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BEFORE THE BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA
ERIC C. SAWYER, ADMINISTRATIVE LAW JUDGE

In the Matter of the)
Calculation of Final) Case No. 2013-1113
Compensation of:) OAH No. 2014080757
)
DESI ALVAREZ,)
)
Respondent,)
)
and)
)
CHINO BASIN WATERMASTER,)
)
Respondent.)
_____)

TRANSCRIPT OF PROCEEDINGS
Glendale, California
Monday, April 11, 2016

Reported by:
JOANNA HAMMOCK
Hearing Reporter

Job No. :
96880AH

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TRANSCRIPT OF PROCEEDINGS, taken at
655 North Central Avenue, Suite 1400, Glendale,
California, commencing at 9:00 a.m.
on Monday, April 11, 2016, heard before
ERIC C. SAWYER, Administrative Law Judge,
reported by JOANNA HAMMOCK, Hearing Reporter.

1 APPEARANCES:

2 For the COMPLAINANT: CALIFORNIA PUBLIC EMPLOYEES'
3 RETIREMENT SYSTEM
4 By: PREET KAUR
5 Lincoln Plaza North
6 400 "Q" Street
7 Sacramento, California
8 94229

9 For the RESPONDENT LAW OFFICES OF
10 DESI ALVAREZ: By: JOHN MICHAEL JENSEN
11 ATTORNEY AT LAW
12 11500 West Olympic Boulevard
13 Suite 550
14 Los Angeles, California
15 90064

16 For the RESPONDENT BROWNSTEIN HYATT FARBER SCHRECK
17 WATERMASTER: By: BRADLEY J. HERREMA
18 ATTORNEY AT LAW
19 2049 Century Park East
20 Suite 3550
21 Los Angeles, California
22 90067

23 BROWNSTEIN HYATT FARBER SCHRECK
24 By: JESSICA L. DIAZ
25 ATTORNEY AT LAW
1020 State Street
Santa Barbara, California
93101

Also Present: Angel Gutierrez
Nicole Horning
Ron Gow

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I N D E X

COMPLAINANT'S Witnesses:	Direct	Cross	Redirect	Recross
Joseph Joswiak	27	105 123	128	
Peter Kavounas	131			
Bob Kuhn	142	196		

E X H I B I T S

COMPLAINANT'S:	Marked for identification	Received in evidence
3 - Amended Statement of Issues	167	
6 - Supplemental Determination Letter	168	
8 - Notice of Appeal - Alvarez	187	
10 - Minutes - Closed Conference Call	47	102
11 - Employment agreement	59	102
12 - Confidential Separation Agreement	157	199
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E X H I B I T S (Continued)

COMPLAINANT'S:	Marked for identification	Received in evidence
15 - Salary Matrix 2004-2009	98	102
16 - Salary Matrix 2011-2012; 2012-2013	92	102
17 - Temporary Part-Time Employment agreement	107	123
18 - E-mails J. Joswiak	114	122
RESPONDENT DESI ALVAREZ'S:		
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G - E-mail Sherri Lynne Molino	110	123
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K - Minutes - Board Meeting 4/28/2011	106	123
R - E-mail Bob Kuhn	111	123

1 Los Angeles, California, Monday, April 11, 2016

2 9:00 a.m.

3

4

5 THE COURT: All right. Let's go on the record.

6 Okay.

7 This is the Matter of the First Amended Statement of
8 Issues, and that was filed against Desi Alvarez, Respondent
9 and Chino Basin Watermaster, the other Respondent. This
10 Matter is before the Board of Administration for the
11 California Public Employees' Retirement System.

12 Today is April 11, 2016. It's 9:07 a.m. We are at
13 the PERS regional office located in Glendale, California. My
14 name is Eric Sawyer, Administrative Law Judge with the Office
15 of Administrative Hearings, State of California, also known
16 as OAH.

17 At this time I'll ask the parties to introduce
18 themselves for the record, beginning with the Complainant.

19 MS. KAUR: Preet Kaur, attorney for CalPERS.

20 THE COURT: Okay. Good morning.

21 MS. KAUR: Good morning.

22 MR. JENSEN: Good morning, your Honor. John Jensen for
23 Respondent Desi Alvarez.

24 THE COURT: Okay. Good morning.

25 MR. HERREMA: Good morning, your Honor. Brad Herrema for

1 Respondent Chino Basin Watermaster.

2 THE COURT: Okay. Good morning.

3 MS. DIAZ: Good morning, your Honor. Jessica Diaz for
4 Respondent Chino Basin Watermaster.

5 THE COURT: Okay. Before we begin with the presentation
6 of the case, we have three issues we're going to discuss. The
7 first is when we were off the record, Mr. Jensen indicated
8 that he would be making a motion to exclude witnesses until
9 they complete their testimony.

10 Is that still your request, Mr. Jensen?

11 MR. JENSEN: Yes, your Honor. If I may exclude all but
12 the agency representative.

13 THE COURT: Okay. All right. Does anyone object to such
14 a motion? Ms. Kaur?

15 MS. KAUR: Yes. I object to that motion.

16 THE COURT: Why?

17 MS. KAUR: This is a -- mainly a legal issue. I don't
18 know why the witnesses need to be included (sic). The Court
19 does have discretion to not exclude the witnesses. I'm
20 requesting the Court use that discretion.

21 My witnesses -- I have -- the witnesses I have are
22 Nicole Horning as well as Ronald Gow. They made a
23 determination for CalPERS. My understanding is percipient
24 witnesses can be excluded, but they're going to be testifying
25 about the determinations they made. So I'm requesting they

1 be allowed to sit in.

2 THE COURT: Okay.

3 Mr. Herrema, your thoughts on the motion to exclude?

4 MR. HERREMA: I don't object. I don't take a position.

5 THE COURT: All right.

6 Mr. Jensen, do you want to respond to Ms. Kaur?

7 MR. JENSEN: I agree with -- that it's likely underneath
8 a legal issue in many aspects.

9 But to the extent there's any factual
10 determinations, factual issues regarding their testimony,
11 which would be the only reason they're being called because
12 they can't testify as to law, it would be helpful to exclude
13 them so that they don't coordinate their stories with
14 whatever the other witnesses would say.

15 And just as a -- be able to have a fresh,
16 independent view of each witness's prior experience, not
17 colored by the testimony of the prior witness.

18 THE COURT: Okay.

19 Ms. Kaur, I'm going to grant the motion. In my
20 experience in these cases, they are a blend of both fairly
21 complex law, but also, a lot of times they get very factual.

22 And I think I'm -- when I err on the side of caution
23 in such cases, I generally have regrets. But when I decide
24 to let people in the room, I start to have regrets after I
25 hear folks testifying. I start hearing, you know, similar

1 statements that other witnesses have said.

2 So I don't sense this is the kind of case where I
3 have no concerns about any sort of factual information
4 bleeding into people's testimony.

5 So I think I'll exclude them, and then I won't have
6 to worry about it. And I'm not sensing there being any
7 prejudice to your case by doing that. So I'm going to --
8 I'll grant the -- the motion.

9 And my concern is, though, is there a place where
10 folks can wait until they're called?

11 MS. KAUR: I would have to check.

12 And I would make the same motion, then, that the
13 Watermaster's witnesses also be excluded.

14 THE COURT: Oh, that -- that ruling goes for any witness.
15 So the Watermaster gets one agency designee, PERS gets one
16 agency designee, and then Mr. Alvarez gets to remain here
17 since he's a party.

18 Anyone else, any other witnesses would be excluded
19 until they've completed their testimony.

20 MS. KAUR: I suppose the witnesses can wait in the lobby.
21 I think that would be the only location. Otherwise, I can
22 check if there's any other locations.

23 MR. JENSEN: I believe there is a coffee shop or a
24 restaurant of Trimani (phonetic), or something. I saw it as
25 I was walking in downstairs.

1 THE COURT: Okay.

2 MR. JENSEN: But I don't know if it's open yet.

3 THE COURT: It is. I know. I know from firsthand
4 experience.

5 Okay. All right. So then I'll let witnesses decide
6 where they want to remain, then, either the main lobby up
7 front when you come up the elevator, or down on the ground
8 floor there, the coffee shop.

9 Okay. So next is the issue concerning the order of
10 witnesses. In my Prehearing Conference Order I had decided
11 that PERS would go first and present its information first,
12 and I indicated that would be focusing on explaining the
13 decision PERS made to reduce Respondent Alvarez's pension
14 benefits.

15 And then the Respondents thereafter would present
16 their cases in chief, and then PERS would present any
17 rebuttal to what the Respondents had said.

18 So as I understand it, the issue is Ms. Kaur intends
19 to call in her case in chief employees or staff or witnesses
20 from the Chino Basin Watermaster, and both Mr. Jensen and
21 Mr. Herrema are concerned about that.

22 So, Ms. Kaur, why don't you flesh out first. In
23 terms of calling the Watermaster witnesses, your questioning
24 of them will relate to why PERS made its decision to propose
25 to reduce Mr. Alvarez's benefits?

1 MS. KAUR: Yes, your Honor. That would be the basis of
2 presenting them because the information that was provided by
3 the Watermaster witnesses, and that was received by CalPERS,
4 CalPERS looked at that in making it's determination. So
5 that's why I would like to present them first.

6 THE COURT: Okay. So basically you'd just be questioning
7 them on information that was provided to PERS that PERS, in
8 turn, relied on in making its decision regarding Mr. Alvarez?

9 MS. KAUR: Yes. It would -- it would be direct questions
10 regarding the information provided and also how they're
11 involved in the information and involved in the decision
12 making.

13 THE COURT: Okay. All right.

14 Mr. Herrema, tell me your concerns about that again.

15 MR. HERREMA: I'm not sure that it's entirely consistent
16 with the order in terms of CalPERS laying out its rationale.
17 I understand Ms. Kaur is saying it's foundational to -- to
18 what CalPERS decided.

19 The other concern I have in regard to Mr. Kavounas,
20 who's the General Manager of Watermaster and Mr. Joswiak,
21 who's the CFO of Watermaster is that there's an efficiency
22 concern there.

23 If Ms. Kaur is going to bring them up on direct, and
24 then we are going to bring them on as part of our case later
25 on direct, it may be more efficient to -- to have her go with

1 her CalPERS witnesses first and then have her ask her
2 questions after I've had the opportunity to do my direct.

3 If she wants to proceed this way, and that's the
4 Court's pleasure, then it is what it is. But I think there
5 is an efficiency concern on those two issues.

6 In regard to Bob Kuhn, who is a current Board member
7 and a former Chair of the Watermaster Board, CalPERS has
8 listed him as a witness in its witness list, saying he was
9 the Chairman of the Watermaster Board and executed one of the
10 Agreements that's at issue in this proceeding.

11 I've offered to stipulate with Ms. Kaur that he was
12 the Chairman of the Board at the time that this agreement was
13 executed. He executed it. I'm happy to stipulate as to the
14 authenticity of the document.

15 I don't -- maybe this isn't the appropriate time,
16 but I'm not sure what testimony from him would be -- would be
17 probative and have any -- any relevance in this proceeding.

18 THE COURT: All right.

19 Ms. Kaur, let's -- why don't we address that right
20 now to see where we're at on that. What -- how do you
21 respond to Mr. Herrema?

22 MS. KAUR: Address the issue about Bob Kuhn?

23 THE COURT: Yes.

24 MS. KAUR: He is the -- he is the individual who signed
25 the separation agreement. So I do have questions for him

1 regarding the separation agreement, relating to why it was
2 signed, why it was signed by him.

3 And, also, he was the Chair at the time Desi Alvarez
4 worked there. He was the Chair at the time Desi was
5 replaced. So -- and the CEO did report to the Board. So I
6 have questions for him concerning who reported to him, when
7 they reported to him, and so forth.

8 THE COURT: Okay. All right.

9 MR. HERREMA: We're going to have objections on anything
10 that would be covered by -- that would be privileged based on
11 his discussion in confidential session, as well as anything
12 that is part of or was part of the Watermaster Board's
13 deliberative process in terms of decisions -- personnel
14 decisions -- made.

15 So, again, we've offered to stipulate that Mr. Kuhn
16 was the Chair during part of Mr. Alvarez's employment. He
17 was the one who signed the Confidential Separation Agreement
18 that's at issue.

19 Beyond that, again, I'm not sure what testimony
20 Ms. Kaur will be able to develop that's probative and
21 relevant.

22 THE COURT: All right. It doesn't sound like she's
23 interested in just that stipulation in terms of what part of
24 her questions may or may not interfere with the deliberative
25 process privilege. You know, I don't think we're going to

1 know until we hear what she has to ask, and then I'll make a
2 decision at that point.

3 I mean, obviously, that privilege exists, and there's
4 certain information that we wouldn't be privy to if the
5 Watermaster doesn't waive it, but I'll let Ms. Kaur decide,
6 you know, what she wants to ask and --

7 So anything you want to add to our discussion on
8 that -- regarding that witness?

9 MS. KAUR: I think I'd like to hear from him, if he's
10 going to answer, what is privileged or what is not. I
11 mean, you're just kind of putting a blanket statement on it.
12 And when I ask him questions, we'll see exactly what is
13 privileged and go off of there.

14 THE COURT: Okay.

15 MR. HERREMA: I -- I would disagree. I think the things
16 that would be covered are the things -- or the things that
17 would be subject to -- that would be privileged are the
18 discussions that were had by the Board in closed session, and
19 is its rationale about its personnel decisions.

20 So if you want to ask him if he was Chair of the
21 Board, I won't object to that; if you want to ask him if his
22 signature is on the document, I don't have any objection to
23 that.

24 THE COURT: All right. I'll let you make that decision,
25 if you think you have questions that will be able to derive

1 information that's outside the privilege. Otherwise, if
2 there's -- if the only other information would be resolved
3 with the stipulation, then you can let Mr. Herrema know, and
4 we'll take care of it that way. So --

5 So I think that's just the way we'll do it right
6 now. If you make any decisions between now and when you get
7 to that, you can tell me.

8 Otherwise, my thought would be with that witness,
9 I'll let her -- if she decides to question him -- we'll just
10 take it question by question, and I'll sort out the privilege
11 situation as it arises.

12 MR. HERREMA: Okay. Thank you, your Honor.

13 THE COURT: All right.

14 So, Mr. Jensen, your thoughts on the order of
15 witness presentation?

16 MR. JENSEN: Again, your Honor, it's just a convenience
17 issue for me. I can't really release them until I know, you
18 know, my case -- I call them in my case in chief as well --
19 and I'm not comfortable just crossing them, especially if
20 Mr. Herrema hasn't had an opportunity to develop their
21 testimony on direct.

22 It's just a -- it's a complicated situation for me
23 because my client is not as informed as the other two parties
24 -- or is informed in different subjects. So I am going to be
25 learning this as it goes in this hearing.

1 THE COURT: Okay. All right.

2 So, Ms. Kaur, let me ask you one question. Would
3 there be any problem with you presenting the PERS witnesses
4 first and then questioning the Water Basin witness at the end
5 of your case, just -- just out of curiosity?

6 MS. KAUR: I would like to present the Watermaster
7 witnesses first. I think in terms of even efficiency it
8 would be more efficient because we obtain information from
9 them. They made certain decisions. It would be more
10 efficient to lay out that foundation and that background and
11 then ask my witnesses the questions.

12 That's how I would like to proceed with the
13 presentation. If there -- I mean, I'm in the same situation
14 as Mr. Jensen, then. I have to wait, and then I have to wait
15 for him to do his direct and then ask questions. But I think
16 it can be efficiently done if I present them first and lay
17 the foundation first.

18 THE COURT: Okay. I'm just curious, though, if PERS made
19 a decision based on information the Watermaster provided, if
20 there's information that's adduced in their testimony that's
21 different, how would that promote your case or make your case
22 more understandable?

23 MS. KAUR: I think in terms of proceeding, a number of
24 the exhibits were provided by the Watermaster. They're
25 probably the most familiar with them. So I'd like to cover

1 those exhibits with them first, in terms of the presentation
2 of my case.

3 I suppose we could do it the other way around. But
4 CalPERS is required to present its case first, in terms of
5 how we made the determination. And I think it's most
6 efficient to proceed that way, especially given the number of
7 exhibits and the documents. They are the ones who drafted
8 them, created them, and it'd be more clear for them to
9 testify about it first.

10 THE COURT: Okay.

11 MR. HERREMA: If I might, your Honor?

12 THE COURT: Yes.

13 MR. HERREMA: I would agree with your concern as to what
14 -- how CalPERS testimony might be effected if --

15 I think we should hear from CalPERS as to what the
16 decision was that they made. If the documents came from
17 Watermaster, we can -- we've all designated -- all -- all the
18 parties have designated some similar exhibits, and there's
19 not -- I don't know that there's any argument about the
20 authenticity of the documents, or when they were produced,
21 and who sent them to whom.

22 The issue that I would be concerned about is the
23 same that you raised about what would be the effect on
24 CalPERS witnesses' testimony depending on what -- what the
25 Watermaster witnesses have said.

1 THE COURT: Okay. I'll tell you, when I made the
2 decision during the prehearing conference and issued my order
3 concerning the presentation, when I said I wanted PERS to
4 focus on their reasons for proposing to reduce Mr. Alvarez's
5 benefits, what I really had in mind was that we would hear,
6 basically, PERS's case in chief. And what I didn't want PERS
7 to get into, initially, was pre-staging the Respondent's
8 arguments and offering evidence concerning the Respondent's
9 arguments up front. And that's why I gave PERS a chance to
10 do rebuttal.

11 So basically, it explained, "This is why PERS
12 has decided to reduce Mr. Alvarez's benefits." Then the
13 Respondents would present evidence and tell me, "This is why
14 that shouldn't happen. This is why Mr. Alvarez's benefits
15 should remain."

16 And then PERS would be presenting rebuttal evidence
17 responding to the evidence that you folks present. It was
18 basically that simple. I didn't really mean to or intend to
19 hamstring PERS and tell them these are issues that you can
20 get into or not.

21 So based on the objections or the concerns raised by
22 Respondents, I'm not hearing anything that would rise to the
23 level of having me interfere with Ms. Kaur's presentation of
24 her case.

25 And Ms. Kaur does raise a point that regardless of

1 when we hear from the Watermaster folks, whoever's calling
2 that witness, the other folks are going to be in the same
3 boat that the Respondents are in now with their concerns of
4 Ms. Kaur presenting them.

5 So no hearing's ever perfectly efficient, and I
6 think in a case like this, we're going to have some bumps
7 here and there. But, like I said, I just don't think I'm
8 hearing anything that would give me cause to interfere with
9 Ms. Kaur. So I'll let her call those folks, and I will not
10 release and excuse them until everyone feels that they've had
11 an adequate chance to ask them questions.

12 I am mindful of keeping folks around longer than
13 they need to be and unnecessarily inconveniencing them and
14 their schedules. So I don't want this to get to the point
15 where we're taking advantage of their schedules. But we're
16 only going to be here three days. So I can't imagine it's
17 going to be that difficult.

18 I do want to make sure when folks question them,
19 they question them reasonably and try to hit all the relevant
20 questions and not have to re-call people for just small,
21 limited areas. But I don't know what to do about that until
22 we're there.

23 So I'm going to let Ms. Kaur call them, and then
24 I'll let the Respondent decide how they want to question
25 them, and if you need them to come back for more questioning

1 later in your cases in chief, I'll let Mr. Jensen and
2 Mr. Herrema -- I'll let you guys decide that.

3 MR. JENSEN: Thank you.

4 MR. HERREMA: Thank you, your Honor.

5 THE COURT: Okay. On the motion in limine, which I've
6 received from Mr. Jensen's office, here are my concerns. I'm
7 going to indicate them up front.

8 Then, Ms. Kaur and Mr. Herrema, I'll let you
9 respond.

10 And then, Mr. Jensen, you can respond to that.

11 Concern number one: This came into our office, I
12 believe, on Thursday?

13 MR. JENSEN: That's correct, your Honor.

14 THE COURT: So less than two working days before the
15 hearing. That's obviously a concern without any further
16 explanation.

17 But also in the -- in my PHC order for the prior
18 hearing date, I had indicated that any prehearing motions
19 would be noticed two, three weeks ahead of the hearing so
20 folks could file written oppositions, and I'd have a chance
21 to read everything and make a considered decision. So
22 obviously, that's not going to happen because of the timing.

23 The second concern I have is, to me, this seems like
24 this goes to one of the pivotal underlying questions,
25 probably something that I would decide in the proposed

1 decision as a legal matter of what process and notice of that
2 process is required to calibrate benefits of the
3 Watermaster's staff.

4 So it just seems a bit truncated to make that
5 decision at the beginning of the hearing where, really, the
6 hearing gives me the information I would need to make the
7 decision at the end.

8 So I've read it, but those were the first two
9 concerns that immediately leapt to mind.

10 So, Ms. Kaur, let me have you lead off the
11 discussion. Is there anything you want to add or tell me
12 about the motion in limine?

13 MS. KAUR: We request it not be considered by the Court.
14 In terms of the first concern, I believe I don't have the
15 e-mail with me, but I believe we did also receive it on
16 Thursday around 4:59. It's not sufficient notice, and I
17 didn't have enough time to reply. So that's why I didn't put
18 in a reply.

19 And then I agree with the Court's thoughts on the
20 second issue -- the second concern -- as well. It seems like
21 -- more like a legal argument. So we're requesting the Court
22 not consider it.

23 THE COURT: Okay.

24 Mr. Herrema, your thoughts?

25 MR. HERREMA: The interpretation of the Court's order is

1 its own interpretation in terms of the timing. I don't take
2 a position on that.

