-A-R?

19 THE WITNESS: Yes.

20 ADMINISTRATIVE LAW JUDGE WONG: Thank you.

21 Ms. Kaur.

22 MS. KAUR: Thank you, your Honor.

23 DIRECT EXAMINATION

24 BY MS. KAUR:

25 Q Are you ready to testify, Ms. Bolar?

1 A Yes.

2 Q Do you work for CalPERS?

3 A Yes.

4 Q And in which department do you work?

5 A The Death Benefits Section.

6 Q Is that under a certain division?

7 A Benefit Services Division.

8 Q And what is your job title in the Death Benefits Unit?

9 A I am an SSM-1, Staff Services Manager 1.

10 Q And how long have you held that position?

11 A Since July of 2013.

12 Q And what are your duties?

13 A I oversee and manage the Death Benefit Exceptional
14 Processing Unit.

15 Q And as part of the supervision, what do you actually
16 do? What does your casework entail?

17 A All death benefit cases that involve unusual or out of
18 the ordinary circumstances that require more in depth analytical
19 review and determination are referred to my unit for review by
20 analysts.

21 Q So an analyst reviews them. And do you oversee their
22 work?

23 A Yes.

24 Q And is that why it's titled "exceptional processing
25 unit" because you are reviewing more complex cases?

1 A Yes.

2 Q And what sort of cases exactly do you handle? Do you
3 handle cases concerning lump sum benefits?

4 A All cases regarding death benefits, including cases
5 that involve community property issues, disputes regarding
6 beneficiary or benefit determinations, safety member death
7 cases, which could involve job-related death benefits.

8 Q And did you work with CalPERS prior to -- prior to
9 holding this job title?

10 A Yes, I have been an employee since August of of 1995.

11 Q And have you -- and how long have you been in the Death
12 Unit?

13 A Prior to my position as the manager, I was a RPS-1 and
14 2 within the Exceptional Processing Unit, beginning around
15 January 2008.

16 Q What is the RPS?

17 A Retirement Program Specialist.

18 Q What were you doing in that position?

19 A I was doing the actual case reviews and analytical
20 reviews and determinations.

21 Q And I am sorry. About how long did you do that for?

22 A Since about January 2008.

23 Q And what did you do prior to that?

24 A Prior to that, I was a Retirement Program Specialist 1
25 in the Disability Determination Unit.

1 Q And what did you do as a Program Specialist 1?

2 A I would review earlier retirement effective date
3 requests for disability retirement.

4 Q And what did you do prior to that position?

5 A I was a supervisor, Benefit Program Specialist
6 Supervisor in the Post Retirement Death Benefit Unit.

7 Q And how long did you hold that position?

8 A About four years.

9 Q And what did you do in that position?

10 A I was the supervisor over one of two Post Retirement
11 Death Benefit Units, where employees who passed away after
12 retirement, we would review their files and determine who the
13 beneficiary was and what death benefits were payable.

14 Q Aside from your experience, did you receive any sort of
15 training for the current position you are in?

16 A Mmmm... Just on-the-job training, just as cases come
17 about.

18 Q And in terms of focusing in on modifying an option
19 benefit, when does that file come into your unit, the death
20 unit?

21 A If there is a question about whether or not a
22 modification was processed, it could come to my unit.

23 Q And you are familiar with Mr. Johnson's case; is that
24 correct?

25 A Yes.

1 Q Did this case come into your unit?

2 A Yes, it came to my unit due to community property
3 issues. There was a community property hold on the account.

4 Q And when did it come? Did it come after Mr. Johnson
5 died?

6 A Yes.

7 Q So who was assigned to this file?

8 A Initially when the death is reported, since he was
9 retired, staff in the Post Retirement Death Benefit Unit would
10 do the initial review to try to determine what death benefits
11 are payable and to whom. When they discover that there as
12 community property hold, then it's referred to my unit. Because
13 we have to provide direction about the resolution of the
14 community property and how it affects the benefits that will be
15 payable.

16 Q And I'm sorry. Who was the staff person that was
17 assigned this case?

18 A In my unit?

19 Q Yes.

20 A Initially, it was Melissa Cisneros.

21 Q When did you review this file?

22 A I reviewed the file later once there was a dispute
23 regarding the processing of the option modification.

24 Q And you mentioned there was a dispute. Was there a
25 determination by CalPERS concerning the death benefits?

1 A Yes.

2 Q If you could turn to Exhibit -- well, let's back up
3 actually.

4 You also mentioned there was a community property hold;
5 is that correct?

6 A Yes.

7 Q And that was the reason why it was sent to your unit?

8 A Yes.

9 Q And if you could turn to Exhibit 9-S. And have you
10 reviewed this document as part of reviewing the community
11 property issue?

12 A Yes.

13 Q This is a summons joinder. Can you explain to us
14 briefly what this is.

15 A It's pretty much just notification to CalPERS that --

16 ADMINISTRATIVE LAW JUDGE WONG: You said 9-F.

17 THE WITNESS: S.

18 ADMINISTRATIVE LAW JUDGE WONG: Oh, S. Okay.

19 THE WITNESS: It's notification to CalPERS that there
20 is a potential community property interest that needs to be
21 determined, and joining us as a party so that we are notified of
22 the resolution of the community property claim.

23 Q BY MS. KAUR: This document is dated August 9, 2013.

24 Did this come into your department?

25 A No.

1 Q Which department would it have come into?

2 A Our Community Property Unit.

3 Q And if you could turn to Exhibit 9-R, this is a Notice
4 and Acknowledgement of Receipt. Can you tell me what this
5 document is.

6 A I believe it's just the acknowledgement that we
7 received the joinder.

8 Q And is this something that CalPERS would file with the
9 Court?

10 A Yes.

11 Q And it would file with the Court that's handling the
12 dissolution proceedings; is that correct?

13 A Correct.

14 Q And if you could turn to Exhibit 9-Q.

15 And if you could turn to the last page, the letter
16 dated October 21st, 2013, to Mr. Johnson. And can you explain
17 what this document is and why this would be sent out.

18 A Just informing the member Mr. Johnson that we received
19 notice regarding a potential community property claim by
20 Charlotte Bolton, explaining how we handle those claims, that we
21 could be required to hold their allowance pending a
22 determination by the Court regarding their community property
23 interest. However, we would be withholding one-half of the
24 allowance. When that would begin.