3 In regard to the issues, I think you may or may not
4 need to make a determination, eventually, on what the
5 procedures are for Watermaster's -- what the public meetings
6 laws are that are applicable to Watermaster. I don't have an
7 objection to you considering the motion at this time.

8 I do think it's something that will be born out. If
9 you don't decide at this point, it will be born through the
10 -- through the testimony and actually -- probably if you
11 don't decide now, it will be born out probably through the
12 closings.

13 THE COURT: Do you -- do you agree or disagree with what
14 Mr. Jensen's requesting in it?

15 MR. HERREMA: I agree the -- that public meetings laws
16 that are applicable to Watermaster, in terms of its decisions
17 that it makes, are those that are in its court's -- in the
18 documents that created Watermaster and that govern
19 Watermaster under the Superior Court's jurisdiction.

20 THE COURT: Okay.

21 Okay. Mr. Jensen, your thoughts?

22 MR. JENSEN: And I apologize, your Honor. Now I see
23 where the prehearing motions are here. I sort of looked at
24 those as more substantive rather than evidentiary motions.
25 But I -- it doesn't say that here.

1 So I was tardy. And for that reason, I understand
2 that you would not take it into consideration at this time.

3 THE COURT: Okay. Okay. To me, I've kind of used it just
4 as a -- like a pocket brief educating me on one of the
5 Respondent's issues.

6 So I'll let the parties weigh in on the argument.
7 It seems like it's pivotal, and everyone will weigh in on
8 this argument through the hearing process, or in closing
9 arguments.

10 So this has opened my eyes to the issue, and I'll
11 certainly take evidence from both sides, or from all the
12 parties, and then I just think this is a decision I'm going
13 to have to make as a matter of law, and then how that applies
14 factually.

15 So I won't rule on the motion in limine, then, but
16 -- as a motion in lime -- and up front. But I think it's
17 probably something I'm going to have to decide in the
18 proposed decision, unless someone thinks otherwise.

19 And I'll just be attentive to the evidence and
20 arguments that you present on it and will look for more
21 guidance in your closing arguments on how the open meeting
22 laws apply, and which ones apply, and what's required of
23 them, and all that.

24 Okay. Just let me make a note here. All right. I
25 believe that covers all the issues that we had discussed when

1 we went off the record -- or before we went on the record.

2 Are there any other housekeeping/procedural issues
3 that we need to discuss before we get started with the
4 presentation, Ms. Kaur?

5 MS. KAUR: I don't believe so, your Honor.

6 THE COURT: All right.

7 Mr. Jensen?

8 MR. JENSEN: I'd just like to ask the witnesses, who
9 aren't Agency Reps who are about to testify, to leave the
10 room.

11 THE COURT: Okay. Let me -- let me -- we'll put a hold
12 on that.

13 Anything else, Mr. Herrema?

14 MR. HERREMA: No, your Honor.

15 THE COURT: Okay. All right. Let's go off the record
16 for a moment.

17 (Off the record)

18 THE COURT: Let's go back on the record. We're back from
19 a short break. At this time if any or all of the parties
20 would like to make an opening statement, you may do so.

21 Ms. Kaur?

22 MS. KAUR: I'll just make a brief opening statement, your
23 Honor.

24 THE COURT: Okay.

25 MS. KAUR: Mr. Alvarez was employed by the

1 Chino Basin Watermaster, who I'll refer to as the Watermaster
2 from time to time. He was employed as an executive -- chief
3 executive officer. And because of his employment, he was a
4 local miscellaneous member of CalPERS. And he applied for
5 service retirement on May 2nd, 2012.

6 CalPERS reviewed the compensation that was reported
7 for Mr. Alvarez that was reported by the Watermaster. And
8 upon reviewing the compensation that was reported, CalPERS
9 determined that the reported payments were not pursuant to a
10 publicly available pay schedule and didn't qualify as comp
11 earnable.

12 In particular, CalPERS determined the compensation
13 from May 3rd, 2011, through May 4th, 2012, was not eligible
14 to be included in the final compensation. And CalPERS
15 received an appeal that was filed by the Watermaster.

16 In that appeal the Watermaster provided additional
17 information. And based on the additional information that
18 was provide by the Watermaster, CalPERS amended its
19 determination to state that Mr. Alvarez was not in the employ
20 of Watermaster from November 9th, 2011, to May 4th, 2012.

21 And as the SOI states, the issues are limited to
22 whether the payments to Mr. Alvarez can be included in the
23 calculation of his final compensation, and also whether he
24 was an employee after November 9th, 2011.

25 THE COURT: Okay. Thank you.

1 Mr. Jensen, I have reviewed your supplement to your
2 Notice of Defense and Affirmative Defenses and New Matter. I
3 think that was a document that you filed in response to the
4 First Amended Statement of Issues. I also reviewed your --
5 your brief.

6 Would you like to make a brief opening statement?

7 MR. JENSEN: Your Honor, if I can reserve it to the
8 beginning of my -- a brief opening statement -- beginning of
9 my case in chief.

10 THE COURT: Yes. Certainly.

11 MR. JENSEN: Thank you.

12 THE COURT: Okay. We'll do that. Remind me, though.
13 Usually I have a poor memory on that.

14 MR. JENSEN: I will.

15 THE COURT: Okay. Thank you.

16 All right. Mr. Herrema, would you like to make an
17 opening statement? I've receive your brief.

18 MR. HERREMA: I'd like to also reserve my opening
19 statement until the beginning of our case in chief.

20 THE COURT: Okay. Great. Thank you. And, again, remind
21 me also on that.

22 Okay. Then we're going to hear from -- well, we're
23 going to let --

24 Ms. Kaur, you can begin presenting PERS's case.

25 MS. KAUR: Thank you, your Honor. And my first witness

1 is Mr. Joseph -- Joseph Jos- --

2 MR. JOSWIAK: Joswiak.

3 MS. KAUR: Joswiak.

4 THE COURT: Okay. Thank you. I'm going to ask the court
5 reporter to swear you in.

6 MR. JOSWIAK: Thank you.

7

8 JOSEPH JOSWIAK,

9 called as a witness, and having been first duly sworn by the
10 Hearing Reporter, was examined and testified as follows:

11 THE WITNESS: I do.

12 THE COURT: Okay. Good morning.

13 THE WITNESS: Good morning.

14 THE COURT: For the record, please state and spell your
15 name.

16 THE WITNESS: Joseph Joswiak, spelled J-o-s-e-p-h,
17 J-o-s-w-i-a-k.

18 THE COURT: Okay. Thank you, Mr. Joswiak.

19 THE WITNESS: You're welcome.

20 THE COURT: Ms. Kaur, when you're ready.

21 MS. KAUR: Thank you, your Honor.

22

23 DIRECT EXAMINATION

24 BY MS. KAUR:

25 Q Thank you for taking the time out to be here.

1 I will be referring you to the exhibit binder that
2 you have right in front of you which has your glasses set on
3 it.

4 A Thank you.

5 Q That is the CalPERS exhibit binder.

6 Are you prepared to testify today?

7 A Yes.

8 Q And do you currently work for the
9 Chino Basin Watermaster?

10 A Yes.

11 Q And what is your position there?

12 A I'm the Chief Financial Officer.

13 Q And how long have you been there?

14 A I have been employed with Watermaster since
15 April 5th, 2010.

16 Q And have you been continuously employed since then,
17 or did you --

18 A Yes.

19 Q So if you could turn to -- the binder is right in
20 front of you.

21 If you could turn to Exhibit 13. Can you tell us
22 what this document is, or these documents are. There is one,
23 two, three -- there are five pages.

24 A The first document is the Chino Basin Watermaster
25 2010 Staff Organizational Chart. The second is the

1 Chino Basin Watermaster 2011 Organizational --
2 Staff Organizational Chart.

3 (Complainant's Exhibit 13 was marked
4 for identification by the Court.)

5 BY MS. KAUR:

6 Q And the rest are the same -- is that correct -- but
7 different years?

8 MR. JENSEN: Objection. Misstates the testimony.

9 THE COURT: Overruled. You can answer. Do you agree or
10 disagree with what she just asked?

11 THE WITNESS: They are 2012, 2013, and 2014
12 Staff Organizational Charts. So I agree.

13 BY MS. KAUR:

14 Q And do these accurately reflect the staff that were
15 employed by the Chino Basin Watermaster in their respective
16 years?

17 A Yes.

18 Q And just to -- just to confirm, you held the
19 position of CEO in May 2011; would that be correct?

20 MR. JENSEN: Objection. Misstates his testimony.

21 THE COURT: Sustained. He said "CFO."

22 BY MS. KAUR:

23 Q I'm sorry, CFO.

24 A Yes.

25 Q And what are your duties as a CFO?

1 A For the CFO for Chino Basin Watermaster, I am in
2 charge of all finance and accounting issues that regards to
3 human resources, IT, financial reporting, accounting,
4 payroll, administration. Again, all accounting and financial
5 duties.

6 Q Does the Watermaster have a separate human resources
7 department, or is that just part of your unit?

8 A Human resources is part of my function.

9 Q And what are you responsible for in relation to that
10 function?

11 A All duties assigned to human resources. So all HR
12 duties are mine.

13 Q And do you -- who do you report to?

14 A I report to the -- to -- currently now? I report to
15 the General Manager, Peter Kavounas.

16 Q And in 2011, who did you report to?

17 A In 2011 I reported to the chief executive officer,
18 Desi Alvarez.

19 Q And your current duties that you just described,
20 were those the same duties in 2011?

21 A They were.

22 Q And you stated you reported to Mr. Alvarez in 2011.
23 Did you report to him during that entire year?

24 A Yes.

25 Q Mr. Alvarez wasn't hired -- didn't start working

1 until May 2011; is that correct?

2 A That is correct. He started May -- May 3rd, 2011.

3 Q So who did you report to prior to him starting?

4 A Prior to that, Ken Manning.

5 Q And who was Ken Manning?

6 A Ken Manning was the chief executive officer of
7 Chino Basin Watermaster.

8 Q Prior to Mr. Alvarez coming along; is that correct?

9 A That is correct.

10 THE COURT: How does he spell his last name?

11 THE WITNESS: Mr. Manning?

12 THE COURT: Yes.

13 THE WITNESS: M-a-n-n-i-n-g.

14 THE COURT: Thank you.

15 BY MS. KAUR:

16 Q And when did you stop reporting to Mr. Alvarez?

17 MR. JENSEN: Objection. Asked and answered.

18 THE COURT: Overruled. But if you can answer that
19 without referring to any exhibit, that would be the primary
20 mode of --

21 THE WITNESS: Oh.

22 THE COURT: If you need to look at something to refresh
23 your recollection, it's okay to do that. We don't expect you
24 to remember everything. But you just have to let folks know
25 what document you're looking at so we can all kind of join

1 you.

2 Okay. Can you answer that question from memory?

3 THE WITNESS: Yes. Addressed to --

4 THE COURT: Yes. Oh --

5 THE WITNESS: Oh --

6 THE COURT: Her. Sorry.

7 THE WITNESS: Could you repeat the question, please.

8 BY MS. KAUR:

9 Q When did you stop reporting to Mr. Alvarez?

10 A I stopped reporting to him in November 2011.

11 Q Would it be November 9th -- after November 9th,
12 2011?

13 A Yes.

14 Q And who did you start reporting to?

15 A The interim chief -- well, I believe it was the
16 chief interim, who was Mr. Ken Jeske.

17 THE COURT: How does he spell his last name?

18 THE WITNESS: J-e-s-k- -- J-e-s-k-e.

19 THE COURT: Thank you.

20 THE WITNESS: You're welcome.

21 BY MS. KAUR:

22 Q So did Ken Jeske start -- take the position of a CEO
23 right after Mr. Alvarez, or did anybody else take the CEO
24 position in between?

25 A Actually, do you mind? Because during the --

1 Prior to Mr. Alvarez starting, when we had numerous
2 changes, if I can just look to see the chart --

3 Q Sure.

4 A -- to see exactly who we -- because if I recall --

5 THE COURT: Okay. For the record, the witness is
6 referring to Exhibit 13.

7 THE WITNESS: Okay. Ask your question -- I'm sorry.

8 BY MS. KAUR:

9 Q Right after Mr. Alvarez -- after November 9th, 2011,
10 when you stopped reporting to Mr. Alvarez, did you
11 immediately start reporting to Ken Jeske, or was there
12 another CEO after Mr. Alvarez?

13 A I reported to Ken Jeske.

14 Q And what was the position that Mr. Jeske had at that
15 time?

16 A He was the interim CEO.

17 Q Was Danni Maurizio ever the interim CEO right after
18 Mr. Alvarez left?

19 A She may have been for a spe- -- certain amount of
20 time.

21 Q But whoever it was, you would be reporting to the
22 CEO --

23 A Correct.

24 Q -- that replaced Mr. Alvarez?

25 A Yes.

1 Q And what exactly are you reporting to the CEO?

2 MR. HERREMA: I'm sorry. Repeat that question again.

3 BY MS. KAUR:

4 Q So you testified that you were reporting to the CEO.
5 What exactly are you reporting? What does "reporting" mean?

6 A I would -- my responsible duties as assigned.

7 Q So did you go through the CEO if you needed to
8 report anything to the Board, or did you report directly to
9 the Board?

10 A I -- no. I report directly to the CEO.

11 Q And you mentioned that you're in charge of the HR
12 responsibilities and duties; is that correct?

13 A That is correct.

14 Q So what is your involvement in terms of setting
15 the salary schedule for a -- for Watermaster employees?

16 MR. HERREMA: Objection. Assumes a fact not in evidence.

17 THE COURT: Overruled. You can answer.

18 THE WITNESS: In regards to setting the salaries, I would
19 need to have some additional information of what -- what --
20 what you're asking.

21 BY MS. KAUR:

22 Q So are you the one who sets the salaries for the
23 employees?

24 A Am I the one that comes up with what the salaries
25 are going to be? No.

1 Q Who comes up with that?

2 A That is usually done as part of our budget creation,
3 which is done each year.

4 Q Who does that -- the budget creation.

5 A My -- well, I do the budget creation, but the
6 salaries are based upon previous salaries and discussions
7 with the current CEO and/or the personnel committee.

8 Q You said personnel committee; is that correct?

9 A Correct.

10 Q And do the salaries ever change from what was
11 previously set?

12 MR. HERREMA: Objection. Vague.

13 THE COURT: Sustained.

14 BY MS. KAUR:

15 Q So -- is the Board involved in setting the salary?

16 A No.

17 Q So which departments are involved in setting the
18 salary?

19 A The salaries would be set by myself and the general
20 -- and the CEO (inaudible) discussions.

21 THE REPORTER: I'm sorry. "By the CEO and myself" --

22 THE WITNESS: Oh, myself as the chief financial officer
23 and --

24 THE REPORTER: You said something "discussions."

25 THE WITNESS: Well, with the CEO.

1 BY MS. KAUR:

2 Q And you had testified it would be the current CEO at
3 that time; is that correct?

4 A Yes.

5 Q At the time you're discussing the salary?

6 A Correct. Normally we -- our budgets process is --
7 we developed a budget between January, February, and March.
8 And then in April we bring the budget to our -- for workshops
9 for the parties of Watermaster to review. And then in May we
10 usually bring that to the three pools, the
11 advisory committee, and the Board for approval.

12 Q And that budget would include the salary for the
13 employees; is that correct?

14 A Yes.

15 Q So when you're setting the salary with the CEO, what
16 input do you have? What input can you provide in terms of
17 salary?

18 A I -- well, we use our previous salary matrix. And
19 then if we have any new positions, we will add those on. If
20 we have any positions that are being eliminated, we'll --
21 we'll erase those.

22 Basically, our pay matrix has certain steps. And
23 depending upon what an individual step is -- let's say someone
24 is at Step D, and they're going to be moved into step E, I
25 would ensure that we would budget for someone's salary

1 increase that was going to be happening in the next fiscal
2 year.

3 So the salary matrix is basically what is used to
4 create the salary budgets.

5 Q And are you the one who creates the salary matrix?

6 A Yes.

7 Q And what about new employees that come on? For
8 example, when Mr. Alvarez was hired as a new CEO, who sets the
9 salary for the CEO?

10 A We use the exiting salary that's there.

11 Q Is it ever changed?

12 MR. HERREMA: Objection. Vague.

13 MR. JENSEN: Objection. Vague as to time and --

14 THE COURT: Sustained. Oh, and --

15 MR. JENSEN: Position.

16 THE COURT: Sustained.

17 MS. KAUR: I'm sorry. I didn't hear him.

18 THE COURT: Time and position.

19 BY MS. KAUR:

20 Q For the CEO position, for exam -- for Mr. Alvarez
21 -- was it the same as the prior CEO position?

22 MR. HERREMA: Objection. Vague as to --

23 THE COURT: Oh, he wanted you to finish --

24 MS. KAUR: I finished.

25 THE COURT: -- the question.

1 Oh, okay.

2 MS. KAUR: I don't know if he heard me.

3 MR. HERREMA: I didn't know what "it" was, but he
4 clarified that it was the salary.

5 THE COURT: Okay.

6 THE WITNESS: Could you have the question asked again,
7 please?

8 BY MS. KAUR:

9 Q I can't remember the question. Sorry. I'm drawing
10 a blank.

11 THE COURT: Can you find it and read it back, please.

12 (Record read)

13 THE WITNESS: Oh, as the prior? I believe it was higher.

14 BY MS. KAUR:

15 Q And did you discuss that with -- did you discuss
16 that with the CEO at the time?

17 MR. HERREMA: Objection. Vague again as to "it is."

18 BY MS. KAUR:

19 Q Did you discuss --

20 MS. KAUR: Should I clarify, your Honor?

21 THE COURT: Yes.

22 BY MS. KAUR:

23 Q So did you discuss the salary with the CEO at that
24 time, whoever was the CEO at that time?

25 A Yes.

1 Q And Ken was the CEO at that time; is that correct?

2 A Yes.

3 MR. HERREMA: Objection. Misstates the prior testimony.

4 THE COURT: Overruled.

5 Do you me a favor, though, Mr. Herrema. Keep your
6 voice up, just so the reporter can hear.

7 MR. HERREMA: I'm sorry. I apologize.

8 THE COURT: That's okay.

9 MR. HERREMA: We've talked about two different Kens.
10 There's a Ken Manning and a Ken Jeske, and she said "Ken."
11 I don't know to whom she was referring.

12 MS. KAUR: I'll clarify.

13 THE COURT: Okay.

14 BY MS. KAUR:

15 Q Ken Manning. Was he the CEO at that time?

16 MR. HERREMA: Objection. Vague as to what time.

17 BY MS. KAUR:

18 Q As I was referring to in my previous question, was
19 he the CEO at the time that you were considering hiring
20 Mr. Alvarez and discussing Mr. Alvarez's salary?

21 A Yes.

22 Q And just to clarify, you discussed Mr. Alvarez --
23 Mr. Alvarez's potential salary with Mr. Ken Manning; is that
24 correct?

25 A Actually, no. If I could --

1 Ken -- I apologize. Ken was not in the office.
2 That would have been Ken Jeske. Because Mr. Manning left in
3 February-ish of 2011, and Mr. Alvarez wasn't even hired until
4 May 3rd. So there was no way -- possible way that -- I
5 would have had discussions with Mr. Jeske, not Mr. Manning.

6 Q And what was Mr. Jeske's position at the time?

7 A He was the interim CEO.

8 Q So would it be correct to say he was the interim CEO
9 from February 2011 until May of 2011?

10 A I believe so, yes.

11 Q And what did you discuss with Mr. Jeske regarding
12 the setting of the salary for the new CEO?

13 A We wanted to ensure that the salary -- depending
14 upon whatever the contract was going to be -- that we had
15 enough funds budgeted.

16 Q Anything else?

17 A No.

18 Q And do you recall when this discussion occurred? Or
19 were there a series of discussions -- let me ask that first.

20 A There would have been numerous discussions through
21 the budget process.

22 Again, as I previously stated, we do our budget from
23 budget preparation beginning in mid January all the way
24 through March to April. Or, sorry, April and --

25 Q And in terms of your HR functions, are you also in

1 charge of hiring the CEO?

2 A No.

3 Q Who is in charge of that?

4 A That's handled by the Board.

5 Q Do you have any input in that matter?

6 A No.

7 Q How about terminating the CEO?

8 A No.

9 Q Do you have any input in the termination of the CEO?

10 MR. HERREMA: Objection. Asked and answered.

11 THE COURT: Sustained.

12 BY MS. KAUR:

13 Q Are you familiar with the duties of the CEO for the
14 Watermaster?

15 MR. HERREMA: Objection. Vague as to time frame.

16 THE COURT: What time frame are we talking about?

17 BY MS. KAUR:

18 Q We can look at 2011. So the duties for the Water-
19 -- the CEO for the Watermaster in 2011, are you familiar with
20 those duties?

21 A Yes.

22 Q And can you tell me what those duties were?

23 A The CEO is responsible for ensuring that the
24 Watermaster run according to the Rules and Regulations of
25 what Watermaster is. So, in essence, the CEO is responsible

1 for everything that happens within Watermaster.

2 Q Did you work closely with the CEO on your
3 assignments?

4 MR. HERREMA: Objection. Vague as to which assignments.

5 MR. JENSEN: Objection. Vague as to time.

6 MS. KAUR: In --

7 THE COURT: 2011?

8 MS. KAUR: Yes.

9 THE COURT: Okay. Otherwise overruled.

10 Do you understand what she's asking?

11 THE WITNESS: I believe so, yes.

12 THE COURT: Okay. You can answer.

13 THE WITNESS: In -- in 2011, yes.

14 There are three separate CEO's and, yes, I -- if I
15 needed questions or had -- needed anything that I couldn't
16 handle myself, I would ask, yes -- look for clarification.

17 BY MS. KAUR:

18 Q So you reported to the CEO concerning the HR issues;
19 is that correct?

20 MR. JENSEN: Objection. Asked and answered.

21 THE COURT: Overruled. You can answer.

22 THE WITNESS: In regards to some HR issues. Yes.

23 BY MS. KAUR:

24 Q Which --

25 Were there certain issues you didn't report to the

1 CEO about?

2 MR. HERREMA: Objection. Vague as to time frame. And
3 which CEO?

4 MS. KAUR: And I'd like to just say this would be all
5 concerning 2011.

6 MR. HERREMA: There were multiple CEO's during 2011.

7 BY MS. KAUR:

8 Q I'm -- and I'm asking generally, in terms of the CEO
9 -- whoever the CEO would be in 2011. Unless it varied, then
10 you can clarify them.

11 If your duties -- did your duties ever change in
12 2011, from CEO to CEO?

13 A No. No.

14 Q So they've stayed consistently the same regardless
15 of what person was filling in that position; would that be
16 correct?

17 A Yes.

18 Q So you mentioned there was -- you reported to the
19 CEO concerning certain HR issues. Were there certain HR
20 issues you didn't report to the CEO about?

21 A Yes. If there were issued regarding to him then,
22 yes, I would not report to those.

23 Q Who would you report to?

24 A I wouldn't. Those would be handled by the Board.

25 Q And did you say you wouldn't?

1 A I would not. Correct.

2 Q You would --

3 Would you report to the Board, then?

4 A Those issues would have been handled by the Board.

5 Q But if -- but if there were any issues concerning --

6 any HR issues concerning the CEO, would you report to the

7 Board about those issues instead of him?

8 A No. All HR issues regarding the CEO would be

9 handled by the Board.

10 Q When you say "HR issues," what do you mean? Are you

11 talking about including discipline issues, or are you talking

12 about paperwork? What do you mean by "HR issues concerning

13 the CEO"?

14 MR. HERREMA: I'm going to object. I think -- this line

15 of questioning -- Ms. Kaur is the one who has used the term

16 "HR issues."

17 MR. JENSEN: In other words, lacks foundation.

18 MR. HERREMA: Lacks foundation, and -- yes.

19 THE COURT: All right.

20 Mr. Joswiak, do you understand what she's asking?

21 THE WITNESS: I -- I believe she's asking in regards to

22 disciplinary actions, and that's -- would not be anything

23 that I would deal with because the CEO reports directly to

24 the Board. The CEO doesn't report to me. So I would not be

25 handling any disciplinary actions for the CEO.

1 BY MS. KAUR:

2 Q That clarifies. Thank you.

3 MR. JENSEN: I apologize to Counsel to -- for stepping on
4 Mr. Herrema.

5 BY MS. KAUR:

6 Q You testified you reported the HR issues to the CEO
7 except when they're concerning the CEO regarding disciplinary
8 actions?

9 A Uh-huh.

10 Q Would it be correct to state you also reported to
11 the CEO concerning the budget for the Watermaster?

12 A Yes.

13 Q Any other issues you reported to the CEO about?

14 MR. HERREMA: Objection. Asked and answered.

15 THE COURT: Overruled. You can answer.

16 THE WITNESS: Anything that was within my scope. So
17 anything that dealt with accounting, anything that was
18 IT-related, anything that dealt with risk management. Again,
19 if we were having a human resources issues with another
20 member of staff.

21 Q And just to turn your attention back to the
22 Staff Organization Chart under Exhibit 13 -- and it's the
23 2011 Staff Organization Chart -- does this provide -- does
24 this list all the staff for the Watermaster in 2011, or at
25 least all the positions?

1 MS. KAUR: Objection. Compound question.

2 THE COURT: Overruled. You can answer.

3 THE WITNESS: Yes.

4 BY MS. KAUR:

5 Q There aren't any position that are left out; would I
6 be correct in assuming that?

7 A Yes. There are no position left out.

8 Q Aside from the duties you have listed, are you also
9 the agent -- are you also the contact person in terms of
10 CalPERS issues that come up with the Watermaster?

11 A Yes.

12 Q So what are your responsibilities in relation to
13 that designation?

14 A In regards to when -- if CalPERS requests any
15 information, I would provide it. I'm also the individual who
16 would provide the salary information to CalPERS for new
17 employees.

18 I would also input into the CalPERS system new
19 employees, terminated employees, benefit changes, if an
20 employee had married, divorced, had a dependent change for
21 purposes of medical, if they changed their address.

22 Basically anything that had to do with personal-type
23 related issues that would normally be entered into the
24 CalPERS system.

25 Q And were you responsible for those duties in 2011 as

1 well?

2 A Yes.

3 Q And if you can turn to Exhibit 10 in your
4 binder. This exhibit has a 2-page document.

5 Can you tell us what this document is, please.

6 A This document is the minutes for
7 Chino Basin Watermaster, the Watermaster Board Closed Session
8 Conference Call Special Meeting dated March 31st, 2011.

9 (Complainant's Exhibit 10 was marked
10 for identification by the Court.)

11 BY MS. KAUR:

12 Q And it seems like your --

13 So your name is listed under the "Watermaster Staff
14 Present." Were you present at this meeting?

15 A Yes, I was.

16 Q And what was the purpose of this meeting?

17 A This meeting was to discuss the hiring of a CEO for
18 Watermaster.

19 Q And why was a meeting held to discuss this -- that
20 issue.

21 A According to the minutes, it was held to give
22 authorization to Scott Slater to create a contract to hire
23 Mr. Alvarez as the new CEO of Watermaster.

24 Q And who's Scott Slater?

25 A Scott Slater is the Brownstein Hyatt Farber and

1 Schreck legal counsel for Watermaster. He's the
2 Watermaster's counsel -- general counsel.

3 Q Is this the -- would this be a normal process when
4 the Watermaster is determining to hire -- has determined to
5 hire a CEO? Is there always a meeting held with the Board?

6 MR. JENSEN: Objection. Leading and lacks foundation.

7 THE COURT: Overruled. You can answer.

8 MR. HERREMA: I'm going to object that it's vague as to
9 time frame of hiring a CEO.

10 THE COURT: We're talking about this time frame of --

11 MS. KAUR: Yes. During this time frame.

12 THE COURT: March 2011?

13 MS. KAUR: Yes.

14 THE COURT: Okay. Overruled. You can answer.

15 THE WITNESS: I would have to say because this was the
16 first instance that I had been with Watermaster when they
17 had hired a CEO. This was the first instance where we had a
18 confidential session in regards to authorizing legal counsel
19 to generate a term.

20 BY MS. KAUR:

21 Q Has a confidential session with the Board been held
22 in similar situations since then?

23 MR. HERREMA: Objection. Lacks foundation.

24 THE COURT: Overruled. You can answer.

25 THE WITNESS: Yes.

1 BY MS. KAUR:

2 Q And in what instances?

3 A When Mr. Kavounas was hired, there was action by
4 the Board.

5 Q And was that in confidential session?

6 A I believe so, yes.

7 Q What about the interim CEO's?

8 MR. JENSEN: Objection. Vague.

9 THE COURT: Sustained. Why don't you clarify.

10 BY MS. KAUR:

11 Q The interim CEO, particularly Mr. Ken Jeske, was he
12 also hired through a confidential session?

13 A I don't recall.

14 Q And do you know why this was discussed in closed
15 session? I'm referring to the March 31st, 2011, minutes.

16 A No.

17 Q Do you know why it was discussed in a confidential
18 session?

19 A No.

20 MR. HERREMA: Objection. That was asked and answered.

21 THE COURT: He answered the question, but that was
22 basically what you had asked before; wasn't it?

23 MS. KAUR: I just wanted to clarify if there's any
24 confusion between -- any difference between confidential
25 or closed. I just -- it was just a clarifying question.

1 THE COURT: Okay. Okay. I got it.

2 MS. KAUR: Maybe a little --

3 BY MS. KAUR:

4 Q Do you recall what was discussed in that session?

5 MR. JENSEN: Objection.

6 MR. HERREMA: Objection. Privilege.

7 THE COURT: Okay.

8 MR. HERREMA: And I'd also -- I would say we don't know
9 that Mr.- -- Mr. Joswiak hasn't -- hasn't testified that he
10 -- that lacks foundation. He hasn't testified that he
11 was in the confidential session. He's testified that he was
12 at the meeting but not necessarily that he was in the
13 confidential session.

14 MR. JENSEN: And, your Honor, can I just briefly address
15 that? There --

16 THE COURT: Sure.

17 MR. JENSEN: There is, I think, law that allows personnel
18 decisions to be made in confidential sessions. And I'm not
19 speaking for Watermaster. But I just wanted to bring that to
20 your attention.

21 THE COURT: Yes. All right. So let's take first thing
22 first.

23 Were you present if and when the Board actually
24 discussed hiring Mr. Alvarez as CEO?

25 THE WITNESS: In the -- in -- I was at the meeting. I

1 was not part of the confidential session.

2 THE COURT: Okay. So were you excluded when -- during
3 the confidential part of the session, then?

4 THE WITNESS: Yes.

5 THE COURT: Okay. Was there any discussion concerning
6 Mr. Alvarez outside of the confidential session?

7 MR. JENSEN: And, your Honor, can I make an objection to
8 your question?

9 THE COURT: Yes. Of course. Yes.

10 MR. JENSEN: There's -- there's two separate meetings.
11 There's an April meeting, which is later to that, which I
12 believe this was brought up again and proved. And so --

13 There's, you know, there's this meeting here, which
14 is March, and I believe there's a subsequent meeting where it
15 was also discussed. So I just wanted to add that wrinkle to
16 the -- not just focusing on this meeting.

17 THE COURT: Okay. Right now we're just focusing on the
18 March 31st meeting. Okay. All right.

19 Actually, Ms. Kaur, I'll let you take it from there
20 because he's saying he wasn't part of the closed,
21 confidential part. So why don't you pick up from there.

22 BY MS. KAUR:

23 Q So you were part of the meeting; is that correct?

24 MR. JENSEN: Objection. Vague as to which meeting.

25 MR. HERREMA: Objection. He's already testified that he

1 was at the meeting. He was not part of the confidential
2 session.

3 THE COURT: Okay.

4 Do you agree with what Mr. Herrema just said?

5 THE WITNESS: Yes.

6 THE COURT: Okay.

7 BY MS. KAUR:

8 Q Was this meeting held before or after the
9 confidential session?

10 MR. HERREMA: Objection. Vague.

11 BY MS. KAUR:

12 Q And I'm referring to this meeting on March 31st,
13 2011.

14 MR. JENSEN: And I'll reiterate it's vague.

15 THE COURT: All right. Can you just tell us what the
16 process was which -- what happened? What was the order of
17 the meeting?

18 THE WITNESS: Normally when we have our Watermaster
19 meetings, specifically for this type of board meeting, all of
20 the members would join at Watermaster.

21 We would go through the normal flag salute, and then
22 if -- in instance of here, this is a confidential session --
23 the Board or the Chair would excuse all those parties not
24 part of the discussion. We would leave and then the Board,
25 in confidential session, would have their discussion.

1 After the meeting the Board would then call back in
2 staff and any discussion or -- not discussion -- any action
3 would then be announced in open session.

4 THE COURT: Okay. Thank you.

5 BY MS. KAUR:

6 Q And what was announced in open session? I'm
7 sorry. You said after the meeting then any action would be
8 announced. Did you say "open session," or am I --

9 THE COURT: When they were called back in after the
10 closed session, there would be an announcement of the action
11 or result.

12 THE WITNESS: Correct. After -- after -- after the
13 closed session, the Board would then call staff and any other
14 parties back to an open session, and then any reportable
15 action would then be noted.

16 BY MS. KAUR:

17 Q And you're referring to that open session as "the
18 meeting"; would that be correct, also? You're saying you
19 were part of the meeting?

20 A Yes.

21 Q And what was announced at the meeting or the open
22 session?

23 A It was announced reportable action by Scott Slater
24 -- and I'm reading from the March 31st, 2011 minutes --
25 authorize counsel to extend a term -- binding term sheet,

1 for the retention of Desi Alvarez, the new CEO of
2 Watermaster, and to prepare a confirming legal contract for
3 execution by the Watermaster Board Chair.

4 Q Was this announcement discussed in further detail at
5 the meeting?

6 A In open session? I don't recall.

7 Q Were you given any direction concerning this
8 announcement?

9 MR. HERREMA: Objection. Vague as to "given direction."

10 THE COURT: Overruled. You can answer.

11 THE WITNESS: I don't recall any direction from this.
12 No.

13 BY MS. KAUR:

14 Q In the open meeting, because this refers to a
15 binding term sheet -- the sentence that you just read --

16 A Uh-huh.

17 Q -- what is your understanding of a binding term
18 sheet?

19 MR. HERREMA: Objection. Relevance.

20 MR. JENSEN: The document speaks for itself.

21 THE COURT: Is there anything --

22 MR. HERREMA: I said, I object as to the relevancy of the
23 question.

24 THE COURT: Okay. Overruled. You can answer.

25 THE WITNESS: I -- I'm not an attorney. So I -- I don't

1 know what a -- I could make an assumption of what a binding
2 term sheet is.

3 It's an agreement or a -- terms of what the
4 agreement for the new CEO would be, which would be salary,
5 length of -- length of the contract, what the -- what the
6 terms are, when you're supposed to work, when you're not
7 supposed to work, what are your responsibilities, what are --
8 what are your benefits.

9 To me, that's what a term sheet would be, I mean,
10 similar to any contract, you -- should be terms -- some type
11 of agreement.

12 THE COURT: Okay. Just to clarify, was that your
13 understanding of what this meant at that time, or are you
14 just telling us what your general understanding --

15 THE WITNESS: Oh, I'm just -- I'm just telling you
16 because I -- I -- at this time, I don't know what the -- the
17 agreement was.

18 Again, I wasn't the attorney. I'm not an attorney.
19 This was giving authorization to Mr. Slater to create the
20 binding term.

21 THE COURT: Okay.

22 THE WITNESS: Term agreement.

23 So I -- I don't -- I -- again, I wasn't involved in
24 creating of the term agreement. So I don't know what it is.
25 I can tell you what I think it --

1 THE COURT: That's okay.

2 THE WITNESS: -- just from a lay person's -- from a CFO
3 position -- and what it is.

4 THE COURT: That's okay. Ms. Kaur will follow up.
5 Thank you.

6 BY MS. KAUR:

7 Q Thank you. And just to clarify, considering your
8 testimony, an actual binding term sheet was not presented at
9 that hearing; is that correct?

10 MR. HERREMA: Objection. Vague as to "hearing."

11 MS. KAUR: I mean -- I apologize. Not hearing. The
12 open session.

13 MR. HERREMA: Object again. He hasn't been asked a
14 question about whether a term sheet was presented.

15 THE COURT: I think that's what she's asking now, if that
16 happened during the meeting; is that right?

17 MS. KAUR: Yes.

18 THE COURT: Okay.

19 MS. KAUR: That's what I'm asking.

20 THE WITNESS: Because I wasn't in the closed session.
21 When we -- when -- was there -- no. I -- I'm not aware
22 of a term sheet.

23 BY MS. KAUR:

24 Q In the open session. Is that -- I'm referring
25 to the open session.

1 A I don't recall a binding term sheet -- no -- being
2 handed out.

3 Q And this also -- this sentence also goes on to state
4 -- so the "authorize counsel" -- and I paraphrase -- is to
5 prepare confirming legal contract for execution.

6 There was no legal contract presented during open
7 session; is that correct?

8 MS. KAUR: Objection. Leading question.

9 MR. JENSEN: Document speaks for itself.

10 THE COURT: Overruled. You can answer.

11 THE WITNESS: I don't recall if there was. I don't
12 believe there was.

13 BY MS. KAUR:

14 Q And is it your understanding a confirming, binding
15 contract was to be prepared? Is that a correct statement of
16 your understanding?

17 A That's the way the statement reads.

18 MR. JENSEN: And, your Honor, I just want to move to
19 strike "as this says 'to prepare.'" It doesn't say "to be
20 prepared." Literally.

21 THE COURT: Okay. I'll deny the motion. I'll take the
22 testimony for what it's worth.

23 On the question of the leading questions, I think
24 since he's an authorized representative of the Watermaster,
25 which is one of the parties, and this is an opponent that

1 Ms. Kaur would be able to ask leading questions right off the
2 bat; am I not correct?

3 MR. HERREMA: She's designated him as one of her
4 witnesses. I suppose that's --

5 THE COURT: True, but --

6 MR. HERREMA: I would leave it to your Honor.

7 THE COURT: Okay. I think the -- whether she's calling
8 the person or asking questions on cross-exam, I would think
9 she would be allowed to treat this person as an opponent and
10 would thus be able to ask leading questions.

11 MR. HERREMA: Okay.

12 THE COURT: Okay.

13 MR. HERREMA: Thank you, your Honor.

14 THE COURT: Okay.

15 MS. KAUR: Thank you.

16 THE COURT: Go ahead.

17 BY MS. KAUR:

18 Q The sentence -- and I'll paraphrase -- it also says
19 -- to a certain extent it says, so the counsel is to
20 prepare a confirming legal contract for execution by the
21 Watermaster Board Chair.

22 What is your understanding of the term "execution"
23 here?

24 A That the legal contract would be signed by the
25 Watermaster Board Chair.

1 Q Would anything else be done?

2 MR. JENSEN: Objection. Vague.

3 MR. HERREMA: Objection.

4 THE COURT: Sustained.

5 BY MS. KAUR:

6 Q And if you could turn to Exhibit 11, please. Can
7 you tell us what this document is, please.

8 A This is the employment agreement for the chief
9 executive officer between Chino Basin Watermaster and
10 Desi Alvarez, effective date of May 3rd, 2011.

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

13 BY MS. KAUR:

14 Q And if you could turn to Page 6 of this document.
15 And this is signed by Kenneth Willis. Was he the chairman
16 of the Watermaster at the time?

17 A Yes, he was.

18 Q Did you have any involvement in drafting this
19 document?

20 A No.

21 Q Did you have any involvement in executing this
22 document?

23 A No.

24 Q Aside from the Chair of the --

25 Well, what is the process for it to be signed by

1 the Board -- the Board Chair? Does it go through you? Was
2 it -- how is it presented to the Chair?

3 MR. HERREMA: Objection. Vague.

4 THE COURT: Overruled. You can answer.

5 THE WITNESS: In instances of contracts, they're usually
6 -- for this specific, it would have gone from the Board clerk
7 for signature.

8 BY MS. KAUR:

9 Q Who -- who presented -- who would present this type
10 of document? It's not your department; is that correct?

11 MR. HERREMA: Objection. The question is vague.

12 THE COURT: Sustained.

13 MS. KAUR: Who would present which type of document to
14 whom?

15 THE COURT: Sustained.

16 BY MS. KAUR:

17 Q Who would -- who would present this employment
18 document, and particularly this document? Do you know who
19 would have presented it to the Chair?

20 A Documents such as this would have come from the
21 legal counsel.

22 Q And would it -- would that be provided directly to
23 the Board clerk?

24 A It would -- well, it could have gone to the Board
25 clerk, and then in turn passed over to the Board Chair.

1 Because this was of a -- employment contract, it may have
2 gone directly from the counsel directly to the Board Chair.

3 Q Do you know if this document was approved in open
4 session before it was signed by the Board Chair?

5 A I don't recall.

6 Q Do you know if it was approved in open session after
7 it was signed by the Board Chair?

8 A I don't recall.

9 Q And after it's been executed, who maintains this
10 type of agreement?

11 A Because it's a personnel-related issue, it would be
12 maintained in the employee's personnel folder.

13 Q Would that be by -- by you?

14 A Yes.

15 Q Was this posted on the Watermaster's website at any
16 time in 2011?

17 MR. JENSEN: Objection. Lacks foundation.

18 THE COURT: Overruled. You can answer.

19 THE WITNESS: All of our -- all of our employment
20 contracts in regards to the chief executive officer are
21 posted on the website. I don't know the time frame of -- if
22 this was posted on the website.

23 Q In 2011, did you ever receive a request to produce
24 this employment agreement to any member of the public or any
25 entity aside from the Watermaster?

1 A Yes.

2 Q Who did you receive a request from?

3 A In 2011 we received a request from Monte Vista Water
4 District.

5 Q How was the request made?

6 A Via e-mail.

7 Q And what was -- was it made to you?

8 A Yes.

9 Q And did you provide a response?

10 A Yes.

11 Q And what was your response?

12 A Well, they requested information for salaries, and I
13 provided them the salaries -- the salary matrix, along with
14 our employee manual.

15 Q Did you e-mail this information to them?

16 A Yes.

17 Q Did you ever provide this -- this employment
18 agreement? I'm referring to the employment agreement under
19 Exhibit 11.

20 A The employment agreement? No.

21 Q Did you receive a request by anyone else in 2011?

22 MR. HERREMA: Objection. Vague. What type of request?

23 BY MS. KAUR:

24 Q For this -- this employment agreement under
25 Exhibit 11?

1 A No.

2 Q Did you provide this employment agreement to anybody
3 outside of Watermaster in 2011?

4 A In 2011? No.

5 Q Did you have any -- this document was maintained
6 by you, and I'm referring to Exhibit 11, the employment
7 agreement. Did you have any role in implementing this
8 employment agreement?