25 Q And based on your review of the file, is that what was

1 done? Was -- one-half of his community property allowance was
2 withheld?

3 A Yes.

4 Q And based on your review, Charlotte Bolton, that was
5 his first wife; is that correct?

6 A It was his wife at the time of retirement.

7 Q And when you reviewed the file, Mr. Johnson had passed
8 away already; is that correct?

9 A Yes.

10 Q Was there still a community property hold?

11 A Yes.

12 Q And why is that?

13 A We had not been provided with a court order that
14 resolved their community interests.

15 Q And Mr. Johnson had been informed to send in the
16 property settlement agreement or court order; is that correct?

17 A Yes.

18 Q And that was in the October 21st, 2013 letter; is that
19 correct?

20 A Yes.

21 Q And that court order or settlement agreement was
22 eventually sent to CalPERS; is that correct?

23 A Yes.

24 Q And do you recall when it was sent in?

25 A I believe it was around February 2014. February 2015.

1 Q And was the community property hold removed once that
2 document -- once the marital settlement agreement was sent in?

3 A Yes.

4 Q And what did that trigger, in terms of the death
5 benefits? Well, what did that -- so let's -- what did that
6 trigger?

7 A Well, based on the court order, the member was awarded
8 100 percent interest in his retirement benefit. So we were able
9 to review his file and determine what death benefits would be
10 payable.

11 Q Okay. And if you could turn to Exhibit 4, this is
12 CalPERS determination. Have you reviewed this before?

13 A Yes.

14 Q And this outlines the different types of benefits that
15 Mr. Johnson's beneficiaries may or may not be eligible for; is
16 that correct?

17 A Yes.

18 Q And this was sent to Mrs. Johnson. Is that correct?

19 A Yes.

20 Q Okay. So just to begin with, Mrs. Bolton did not
21 receive any of the benefits as a beneficiary, any of the death
22 benefits; is that correct?

23 A Correct.

24 Q And why is that?

25 A Based on the letter that we had received from

1 Mr. Johnson, we determined that he had requested to remove her
2 as the option beneficiary.

3 Q All right. Can you turn to Exhibit 9-M. Is this the
4 letter you are referring to?

5 A Yes.

6 Q So based on this letter, you removed him -- let's start
7 with the lump sum -- the lump sum benefits. Did you remove
8 him -- did you remove her as a beneficiary of the lump sum
9 benefits?

10 A No. We didn't need to remove her. There was a -- his
11 divorce would have revoked any previous monthly -- I mean lump
12 sum designation. In addition, he had submitted a lump sum
13 beneficiary designation form changing the lump sum beneficiary.

14 Q So because of the form that he submitted and also
15 because of the pursuant to automatic revocation, what is that?
16 Is that required by statute or --

17 A Yes.

18 Q -- how do you make the determination?

19 A Lump sum designations have automatic revocation based
20 on certain events.

21 Q What are those events?

22 A Birth of a child, marriage, divorce.

23 Q So when Mr. Johnson sent in his divorce documents, is
24 that what triggered, in addition to the new form -- in addition
25 to the lump sum form changing the beneficiary to Mrs. Johnson,

1 but did the divorce documents also trigger the change?

2 A Yes. The divorce document would have revoked the
3 previously filed lump sum designation.

4 Q And how do you determine who the new beneficiary is?
5 How did you make that determination here for the lump sum
6 benefits?

7 A In this case, it was based on the lump sum beneficiary
8 designation form that was received. If it had not been
9 received, we would have paid in accordance with the statutory
10 order.

11 Q And what does that require?

12 A There is a statutory order of payment in the absence of
13 a valid lump sum designation. And first in line would be the
14 spouse.

15 Q Do you recall the code section?

16 A 21493.

17 Q How about the survivor continuance? Mr. Johnson in his
18 retirement application had named Mrs. Bolton as the spouse to
19 receive the survivor continuance. Was that changed? Or did
20 that remain the same? Did Mrs. Bolton receive those benefits?

21 A No. Upon divorce, she was no longer an eligible
22 survivor.

23 Q And is that automatically triggered by divorce?

24 A Yes.

25 Q And is there a particular statute -- statutory scheme

1 you are looking at?

2 A Yes. I can't recall the Government Code, but
3 ineligible spouse for survivor continuance is a spouse who was
4 married at least one year prior to the service date and
5 continuously until death.

6 Q Mrs. Bolton was removed because she is no longer the
7 spouse, correct?

8 A Correct.

9 Q Was anybody else eligible for the benefits?

10 A We determined there was not.

11 Q Why did you make that determination?

12 A Based on the information provided by Mrs. Johnson.

13 Q And what information did you look at?

14 A Her application for death benefits.

15 Q And what in particular did you look at to make that
16 determination?

17 A To see if there was information regarding any surviving
18 eligible -- eligible survivors.

19 Q And why did she not meet that requirement?

20 A She did not meet the requirement because she was not
21 married to the member a year prior to retirement and
22 continuously until death.

23 Q What about the pro rata and the community property
24 allowance? There was half of his community property allowance
25 was withheld because of the community property hold?

1 A Yes.

2 Q Who was eligible for those benefits?

3 A We determined Mrs. Johnson was eligible for those
4 benefits as the statutory beneficiary per 21506.

5 Q And what does that provide?

6 A Any accrued and unpaid monthly allowance at the time of
7 death is payable by statutory order.

8 Q So that went to Mrs. Johnson and not to Mrs. Bolton; is
9 that correct?

10 A Correct.

11 Q And then what about the pro rata allowance?

12 A That was included in that, the pro rata and the
13 approved community property payments.

14 Q And your letter, your determination letter under
15 Exhibit 4, also makes reference to -- on page 2, it also makes
16 reference to the accumulated contribution.

17 If you look at the last full paragraph and the last
18 sentence, it says, "Therefore, you are also entitled to the
19 balance of Mr. Johnson's accumulated contributions at retirement
20 in the amount of \$2,858.71.