9 MR. JENSEN: Objection.

10 MR. HERREMA: Objection. Vague as to implementation.

11 THE COURT: I'm sorry? Vague as to --

12 MR. HERREMA: I don't know what -- vague as to
13 implementing the agreement.

14 THE COURT: Okay.

15 Do you understand what she's asking, Mr. Joswiak?
16 Or do you need her to clarify?

17 THE WITNESS: Could you clarify, please.

18 BY MS. KAUR:

19 Q So did you have any role in enforcing this
20 employment agreement?

21 MR. JENSEN: Same objection.

22 THE COURT: Actually, why don't you clarify. I'm not --
23 I'm not following.

24 BY MS. KAUR:

25 Q If you look at Page 1 of this employment agreement,

1 it discusses the duties to be performed. Did you have any
2 role in enforcing or ensuring the CEO performed these duties?

3 A No.

4 Q Did you have any role in reviewing the CEO's
5 performance?

6 A No.

7 Q Would it be the Board that would review the CEO's
8 performance?

9 A Yes.

10 Q Anyone in particular? Any position, in particular,
11 from the Board that would review the CEO's performance?

12 MR. JENSEN: Vague. Objection.

13 THE COURT: Overruled. You can answer.

14 THE WITNESS: The Chair.

15 BY MS. KAUR:

16 Q You also said you're not involved in disciplining
17 the CEO. I believe you testified that would be the Board's
18 responsibility. So anybody in particular who would be
19 involved in disciplining the CEO from the Board?

20 A The Chair.

21 Q And if you could turn to the first page of this
22 employment agreement. And -- and under Item I, where it
23 states -- it's labeled -- "Employment," there is a
24 discussion concerning the executive having the title, status,
25 and duties of the CEO.

1 After -- after November 9, 2011, did Mr. Alvarez
2 have the title of the CEO?

3 A I don't recall.

4 Q You reported to the CEO after -- in November of
5 2011; is that correct?

6 A Correct.

7 Q And so who had the title of the CEO, and who -- or
8 who were you reporting to? Which CEO were you reporting to
9 in November 2011?

10 MR. HERREMA: Objection. Vague as to what time during
11 November 2011.

12 BY MS. KAUR:

13 Q After November 9th, 2011?

14 A I was reporting to Ken Jeske.

15 Q Was there only one CEO after -- well, was there only
16 one CEO you were reporting to at that time?

17 MR. HERREMA: Objection. Vague as to the particular time
18 that's being discussed.

19 THE COURT: You mean on November 9th, 2011?

20 MS. KAUR: Yes.

21 THE COURT: Okay. You can answer.

22 THE WITNESS: There was only one, yes.

23 BY MS. KAUR:

24 Q And is that the same after November 9th, 2011?

25 A Yes.

1 Q And the just to clarify, at all times in 2011 there
2 was only one CEO position for the Watermaster; is that
3 correct?

4 A Yes.

5 Q Did Mr. Alvarez have the status of a CEO after
6 November 9, 2011?

7 MR. JENSEN: Objection. Asking for legal interpretation.

8 THE COURT: Can you clarify what you mean by "status."

9 BY MS. KAUR:

10 Q In terms of -- well, did he have -- what I mean is,
11 did he hold himself out as a CEO after November 9th, 2011?
12 When you went to board meetings, was he held out as the CEO?

13 MR. JENSEN: Objection. Compound. Lacks foundation.

14 MS. KAUR: I'm trying to explain, but --

15 THE COURT: Okay. Keep going.

16 BY MS. KAUR:

17 Q Does that clarify, or should I elaborate further?

18 THE COURT: I'll overrule the --

19 MR. JENSEN: Is there a question pending?

20 THE COURT: I'm sorry?

21 MS. KAUR: No, I'm -- I'm --

22 MR. JENSEN: Is there a question pending? I didn't know
23 what the question --

24 MS. KAUR: I'm waiting for the Judge to make a ruling, I
25 suppose. I was explaining myself.

1 THE COURT: Yes. Okay. Mr. Jensen had objected.

2 Let's -- let's fast-forward, and why don't you ask a
3 question, and then we'll take it from there.

4 I think you were -- you were -- I thought you had
5 asked if Mr. Alvarez had held himself out as a CEO. Was
6 that the question? Or did you --

7 MS. KAUR: Yes.

8 THE COURT: Okay.

9 MS. KAUR: If he held himself out as the CEO after
10 November 9th, 2011.

11 MR. JENSEN: And I'm going to object. Lacks foundation.
12 Lacks personal knowledge and is vague as to -- vague as to
13 time and location.

14 THE COURT: Okay. So on or after November 9th, 2011, you
15 can answer the question. But I don't want you to guess or
16 speculate. Whatever personal knowledge you have, you can
17 answer.

18 THE WITNESS: I don't know that he did or that he didn't.

19 BY MS. KAUR:

20 Q Did you continue -- did you -- were you present --
21 were you present at the board meetings after November 9th,
22 2011?

23 MR. HERREMA: Objection. Vague as to time frame.

24 THE COURT: Overruled. You can answer.

25 THE WITNESS: Was I present at any board meetings?

1 BY MS. KAUR:

2 Q Yes.

3 A Yes.

4 Q Was Mr. Alvarez also present at the board meetings
5 after November 9th, 2011?

6 A No.

7 Q Would it be correct to say he was not present at any
8 board meetings after the November 9th, 2011?

9 MR. HERREMA: Objection. Asked and answered.

10 THE COURT: Overruled. You can answer.

11 THE WITNESS: Not that I can recall.

12 BY MS. KAUR:

13 Q Did he continue to perform the duties of a CEO after
14 November 9th, 2011?

15 A "He" being Desi?

16 Q Mr. Alvarez.

17 A I don't know if he did or if he didn't.

18 Q You -- did you stop reporting to him after
19 November 9th, 2011?

20 A Yes.

21 Q What is the location where you work for the
22 Watermaster?

23 A Our physical address? It's 9641 San Bernardino
24 Road, Rancho Cucamonga, California.

25 Q Is the entire staff -- and I'm referring to the

1 staff particularly from the chart -- also stationed there?

2 A Yes.

3 Q Would that include the CEO as well?

4 A Yes.

5 Q And that includes yourself as well?

6 A Yes.

7 Q And does Mr. Alvarez -- was Mr. Alvarez stationed
8 there when he started working?

9 MR. HERREMA: Objection.

10 THE WITNESS: Yes.

11 BY MS. KAUR:

12 Q Did he come into -- and I'll refer to it as an
13 office. Did he perform his work out of the Cucamonga
14 office?

15 MR. JENSEN: Objection. Vague as to time.

16 THE COURT: What time frame?

17 BY MS. KAUR:

18 Q When he started. In May 2011.

19 A Yes.

20 Q And did you also perform work out of that office?

21 A Yes.

22 Q What is your schedule like? Do you go into that
23 office every day?

24 A Yes.

25 Q And in 2011, particularly after May 2011, or

1 starting May 2011, did you have set hours that you were in
2 that office?

3 A Per se, we don't really have set hours. We should
4 be there Monday through Friday. My schedule is set where I
5 am off every other Friday. Most staff have that.

6 Depending upon business meetings, or things, you may
7 be in the office, you may be out of the office. But on a
8 usual, regular basis, yes, I'm in the office.

9 Q And did Mr. -- was Mr. Alvarez also -- I'm going
10 to strike that.

11 Did Mr. Alvarez have -- also have set hours at that
12 office?

13 MR. JENSEN: Objection. Vague and ambiguous as to time.

14 THE COURT: May 2011?

15 MS. KAUR: Yes.

16 THE COURT: Okay. You can answer.

17 THE WITNESS: The CEO has a very unique business function
18 with Watermaster. His -- because of the nature of
19 Watermaster, he -- he or she does not normally have set
20 business hours.

21 They could be in the office a couple hours. They
22 could be out of the office in meetings. They could be out
23 for two or three days. But on a -- on a -- again, similar
24 to my schedule, on a normal basis, the CEO is usually in the
25 office.

1 Q And after November 9th, 2011, did Mr. Alvarez report
2 to the Cucamonga office?

3 A No.

4 Q What was your understanding regarding his status
5 with the Watermaster after November 9th, 2011?

6 A He reported to the Board.

7 Q In what capacity?

8 A They -- they had an agreement that he would report
9 to the Board, and any -- anything that needed to -- that the
10 Board needed from him, he would provide.

11 Q Did he report to the Board as a CEO?

12 MR. HERREMA: Objection. Calls for legal conclusion.

13 THE COURT: Overruled. But I don't want you to guess or
14 speculate. Just what you have from personal knowledge.

15 THE WITNESS: I don't know that he reported to them as
16 the CEO. No.

17 BY MS. KAUR:

18 Q Was it your understanding that he's no longer the
19 CEO after November 9th, 2011?

20 MR. JENSEN: Objection. Calls for legal conclusion.

21 THE COURT: Overruled. You can answer.

22 Let me just preface this. And I'm not asking you to
23 make a legal conclusion, just what your understanding was
24 then. You can answer.

25 THE WITNESS: I -- I know that he was still on payroll.

1 So in my mind, he was still acting as a representative of
2 Watermaster. I don't recall exactly what his title was.

3 Again, the CEO reports directly to the Board. He
4 doesn't report to me.

5 BY MS. KAUR:

6 Q You report to the CEO, you testified. Are you
7 taking direction from the CEO? Would that be correct, in
8 making that statement?

9 A Direction in regards to my daily functions?

10 Q Or just your general job duties. Who's telling you
11 what to do? Or who's managing you?

12 A The CEO.

13 Q So was Mr. Alvarez, after November 9th, 2011,
14 providing any direction or in charge of you in any way?

15 A No.

16 Q Who was the CEO in charge of you after November 9th,
17 2011?

18 MR. JENSEN: Objection.

19 MR. HERREMA: Objection. Asked and answered.

20 MR. JENSEN: Objection. Vague as to time.

21 THE COURT: Over- --

22 MS. KAUR: After November 9th, 2011.

23 MR. JENSEN: And ending when?

24 THE REPORTER: I'm sorry?

25 THE COURT: "Ending when."

1 Yeah, Mr. Jensen, keep your voice up.

2 MR. JENSEN: Yeah, I'm sorry. Yes. I apologize.

3 THE COURT: Okay. Overruled. You can answer.

4 Do you remember what the question was?

5 THE WITNESS: Yes. In the interim, I was reporting to
6 Ken Jeske.

7 BY MS. KAUR:

8 Q So Mr. Alvarez was not providing day-to-day
9 supervision or leadership of you; would that be correct?

10 MR. JENSEN: Objection. Vague as to time.

11 MS. KAUR: After November 9th, 2011.

12 THE WITNESS: Correct. Yes.

13 THE COURT: Ms. Kaur, let me know when a good time would
14 be to break. I'm just afraid that if we don't take a break,
15 we're going to go a couple hours without one before lunch.

16 MS. KAUR: Sure. We can break.

17 THE COURT: Is now an okay time?

18 MS. KAUR: That's fine.

19 THE COURT: Okay. All right. Why don't we take a --
20 we'll take a ten-minute break. We'll resume again at 11:11,
21 depending on what your watches say.

22 All right. We're off the record.

23 (Morning recess)

24 THE COURT: Let's go back on the record. We're back on
25 the record after our morning break.

1 Ms. Kaur, please continue.

2 MS. KAUR: Thank you, your Honor.

3 BY MS. KAUR:

4 Q Can you please turn to Exhibit 18. That's in the
5 CalPERS binder.

6 THE COURT: Can I just note for the record -- on,
7 I think, all of the exhibits that we've reviewed, some
8 pages have highlighting and marking.

9 Is that the condition the documents were in on
10 receipt from PERS, or is that something that's been added
11 after or -- let me just make sure. Did the other
12 parties -- do yours have the -- are yours also -- have
13 some highlighting on them?

14 MR. HERREMA: My copy of their exhibits has highlighting
15 on it. I -- I don't believe that the highlighting was on it
16 when it was given to PERS.

17 THE COURT: Okay. Does yours have highlighting on it,
18 Mr. Jensen?

19 MR. JENSEN: Yes, your Honor.

20 THE COURT: Okay. So we're -- we're looking at the same
21 one. If there's any problem that anyone has, let me know.

22 I often get documents with highlighting on them, and
23 a lot of times it's helpful. And sometimes it doesn't
24 matter. I just want to make sure we all have the same
25 documents. And if anyone has any concerns, let me know.

1 Otherwise, I'll just -- we'll just keep going.

2 MR. JENSEN: And, your Honor, can I just briefly address
3 the Watermaster's?

4 Did the -- is this the highlighting from the
5 Watermaster?

6 MR. HERREMA: No. I don't believe it's -- it was
7 highlighted when it was given. You see there's a Bates stamp
8 on the top here?

9 MR. JENSEN: Yes.

10 MR. HERREMA: I don't believe that it was highlighted
11 when it was provided to CalPERS.

12 MR. JENSEN: So, your Honor, just -- if I can make a
13 motion on all the highlighted documents, just -- unless
14 there's some indication that they're from the Watermaster, to
15 exclude those as being supplemental markings, likely by
16 CalPERS.

17 THE COURT: Okay. Do you know -- would there be any of
18 these documents that would have had highlighting on them by
19 Watermaster staff and then provided to CalPERS?

20 MR. HERREMA: No. I don't believe so.

21 THE COURT: Okay. I think the easiest thing would be I
22 can just say on the record that I'll just disregard any
23 highlighted material as if it wasn't there. That might
24 be the easiest way to go about this.

25 MS. KAUR: You'll disregard the highlighted --

1 THE COURT: Yes.

2 MS. KAUR: Just the highlights?

3 THE COURT: Correct. The fact that it's -- the
4 highlighting, not the information within the highlighting.
5 Highlighting.

6 MR. JENSEN: Thank you, your Honor.

7 MS. KAUR: Thank you.

8 THE COURT: Okay. All right.

9 MR. HERREMA: One more note on --

10 THE COURT: Yes.

11 MR. HERREMA: -- this exhibit: There are four different
12 pages that are taken from, it appears, four separate e-mails.
13 They're not -- this Exhibit itself isn't internally
14 paginated. So some -- maybe Ms. Kaur will --

15 MS. KAUR: I will clarify that --

16 MR. HERREMA: -- do that as part of the discussion.

17 THE COURT: Okay. Thank you.

18 MS. KAUR: -- page-by-page.

19 THE COURT: Thank you. Okay.

20 Sorry about that, Ms. Kaur. Go ahead, when you're
21 ready.

22 MR. JENSEN: Oh, can I just add one more thing?

23 THE COURT: Sure.

24 MR. JENSEN: Mr. Alvarez, do you want to sit here?

25 MR. ALVAREZ: No. I'm fine.

1 MR. JENSEN: Okay.

2 MR. ALVAREZ: Thank you.

3 MR. JENSEN: Thank you.

4 THE COURT: Sure. Okay.

5 BY MS. KAUR:

6 Q And we're just looking at the first page of
7 Exhibit 18. And I'm -- and any questions I ask you will be
8 concerning the first page of this exhibit, unless I notify
9 you otherwise.

10 Can you please tell me when the first page of
11 Exhibit 18 is.

12 A This is an e-mail from myself, dated Wednesday,
13 January 25th, 2012, at 11:34 a.m., and was in regards to a
14 telephone call that I received from Mr. Alvarez.

15 Q And who was it sent to?

16 A It was sent to Danni Maurizio, Sherri Molino, and
17 Ken Jeske.

18 Q And who is Danni Maurizio? What position did
19 Danni Maurizio hold at the time?

20 A She -- her position was Senior Engineer.

21 Actually, allow me to correct that. I believe that
22 she may have been Assistant General Manager at that time.

23 Q Do you want to refer back to the chart on -- under
24 Exhibit 13? If you -- and this is in 2012.

25 A She was Senior Engineer.

1 Q And who is Sherri --

2 A Molino? She was the executive assistant.

3 Q What does an executive assistant of the Watermaster
4 do?

5 A She -- provides secretarial duties for the
6 administrative office.

7 Q And who is Ken Jeske -- or what position did he
8 hold at that time?

9 A He was interim CEO.

10 Q And why did you send this e-mail to these three
11 individuals?

12 A I sent it because of a question that Mr. Alvarez had
13 asked in regards to his payroll.

14 Q What was the question?

15 A He wanted to change some of his 457 payroll
16 deductions.

17 Q Was there any other reason why you sent this e-mail
18 to them?

19 A No. Just to let them know that there was a
20 conversation between myself and Desi.

21 Q And in the sentence -- the second sentence -- there
22 is a reference to a legal ruling. What is that legal ruling?

23 MR. HERREMA: Objection. Misstates the document.

24 THE COURT: Overruled. You can answer. Do you see which
25 part she's referring to in the e-mail?

1 THE WITNESS: Yes. Where it says "...including Ken's
2 appointment. The legal ruling..."

3 THE COURT: Yes.

4 THE WITNESS: Because Watermaster is a -- arm of the
5 court, we had lots of different legal issues going on at that
6 time. It could have been in regards to a Paragraph 31 Motion
7 or some other legal issue that was going on during that time.

8 BY MS. KAUR:

9 Q And then the third sentence starts off with "I did
10 not provide any additional information regarding issues at
11 Watermaster and was nonresponsive to his questions."

12 What questions was Mr. Alvarez asking?

13 A I don't recall.

14 Q And why did you not provide any information
15 regarding the issues at Watermaster?

16 A Because they may have been personnel-related or
17 personal in nature.

18 Q Personal in nature to the Watermaster or personal in
19 nature to you?

20 A To myself or another employee.

21 Q Why were you nonresponsive to his questions?

22 MR. HERREMA: Objection. Asked and answered.

23 THE COURT: Didn't you just ask that before, Ms. Kaur?

24 MS. KAUR: No. I asked why he didn't provide additional
25 information regarding issues at the Watermaster, not about

1 the questions themselves that Mr. Alvarez was asking.

2 THE COURT: Okay. Overruled. You can answer.

3 THE WITNESS: There's a lot of issues that go on at
4 Watermaster that I'm not involved in, specifically from --
5 legal in nature -- for the activities that Watermaster is
6 involved in. As a CFO, I'm involved in activities in the
7 accounting arena, not in the legal arena.

8 So, again, I don't testify to being an attorney.
9 I work with a lot of attorneys, but I'm not an attorney.
10 So I'm not going to provide legal information to employees
11 that ask if I don't know.

12 Q Was he asking you for legal information?

13 A He could have been.

14 Q Would you have been responsive if he was asking for
15 nonlegal information?

16 MR. HERREMA: Objection.

17 MR. JENSEN: Objection. Calls for speculation.

18 THE COURT: Sustained.

19 BY MS. KAUR:

20 Q Had you requested any information from him prior to
21 the call?

22 MR. HERREMA: Objection. Vague as to whom.

23 MR. JENSEN: Vague as to time.

24 MS. KAUR: Mr. Alvarez.

25 MR. JENSEN: Vague as to time.

1 THE COURT: Overruled. You can answer.

2 THE WITNESS: I don't recall.

3 BY MS. KAUR:

4 Q Aside from the -- any information concerning the
5 deductions, did you request any information from him --
6 Mr. Alvarez -- after the call after January 25th, 2012?

7 MR. JENSEN: And it's vague as to "request any
8 information."

9 THE COURT: Do you understand what she's asking?

10 THE WITNESS: I believe so. Yes.

11 THE COURT: Okay. You can answer.

12 THE WITNESS: I don't recall requesting any information.

13 BY MS. KAUR:

14 Q Did you have a discussion regarding Mr. Alvarez's
15 call with any other staff person at the Watermaster?

16 A No.

17 Q Do you know if he called Ken after this call with
18 you?

19 A I don't know. There are numerous Kens that work at
20 Watermaster.

21 Q I'm referring to Ken Jeske.

22 A I -- I don't know.

23 Q And if you could turn to the next page in the same
24 exhibit, which is Exhibit 18. Can you tell me what this
25 document is, please.

1 A This is an e-mail from myself, dated Friday,
2 March 4th, 2012, at 2:03 p.m.

3 Q And who is Patrick Park?

4 A Patrick Park is Watermaster's IT consultant.

5 Q And why did you send this e-mail?

6 A I sent the e-mail to Pat Park to inform him that we
7 needed to update the exchange server in regards to
8 Mr. Alvarez and Mr. Alvarez's e-mail.

9 Q And I'm going to read the first sentence, which
10 says:

11 "Now that Desi is officially no longer an employee
12 of Watermaster," and in parentheses, "(his official last day
13 was May 3rd, 2012)," closed parentheses, "we can stop
14 receiving his e-mails, and Sherri no longer has to monitor
15 them."

16 What do you mean by "officially" when you say
17 "officially no longer an employee"?

18 A According to the contract that was signed, his
19 contract was over as of May 3rd, 2012.

20 Q And this date -- and I'll paraphrase -- it states
21 to stop receiving his e-mails.

22 Who was receiving his -- Mr. -- and are you
23 referring to Mr. Alvarez there?

24 A Yes.

25 Q Who was receiving Mr. Alvarez's e-mails?

1 A Well, all -- all e-mails that were coming in were
2 coming in to Mr. Alvarez's e-mail account at Watermaster.

3 Q So when you're saying "receiving his e-mails,"
4 you're referring to Mr. Alvarez's Watermaster e-mail account;
5 is that correct?

6 A Correct.

7 Q And who was receiving them?

8 A They were coming in to Sherri Molino, who was the
9 administrative assistant.

10 Q Why was she receiving them?

11 A Because if any e-mails came in for Desi, they were
12 to be forwarded to him.

13 Q How do you know that?

14 A How do I know that?

15 Q Yes.

16 A Because that's what Sherri was doing.

17 Q How were you notified of that procedure? -- that
18 the -- his -- any e-mails from his account are to be
19 forwarded to her.

20 MR. JENSEN: Objection.

21 MR. HERREMA: Objection. That misstates his testimony.

22 THE COURT: Sustained. He's saying the e-mails that came
23 in to Mr. Alvarez's account would be forwarded by Ms. Molino
24 to Mr. Alvarez; is that right, what I just said.

25 THE WITNESS: Well, any e-mails that came in under -- for

1 Desi were forwarded to Sherri.

2 THE COURT: Ah. Okay.

3 THE WITNESS: So our -- our IT consult had all of those
4 directly forwarded over.

5 THE COURT: To?

6 THE WITNESS: To Sherri.

7 THE COURT: Ms. -- Ms. Molino?

8 THE WITNESS: Yes.

9 THE COURT: Okay. Go ahead.

10 BY MS. KAUR:

11 Q Did Mr. Alvarez have access to that e-mail account
12 for the Watermaster?

13 A I believe he did, yes.

14 Q After November 9th, 2011?

15 A Yes.

16 Q And why were they being forwarded to Sherri?

17 A Because she was the executive assistant in charge of
18 the administration.

19 Q Is this the normal course for all CEO e-mails?

20 MR. HERREMA: Objection. Vague as to time frame.

21 THE COURT: Overruled. You can answer.

22 THE WITNESS: The executive assistant is the capturer, if
23 you want to say, for all e-mails that are directed to the
24 CEO.

25 ///

1 BY MS. KAUR:

2 Q What do you mean "capturer"?

3 A Well, she's the -- she's the secretary, the
4 assistant, the -- the person who would assist that position.

5 Q And it states "Sherri no longer has to monitor
6 them." What is she monitoring them for?

7 A For any action.

8 Q What do you mean "action"?

9 A If there was action that needed to be taken care of.
10 She was monitoring the e-mails.

11 Q And if there was action that needed to be taken care
12 of, what does she do next?

13 MR. HERREMA: Objection. Calls for speculation.

14 MR. JENSEN: Lacks personal knowledge.

15 BY MS. KAUR:

16 Q To the extent you know.

17 MR. JENSEN: Objection.

18 THE COURT: Overruled. If you have personal knowledge.
19 Don't -- we don't want you to guess or speculate.

20 THE WITNESS: Yeah, I don't know what she would do with
21 them.

22 BY MS. KAUR:

23 Q And was Mr. Alvarez taking any action on behalf of
24 the Watermaster after November 9th, 2011?

25 MR. JENSEN: Objection. Lacks foundation.

1 THE COURT: Overruled. You can answer.

2 THE WITNESS: I don't -- I don't know if he was or not.

3 BY MS. KAUR:

4 Q Were any of the e-mails forwarded to you for taking
5 any action?

6 MR. JENSEN: Objection.

7 MR. HERREMA: Objection. Vague as to which e-mails we're
8 discussing.

9 MR. JENSEN: And vague and ambiguous as to time.

10 MS. KAUR: After November 9th, 2011.

11 MR. HERREMA: Objection. Still vague as to which
12 e-mails.

13 THE COURT: Overruled. You can answer.

14 THE WITNESS: I don't recall.

15 BY MS. KAUR:

16 Q And if you can turn to the next page. And I'm going
17 to ask you to look at the very bottom e-mail on this page,
18 the one that starts out -- the section that starts out "From
19 Joe Joswiak."

20 Did you send this e-mail?

21 A Yes, I did.

22 Q And who did you send it to?

23 A It was sent to Nicole Horning with a cc to Peter
24 Kavounas.

25 Q And when was this?

1 A This was February 22nd, 2013, at 2:22 -- sorry --
2 2:29 p.m.

3 Q And was Mr. Kavounas the CEO at the time?

4 A Yes, he was.

5 Q And what was this e-mail regarding?

6 A This was in regards to a request from Ms. Horning,
7 if I recall, in regards to our salary matrix. Well --
8 yeah. If we're just looking at this, it -- it was
9 in regards to the salary matrix and information for --
10 request for information on our -- on our website.

11 MR. HERREMA: Your Honor, may I ask that the record
12 reflect that this page that's being referred to is -- looks
13 like it's Page 4 of some larger e-mail chain that's been
14 printed out.

15 We don't have the first three pages here. We don't
16 know whether there are more pages than the fourth page.

17 THE COURT: Yes.

18 MR. HERREMA: We don't know if the entirety of
19 Mr. Joswiak's February 22nd, 2013, e-mail is there.

20 THE COURT: Okay. Yes. On everything. On the last
21 point, I do think we do need to clarify this February 22nd.

22 Is this the entire e-mail sent, Ms. Kaur?

23 MS. KAUR: I'll clarify, your Honor.

24 BY MS. KAUR:

25 Q Was this the entire e-mail that you had sent to

1 Ms. Horning?

2 A I'm not sure. Again, this is Page 4. So I'm
3 assuming that there were much -- other exchanges prior to
4 this.

5 MR. JENSEN: And, your Honor, can I just -- just make
6 an observation that at the top of the page, Mr. Joswiak's --
7 it's part of the prior e-mail, and it's got his footer, and
8 his name, and those other things which would -- are missing
9 from the bottom of the page.

10 So at least his name, and his CFO, and Chino Basin
11 Water, those things are missing from the bottom of Page 4.
12 So it's certainly not a complete e-mail. Just looking at
13 this one page, it's not.

14 THE COURT: Yes. That's -- that makes sense.

15 Mr. Jensen, let me ask you: I'm -- I'm guessing
16 that this was produced by you during discovery? Or am I
17 reading that wrong?

18 MR. JENSEN: You know --

19 THE COURT: Just because it has the "ALV."

20 MR. JENSEN: Yeah, and -- and it could be. I'd just have
21 to look. I mean, I can ask my office. That's probably the
22 best way of doing it. And I'm trying to get a full thing --
23 the full -- the pages and see how it was produced. Because I
24 don't know offhand.

25 THE COURT: Okay. Okay.

1 MR. JENSEN: I can -- I can do it --

2 THE COURT: You don't have to do it right now, but at
3 some point.

4 MR. JENSEN: Yeah.

5 THE COURT: The break, or whatever.

6 MR. JENSEN: Great.

7 THE COURT: Okay. Okay. I would generally agree that if
8 it doesn't have his -- his footer down at the bottom that it
9 probably is missing something because the other ones seem to
10 have the -- the name, and the -- the logo for the
11 Watermaster. Okay. All right.

12 Go ahead, Ms. Kaur.

13 BY MS. KAUR:

14 Q In the first sentence, the first sentence states
15 "The e-mail file that was sent to Angel did not include the
16 CEO position."

17 Were you -- and are you referring to Angel Gutierrez
18 there from CalPERS?

19 A I believe so. Yes.

20 Q Were you in touch with Mr. Gutierrez prior to this
21 February 22nd, 2013, e-mail?

22 A By phone and by e-mail. Yes.

23 Q And then it states "That was my error." What error
24 are you referring to?

25 A The CEO position that they were -- that CalPERS was

1 requesting was a position that was open in fiscal year
2 2011/2012. The document that CalPERS was asking for was for
3 fiscal year '12/'13, which did not have a CEO position. It
4 had a general manager position.

5 Q And so what was your error there? Did you send the
6 wrong information? Or --

7 A In -- well, what -- if I recall, what Mr. Gutierrez
8 was requesting was the salary that showed that Mr. Alvarez --
9 that he was part of the salary matrix.

10 For fiscal year 2012/2013, that position was not
11 part of the salary matrix because that position was not a
12 valid position. It was only valid in fiscal year 2011/2012.

13 Q Which position? The CEO position?

14 A The CEO.

15 Q And then you state "I have included the position in
16 the new matrix, and it is attached for your records."

17 What do you mean by you have included it in the new
18 matrix?

19 A Per the request, I added it.

20 Q Did you type it up into the new matrix? Is that
21 what you mean by you added it?

22 A The -- it was always part of the matrix because it
23 wasn't a filled position. When I printed it, I didn't print
24 those rows.

25 Q Which rows?

1 A The rows that showed the CEO position.

2 Q And it states "new salary matrix." What are you
3 referring to there?

4 MR. HERREMA: Objection. I don't think it states "new
5 salary matrix."

6 BY MS. KAUR:

7 Q I'm sorry. "New matrix." It states "I have
8 included the position in the new matrix."

9 What are you referring to? Which matrix are you
10 referring to?

11 A The new matrix that showed the CEO position with the
12 rows -- with the rows uncovered -- or printed.

13 Q And then you're also -- the next section, you explain
14 where it states "as part of our website at www.cbwm.org, we
15 have a 'Request for Information' form in the 'Contact Us'
16 section which would allow for someone from the public to
17 request any information regarding Chino Basin Watermaster."

18 Why are you providing this information?

19 A If I recall the conversation, Ms. Horning and I, and
20 also Mr. Gutierrez had discussed the -- how, if anyone from
21 the public wanted to have our salary matrix, what would be the
22 process.

23 And I was providing this so that the representatives
24 of CalPERS could understand how someone from the public would
25 be able to request public information.

1 Q This e-mail was sent on February 22nd, 2013. So at
2 that point, had the salary matrix for 2011 to 2012 been
3 approved or adopted by the Board in open session?

4 A I know that they were approved in open session. I
5 don't recall the exact dates.

6 Q And if you could turn to Exhibit 16.

7 MR. HERREMA: Can I just have it noted for the record
8 it's not clear that the new matrix that's being discussed in
9 this e-mail was 2011/2012. I think Mr. Joswiak testified
10 that he was talking about the 2012/2013 matrix.

11 So maybe you're changing course here, but those are
12 two different matrixes that we're talking about at this
13 point.

14 MS. KAUR: All right. I'll ask him questions relating to
15 both. Maybe I can clarify further.

16 BY MS. KAUR:

17 Q So at that point on February 22nd, 2013, had the
18 salary matrix for 2012 to 2013 been adopted or approved by
19 the Board in open session?

20 A They -- I -- I can't say "yes" or "no." I don't
21 recall.

22 Q Okay. So if you could turn to Exhibit 16.

23 (Complainant's Exhibit 16 was marked
24 for identification by the Court.)

25 MR. JENSEN: And -- and, your Honor, there's still, I

1 think, some outstanding confusion about what matrix was --
2 was being referred to here. If I'm right, Mr. Herrema said.

3 MR. HERREMA: My recollection of Mr. Joswiak's testimony
4 was that the matrix that was being referred to in that
5 February 22nd, 2013, e-mail was the 2012/2013 matrix.

6 THE COURT: That -- that was my understanding. Was that
7 what you were trying to convey, Mr. Joswiak?

8 THE WITNESS: That is correct.

9 THE COURT: Okay.

10 THE WITNESS: CalPERS was requesting the salary matrix
11 for fiscal year 2012/2013.

12 THE COURT: Okay.

13 MR. JENSEN: Thank you.

14 THE COURT: Thank you.

15 BY MS. KAUR:

16 Q Can you tell us what this document is?

17 A Are you speaking of Document 16?

18 Q Yes. This is Exhibit 16. I'm speaking of the first
19 page and the second page.

20 A This is a staff report dated May 23rd, 2013, to the
21 Watermaster Board members. This is adoption of the Chino
22 Basin Watermaster salary matrix schedules for periods fiscal
23 year 2011/12 and fiscal year 2013.

24 Q And do you know who this staff report was created or
25 drafted by?

1 A It was drafted by myself.

2 Q And what was the purpose of this staff report?

3 A The purpose of this was at the request of
4 Nicole Horning. As a representative of CalPERS, she
5 requested that we go ahead and get the old matrixes approved.

6 Q Did she make -- did she specifically make that
7 request to you?

8 A Yes. In a -- via e-mail.

9 Q And which e-mail? Do you recall which e-mail that
10 would be?

11 A I do not recall. However it was around the same
12 time period --

13 Q So if you --

14 A -- as the -- as the discussions that we were
15 having in regards to the item in question.

16 Q And if you could turn back to Exhibit 18 and turn to
17 the third page of this exhibit. I'm referring to Exhibit 18.
18 You're on Exhibit 16.

19 A Oh, sorry. I apologize.

20 Q So Exhibit 18, the third page. And I'd like to
21 direct your attention to the midsection of this document,
22 particularly the e-mail from Nicole Horning. And then the
23 third paragraph, which states also "Have you been able to
24 have your current pay schedule approved by your governing
25 body in an open session?"

1 Were you referring to this correspondence earlier?

2 A No. I believe that there's another e-mail.

3 Q And if you could turn back to Exhibit 16. And I
4 just want to clarify the process for this document.

5 Did you provide it directly to -- the staff report,
6 did you provide it directly to the Board, or did it go
7 through the CEO?

8 A The staff reports are always created by the -- so
9 for example, this staff report was created by myself. It was
10 forwarded to the general manager, Peter Kavounas for his
11 review and then sent to the executive assistant who then
12 included it into the Board packet.

13 Q Did you have any discussions concerning this report
14 with Peter Kavounas?

15 A I don't recall.

16 Q And why are you recommending the Board approve or
17 adopt the salary matrix schedules for 2011/2012 and
18 2012/2013?

19 MR. HERREMA: Objection. Asked and answered.

20 THE COURT: Overruled. You can answer that.

21 MR. HERREMA: I received an e-mail from Nicole Horning
22 at CalPERS who recommended that we have the fiscal year
23 2012/2013 and 2000- -- sorry. 2011 and '12 -- and fiscal
24 year '12 and '13 approved.

25 Q Any other reason?

1 A No.

2 Q If you could turn to the second page of this
3 document. The second paragraph -- part of the sentence of
4 the second paragraph states the previous, quote, "salary
5 matrix," unquote, from FY -- fiscal year -- 2011/2012 and
6 fiscal year 2012/2013 have not been approved in open session
7 by the Watermaster Board.

8 Based on your -- and did you also draft this
9 portion?

10 A Yes.

11 Q And was that your understanding at the time?

12 A Yes.

13 Q And then the next sentence, the second sentence in
14 the second paragraph says, "To ensure compliance with CalPERS
15 regulations, Watermaster is recommending Board approval of
16 the," quote/unquote, "'salary matrix' in open session."

17 What regulations are you referring to?

18 A That would be in compliance with CalPERS 570-5.

19 Q And why are you recommending adoption in open
20 session?

21 A Because I was instructed from an e-mail from
22 Nicole Horning to do so.

23 Q Did you request any input from the CEO, prior to
24 making this recommendation?

25 A I'm sure that Mr. Kavounas and I had conversation in

1 regards to this.

2 Q And did the Board follow up on this recommendation?

3 A Yes.

4 Q And if you could turn to Exhibit 14.

5 Can you tell us what this is.

6 A This is the minutes of Chino Basin Watermaster's

7 board meeting dated May 23rd, 2013.

8 (Complainant's Exhibit 14 was marked

9 for identification by the Court.)

10 BY MS. KAUR:

11 Q And is this when the Board adopted the salary matrix
12 for 2011 to 2012 and then 2012 to 2013 in open session?

13 A Yes. Also, in -- there were also a number of other
14 personnel issues that were adopted during that meeting, but
15 yes.

16 Q Anything else related to the matrix? Are those
17 related to the matrix?

18 A Yes.

19 Q And what -- what would that be?

20 A Under Section D(3), adopt publicly available pay
21 schedules.

22 Q And what is that referring to? What sort of pay
23 schedules?

24 A That would be the pay schedules for the upcoming
25 next three fiscal years.

1 Q And then under F, that is concerning the prior
2 pay schedules; is that correct?

3 A The salary matrix from fiscal year 2011/'12, '12
4 and '13.

5 Q And just to clarify, you were present at this Board
6 meeting?

7 A Yes.

8 Q Was there a discussion concerning the adoption of
9 the prior salary matrix?

10 A Not that I recall. No.

11 Q And if you could turn to Exhibit 15. This exhibit
12 includes the salary matrix from -- ranging from 2004 up to
13 2011.

14 MR. HERREMA: Is that a representation by counsel?

15 MR. JENSEN: Is there a question pending?

16 THE COURT: Is that a representation, or is that a
17 question?

18 MS. KAUR: I'll ask a question.

19 MR. HERREMA: I'll stipulate.

20 BY MS. KAUR:

21 Q Can you tell me what these document are?

22 A These are the Chino Basin Watermaster budget
23 worksheet salary matrixes for each fiscal year from fiscal
24 year 2004/2005 through fiscal year 2010/2011.

25 (Complainant's Exhibit 15 was marked

1 for identification by the Court.)

2 BY MS. KAUR:

3 Q And what are these budget worksheets?

4 A Budget worksheet salary matrix is what myself, as a
5 chief financial officer, and what my predecessor would use to
6 develop and create the final budget for any position that's
7 listed or that's currently filled at Watermaster.

8 The steps are listed. And then based upon where
9 that individual is in their step, we would note off to the
10 side and use this document to create our final budget,
11 which is then approved by the Board.

12 Q Were any of these adopted or approved by the Board
13 in open session?

14 A This --

15 Q Prior --

16 A This specific salary matrix? The salary matrix is
17 part and parcel of what our budget is, and the budget is
18 approved in open session.

19 Q Is it attached to the budget?

20 A No.

21 Q Are these figures incorporated -- these exact
22 figures incorporated into the budget?

23 MR. HERREMA: Objection. Vague as to which exact
24 figures, which budget.

25 THE COURT: Sustained.

1 BY MS. KAUR:

2 Q If you could look at the last page in this
3 Exhibit 15, the 2010/2011, was this salary matrix ever
4 attached to the budget?

5 A No.

6 Q And I just have a clarifying question. Is it your
7 understanding that the Watermaster contracts with CalPERS for
8 pension benefits for its employees?

9 A Yes.

10 Q Do you have any role in approving the contract
11 between CalPERS and the Watermaster?

12 A No. That was approved in 1999. I was not an
13 employee of Chino Basin Watermaster at that time.

14 Q Do you have any role in the approval of any of the
15 amendments between -- for that contract?

16 MR. HERREMA: Objection --

17 MS. KAUR: Amendments to that contract.

18 MR. HERREMA: Objection. Lacks foundation.

19 THE COURT: Overruled. You can answer.

20 THE WITNESS: I don't recall signing any of the
21 amendments. There may have been amendments, but I don't
22 recall.

23 If there was a specific date that maybe you're
24 looking for, I could provide a more clear answer.

25 THE COURT: Ms. Kaur, let me ask you: We're in our lunch

1 hour. How much longer do you think you have? Just out of --

2 MS. KAUR: I'm done.

3 THE COURT: I'm sorry?

4 MS. KAUR: I'm done.

5 THE COURT: Oh. No more questions?

6 MS. KAUR: No.

7 THE COURT: Okay. Let me ask what you wanted to do with
8 Exhibits 10 through 16 and 18. Those are the ones that were
9 identified with this witness by your questions. Do you want
10 to offer those or -- at this point -- or not?

11 MS. KAUR: I'm sorry. You said 10?

12 THE COURT: 10 through 16 -- oh, I'm sorry. 10, 11, 13
13 through 16, and then 18.

14 MS. KAUR: Yes. I'd like to offer those into evidence.

15 THE COURT: Okay. So --

16 MR. HERREMA: I'm sorry. On -- on 18 --

17 MS. KAUR: The -- except the last document, I think.
18 That wasn't on 18.

19 THE COURT: Yes. Let's talk about -- let's put 18 off to
20 the side for a moment.

21 So let me ask Respondents, then. Are there any
22 objections to 10, 11, 13, 14, 15, or 16?

23 Mr. Herrema, let me ask you first.

24 MR. HERREMA: Sorry. 10, 11 --

25 THE COURT: Yes. 13, and 14, 15, and 16.

1 MR. HERREMA: No, I -- no objections.

2 THE COURT: All right.

3 And Mr. Jensen? Any objections to any of those?

4 MR. JENSEN: No objections, except to the markings that
5 we've already talked about.

6 THE COURT: The highlighting?

7 MR. JENSEN: The highlighting.

8 THE COURT: Okay.

9 MR. JENSEN: And it does appear there's some highlighting
10 in the -- parts of the salary schedules, too, in 15, but I
11 don't know what those are.

12 I don't know if those are on the -- it looks like
13 they're on the spreadsheet itself in the 2008/2009 -- or,
14 actually, 2009/2010 and 2010/'11. Just an incomplete
15 marking.

16 But if those were done by the Watermaster, no
17 objection to them.

18 THE COURT: Okay. Then I'll admit Exhibits 10, 11,
19 13, 14, 15, and 16.

20 (Complainant's Exhibits 10, 11 and 13
21 through 16 were received in evidence by the Court.)

22 THE COURT: Then, Ms. Kaur, let me ask you: What
23 did you want to do with 18? And I believe those are the
24 e-mails that we had some discussion about, whether they
25 were complete and all that.