21 A Yes.

22 ADMINISTRATIVE LAW JUDGE WONG: What exhibit is this?

23 MS. KAUR: I am looking at Exhibit 4.

24 ADMINISTRATIVE LAW JUDGE WONG: Exhibit 4.

25 MS. KAUR: Exhibit 4. I am looking at page 2 of

1 Exhibit 4. This is CalPERS' determination.

2 ADMINISTRATIVE LAW JUDGE WONG: This is a letter from
3 Keith Riddle.

4 MS. KAUR: Yes.

5 ADMINISTRATIVE LAW JUDGE WONG: Okay.

6 Q BY MS. KAUR: Page 2, the last full sentence from the
7 bottom up. I am -- the last full paragraph from the bottom up.
8 And I am looking at the last sentence, the accumulated
9 contribution benefits.

10 Were those paid out to Mrs. Johnson?

11 A No.

12 Q And why were they not paid out?

13 A Because she is claiming she is entitled to a monthly
14 Option 2 allowance. And we wouldn't pay the return of
15 contributions if the monthly allowance is payable. So we need a
16 final determination regarding that.

17 Q So those would only become payable based on whether
18 it's decided that she receives the Option 2 benefit or not; is
19 that correct?

20 A Right.

21 MR. BARLOW: I would interpose an objection to the
22 extent that the witness didn't draft this letter and she is
23 testifying as to its contents.

24 ADMINISTRATIVE LAW JUDGE WONG: Go ahead and lay a
25 foundation, Ms. Kaur.

1 Q BY MS. KAUR: Have you reviewed this document? Was
2 this part of the file?

3 A Yes.

4 Q When was the first time you looked at this document?

5 A When it was prepared.

6 Q Who prepared it?

7 A I believe Melissa Cisneros prepared it.

8 Q And it's not signed by her though; is that correct?

9 A No.

10 Q What is the procedure? She prepares it, and then what
11 happens?

12 A Provides it to the Assistant Division Chief, so that
13 they can review it and make any changes or alterations that they
14 feel necessary for their signature.

15 Q And did she provide it to you for review?

16 A Yes.

17 Q And did you review the contents of this letter and also
18 verify by looking at the file?

19 A Yes.

20 Q So we discussed pretty much all the other -- are there
21 any other death benefit options that would be available --
22 possibly available, aside from the option benefit?

23 A No.

24 Q And so the option benefit which is at dispute here,
25 that was not granted -- well, let's just back up.

1 So the option benefit, initially in the service
2 retirement application, Mrs. Bolton was named as the
3 beneficiary; is that correct?

4 A Yes.

5 Q And how did your unit receive this -- when did your
6 unit come in in terms of making a determination about the option
7 benefit?

8 A Once the community property issue was resolved, we
9 reviewed the entire file and circumstances and made a
10 determination that he had requested to remove her and he was
11 able to do so.

12 Q For the option benefit?

13 A Yes.

14 Q And why was he able to -- and you are saying "her," you
15 are referring to Ms. Bolton; is that correct?

16 A Yes.

17 Q And why did you determine that she should be removed?

18 A Because he had been awarded 100 percent interest and
19 requested to remove her.

20 Q Does he need to fill out an application or anything
21 like that to remove her?

22 A No.

23 Q And what is your determination based on allowing him to
24 just simply remove her?

25 A A letter.

1 Q A letter from him?

2 A Yes. And the law allows for that.

3 Q What law?

4 A I believe it's 21454. And we also explain it in our
5 publication.

6 Q Which publication?

7 A 98.

8 Q Would you be able to refer us to the page where you
9 explain on Publication 98?

10 A Yes.

11 Q And that would be under Exhibit 11.

12 A On page 17, fourth paragraph down.

13 Q And is that the paragraph that starts with, "However,
14 if the Court awards you 100 percent interest"?

15 A Yes.

16 Q Okay. So the second sentence reads -- well, it
17 reads -- and I will paraphrase -- that to remove the former
18 spouse, you need to -- to remove the former spouse so they will
19 not receive a monthly benefit, you need to send a letter asking
20 the former spouse or partner be removed. I am just
21 paraphrasing.

22 A Yes.

23 Q Is that what you are referring to?

24 A Yes.

25 Q And is that what Mr. Johnson did?

1 A Yes.

2 Q So Ms. Bolton was removed and was Ms. Johnson replaced
3 as the beneficiary for the option benefits instead?

4 A No.

5 Q And how did you obtain that information or make that
6 determination?

7 A There was no modification processed to designate a new
8 beneficiary or option, a new Option 2 or beneficiary.

9 Q And did you look at the information from the
10 Calculations Unit to make that determination?

11 A The information that was in the file, which includes
12 the application to modify and the notes indicating that it was
13 not processed. And that there was no election document in the
14 file. We look for the election document to determine who the --
15 what the new option is and who the new beneficiary is if a
16 modification has been processed.

17 Q Do you look at it to also determine the effective date
18 of the new option?

19 A Yes.

20 Q And why do you look at that?

21 A Because the effective date needed to be in effect prior
22 to -- prior to the passing.

23 MS. KAUR: I have no further questions, your Honor.

24 ADMINISTRATIVE LAW JUDGE WONG: Cross-examination.

25 MR. BARLOW: Yes, your Honor.

CROSS-EXAMINATION

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BY MR. BARLOW:

Q Mrs. Bolar, correct?

A Yes.

Q Survivor benefits and lump sum benefits are separate and apart from Option 2 benefits?

A I don't really understand your question.

Q They are not the same types of benefits that would be awarded to a beneficiary. Those are three different categories of benefits.

A Well, there is benefits that can be designated or there is benefits that are only payable to certain eligible survivors.

Q Okay. And Option 2 benefits would be a designated benefit?

A Yes.

Q And it's not a survivor benefit then, correct?

A I don't know what you mean by "a survivor benefit."

Q I think, well, in the context of the testimony that you just provided when you were referring to survivor benefits --

A It's not a benefit that is only payable to an eligible survivor.

Q Okay. So to that extent an Option 2 benefit would not -- would not be the same as a survivor benefit?

A I don't understand that.

Q Well, in your testimony when you were referring to

1 survivor benefits, were you including Option 2 benefits?