1 MS. KAUR: I believe we didn't have an issue about the
2 first or the second page of Exhibit 18.

3 Am I correct in stating that -- about the
4 completeness?

5 THE COURT: Good question.

6 Any objections to Page 1 or 2?

7 MR. HERREMA: No, your Honor.

8 THE COURT: Mr. Jensen?

9 MR. JENSEN: No, your Honor.

10 THE COURT: Okay.

11 MS. KAUR: And I suppose we could hold off on 18, and I
12 could try to find the complete e-mail exchange, and perhaps
13 Mr. Jensen --

14 MR. JENSEN: I have access to it on PDF, and there is --
15 it is a series of e-mails, and -- if this is incomplete.

16 So if she wants to offer it, then I would like to
17 offer the complete series of -- of that. And then I have
18 another chance to review it in depth, but --

19 MS. KAUR: I'm sorry?

20 MR. JENSEN: I haven't had a chance to review the whole
21 e-mail chain in depth. But there is at least the second page
22 to the specific e-mail that he was questioned about.

23 THE COURT: Okay. I'll admit Pages 1 and 2 for now.

24 And then, Mr. Jensen, if you can pull up the full
25 and complete version of the e-mail on the bottom of Page 3

1 and show counsel.

2 Then remind me, Ms. Kaur, and then we'll -- we'll
3 address that again. How's that?

4 MS. KAUR: Yes. That works.

5 THE COURT: Okay. Okay. Then why don't we take our
6 lunch break at this time.

7 I'll let Respondents' counsel figure out who wants
8 to be the next questioning party.

9 So we'll resume at 1:30.

10 MR. JENSEN: And -- and just as a matter of sort of
11 convenience, can I just e-mail the PDF's to --

12 MR. HERREMA: I have it.

13 MR. JENSEN: Oh.

14 MR. HERREMA: We were able to find them.

15 MR. JENSEN: Oh, great. Super. Then that's --

16 THE COURT: Okay.

17 MR. JENSEN: That's even better.

18 THE COURT: Why don't you guys take a look at that at
19 some point during the break.

20 MS. KAUR: Should I make copies?

21 THE COURT: Okay. Let's go off the record.

22 (Lunch recess)

23 THE COURT: Let's go on the record. We're back from our
24 lunch break. We are now going to continue with questioning
25 by counsel for the Watermaster.

1 Mr. Herrema, when you're ready.

2 MR. HERREMA: Thank you, your Honor.

3

4 CROSS-EXAMINATION

5 BY MR. HERREMA:

6 Q Good afternoon, Mr. Joswiak. I just have a few
7 clarification questions for you arising out of Ms. Kaur's
8 direct examination.

9 The first thing I'd like to do is, there was some
10 confusion during -- during your discussion with Ms. Kaur
11 about the progression of the CEO's and general managers
12 during 2011 and 2012. So I'd like to ask you a few questions
13 about that to try and clarify that for the record.

14 A Okay.

15 Q And I probably will go through, sort of,
16 month-by-month for the months of 2011 and 2012.

17 Who was the Watermaster CEO during the very first
18 part of calendar year 2011 -- January 2011?

19 A That would have been Ken Manning.

20 Q And for how much longer during 2011 was he the
21 Watermaster CEO?

22 A He was there until February 28th of 2011.

23 Q If I could, I'd like to turn your attention to
24 Watermaster Exhibit K. Do you have Exhibit K before you?

25 A Yes, I do.

1 Q What is Watermaster Exhibit K?

2 A This is the minutes for Chino Basin Watermaster
3 board meeting of April 28th, 2011.

4 (Respondent's Exhibit K was marked for
5 identification by the Court.)

6 BY MR. HERREMA:

7 Q Can you turn to Page 6 of Watermaster Exhibit K.
8 And about two-thirds down the page, there is a section that
9 says "Board Member Comments." Could you read for the record
10 what that says.

11 A Yes. Under "Board Member Comments" it says
12 "Mr. Kuhn thanked the CEO Ad Hoc Committee members for their
13 assistance in hiring Desi Alvarez and thanked Danni Maurizio
14 for stepping up and filling the CEO position as interim,
15 noting she did a great job."

16 Q So what was Danni Maurizio in a -- in early 2011,
17 the interim Watermaster CEO?

18 A She was, in between when Ken Manning left and
19 Mr. Alvarez was hired.

20 Q Okay. And it says in the minutes there, "Mr. Kuhn
21 thanked the committee members for assistance in hiring
22 Mr. Alvarez"; is that correct?

23 A Yes.

24 Q And I believe you testified earlier that Mr. Alvarez
25 -- his employment started with Watermaster on May 3rd, 2011;

1 is that correct?

2 A Yes.

3 Q And there was some questions about the time frame
4 that Ken Jeske served as interim CEO of Watermaster. Do you
5 recall Ms. Kaur asking you about Mr. Jeske?

6 A Yes.

7 Q Could I turn your attention to CalPERS Exhibit 17.
8 Just let me know when you have it.

9 A I have it. Yes.

10 Q Okay. Do you recognize this document, which is
11 CalPERS Exhibit 17?

12 A Yes.

13 Q Could you tell me what Exhibit 17 is, please.

14 (Complainant's Exhibit 17 was marked
15 for identification by the Court.)

16 THE WITNESS: This is the Temporary Part-time employment
17 agreement between Chino Basin Watermaster and Ken Jeske,
18 dated the 17th of January, 2012.

19 BY MR. HERREMA:

20 Q Okay. And so I think it says that it is entered
21 into as of January 17, 2012; is that correct?

22 A Yes.

23 Q So there were questions, when you were discussing
24 the issues with Ms. Kaur, there was a question about the
25 time frame that Mr. Jeske was interim CEO. What -- based

1 on your review of this document, do you have a recollection
2 of that -- what the time frame was for Mr. Jeske's --

3 A He began as the part-time -- well, he -- this
4 document is dated 17th January 2012. So that would have
5 been the first day that he started.

6 Q Okay. And do you have a recollection of whether
7 anyone served in the CEO position between November 9, 2011,
8 and January 17, 2012?

9 A I believe that would have been Danni Maurizio.

10 Q You believe she served on an interim basis yet
11 again?

12 A Yes.

13 Q Okay. Subsequent to Mr. Jeske working pursuant to
14 this agreement with Watermaster, did Watermaster hire a
15 general manager?

16 A Yes.

17 Q And who was that general manager?

18 A That was Desi Alvarez.

19 Q I'm sorry. Subsequently to Mr. Jeske's service as
20 interim, did Watermaster hire a general manager in the --

21 A Oh, oh --

22 Q -- fall of 2012?

23 A Sorry. That was Peter Kavounas.

24 Q Okay. And so in -- when did Mr. Kavounas begin as
25 General Manager? Do you recall?

1 A September 2012.

2 Q Okay. And his title is General Manager not Chief
3 Executive Officer; is that correct?

4 A Correct.

5 Q Okay. And for Watermaster's purposes of budgeting,
6 what is Watermaster's fiscal year?

7 A It is from July 1st through June 30th.

8 Q Okay. So the time frame from June -- strike that.
9 The time frame from July 1st of 2011, through
10 June 30th of 2012, would you refer to that as "Fiscal
11 Year '11/'12"?

12 A Yes.

13 Q And the time frame from July 1st, 2012, through
14 June 30 of 2013, would you refer to that as "Watermaster
15 Fiscal Year '12/'13"?

16 A Yes.

17 Q There was another question that Ms. Kaur asked you
18 about, what the duties of the Watermaster CEO were during
19 2011. Do you recall that?

20 A Yes.

21 Q Could you turn to Watermaster Exhibit G.

22 A Okay.

23 Q Do you have it before you?

24 A Yes, I do.

25 Q What is Watermaster Exhibit G?

1 A This is an e-mail from Sherri Lynne Molino dated
2 Monday, January 31st, 2011, at 3:11 p.m. This is an e-mail
3 in regards to the Watermaster CEO search. This is a listing
4 that entails the CEO job description.

5 (Respondent's Exhibit G was marked for
6 identification by the Court.)

7 BY MR. HERREMA:

8 Q Okay. There's an e-mail on Page 1, and then the
9 copy I have, Pages 2 and 3 contain chief executive officer
10 position description. Do you see that?

11 A Yes.

12 Q Okay. And at the time that there was a search going
13 on during the beginning of 2011, was that position
14 description on Pages 2 and 3 an accurate representation of
15 what the CEO duties were?

16 A Yes.

17 Q Okay. Could I ask you, now, to turn to what's
18 labeled as Watermaster Exhibit R. Do you have that in front
19 of you?

20 A Yes.

21 Q What is Watermaster Exhibit R?

22 A This is an e-mail from myself sent on Thursday,
23 September 15th, 2011, at 4:49 p.m. to Tracy Tracy at
24 Monte Vista Water District in regards to a request for
25 information for salaries.

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

3 MR. MR. HERREMA:

4 Q Could you just read to me what the attachments are
5 that are listed in that e-mail?

6 A Yes, there are two attachments. The first one is
7 labeled "salary schedule_2011-2012.xls." So that's an Excel
8 file.

9 And then the second file is "2011 Watermaster
10 Employee Manual_050311.doc." So that's a Word document.

11 Q In your e-mail to Ms. Tracy, it says that the
12 information you provided is responsive to her request number
13 one and number two.

14 You did not provide anything in response to number
15 three because you said that hadn't been approved or adopted;
16 is that correct?

17 A That is correct.

18 Q Okay. I think when Ms. Kaur was asking you
19 questions this morning, she asked if anyone had asked for a
20 copy of Mr. Alvarez's contract and whether that had been sent
21 out to -- to anyone.

22 This e-mail in Exhibit R, it shows that the request
23 from Monte Vista Water District and what was provided to
24 Water -- or to Monte Vista Water District, were the salary
25 ranges, not Mr. Alvarez's contract; is that right?

1 A That is correct.

2 Q Okay. Additionally, this morning there was some
3 discussion about whether -- who might -- which members of the
4 Watermaster Board might have reviewed Mr. Alvarez. Do you
5 recall those questions?

6 A Yes.

7 MS. KAUR: I'm sorry. I didn't hear your complete
8 question.

9 MR. HERREMA: Can you read it back if you have it?

10 (Record read)

11 BY MR. HERREMA:

12 Q Do you recall that discussion?

13 A Yes.

14 Q Okay. I think Ms. Kaur had asked you to speculate
15 as to which members of the Board, in particular, might have
16 been involved in Mr. Alvarez's review. Do you know,
17 specifically, which Board members were involved in his review?

18 MS. KAUR: Objection as to the term -- the term "review."
19 Vague.

20 THE COURT: "Review" --

21 MS. KAUR: The term -- the terminology that he's using in
22 terms of "review." It's vague.

23 THE COURT: Ah. Okay.

24 Clarify. I'm -- I'm not quite sure she phrased it as
25 "review."

1 BY MR. HERREMA:

2 Q Do you recall a discussion with Ms. Kaur, which
3 members of Watermaster might have been reviewing
4 Mr. Alvarez's performance?

5 A Yes.

6 Q Do you know, specifically, which members of the
7 Board reviewed Mr. Alvarez's performance?

8 A Specifically, no.

9 Q Could I ask you to CalPERS Exhibit 11. Do you have
10 that in front of you?

11 A Yes.

12 Q This is the employment agreement for Mr. Alvarez
13 effective May 3rd, 2011. Could you please turn to Page 2 of
14 that CalPERS Exhibit 11.

15 A Okay.

16 Q Paragraph 4 of the document on Page 2 states "hours
17 of work"; is that correct?

18 A Correct.

19 Q Okay. There was a question from Ms. Kaur asking you
20 about what the CEO's hours of work were. And looking at
21 Exhibit 11, it appears that the Agreement itself included
22 terms as to the hours of the CEO's work; is that correct?

23 A Yes.

24 Q Directing your attention to CalPERS Exhibit 18,
25 January 25th, 2012, e-mail that you sent to Danni Maurizio,

1 Sherri Molino, and Ken Jeske --

2 (Complainant's Exhibit 18 was marked
3 for identification by the Court.)

4 THE WITNESS: Yes.

5 BY MR. HERREMA:

6 Q -- references -- there's a statement by you that
7 you were nonresponsive to Mr. Alvarez's questions.

8 Do you recall specifically what questions he asked?

9 A No.

10 MR. HERREMA: Could we go off the record for just a
11 moment?

12 THE COURT: Yes. Let's go off the record.

13 (Off the record)

14 THE COURT: Let's go back on the record.

15 Okay. Off the record, counsel for all the parties
16 have agreed that with respect to Exhibit 18, Pages 3 and 4 of
17 that exhibit have the e-mail from February 22nd, 2013, that
18 was not full and complete.

19 And Respondents' -- plural -- counsel have come up
20 with the entire e-mail chain before and after that particular
21 date. So counsel have agreed with my recommendation that we
22 simply add the pages from the full and complete e-mail chain
23 to the end of Exhibit 18.

24 So Exhibit 18, as now constituted, will have the
25 initial four pages, ending the fourth page Bates stamped at

1 the bottom ALV 160, and then adding to that will be pages
2 Bates stamped ALV 197 through 2002, and they're -- each page
3 is double-sided.

4 And of the new pages we're adding, the e-mail in
5 question from February 22nd, 2013, is located on ALV 200
6 through ALV 2001 -- if I'm reading this right.

7 All right. So 18 will now have been reconstituted
8 as I just described.

9 And, Mr. Herrema, please continue.

10 MS. KAUR: Thank you, your Honor.

11 BY MR. HERREMA:

12 Q Could you, Mr. Joswiak, could you take a look at the
13 new page we've included in Exhibit 18, specifically the one
14 that's Bates stamped ALV 000197.

15 A I have that.

16 Q And do you see an e-mail from Nicole Horning to you
17 dated March 19, 2013?

18 A Yes.

19 Q About -- I guess, it's the third paragraph of the
20 e-mail. Could you read what she's written there -- that
21 paragraph starting with "If you have..."

22 A Yes. It states "If you have a board meeting coming
23 up soon, it would be advisable to present the pay schedule
24 for approval in an open session. Regardless of the outcome
25 of Desi's case, this will continue to present problems for

1 your retirees in the future."

2 Q So there was a question from Ms. Kaur this morning
3 when she'd asked why the '11/'12 and '12/'13 salary schedules
4 were approved by the Board in open session in May of 2013,
5 and you referenced an e-mail from Nicole Horning that had
6 requested or encouraged Watermaster to do that.

7 Do you recall that discussion?

8 A Yes, I do.

9 Q Is this May 19, 2013, e-mail the e-mail you were
10 referring to?

11 A Yes, it is.

12 MR. JENSEN: And let the record reflect it's let the
13 March 19th, 2013.

14 MR. HERREMA: Thank you, Mr. Jensen.

15 MR. JENSEN: Sorry, your Honor.

16 THE COURT: That's okay. I agree.

17 MR. HERREMA: Appreciate it.

18 THE COURT: I agree.

19 BY MR. HERREMA:

20 Q If you look just below that statement from
21 Ms. Horning, was there reference to two circular letters? It
22 says "we have issued two circular letters in the past couple
23 of years to specifically address these requirements."

24 Do you know what requirements she was referring to
25 in that e-mail or in that sentence?

1 A I believe she was referring to the regulations of
2 570-5.

3 Q For the approval of a pay schedule in open session?

4 A Yes.

5 Q And do you recall when 570.5 was adopted?

6 A It was adopted in late 2000- -- 12? No. Late 2011.

7 Q I'd like to turn your attention back to CalPERS
8 Exhibit 16. Turning to what's stamped as Page 119 and 120 on
9 the bottom, these are the salary matrixes from fiscal year
10 '11 and -- I'm sorry -- fiscal year '11/'12 and fiscal year
11 '12/'13 that were adopted by the Watermaster Board May 23rd,
12 2013.

13 Do you see those?

14 A Yes.

15 Q Based on the description of how these matrixes were
16 used on Page 2 of the staff report, the fiscal year '11/'12
17 salary matrix would have been used by you during the early
18 part of 2011 to help with the budget for fiscal year '11 and
19 '12 together; is that correct?

20 A Yes.

21 Q And the salary matrix for 2012/'13 would have been
22 used by you in early 2012 to put the salary -- I'm sorry --
23 to help put the salary budget together for fiscal year
24 '12/'13; is that right?

25 A Yes.

1 Q One more question before we take a quick break.

2 If you could turn your -- turn your attention to
3 CalPERS Exhibit 10. These are the minutes of the
4 confidential -- I'm sorry -- special -- strike that.

5 These are the minutes of the Watermaster Board
6 Closed Session Conference Call Special Meeting on March 31st,
7 2011. If you look on the second page, the last bit of text
8 there, it says "Minutes approved April 28, 2011."

9 Do you see that?

10 A Yes.

11 Q How are the Watermaster minutes presented for
12 approval?

13 A They are presented at the next upcoming meeting. So
14 these, because these minutes were done in March 31st, 2011,
15 the next board meeting would have been April 28th, 2011.
16 And they would have been part of the agenda packet and
17 approved in open session.

18 Q So those minutes that are in Exhibit 10 would have
19 gone out with the April Board packet -- April 2011 Board
20 packet; is that correct?

21 A Yes.

22 Q And what is the regular meeting day of the
23 Watermaster Board?

24 A The Watermaster Board meets on the third Thursday
25 of every month.

1 Q Is it the third Thursday or the fourth Thursday?
2 I notice the date of this is April 28th.

3 A It's the fourth.

4 Q Okay. And when does the Watermaster Board agenda
5 usually go out relative to the board meeting itself?

6 A It will usually go out at least three to four days
7 before. So, for example, if we have a meeting on Thursday,
8 we usually get the minutes and the packet turned out on that
9 Friday afternoon.

10 Q The preceding Friday afternoon?

11 A Preceding, yes.

12 Q Okay. So if the board meeting is on the fourth
13 Thursday, the minutes and the packet -- I'm sorry -- the
14 Board packet, including the previous board meeting minutes,
15 would go out on the third Friday of the month; is that
16 correct?

17 A Yes.

18 MR. HERREMA: That's all I have, other than taking a look
19 at this potential new exhibit.

20 THE COURT: Okay.

21 MR. HERREMA: Could we have a five-minute break, please?

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

23 (Off the record)

24 THE COURT: Let's go back on the record. We are back
25 from a short break during which time we've reconstituted

1 Exhibit 18.

2 So what we've done is first, we've internally
3 paginated the document. So Pages 1, 2, 3, and 4 were the
4 original pages of the initial version of this document. Then
5 the last group of documents we added to this, beginning at
6 ALV 197, that page is now renumbered as Page 5, and the
7 information on the reverse side of that is Page 6. Then we
8 have Pages 7 and 8, 9 and 10 from the last batch.

9 In addition, we're adding two additional pages which
10 we're marking as 11 and 12. And Page 11 is an e-mail dated
11 February 22nd, 2013. And in the top part of the e-mail
12 header, it has a line for attachments, and it describes the
13 salary schedule attachment to that actual e-mail. And that's
14 why this is being offered and put into the exhibit.

15 My understanding is counsel agree to Exhibit 18
16 being constituted as I just described. Is that so,
17 Mr. Herrema?

18 MR. HERREMA: Yes, your Honor.

19 THE COURT: Mr. Jensen?

20 MR. JENSEN: Yes, your Honor.

21 THE COURT: Ms. Kaur?

22 MS. KAUR: Yes, your Honor.

23 THE COURT: Okay. All right. That's how 19 is
24 currently constituted.

25 All right. Did you have questions, Mr. Herrema?

1 MR. HERREMA: Just one.

2 THE COURT: Okay.

3 BY MR. HERREMA:

4 Q Mr. Joswiak, the last two pages of what is now
5 Exhibit 18, CalPERS Exhibit 18, Pages 11 and 12, on Page 11
6 as Judge Sawyer described, there is an attachment that was
7 listed on your February 22nd e-mail to Nicole Horning.

8 Do you see that?

9 A Yes.

10 Q Okay. And so the attachment, as it states here, is
11 "CBWM salary schedule 2012-2013 CalPERS.xls."

12 Do you see that?

13 A Yes.

14 Q Okay. So is it safe to say that the attachment to
15 this February 22nd, 2013, e-mail was the Watermaster's
16 2012/2013 salary schedule?

17 A Yes.

18 MR. HERREMA: Okay. That's all I have. Thank you.

19 THE COURT: Okay. Thank you.

20 Did you -- do you want to offer 18 now as presently
21 constituted, Mr. Herrema?

22 MR. HERREMA: Yes.

23 THE COURT: Okay. Any? -- Oh.

24 MS. KAUR: I think we also covered a handful of --
25 I'm sorry. If you want to take them --

1 THE COURT: Yes.

2 MR. HERREMA: -- one-by-one.

3 THE COURT: We'll get to your other ones.

4 Any objection, Ms. Kaur, to 18 now, as presently
5 constituted?

6 MS. KAUR: No objections, your Honor.

7 THE COURT: Mr. Jensen?

8 MR. JENSEN: No objections, your Honor.

9 THE COURT: Okay. So then 18 is now admitted fully.
10 All right.

11 (Complainant's Exhibit 18 was received
12 in evidence by the Court.)

13 THE COURT: And then, Mr. Herrema, the other exhibits
14 in your binder that you identified were G, K, and R.

15 What did you plan to do with those?

16 MR. HERREMA: I'm happy to move them now if counsel
17 agree.

18 THE COURT: Okay.

19 Mr. Jensen, any objection to those?

20 MR. JENSEN: No objections, your Honor.

21 THE COURT: All right.

22 Ms. Kaur, any objection to those?

23 MS. KAUR: And, your Honor, you mentioned G, K, and R?

24 THE COURT: Yes.

25 MS. KAUR: I have no objections to those.

1 THE COURT: Okay. Then I will admit Exhibits G, K,
2 and R.

3 (Respondent's Exhibits G, K, and R were
4 received in in evidence by the Court.)

5 MR. HERREMA: And, your Honor, I did also refer to
6 CalPERS Exhibit 17.

7 THE COURT: Ah, yes. Indeed.

8 Ms. Kaur, any objection to Exhibit 17?

9 MS. KAUR: No, your Honor.

10 THE COURT: Mr. Jensen?

11 MR. JENSEN: No objections, your Honor.

12 THE COURT: Okay. 17's admitted. Okay.

13 (Complainant's Exhibit 17 was received
14 in evidence by the Court.)

15 THE COURT: I think that's -- I think that's it,
16 Mr. Herrema, on your part?

17 MR. HERREMA: Yes, your Honor. Thank you.

18 THE COURT: Okay.

19 Okay. Mr. Jensen?

20 MR. JENSEN: Just a couple -- just brief questions.

21

22 CROSS-EXAMINATION

23 BY MR. JENSEN:

24 Q With respect to the Watermaster's HR practices, did
25 the Watermaster follow all of the applicable rules and

1 regulations when hiring Mr. Alvarez?

2 MS. KAUR: Objection. Vague as to "rules and
3 regulations."

4 THE COURT: Do you want to clarify?

5 BY MR. JENSEN:

6 Q Are you -- well, let me just back up and lay a
7 little foundation.

8 Are you familiar with Watermaster's rules and
9 regulations?

10 A Yes.

11 Q Are you familiar with the rules and regulations
12 that apply with respect to hiring an individual?

13 A Yes.

14 Q Did the Watermaster follow the rules and regulations
15 when hiring Desi Alvarez?

16 A Yes.

17 Q Are you familiar with the Watermaster rules and
18 regulations regarding employments of people with Watermaster?

19 A Yes.

20 Q Did Watermaster follow the rules and regulations
21 regarding employment of -- with respect to Mr. Alvarez?

22 A Yes.

23 Q With regards to placing Mr. Alvarez on
24 administrative leave, does Watermaster have rules and
25 regulations regarding that?

1 A I don't recall if there's -- that that's part of
2 the rules and regs.

3 Q Let me ask you what was the -- was -- do you
4 consider, in your expertise as a human resources for
5 Watermaster, do you consider Mr. Alvarez to have been an
6 employee for that full year with Watermaster?

7 A Yes.

8 Q And regarding -- let me just turn your attention to
9 this one exhibit in our exhibit book, which is the last one,
10 as the exhibit -- actually, it's not the last one. It's this
11 264. We previously referred to this e-mail that -- that you
12 provided information in response to a request?

13 A Yes.

14 Q And there's attached to this, approximately a 134
15 pages. Were these the documents that were attached to your
16 e-mail?

17 A Yes.

18 MR. JENSEN: I don't think I have any further questions,
19 your Honor.

20 THE COURT: Okay. Just give me one moment. Okay.

21 Mr. Jensen, did you want to do anything with 264
22 now, or --

23 MR. JENSEN: Yes. I'd like to offer it into evidence.

24 THE COURT: Okay. Mr. Herrema, any objection?

25 MR. HERREMA: No objection, your Honor.

1 THE COURT: All right.

2 Ms. Kaur, any objection to 264?

3 I guess, let me ask. The bulk of this is the
4 Employee Manual dated May 2011?

5 MR. JENSEN: Your Honor, I -- I'm just producing what was
6 -- what I understand was produced at that time. I -- I don't
7 know what it is.

8 THE WITNESS: Yes.

9 THE COURT: Okay. All right. Thank you. I know there's
10 some other -- other items, but --

11 Okay. Ms. Kaur, when you've had a chance to look
12 through this, let me know.

13 MS. KAUR: May I ask questions regarding this, and then
14 --

15 THE COURT: Sure.

16 MS. KAUR: -- we can look to see --

17 THE COURT: Yes.

18 MS. KAUR: -- if I have any objection?

19 Thank you.

20 THE COURT: Okay. I -- Okay. I see. The -- the first
21 two pages is the salary range. That's Category 1. Then the
22 manual is for Category 2. And you, I think, testified before
23 there wasn't anything yet for Category 3?

24 THE WITNESS: Actually, after looking at it, it does
25 appear that we provided them.

1 MR. HERREMA: No. Actually, this is a -- this was what
2 was sent from Mr. Joswiak to -- to Mr. Alvarez asking about
3 whether it should be forwarded on to the requesting agency,
4 the Monte Vista Water District. So I do actually have an
5 objection to including -- well, I'd like to --

6 Mr. Joswiak's e-mail that we had marked stated that
7 he didn't provide to Monte Vista Water District the adopted
8 policies and procedures that it had asked for because it
9 wasn't official and hadn't been adopted. So perhaps this was
10 a draft that was attached.

11 THE COURT: Oh, is there something in here responsive to
12 3 -- Category 3?

13 MR. HERREMA: Yes.

14 THE WITNESS: If I -- if I could -- it's 2 -- 260 --

15 MR. JENSEN: Your Honor, I'm -- I'm just going to
16 withdraw it because I don't know what's in it. And if --
17 they would know better than I.

18 THE COURT: Okay.

19 MR. JENSEN: So, I mean, it's -- I'll look at it --

20 THE COURT: Okay. We'll --

21 MR. JENSEN: -- and see and consult with him. But I'm
22 just going to withdraw it. So --

23 THE COURT: Okay. Okay. Fair enough.

24 MR. JENSEN: I mean, it's 260 pages, or something.

25 THE COURT: Yes. Okay.

1 Exhibit 11.

2 THE COURT: Okay. Do you have a recollection of that, or
3 do you need to refer to the minutes to --

4 THE WITNESS: According to -- well, I can see that the
5 minutes here were approved for March 24th, 2011, and the
6 minute were approved for March 31st, 2011.

7 BY MS. KAUR:

8 Q And you're looking at Exhibit K, 002?

9 A Yes.

10 Q And by looking at this, would you -- do you recall
11 whether any employment agreements concerning Mr. Alvarez were
12 presented to the Board at that open meeting session on
13 April 28th, 2011?

14 A I don't recall.

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

17 THE COURT: Okay. Thank you.

18 Any follow-up, Mr. Herrema?

19 MR. HERREMA: No. Thank you, your Honor.

20 THE COURT: Mr. Jensen, any follow-up?

21 MR. JENSEN: I don't think so, your Honor.

22 THE COURT: Okay.

23 MR. JENSEN: I just -- do reserve the right to recall him
24 just because I'm -- you know, again, this is from her direct.
25 But, otherwise, I don't have any questions right now.

1 THE COURT: Okay. I --

2 MR. HERREMA: We certainly intend to put Mr. Joswiak on
3 as part of our case in chief on direct.

4 THE COURT: Okay.

5 MR. JENSEN: So the --

6 THE COURT: Yes. So I will not release or excuse him
7 from testifying in the hearing.

8 But you're free to -- well, so I think we're going
9 to have to exclude him, then; right?

10 MR. HERREMA: He's our -- he's our agency rep.

11 THE COURT: Ah. Okay.

12 Then you can -- you're free to go back and take your
13 seat as Agency Rep.

14 THE WITNESS: Thank you, your Honor.

15 THE COURT: Okay. What's next, Ms. Kaur?

16 MS. KAUR: I'd like to call my next witness,
17 Peter Kavounas.

18 THE COURT: Okay.

19 MR. HERREMA: He's waiting in the bull pen.

20 THE COURT: Okay. Why don't we -- someone find him, and
21 we'll go off the record.

22 (Off the record)

23 THE COURT: Let's go back on the record. All right.

24 Ms. Kaur, you may call your next witness.

25 MS. KAUR: Thank you. Peter Kavounas.

1 THE COURT: Okay. I'm going to ask the court reporter to
2 swear you in.

3
4 PETER KAVOUNAS,
5 called as a witness, and having been first duly sworn by the
6 Hearing Reporter, was examined and testified as follows:

7 THE WITNESS: I do.

8 THE COURT: Good afternoon.

9 THE WITNESS: Good afternoon.

10 THE COURT: For the record, would you please state and
11 spell your name.

12 THE WITNESS: My name is Peter Kavounas. That's
13 K-a-v, as in "Victor," o-u-n-a-s.

14 THE COURT: Okay. Thank you.

15 Ms. Kaur, when you're ready.

16 MS. KAUR: Thank you, your Honor.

17

18 DIRECT EXAMINATION

19 BY MS. KAUR:

20 Q Are you prepared to testify, Mr. Kavounas?

21 A Yes, ma'am.

22 Q And where do you currently work?

23 A I work at Chino Basin Watermaster.

24 Q And what is your job title there?

25 A My job title there is general manager.

1 Q And how long have you held that position?

2 A I have held the position since September 4th of
3 2012.

4 Q And what are your duties as a General Manager?

5 A My duties as a General Manager are to oversee the
6 day-to-day operation of Watermaster, and to make sure that
7 Watermaster fulfills its function, which is to comply with a
8 1978 judgment, to enforce the provisions of the judgement,
9 and to implement the Optimum Basin Program --

10 Q I'm sorry. To implement --

11 A The Optimum Basin Management Program -- and to
12 keep the Board informed of any activities that relate to
13 groundwater management, and specifically Chino Basin
14 groundwater management.

15 Q And when you say your duties are to oversee the
16 day-to-day operations, what sort of operations are you
17 referring to?

18 A We have operations that relate to data gathering,
19 preparation of reports and studies, preparation of technical
20 memoranda, as well as accounting functions.

21 Q If you could turn to -- there's exhibit binder --
22 there're several exhibit binders before you, but there's a
23 CalPERS exhibit binder. Yes.

24 And if you could turn to Exhibit 13. And if you
25 could turn to the very last page in Exhibit 13. It's titled

1 the "2014 Staff Organization Chart."

2 A I'm there. Thank you.

3 Q Would this -- is this an accurate representation of
4 the Watermaster staff in 2014?

5 A I'm not certain. I have not reviewed your exhibits.
6 Does that match ours?

7 I'm not sure. It looks similar, but I can't tell
8 you for sure.

9 Q So this -- this states -- well, this has you listed
10 as a general manager. That's correct? Am I --

11 A That's correct.

12 Q And then you supervise other individuals or other
13 staff persons at the Watermaster; is that correct?

14 A Yes.

15 Q Are you -- would you be -- did you supervise the
16 Engineering Services in 2014?

17 A Yes.

18 Q What is -- what is that department?

19 A We have an engineering consultant named
20 Wildermuth Environmental, and they and provide engineering
21 services for Watermaster at my direction.

22 Q And then there's -- do you also supervise -- did you
23 also supervise the assistant general manager? That has
24 Danielle Maurizio listed in the "Other Staff" underneath
25 that.

1 A Yes.

2 Q And then are you also -- did you also supervise the
3 CFO?

4 A Yes.

5 Q And did you also supervisor his staff?

6 A Not directly.

7 Q Indirectly?

8 A Yes.

9 Q And would I be correct in assuming that would be an
10 accountant and the office specialist?

11 A Yes.

12 Q And as a CEO, who do you report to?

13 A I report to the Watermaster Board of Directors.

14 Excuse me. I'm the general manager, not the CEO.

15 Q I apologize.

16 MR. JENSEN: Objection. Misstates the testimony. He's
17 not the CEO.

18 BY MS. KAUR:

19 Q As the general manager, who do you report to?

20 A The Watermaster Board of Directors.

21 Q And does the CFO report to you?

22 A Correct.

23 Q Is there anyone else that the CFO reports to, aside
24 from you?

25 A No.

1 Q And if you could turn to Exhibit 16. There's a
2 document in here titled the "Staff Report." And I'm
3 particularly referring to the first two pages of this
4 document.

5 Do you know what this is?

6 A If you're referring to Pages -- what's on the bottom
7 of Page 117 and Page 118?

8 Q Yes.

9 A This looks like a staff report that is produced and
10 provided to the Board -- the Watermaster Board -- when it's
11 time for informing or helping the Board make a decision.

12 This looks like it was prepared on May 23rd, 2013.
13 And it affects personnel policies and adoption of salary
14 matrix schedules for two fiscal years.

15 Q Do you know who would be preparing this report?

16 A Ultimately, I'm responsible for all staff reports.
17 This probably would have been prepared by Joe Joswiak and
18 reviewed/approved by me.

19 Q And do you know why it was -- strike that.

20 Did you have any discussions concerning this report
21 with Joe Joswiak?

22 A I'm sure I did, but I don't recall those explicitly.

23 Q Do you know why this report was presented to the
24 Board?

25 A This report would have been presented to the Board

1 to ensure compliance with CalPERS regulations, as is stated
2 in the report.

3 Q And on the first page, there's a -- under the
4 section title "Summary" -- there's a recommendation, and the
5 recommendation is to adopt the salary matrix schedules for
6 2011/2012, and then 2012 to 2013.

7 Why is that recommendation being made to the Board?

8 MR. HERREMA: I'm going to object. I think Ms. Kaur
9 misstated the -- the language as in the paperwork.

10 THE COURT: I'm sorry. Repeat that.

11 MR. HERREMA: Ms. Kaur said that the recommendation was
12 to adopt the schedules. The paper says the recommendation is
13 "approve the adopted schedules."

14 THE REPORTER: "Approve the adopted schedules"?

15 MR. HERREMA: That's what it says.

16 MR. JENSEN: And I'm going to make an objection that the
17 document speaks for itself.

18 THE COURT: Okay. Why don't you just clarify it. Track
19 the language from the document.

20 BY MS. KAUR:

21 Q I'll just -- I'll just read the recommendation.

22 So it appears there's a recommendation which is
23 "approve the adopted Chino Basin Watermaster," quote,
24 "'salary matrix,'" quote, "schedules for the periods fiscal
25 year 2011/2012 and fiscal year 2012/2013."

1 Why is this recommendation being made?

2 A As the report states and the reason is to ensure
3 compliance with the CalPERS regulations.

4 Q And which regulation?

5 A I'm not sure.

6 Q And if you could turn to the second page. You
7 pointed our attention that it was to ensure compliance with
8 the CalPERS regulation. The last sentence on the second
9 page, the mid-sentence starts "Watermaster is recommending
10 Board approval of the salary matrix in open session."

11 Why is the recommendation being made for salary
12 matrix to be approved in open session?

13 A To ensure compliance with CalPERS regulations.

14 Q Was the Watermaster out of compliance with the
15 CalPERS regulation prior to March 23rd, 2013?

16 MR. JENSEN: Objection. Calls for legal conclusion.

17 MR. HERREMA: I would state the same objection.

18 THE COURT: Okay. I'm going to overrule the objection.

19 But we're not going to require you to sit here and
20 make a legal formulation. This is just as you recall back at
21 the time of this event if -- if you had an understanding one
22 way or the other.

23 MR. JENSEN: And, your Honor, may I make a further
24 objection?

25 THE COURT: Yes.

1 MR. JENSEN: One of the essential issues -- and I don't
2 want to make a speaking objection -- but one of the issues is
3 that when this regulation came into effect, and what was the
4 effective date of the regulation, and Watermaster's rules.

5 So I think the answer is -- is -- is predicated on
6 -- on following both of those legal conclusions prior to
7 making a decision on that.

8 THE COURT: Okay. Overruled.

9 But the same concern: You're not being asked to sit
10 here now and make a legal formulation, just if you had an
11 understanding back when this action was taken one way or the
12 other.

13 THE WITNESS: My understanding is that Watermaster was in
14 compliance with CalPERS regulations.

15 BY MS. KAUR:

16 Q And why did the Watermaster need to ensure
17 compliance with the CalPERS regulations?

18 MR. JENSEN: Objection. Lacks foundation.

19 THE COURT: Sustained.

20 Why don't you rephrase it. It's potentially
21 confusing, and I want to make sure you both are on the same
22 page.

23 BY MS. KAUR:

24 Q Would you agree that the CalPERS statutes and rules
25 and regulations apply to the Watermaster?

1 MR. HERREMA: Objection. Vague as to the "statutes,
2 rules and regulations."

3 MR. JENSEN: And objection. Vague as to time.

4 THE COURT: Sustained.

5 BY MS. KAUR:

6 Q And in terms of time, I'm referring to May, 2013.

7 MR. JENSEN: Objection. Relevance.

8 MR. HERREMA: Is there a question pending?

9 MS. KAUR: I'll ask the question. Sorry.

10 BY MS. KAUR:

11 Q The Watermaster contracts with CalPERS for pension
12 benefits; is that correct?

13 A That's correct.

14 Q And did the Board follow this recommendation to
15 adopt the salary matrix in open session?

16 A To the best of my recollection, yes.

17 Q And if you could turn to Exhibit 14. These are the
18 minutes from the May 23rd, 2013 board meeting.

19 Is this from the salary schedule for 2011 to 2012
20 was adopted in open session?

21 A It appears that way.

22 Q You said you had some discussions with Mr. -- with
23 Joseph Joswiak concerning the staff report under Exhibit 16.

24 Did you ever discuss why this recommendation is
25 being made to the Board? And I'm referring to Exhibit 16.

1 A I'm sure we did.

2 Q And what did you discuss?

3 A I don't recall.

4 Q I'm sorry?

5 A I do not recall.

6 Q Did you have any discussions with Mr. Joswiak
7 concerning the separation of Mr. Alvarez -- separation from
8 employment of Mr. Alvarez?

9 A I'm sure we had some discussions.

10 Q I'm sorry?

11 A I'm sure we had some discussions. Mr. Alvarez --
12 Mr. Alvarez was my predecessor. So I'm sure it was
13 discussed.

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

16 THE COURT: Okay. Thank you.

17 Should we maintain the order from before? Is
18 Mr. Herrema going to --

19 MR. HERREMA: Yeah. I have no questions.

20 MR. JENSEN: And are you -- do you intend to bring Mr. --

21 MR. HERREMA: I will bring him back as part of my case in
22 chief.

23 MR. JENSEN: Okay. Then I have no questions, your Honor.

24 THE COURT: Okay. Thank you very much.

25 THE WITNESS: Thank you.

1 THE COURT: We're going to excuse you again since you're
2 going to be asked to testify further.

3 THE WITNESS: Okay.

4 THE COURT: Okay.

5 THE WITNESS: Do you want me to send Mr. Kuhn in?

6 MS. KAUR: It's up to Ms. Kaur.

7 THE COURT: Good question. Let's go off the record.

8 (Recess)

9 THE COURT: Okay. Let's go back on the record. We're
10 back from our afternoon recess.

11 And, Ms. Kaur, you may call your next witness.

12 MS. KAUR: Bob Kuhn.

13 MR. KUHN: Here. Present.

14 THE COURT: I'm going to ask the court reporter to swear
15 you in.

16 MR. KUHN: Okay.

17

18 BOB KUHN,
19 called as a witness, and having been first duly sworn by the
20 Hearing Reporter, was examined and testified as follows:

21 THE WITNESS: Yes.

22 THE COURT: And good afternoon.

23 THE WITNESS: Good afternoon.

24 THE COURT: For the record, please state and spell your
25 name.

1 THE WITNESS: K-u -- Bob Kuhn, K-u-h-n.

2 THE COURT: Okay. Thank you.

3 Ms. Kaur, when you're ready.

4

5 DIRECT EXAMINATION

6 BY MS. KAUR:

7 Q Are you prepared to testify, Mr. Kuhn?

8 A Yes.

9 Q What is your current involvement with the
10 Watermaster?

11 MR. JENSEN: Vague as to "involvement."

12 THE WITNESS: Currently I sit on the Board --

13 THE COURT: Oh --

14 THE WITNESS: Pardon me?

15 THE COURT: Overruled.

16 THE WITNESS: I'm sorry.

17 THE COURT: Go ahead.

18 THE WITNESS: Currently, I sit on the Board of Directors.

19 BY MS. KAUR:

20 Q Are you the Chair?

21 A No.

22 Q Were you ever the Chair of the Board of Directors
23 for the -- of the Watermaster?

24 A Yes.

25 Q And when was that?

1 A The exact years, I'm not sure. Two years ago. 2012,
2 I think, and '13.

3 Q If you could turn to Exhibit 10. It's in the
4 CalPERS binder. That is the last binder. The last one.

5 A This one?

6 Q Yes.

7 A Exhibit what?

8 Q Exhibit 10.

9 A Okay.

10 Q These are the minutes from the Watermaster Board
11 dated March 31st, 2011.

12 A Yes.

13 Q And were you the Chair of the Board at that time?

14 A Yes.

15 Q And just to confirm, you were the Chair in 2012 --
16 you continued to be the Chair in 2012?

17 A Yes.

18 Q And you continued to be the Chair in 2013?

19 A I'm going to say yes.

20 Q If you could turn to Exhibit 14 in that same binder.
21 On the first page, it demonstrates that these are the
22 minutes, and they're dated May 23rd, 2013.

23 A Okay.

24 Q Under the "Watermaster Board Members Present" it has
25 your name listed as the Chair.

1 So does that refresh your recollection?

2 A Yes.

3 Q So were you the Chair in 2013?

4 A Yes.

5 Q And what were your duties or responsibilities as the
6 Board Chair? And -- and I'll just clarify. And let's go
7 back to 2011.

8 A Okay. They're the same as all other Board members
9 with the expectation of conducting and hearing the meetings.

10 At the same time, I was a member the Personnel
11 Committee. And at the same time I appointed any ad hock
12 committees.