2 A There is a survivor continuance benefit. That is a
3 specific benefit only to eligible --

4 Q Is that --

5 A An Option 2 benefit is separate. Two different
6 benefits.

7 Q Okay. Great.

8 You mentioned also that, in Exhibit 11, Paragraph 4,
9 that a member can --

10 MS. KAUR: Are you looking at page 17, to clarify?

11 MR. BARLOW: I'm sorry. Page 17. Thank you.

12 Q -- request -- submit a letter asking that a former
13 spouse be removed as an option beneficiary?

14 A Yes.

15 Q And that falls under the heading of Monthly Benefit
16 Options on that page?

17 A Yes.

18 Q Which would include Option 2?

19 A Option 2 is a monthly benefit, yes.

20 Q Okay. Is the letter that Grantland Johnson submitted
21 at Exhibit -- the June 23rd, 2014 letter at Exhibit 9-M, is this
22 the letter in which Grantland Johnson requested that his former
23 spouse be removed as a beneficiary for Option 2 benefits?

24 A Yes.

25 Q Okay. So by "all death benefits" in paragraph one,

1 that would include Option 2 benefits?

2 A I took this letter in accordance with what you can do
3 by letter, and removed your beneficiary.

4 Q Than that would include Option 2 benefits?

5 A No, you can't.

6 Q Okay.

7 A You can remove your beneficiary from Option 2 benefits,
8 yes. That's what he did.

9 Q Okay. So all death benefits would be Option 2
10 benefits?

11 A I included Option 2 death benefits as him requesting to
12 remove her, yes.

13 Q Okay. And did you review the judgment that was entered
14 in this case that awarded Grantland Johnson 100 percent interest
15 in CalPERS -- his CalPERS benefits?

16 A I can't say that I fully reviewed it.

17 Q Do you agree with Ms. Owens' testimony that an executor
18 under extenuating circumstances can effectuate an election to
19 modify beneficiary for Option 2 benefits?

20 A No. The law does not allow it for an executor. The
21 member must do it.

22 Q So you and Ms. Owens disagree over that?

23 A I don't recall Ms. Owens saying that an executor could
24 do an option election.

25 Q Can a power of attorney?

1 A Yes, while the member is alive.

2 MR. BARLOW: I don't have any further questions, your
3 Honor.

4 ADMINISTRATIVE LAW JUDGE WONG: Redirect.

5 REDIRECT EXAMINATION

6 BY MS. KAUR:

7 Q If you could turn to Exhibit 4, page 3. In this
8 letter, you notify Mrs. Johnson as to why she is not eligible
9 for the option benefits.

10 Can you briefly explain to us in terms of why she is
11 not eligible. Let me just correct that. CalPERS notified. It
12 wasn't you. CalPERS notified Mrs. Johnson. Can you briefly
13 explain why Mrs. Johnson was not eligible for the benefits, the
14 option benefits.

15 A Just because there was no modification in effect.
16 There was never -- there was never a modification process and
17 there was no -- not one in effect at the time of his death.

18 MS. KAUR: I have no further questions, your Honor.

19 ADMINISTRATIVE LAW JUDGE WONG: Anything on recross?

20 MR. BARLOW: A quick question, your Honor.

21 RECROSS-EXAMINATION

22 BY MR. BARLOW:

23 Q So under these circumstances, it would have been
24 impossible for Grantland Johnson to -- you are saying it would
25 have been impossible for him to complete the election process to

1 modify the beneficiary?

2 A Pretty much.

3 Q Due to his untimely death?

4 MS. KAUR: Objection.

5 Q BY MR. BARLOW: Due to his death?

6 A Pretty much. He submitted the application and died
7 shortly after. I think within a couple of weeks.

8 MR. BARLOW: No further question, your Honor.

9 ADMINISTRATIVE LAW JUDGE WONG: Anything on redirect?

10 MS. KAUR: No, your Honor.

11 ADMINISTRATIVE LAW JUDGE WONG: Thank you very much.

12 You are excused.

13 Ms. Kaur, your next witness or next documents.

14 MS. KAUR: I have no further witnesses.

15 ADMINISTRATIVE LAW JUDGE WONG: Which documents are you
16 wanting marked and moved in?

17 MS. KAUR: Exhibit 6.

18 ADMINISTRATIVE LAW JUDGE WONG: The application for
19 service retirement is marked as Exhibit 6.

20 (Whereupon, CalPERS Exhibit No. 6
21 was marked for identification.)

22 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 6?

23 Are you offering 6 for all purposes or or for
24 jurisdictional?

25 MS. KAUR: For all purposes.

1 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 6 for
2 all purposes?

3 MR. BARLOW: No, your Honor.

4 ADMINISTRATIVE LAW JUDGE WONG: 6 is so admitted.

5 (Whereupon, CalPERS Exhibit No. 6
6 was received in evidence.)

7 MS. KAUR: Exhibit 7.

8 ADMINISTRATIVE LAW JUDGE WONG: The December 4th, 2003
9 letter is marked as 7.

10 (Whereupon, CalPERS Exhibit No. 7
11 was marked for identification.)

12 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 7?

13 MR. BARLOW: No, your Honor.

14 ADMINISTRATIVE LAW JUDGE WONG: 7 is admitted for all
15 purposes.

16 (Whereupon, CalPERS Exhibit No. 7
17 was received in evidence.)

18 MS. KAUR: Exhibit 8.

19 ADMINISTRATIVE LAW JUDGE WONG: 8 are the MyCalPERS
20 Customer Touchpoint Notes.

21 (Whereupon, CalPERS Exhibit No. 8
22 was marked for identification.)

23 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 8 for
24 all purposes?

25 MR. BARLOW: Well, to the extent, your Honor, that it's

1 being admitted for the precise statements included on this form,
2 I would object based on hearsay.

3 ADMINISTRATIVE LAW JUDGE WONG: Ms. Kaur.

4 MS. KAUR: To the extent my witnesses have testified to
5 them, I request they be admitted.

6 ADMINISTRATIVE LAW JUDGE WONG: Both of you need to
7 review the hearsay rule. That is not an exception to the
8 hearsay.

9 So anything else, Ms. Kaur? Does this qualify as a
10 business record?

11 MS. KAUR: Yes, your Honor. Sorry.

12 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow, why does it
13 not fall under the business record exception?

14 MR. BARLOW: That would be fine, your Honor. That's
15 sufficient.

16 ADMINISTRATIVE LAW JUDGE WONG: Okay. 8 is admitted
17 for all purposes.

18 (Whereupon, CalPERS Exhibit No. 8
19 was received in evidence.)

20 MS. KAUR: 9, the MyCalPERS documents.

21 ADMINISTRATIVE LAW JUDGE WONG: 9 is the list.

22 (Whereupon, CalPERS Exhibit No. 9
23 was marked for identification.)

24 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9?

25 MR. BARLOW: No, your Honor.

1 ADMINISTRATIVE LAW JUDGE WONG: 9 is admitted for all
2 purposes.

3 (Whereupon, CalPERS Exhibit No. 9
4 was received in evidence.)

5 MR. BARLOW: With the provision that the
6 interlineations included on the document, just to note that on
7 the record, that those were added by opposing counsel.

8 ADMINISTRATIVE LAW JUDGE WONG: That's fine.

9 Ms. Kaur, your next document.

10 MS. KAUR: My next document is 9-A, which is also
11 Respondent's M, which has been admitted already.

12 ADMINISTRATIVE LAW JUDGE WONG: The February 17, 2015
13 letter is marked as 9-A.

14 (Whereupon, CalPERS Exhibit No. 9-A
15 was marked for identification.)

16 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-A?

17 MR. BARLOW: No, your Honor.

18 ADMINISTRATIVE LAW JUDGE WONG: 9-A is admitted for all
19 purposes.

20 (Whereupon, CalPERS Exhibit No. 9-A
21 was received in evidence.)

22 MS. KAUR: 9-E, which is a condolence letter to
23 Mrs. Turner. And that's dated September 9, 2014.

24 ADMINISTRATIVE LAW JUDGE WONG: Are you withdrawing
25 9-B, C and D?

1 MS. KAUR: Those were included to demonstrate documents
2 that were sent out. I would like to have them included,
3 actually.

4 ADMINISTRATIVE LAW JUDGE WONG: So you are offering 9?

5 MS. KAUR: B, C and D.

6 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-B?

7 MR. BARLOW: No, your Honor. I have no objections to
8 Exhibits B to D.

9 ADMINISTRATIVE LAW JUDGE WONG: All right. So B
10 through D are admitted for all purposes.

11 (Whereupon, CalPERS Exhibits 9-B - 9-D
12 were received in evidence.)

13 ADMINISTRATIVE LAW JUDGE WONG: All right. Then you
14 said 9-E, correct?

15 So 9-B is the Statement of Citizenship/Federal Tax
16 Withholding.

17 9-C is Tax Withholding Election for Survivor Benefits,
18 Including Benefits Eligible for Rollover.

19 D is Application for Retired Member/Survivor Benefits.

20 E is September 4, 2014 letter from CalPERS.

21 (Whereupon, CalPERS Exhibit No. 9-E
22 was marked for identification.)

23 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-E?

24 MR. BARLOW: No, your Honor.

25 ADMINISTRATIVE LAW JUDGE WONG: 9-E is admitted for all

1 purposes.

2 (Whereupon, CalPERS Exhibit No. 9-E
3 was received in evidence.)

4 MS. KAUR: 9-F is a letter from CalPERS to
5 Mrs. Johnson.

6 ADMINISTRATIVE LAW JUDGE WONG: Okay. Any objection to
7 9-F for all purposes?

8 MR. BARLOW: No, your Honor.

9 ADMINISTRATIVE LAW JUDGE WONG: 9-F is admitted for all
10 purposes.

11 (Whereupon, CalPERS Exhibit No. 9-F
12 was received in evidence.)

13 MS. KAUR: 9-G is also a letter from CalPERS. It's to
14 Mr. Johnson dated August 14, 2014. And that is Respondent's
15 Exhibit I.

16 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-G?

17 MR. BARLOW: No, your Honor.

18 ADMINISTRATIVE LAW JUDGE WONG: 9-G is admitted for all
19 purposes.

20 (Whereupon, CalPERS Exhibit No. 9-G
21 was received in evidence.)

22 MS. KAUR: 9-H is the application from Mr. Johnson to
23 modify his benefit. And that is Respondent's Exhibit H and has
24 been admitted.

25 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-H?

1 MR. BARLOW: No, your Honor.

2 ADMINISTRATIVE LAW JUDGE WONG: 9-H is admitted for all
3 purposes.

4 (Whereupon, CalPERS Exhibit No. 9-H
5 was received in evidence.)

6 MS. KAUR: 9-I is Post Retirement Beneficiary
7 designation.

8 ADMINISTRATIVE LAW JUDGE WONG: Any objection?

9 MR. BARLOW: No.

10 ADMINISTRATIVE LAW JUDGE WONG: Admitted for all
11 purposes.

12 (Whereupon, CalPERS Exhibit No. 9-I
13 was received in evidence.)

14 MS. KAUR: J is form sent by CalPERS Justification for
15 Absence of Spouse or Registered Domestic Partner.

16 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-J?

17 MR. BARLOW: No, your Honor.

18 ADMINISTRATIVE LAW JUDGE WONG: 9-J is admitted for all
19 purposes.

20 (Whereupon, CalPERS Exhibit No. 9-J
21 was received in evidence.)

22 MS. KAUR: 9-K is Post Retirement Lump Sum Beneficiary
23 Designation form.

24 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-K.

25 MR. BARLOW: No, your Honor.

1 ADMINISTRATIVE LAW JUDGE WONG: 9-K is admitted for all
2 purposes.

3 (Whereupon, CalPERS Exhibit No. 9-K
4 was received in evidence.)

5 MS. KAUR: 9-L is the July 25th, 2014 letter from
6 CalPERS, also Respondent's Exhibit F.

7 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-L?

8 MR. BARLOW: No, your Honor.

9 ADMINISTRATIVE LAW JUDGE WONG: 9-L is admitted for all
10 purposes.

11 (Whereupon, CalPERS Exhibit No. 9-L
12 was received in evidence.)

13 MS. KAUR: 9-M is a letter from Mr. Johnson dated
14 June 23rd, 2014.

15 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-M?

16 MR. BARLOW: No, your Honor.

17 ADMINISTRATIVE LAW JUDGE WONG: 9-M is admitted for all
18 purposes.

19 (Whereupon, CalPERS Exhibit No. 9-M
20 was received in evidence.)

21 MS. KAUR: 9-N is is a letter from Mr. Johnson dated
22 September 12, 2014, also includes his marriage certificate.

23 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-N?

24 MR. BARLOW: No, your Honor.

25 ADMINISTRATIVE LAW JUDGE WONG: 9-N is admitted.

1 (Whereupon, CalPERS Exhibit No. 9-N
2 was received in evidence.)

3 MR. BARLOW: I would note it also includes
4 Ms. Johnson's birth certificate, as well, and Social Security.

5 ADMINISTRATIVE LAW JUDGE WONG: I don't see a birth
6 certificate. Is this the card, Province of Ontario, Social
7 Security card?

8 MR. BARLOW: Yes.

9 ADMINISTRATIVE LAW JUDGE WONG: N is admitted for all
10 purposes.

11 MS. KAUR: 9-O is a 11/13, 2103 letter from
12 Mr. Johnson, and it encloses the divorce judgment.

13 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-O?

14 MR. BARLOW: No, your Honor.

15 ADMINISTRATIVE LAW JUDGE WONG: 9-O is admitted for all
16 purposes.

17 (Whereupon, CalPERS Exhibit No. 9-O
18 was received in evidence.)

19 MS. KAUR: And 9-P is the Notice of Appearance by
20 CalPERS in the community property matter.

21 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-P?

22 MR. BARLOW: No, your Honor.

23 ADMINISTRATIVE LAW JUDGE WONG: 9-P is admitted for all
24 purposes.

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(Whereupon, CalPERS Exhibit No. 9-P
was received in evidence.)

MS. KAUR: 9-Q also concerns documents filed in the
community property matter and includes letters -- a letter to
Mr. Johnson concerning the community property hold.

ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-Q?

MR. BARLOW: No, your Honor.

ADMINISTRATIVE LAW JUDGE WONG: 9-Q is admitted for all
purposes.

(Whereupon, CalPERS Exhibit No. 9-Q
was received in evidence.)

MS. KAUR: And 9-R is a Notice of Acknowledgement of
Receipt concerning the joinder in the community property matter.

ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-R?

MR. BARLOW: No, your Honor.

ADMINISTRATIVE LAW JUDGE WONG: 9-R is admitted for all
purposes.

(Whereupon, CalPERS Exhibit No. 9-R
was received in evidence.)

MS. KAUR: 9-S is the joinder.

ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-S?

MR. BARLOW: No, your Honor.

ADMINISTRATIVE LAW JUDGE WONG: 9-S is admitted for all
purposes.

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(Whereupon, CalPERS Exhibit No. 9-S
was received in evidence.)

MS. KAUR: 9-T is outgoing form dated February 15,
2013. It's the request for Option 2 or 3 pop-up increase.

ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-T?.

MR. BARLOW: No, your Honor.

ADMINISTRATIVE LAW JUDGE WONG: 9-T is admitted for all
purposes.

(Whereupon, CalPERS Exhibit No. 9-T
was received in evidence.)

MS. KAUR: 9-U is outgoing Application to Modify Option
or Life Option Beneficiary, and dated February 2013.

ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-U?

MR. BARLOW: No, your Honor.

ADMINISTRATIVE LAW JUDGE WONG: The 9-U is admitted for
all purposes.

(Whereupon, CalPERS Exhibit No. 9-U
was received in evidence.)

MS. KAUR: 9-V is Justification for Absence of Spouse
or Registered Partner's Signature.

ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-V?

MR. BARLOW: No, your Honor.

ADMINISTRATIVE LAW JUDGE WONG: 9-V is admitted for all
purposes.

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1 (Whereupon, CalPERS Exhibit No. 9-V
2 was received in evidence.)

3 MS. KAUR: 9-W is a letter from CalPERS dated
4 February 15, 2013 to Mr. Johnson.

5 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 9-W?

6 MR. BARLOW: Only to the extent to clarify that's to
7 the estate of Grantland Johnson. Otherwise, no objections.

8 ADMINISTRATIVE LAW JUDGE WONG: 9-W is admitted for all
9 purposes.

10 (Whereupon, CalPERS Exhibit No. 9-W
11 was received in evidence.)

12 MS. KAUR: 10 is a letter from Mrs. Johnson dated
13 February 11, 2015, and that was Respondent's Exhibit K.

14 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 10?

15 MR. BARLOW: No, your Honor.

16 ADMINISTRATIVE LAW JUDGE WONG: 10 is admitted for all
17 purposes.

18 (Whereupon, CalPERS Exhibit No. 10
19 was received in evidence.)

20 MS. KAUR: 10 also includes, your Honor, the marital
21 settlement agreement which is Respondent's Exhibit J.

22 ADMINISTRATIVE LAW JUDGE WONG: Okay.

23 MS. KAUR: And then Exhibit 11 is Publication 98.

24 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 11?

25 MR. BARLOW: No, your Honor.

1 ADMINISTRATIVE LAW JUDGE WONG: 11 is admitted for all
2 purposes.

3 (Whereupon, CalPERS Exhibit No. 11
4 was received in evidence.)

5 MS. KAUR: Exhibit 12 is Publication 60, CalPERS
6 Publication 60.

7 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 12?

8 MR. BARLOW: No, your Honor.

9 ADMINISTRATIVE LAW JUDGE WONG: 12 is admitted for all
10 purposes.

11 (Whereupon, CalPERS Exhibit No. 12
12 was received in evidence.)

13 MS. KAUR: Exhibit 13 is the log that Mrs. Owens
14 testified to.

15 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 13?

16 MR. BARLOW: No, your Honor.

17 ADMINISTRATIVE LAW JUDGE WONG: 13 is admitted for all
18 purposes.

19 (Whereupon, CalPERS Exhibit No. 13
20 was received in evidence.)

21 MS. KAUR: Exhibit 14 is the recalculation of options
22 chart that Mrs. Owens also testified to.

23 ADMINISTRATIVE LAW JUDGE WONG: Any objection to 14?

24 MR. BARLOW: Only object to the extent this purports to
25 express any kind of expert -- or representations on behalf of an

1 expert as to total.

2 ADMINISTRATIVE LAW JUDGE WONG: You either object or
3 you don't. If you object, what's the basis of the objection?

4 MR. BARLOW: Mmmm... I guess it would be relevance.

5 ADMINISTRATIVE LAW JUDGE WONG: Mrs. Kaur.

6 MS. KAUR: It's relevant to demonstrate that CalPERS
7 can't assume that the member is going to choose -- is going to
8 elect an option just by merely submitting an application.

9 ADMINISTRATIVE LAW JUDGE WONG: Mr. Barlow, anything
10 further?

11 MR. BARLOW: Only that we -- we heard testimony today
12 indicating that was there no examination of the applications
13 involved in this calculation. So to the extent to which it
14 applies to our particular extenuating circumstances, we would
15 still contest that it isn't relevant to what has happened here.

16 ADMINISTRATIVE LAW JUDGE WONG: All right. The
17 objection is overruled. I will allow 14 in for all purposes to
18 the extent it supports the previous testimony.

19 Mr. Barlow, your objections go to the weight rather
20 than its admissibility. So 14 is admitted for all purposes.

21 (Whereupon, CalPERS Exhibit No. 14
22 was received in evidence.)

23 ADMINISTRATIVE LAW JUDGE WONG: I think that's it. Is
24 that correct, Ms. Kaur?

25 MS. KAUR: Yes, your Honor.

1 ADMINISTRATIVE LAW JUDGE WONG: All right. Mr. Barlow,
2 anything in rebuttal?

3 MR. BARLOW: No, your Honor.

4 ADMINISTRATIVE LAW JUDGE WONG: Okay. Do you rest?

5 MR. BARLOW: Yes, your Honor.

6 ADMINISTRATIVE LAW JUDGE WONG: All right. Let's go
7 ahead and go off the record for a moment.

8 (Discussion held off the record.)

9 ADMINISTRATIVE LAW JUDGE WONG: Back on the record.

10 So we discussed the parties' filing simultaneous
11 written closing briefs, just one round. So it will be an
12 opening brief with no reply brief. And they will be due by 5:00
13 p.m. on Monday, November 30th, 2015, after which the record will
14 be closed and the matter submitted for written decision.

15 Anything else for the record, Mr. Barlow?

16 MR. BARLOW: No, your Honor.

17 ADMINISTRATIVE LAW JUDGE WONG: Ms. Kaur?

18 MS. KAUR: No, your Honor.

19 ADMINISTRATIVE LAW JUDGE WONG: Thank you very much.

20 And so we are off the record.

21 (Whereupon, the proceedings concluded at 5:05 p.m.)

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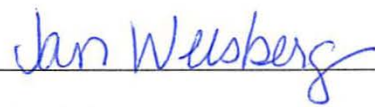
1 REPORTER'S CERTIFICATE

2
3 STATE OF CALIFORNIA)
4 COUNTY OF SACRAMENTO) ss.

5
6 I, JAN L. WEISBERG, CSR, hereby certify that I was duly
7 appointed and qualified to take the foregoing matter;

8 That acting as such reporter, I took down in stenotype
9 notes the testimony given and proceedings had;

10 That I thereafter transcribed said shorthand notes into
11 typewritten longhand, the above and foregoing pages being a
12 full, true and correct transcription of the testimony given and
13 proceedings had.

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21 JAN WEISBERG

MEETING
STATE OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BOARD OF ADMINISTRATION
OPEN SESSION

ROBERT F. CARLSON AUDITORIUM
LINCOLN PLAZA NORTH
400 P STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 16, 2016
9:01 A.M.

JAMES F. PETERS, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

A P P E A R A N C E S

BOARD MEMBERS:

Mr. Rob Feckner, President
Mr. Henry Jones, Vice President
Mr. Michael Bilbrey
Mr. John Chiang, represented by Mr. Grant Boyken
Mr. Richard Costigan
Mr. Richard Gillihan
Ms. Dana Hollinger
Mr. J.J. Jelincic
Mr. Ron Lind
Ms. Priya Mathur
Mr. Bill Slaton
Ms. Theresa Taylor
Ms. Betty Yee, represented by Ms. Lynn Paquin

STAFF:

Ms. Anne Stausboll, Chief Executive Officer
Ms. Cheryl Eason, Chief Financial Officer
Mr. Ted Eliopoulos, Chief Investment Officer
Mr. Douglas Hoffner, Deputy Executive Officer
Mr. Matthew Jacobs, General Counsel
Ms. Donna Lum, Deputy Executive Officer
Mr. Doug McKeever, Deputy Executive Officer
Mr. Alan Milligan, Chief Actuary

A P P E A R A N C E S C O N T I N U E D

STAFF:

Mr. Brad Pacheco, Deputy Executive Officer

Ms. Mary Anne Ashley, Chief, Legislative Affairs Division

Ms. Kara Buchanan, Board Secretary

ALSO PRESENT:

Mr. Al Darby, Retired Public Employees Association

Mr. Neal Johnson, Service Employees International Union,
Local 1000

Mr. Chirag Shah, Shah and Associates

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1 Brings us to Agenda Item -- since D, E and F did
2 not meet, it brings us to Agenda Item 8, the proposed
3 decision of administrative law judges. I want to point
4 out that the Board's independent counsel for
5 administrative hearings, Mr. Chirag Shah, is on the phone.
6 Good morning, Chirag?

7 MR. SHAH: Good morning, Mr. President, members
8 of the Board.

9 PRESIDENT FECKNER: Anything you want to preface
10 before we begin?

11 MR. SHAH: Well, I'd like to just wish everyone a
12 Happy Saint Patrick's Day.

13 (Laughter.)

14 MR. SHAH: That's it.

15 PRESIDENT FECKNER: Thank you, sir.

16 We have Item 8 in front us, 8a through i. Item c
17 has been asked to be withdrawn and taken up separately.
18 So we have 8b -- 8a through i, minus C.

19 Mr. Jones.

20 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
21 President. I move to adopt the proposed decisions at
22 Agenda Items 8a through 8i with the exception of c, as the
23 Board's own decisions with the minor modifications to
24 Agenda Item 8f, as argued by staff.

25 PRESIDENT FECKNER: Thank you.

1 Is there a second?

2 BOARD MEMBER TAYLOR: Second.

3 PRESIDENT FECKNER: It's been moved by Jones,
4 Seconded by Taylor. All in favor -- seeing no discussion,
5 all in favor say aye?

6 (Ayes.)

7 PRESIDENT FECKNER: Opposed, say no?

8 AbstentionS?

9 Motion carries.

10 We're back on Item 8c. Mr. Jones.

11 VICE PRESIDENT JONES: Yeah, I move to adopt the
12 proposed decisions at Agenda Item c as the Board's own
13 decision with the minor modifications to Agenda Item --
14 that's the end.

15 PRESIDENT FECKNER: Very good. Thank you. Is
16 there a second?

17 BOARD MEMBER MATHUR: Second.

18 PRESIDENT FECKNER: It's been moved by Jones,
19 seconded by Mathur.

20 Discussion on the motion?

21 Mr. Jelincic.

22 BOARD MEMBER JELINCIC: I will be abstaining.

23 PRESIDENT FECKNER: Thank you.

24 Mr. Slaton.

25 BOARD MEMBER SLATON: Yes. So this motion would

1 be just to accept it as a separate item?

2 PRESIDENT FECKNER: Correct.

3 BOARD MEMBER SLATON: And if we don't do that,
4 what will occur?

5 BOARD MEMBER MATHUR: The motion is to take it up
6 right now.

7 BOARD MEMBER SLATON: Oh, it's to take it up now.
8 I thought it was to accept it. Okay. I misheard. Sorry.

9 PRESIDENT FECKNER: Mr. Costigan.

10 BOARD MEMBER COSTIGAN: Just again to clarify
11 what Mr. Slaton raised. We just separated it as a
12 separate vote --

13 PRESIDENT FECKNER: Correct.

14 BOARD MEMBER COSTIGAN: -- but we're going to --
15 the motion is to adopt the recommendation -- the staff
16 recommendation.

17 VICE PRESIDENT JONES: Exactly the same, yes.

18 PRESIDENT FECKNER: All right. Motion clear?
19 Not yet.

20 BOARD MEMBER SLATON: Yeah. So the motion on the
21 floor is to accept the recommendation that's been
22 presented to us. I'd like to have more discussion on
23 this. I think that -- and I have to say that the person
24 who passed away, you know, I was acquainted with him. Not
25 a close relationship at all. But I do feel in reading the

1 whole case that there is some room for interpretation
2 here. And I think it bears some more discussion. And I
3 think that this is one where, clearly, it is potentially
4 form over substance.

5 And so I think it -- since we're the final body
6 to adjudicate this, I think it bears further discussion,
7 which I think would be valuable in terms of making the
8 decision for this one.

9 So I would make a substitute motion for a full
10 Board hearing on this.

11 PRESIDENT FECKNER: Is there a second?

12 BOARD MEMBER COSTIGAN: I'll second it.

13 PRESIDENT FECKNER: It's been moved by Slaton,
14 seconded by Costigan to move to a full Board hearing, Item
15 8c.

16 Any discussion on the motion?

17 Mr. Boyken.

18 ACTING BOARD MEMBER BOYKEN: So is that a full
19 board hearing, do you have a specific issue? I mean,
20 there is kind of one specific issue. But do we -- do you
21 want to limit it somehow?

22 BOARD MEMBER SLATON: Well, I think a full Board
23 hearing is on the record that's been presented to us, but
24 I think that given -- I think theres' some questions about
25 that record in terms of the decisions made by CalPERS

1 staff in this particular case. And I just think it's --
2 there is a form over substance issue here, that I think
3 deserves a hearing.

4 ACTING BOARD MEMBER BOYKEN: Thanks.

5 PRESIDENT FECKNER: Mr. Jelincic.

6 BOARD MEMBER JELINCIC: I'm abstaining on the
7 substitute as well.

8 PRESIDENT FECKNER: Thank you.

9 Mr. Jones.

10 VICE PRESIDENT JONES: Yeah. Okay. So he's --
11 the substitute motion, are you going to take a vote on the
12 substitute motion.

13 PRESIDENT FECKNER: We will. There's a
14 discussion on the substitute motion.

15 VICE PRESIDENT JONES: Right. So I was -- I
16 don't have a comment on what he just proposed.

17 PRESIDENT FECKNER: Very good. All right. Any
18 further discussion on the motion for a substitute motion?

19 Seeing none.

20 All in favor say aye?

21 (Ayes.)

22 PRESIDENT FECKNER: Opposed, no?

23 Motion carries.

24 We're back on the original motion. Mr. Jones, do
25 you have anything to add?

1 VICE PRESIDENT JONES: Nothing to add.

2 PRESIDENT FECKNER: All right. Then moving
3 forward that will be a full Board hearing.

4 Mr. Jones.

5 VICE PRESIDENT JONES: Yes, this is Item 9.

6 (Thereupon a discussion occurred off the record.)

7 PRESIDENT FECKNER: Correct. So the motion
8 before you is to move forward with Item 8C for a full
9 Board hearing, correct?

10 VICE PRESIDENT JONES: Right.

11 PRESIDENT FECKNER: All right. So I'm getting
12 conflicting issues, so let's just take a vote so we're
13 clear for the record.

14 All right. We have 8c moving to a full Board
15 hearing.

16 All in favor say aye?

17 (Ayes.)

18 PRESIDENT FECKNER: Opposed, no?

19 Motion carries.

20 Mr. Jelincic is still abstaining.

21 We're on Item 9, Mr. Jones.

22 VICE PRESIDENT JONES: Yeah. Thank you, Mr.
23 President. I move to direct the CalPERS Legal Office to
24 solicit written comments from the public on whether or not
25 to designate the decision at Agenda Item 9 as a

C E R T I F I C A T E O F R E P O R T E R

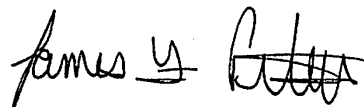
I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California Public Employees' Retirement System, Board of Administration open session meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California.

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of March, 2016.



JAMES F. PETERS, CSR
Certified Shorthand Reporter
License No. 10063