13 Q So you stated they're the same as the other Board
14 members, and then you provided some exceptions.

15 What -- what functions -- what responsibilities or
16 duties did you and the other Board members have?

17 A Oversee the conduct of Watermaster and operate
18 within the rules and the budget.

19 Q And I'll turn your attention back to Exhibit 10.

20 A Okay.

21 Q Were you present at the board meeting on March 31st,
22 2011?

23 A If the minutes reflect that I was there, I was
24 there.

25 Q Would it be correct to state -- were you -- well,

1 I'll just restate that.

2 Were you also present in the closed session?

3 A Yes.

4 MR. HERREMA: Can the record reflect that the minutes say
5 Mr. Kuhn is present on the phone call?

6 THE COURT: Yes.

7 BY MS. KAUR:

8 Q Why was there a closed session confidential meeting?

9 MR. JENSEN: Objection. Vague as to time.

10 BY MS. KAUR:

11 Q March -- on March 31st, 2011. I'm referring to
12 Exhibit 10.

13 A Maybe I'm not looking at the right form. I'm not
14 sure.

15 THE COURT: Exhibit --

16 THE WITNESS: That's all right. I had 10.

17 I don't recall.

18 BY MS. KAUR:

19 Q If you could turn to the second page. On the second
20 page of this document -- you're at the second page.

21 A Okay.

22 Q Under the "Confidential Session Possible Action"
23 under Item I, the second paragraph, it states "authorize
24 counsel to extend the binding -- binding term sheet for the
25 retention the Desi Alvarez --

1 (Cellphone rings)

2 BY MS. KAUR:

3 Q -- the new CEO of Watermaster -- "

4 A Sorry. Pardon me?

5 Q I'll reread it: "...authorized" -- it states
6 "...authorized counsel to extend a binding term sheet for the
7 retention of Desi" -- sorry. I'm sorry. I'm just a little
8 thrown off here.

9 A Okay.

10 Q I'll wait -- I'll reread it again, "...authorized
11 counsel to extend a binding term sheet by the retention of
12 Desi -- for the retention of Desi Alvarez, the new CEO of
13 Watermaster, and to prepare a confirming legal contract for
14 execution by the Watermaster Board Chair."

15 So does this refresh your recollection about why
16 this closed session special meeting was held?

17 A Yes.

18 Q Can you tell us now why it was held.

19 A It was to hire Mr. Alvarez.

20 Q Why was it closed to the public?

21 MR. JENSEN: Objection. Misstates -- it's -- facts not
22 in evidence. Lacks foundation.

23 THE COURT: Overruled. You can answer.

24 THE WITNESS: Why was it closed session?

25 ///

1 BY MS. KAUR:

2 Q Yes.

3 A Specifically? Hiring and terms and conditions were
4 done in closed session, with the results given out in open
5 session. But the negotiation between the Board members as to
6 what we were going to do, how we were going to go about it,
7 would be in a closed session item.

8 Q Would discussions concerning the salary also be in
9 closed session?

10 MR. HERREMA: Objection. The closed sessions discussions
11 are privileged.

12 MR. JENSEN: And she -- objection. I want to reiterate
13 that she's directly inquiring into the substance of the
14 discussions in the closed session.

15 THE COURT: Okay. Do you want to be heard on that,
16 Ms. Kaur?

17 MS. KAUR: Yes.

18 MR. HERREMA: Under California law, there's a prohibition
19 on disclosing what's discussed in confidential sessions --
20 closed sessions.

21 MS. KAUR: This particular question, I'm just asking if
22 salary -- if it's the procedure or -- for the Watermaster to
23 discuss that during closed session, or is it discussed under
24 -- in open session. I'm not asking particularly if it's
25 concerning Mr. Alvarez's salary.

1 MR. JENSEN: Your Honor, if I just address it? That
2 wasn't her question. Her question was, was salary discussed
3 in closed session.

4 THE COURT: Right. So the question is, during closed
5 sessions, regarding the hiring of an employee, is salary
6 discussed? I mean, that, just generally when that happens,
7 is salary discussed? Is that the question?

8 MS. KAUR: Yes. Because Mr. Kuhn testified negotiations
9 were done in closed session. I'm just following up on his
10 comment about are salary discussions also in closed session,
11 or are they ever discussed in open session also.

12 MR. HERREMA: I think he said negotiations among Board
13 members.

14 MR. JENSEN: And -- and I will leave it to Mr. Herrema to
15 make a motion to strike if he inadvertently did reveal
16 something from closed session.

17 But I believe that inquiries even that tangentially
18 touch upon closed sessions, the substance of it are
19 privileged, and he has asserted the privilege.

20 THE COURT: Okay. Just so I'm clear, though, the
21 question is, is that something that's generally discussed in
22 closed session?

23 MS. KAUR: Yes.

24 THE COURT: Okay.

25 MR. HERREMA: But again, the subject of closed sessions

1 is -- is absolutely protected and privileged. The
2 deliberative process privilege also covers the discussions,
3 why the Board member discuss what they discussed.

4 THE COURT: Okay. I tend to agree. I mean, this is --
5 the deliberative process for government agencies is covered
6 in the Government Code, I believe.

7 MR. HERREMA: Evidence Code.

8 THE COURT: In the Evidence Code.

9 I would think whatever is reported back out and
10 depicted in the minutes would be the extent of the
11 information that would be permissible. But I don't think we
12 can get into discussions, whether specific or general, into
13 the substance because I think that would start to invade into
14 privilege.

15 Am I -- am I missing something? Or do you have any
16 legal authority that helps us on this, Ms. Kaur?

17 MS. KAUR: Let me just -- I'm -- I'm not asking about
18 exactly what was discussed. What I'm asking is -- in this
19 question is -- I lost my train of thought, but --

20 THE COURT: All right. Unless you have some legal
21 authority that you cite us, I think we can't really go into
22 any -- any substance, general or specific.

23 It'd be like when an attorney meets with a client,
24 just asking the client, "Did you generally talk about these
25 topics, or specifically?" I just -- any substance that would

1 make us privy to what was being discussed would be covered by
2 the privilege. And I'm really leery and reluctant to get
3 into any of that.

4 And I think that's why the minutes are circumspect
5 because they can only report out very general statements
6 without getting into the specifics for that reason.

7 MS. KAUR: And I just want to clarify, you mentioned the
8 privilege for the deliberative process for government
9 agencies?

10 THE COURT: Yes.

11 That's my understanding of the privilege that you're
12 asserting.

13 MR. HERREMA: Both the deliberative process and -- as
14 well as the -- the official information privilege as to the
15 -- the conclusion on disclosure is out of closed session.

16 THE COURT: Yes. Okay. So the official privilege is --
17 is in the Evidence Code. The deliberative process, I think,
18 relates also to provisions in the Government Code, I think.
19 But --

20 MS. KAUR: And which Government Code section are you
21 referring to?

22 MR. HERREMA: You know, it touches on -- it touches --
23 it's a common law privilege section, your Honor. It's in the
24 Brown Act in terms of preclusion from -- from delving into
25 closed session as well as the discussions in -- behind --

1 underlying the motivations of a -- of a body like the
2 Watermaster Board.

3 THE REPORTER: I'm sorry. "Underlying" what?

4 MR. HERREMA: The motivations or the reasons for the
5 decisions of a body like the Watermaster Board.

6 THE COURT: All right. You're going to be calling
7 Mr. Kuhn in your --

8 MR. HERREMA: No.

9 THE COURT: -- case in -- no?

10 MR. HERREMA: No.

11 THE COURT: Will you be calling him, Mr. Jensen?

12 MR. JENSEN: I had no intent to.

13 THE COURT: Okay.

14 MR. JENSEN: I hadn't intended to.

15 THE COURT: Okay.

16 MR. HERREMA: We discussed this a bit this morning in
17 terms of the topics that Ms. Kaur identified Mr. Kuhn as
18 potentially talking about were his role as the Chair of the
19 Board and the fact that he signed the Confidential Separation
20 Agreement.

21 You know, I think it would be appropriate to inquire
22 about an offer of proof as to what more Ms. Kaur might want
23 to ask him about at this point.

24 THE COURT: Okay.

25 Do you have questions that are outside what was

1 discussed during closed sessions?

2 MS. KAUR: Yes. I do.

3 THE COURT: Okay. Can you just give us a hint?

4 MS. KAUR: I have questions concerning the Separation
5 Agreement, and I have questions concerning the CEO in 2011.
6 So the CEO reporting to Mr. Kuhn, and Mr. Alvarez reporting
7 to Mr. Kuhn or the Board.

8 THE COURT: Okay. I mean, we really haven't gotten into
9 the separation too much. So I don't see a problem with that.
10 And the questions about the CEO, as long as they're not
11 duplicative or cumulative, I don't have a problem with that
12 either.

13 MR. HERREMA: Okay.

14 THE COURT: We'll -- we'll just take it
15 question-by-question.

16 Okay. I was just going to say, Ms. Kaur, unless you
17 can cite me something -- I can't cite you code and verse,
18 but I just remember back when I was at the Attorney General's
19 Office, I represented state agencies, and I just remember
20 what closed sessions were like, and what it was like
21 reporting back.

22 So that's why I'm -- I'm sensitive about this. And
23 I know in city counsel meetings that I've attended and
24 witnessed, it's the same thing. So I know the privilege is
25 there.

1 And unless you have something that would say, "For
2 this sort of closed session, or for this kind of case, or
3 these kinds of issues being framed, we don't have to worry
4 about it."

5 So I'll kind of put the burden back on you. Unless
6 you can show me something that says we can get into that, I
7 think I generally agree with Respondents' counsel -- with
8 both of them.

9 MS. KAUR: That's fine, your Honor.

10 MR. HERREMA: And I would like to move to strike to
11 whatever extent Mr. Kuhn's prior answer could be construed as
12 discussing what was discussed in closed session. I'd like to
13 have that stricken as well.

14 THE COURT: I don't think it's necessary. I -- I don't
15 view it as opening any doors. It seemed pretty broad and --
16 I mean, that's what you do when you -- when you discuss
17 personnel issues.

18 MR. HERREMA: Okay.

19 THE COURT: They're closed, and that's why you do it. So
20 I don't think that really opens any -- any doors.

21 MR. HERREMA: All right.

22 THE COURT: Go ahead, Ms. Kaur.

23 MS. KAUR: Thank you, your Honor.

24 BY MS. KAUR:

25 Q I'd like to direct your attention to Exhibit 10, the

1 second page.

2 A Okay.

3 Q Under Item I, where it says "CEO Position," the
4 second paragraph, there's a discussion concerning the
5 preparation of a confirming legal contract for execution by
6 the Watermaster Board Chair.

7 What does "execution" mean?

8 A Signature.

9 Q Does it have any other meaning?

10 A I'm going to say reading and understanding.

11 Q Of the contract?

12 A Yes.

13 Q And then this paragraph also refers to a binding
14 term sheet. At the very beginning of the sentence, it says
15 "authorize counsel to extend a binding term sheet."

16 Do you know what a binding term sheet is?

17 A No.

18 Q And at the time of the meeting on March 31st, 2011,
19 there wasn't a legal contract presented at that meeting; is
20 that correct -- for the retention of Mr. Alvarez?

21 A No.

22 Q And if you could turn to Exhibit 11. Exhibit 11 is
23 titled "employment agreement chief executive officer." If
24 you could turn to the last page of this Exhibit 11.

25 A Okay.

1 Q Under the signature line it states
2 "By Kenneth Willis." And under that, the title states
3 "Chairman of the Watermaster Board."

4 And then if you turn to the first page of this
5 document, it says "this employment agreement in parentheses
6 Agreement is effective as of May 3rd, 2011."

7 Were you the Chair of the Board at that time?

8 A No.

9 Q So was Kenneth Willis?

10 A Can I just give a quick explanation of why I believe
11 that's a "No"?

12 Q Go ahead.

13 A Okay. Ken Willis was the Chair in 2011, but he was
14 also sick and missed most of the meetings. I was the
15 Vice Chair acting as Chair when he wasn't there.

16 Q So going back to Exhibit 11, the March 31st, 2011
17 meeting, at that time, is that what was happening -- you
18 were the Vice Chair acting as the Chair?

19 MR. HERREMA: I'm sorry. Are you referring to
20 Exhibit 10?

21 BY MS. KAUR:

22 Q I'm sorry. Yeah. Exhibit 10.

23 A I'm going to go by what the minutes state as to the
24 different meetings that I was Chair or not Chair --

25 Q Okay.

1 A -- or chairing and not chairing.

2 Q And in 2011, did the CEO report to the Board?

3 A Yes.

4 Q What did they report?

5 MR. HERREMA: Objection. It's vague. Lacks foundation.

6 THE COURT: Do you understand what she's asking?

7 THE WITNESS: No.

8 THE COURT: Okay. Can you clarify?

9 MS. KAUR: Sure.

10 BY MS. KAUR:

11 Q What sort of issues did the CEO report to the Board
12 about in 2011?

13 A Different reports from the different pools, actions
14 that happened in the previous month or are going to happen in
15 the future months, daily running of the office and what
16 occurred or didn't occur to their satisfaction.

17 Q Anything else?

18 A Basically, that's it. That's all I can recall right
19 now.

20 Q And we're looking at Exhibit 11. If you could turn
21 to the first page.

22 Are you familiar with the duties of the CEO?

23 A I'm sorry. Repeat that.

24 Q Are you familiar with the duties of the CEO?

25 A Generally.

1 Q Can you tell me -- in 2011, can you tell me what the
2 duties of the CEO were?

3 A Again, the general conduct and management of the
4 agency.

5 Q And if you could turn to Exhibit 12.
6 Can you tell us what this document is.

7 A I'm going to apologize. I got my wrong glasses.
8 This is the separation agreement.

9 (Complainant's Exhibit 12 was marked
10 for identification by the Court.)

11 BY MS. KAUR:

12 Q Are you able to read it?

13 A No.

14 If somebody -- if somebody has 150 glasses, I can
15 read it. I have no clue what these are.

16 THE COURT: Do you want someone to hold it really far
17 away from you? Or does that make it worse?

18 THE WITNESS: I'm not sure which. You know, yeah. No,
19 actually, that's -- that'll actually -- okay. Go ahead.
20 I'll give it a shot.

21 THE COURT: Okay. Just -- if you can't read something --

22 THE WITNESS: I'll tell you.

23 THE COURT: -- or make sense of it, let us know. We
24 don't want you to guess or speculate.

25 MS. KAUR: And we'll read for you.

1 THE COURT: Even better. Someone can read it for you if
2 you need.

3 THE WITNESS: I can't believe I brought those.

4 BY MS. KAUR:

5 Q If you could turn -- well -- if you could turn to
6 the last page of this agreement.

7 THE COURT: Oh, we might have help here. Maybe.

8 MR. JENSEN: Now, there's the man, man of all skills and
9 services.

10 THE WITNESS: Perfect.

11 MS. KAUR: According to the Board.

12 THE WITNESS: Okay. Tell me what you want me to read.

13 BY MS. KAUR:

14 Q So if you could turn to the last page of this
15 agreement. The very last page -- actually, Page 7 of this
16 agreement. So it's the second to last page.

17 A Okay.

18 MR. JENSEN: And, can -- your Honor, I just want to
19 remark this has "Confidentiality" marked on it throughout.
20 To the extent that it is Mr. Alvarez's confidentiality, he
21 has not waived that in any way. And this was not produced by
22 Mr. Alvarez.

23 So I don't know how this document came -- I don't
24 know the background of this document. So if there is
25 confidentiality that's in this document, Mr. Alvarez is going

1 to assert it.

2 THE COURT: Okay. Let's see if we can find the provision
3 in here. I mean, I'm just -- the fact that the word
4 "Confidential" appears on the top of each page just tells me
5 it was meant to be confidential. But there should be a
6 provision in here that tells us exactly to what extent.

7 So does anyone know what --

8 MR. JENSEN: I think it's 6 on Page 4 is the way I'm --

9 And, your Honor, I don't believe that we produced
10 this, as counsel for Mr. Alvarez. If so --

11 MR. HERREMA: I think the confidentiality privilege runs
12 to Watermaster.

13 THE COURT: I'm sorry, "runs" --

14 MR. HERREMA: To Watermaster. It's in of Watermaster.

15 THE COURT: Is it not bilateral? Wouldn't it not apply
16 for both the employee and the employer, or --

17 MR. JENSEN: It would likely be unconscionable if it
18 wasn't, I would think. But -- and, Ms. Kaur, can I just
19 ask you, did Mr. Alvarez -- or our -- or did we produce this
20 to CalPERS?

21 MS. KAUR: I know that Watermaster produced it. I don't
22 know if you produced it at any time.

23 MR. JENSEN: I don't believe we could. I don't -- I
24 don't --

25 MS. KAUR: I would have to look through --

1 MR. HERREMA: Counsel --

2 MR. JENSEN: What's that? I did? Well, then it was --
3 then it was inadvertent, and I apologize for that to you.

4 THE COURT: Okay. So reading the Provision 6, though, it
5 does seem like it's the defined term "Executive," whom I'm
6 assuming is Mr. Alvarez. I'm assuming that's who -- yes.
7 Mr. Alvarez is designated as the "Executive," and
8 Paragraph 6 seems to say the "Executive" agrees not to --

9 MR. JENSEN: So I -- it must have been an inadvertent
10 disclosure, your Honor. And I'd like to re-claw it if
11 possible.

12 THE COURT: Okay. So --

13 MR. JENSEN: Claw it back. And I'd just, you know --
14 there was a lot of documents produced.

15 And this doesn't have any Bates stamps on it. So I
16 was unaware that it was our office that produced it as all of
17 our -- our -- all of our material's usually Bates stamped.

18 And so we -- we're actually required to -- to -- to
19 claw this back. And I apologize for any inconvenience.

20 THE COURT: Okay. Required by what to --

21 MR. JENSEN: By this Agreement. It's -- we may not
22 disclose it.

23 And frankly, your Honor, if it was -- Mr. Herrema
24 just said to me that it was our office and -- I mean, it's
25 atypical because it's not Bates stamped. So --

1 THE COURT: I got the impression, though, that this was
2 -- had been provided to PERS at the outset of the dispute
3 when there was a challenge or --

4 MR. HERREMA: That's not the case.

5 THE COURT: No --

6 MS. KAUR: This was provided to CalPERS by the
7 Watermaster -- I believe it was after the --

8 MR. HERREMA: Can we go off the record? Is it necessary
9 to have the conversation on the record?

10 THE COURT: Well, to the extent there's a dispute. We
11 can go off the record, and then we're going to have to report
12 back what we discussed if --

13 MR. HERREMA: Okay.

14 THE COURT: -- there's any -- any issue.

15 Is there something that you don't want to discuss on
16 the record? I -- I -- I want to be mindful of that.

17 MR. HERREMA: Ms. Kaur was not -- was not the attorney on
18 the case. I had significant discussions with her predecessor
19 about the disclosure of this Agreement.

20 THE COURT: Mr. Kennedy?

21 MR. HERREMA: Yes.

22 THE COURT: Okay.

23 MR. JENSEN: Oh, you -- okay. So -- and, your Honor, I
24 want to say I'm, at least presently, unaware of this being
25 raised before -- the issue of any confidentiality -- because

1 we would not waive confidentiality in this document
2 intentionally.

3 And -- and so this would not be something -- because
4 we Bates stamp all of our documents and send them out when we
5 -- when we produce disclosure in discovery. And, I mean,
6 that's our practice, at least. And this isn't Bates stamped
7 from and by us.

8 And, I guess, what I can say is that if it was
9 inadvertently disclosed by us, it was disclosed in error, and
10 -- and this is really the first time I'm under the
11 understanding that it would have been my office's inadvertent
12 disclosure, and then I would have to claw it back.

13 THE COURT: Okay. Now, when you're referring to
14 disclosure, you're saying that your office disclosed it to
15 whom and when?

16 MR. JENSEN: See? This is what -- and I'll just -- let
17 me just ask Mr. Her --

18 MR. HERREMA: Herrema.

19 MR. JENSEN: Herrema.

20 Were you under the impression that we've produced
21 this to CalPERS?

22 MR. HERREMA: Yes.

23 MR. JENSEN: Okay. That was --

24 MR. HERREMA: That is my impression.

25 THE COURT: And produced in what context? In discovery,

1 or gave it to PERS or --

2 MR. HERREMA: In discovery.

3 THE COURT: Of this case?

4 MR. HERREMA: Yes.

5 MR. JENSEN: And -- and -- and that, again, that would be
6 an atypical practice of ours, and if so, it was -- it was
7 waived -- it was not waived. It was inadvertently disclosed,
8 and this is the first time I'm aware that it was our office
9 that might have disclosed this.

10 THE COURT: Whose discovery request was it in response
11 to?

12 MR. HERREMA: It wouldn't have been -- it wouldn't have
13 needed to be in response to Watermaster's.

14 THE COURT: Okay.

15 MR. HERREMA: I believe it was in response to CalPERS's
16 discovery request.

17 THE COURT: Okay.

18 MR. JENSEN: And --

19 MR. HERREMA: I can go back and review the discovery
20 documentation tonight.

21 THE COURT: Let me -- let me ask Ms. Kaur: When --
22 what's your understanding of how this document came into
23 PERS's possession?

24 MS. KAUR: My understanding is that it was received
25 during discovery. I don't think CalPERS had it when we

1 issued our first determination. And this is just based on
2 reading the record. I haven't had any discussion with
3 Mr. Kennedy concerning this.

4 MR. JENSEN: And --

5 MS. KAUR: This is just based on my review of the
6 records.

7 MR. JENSEN: And was there ever -- upon receipt of this,
8 did CalPERS inform us that there was a document marked
9 "Confidential" that was received?

10 MS. KAUR: If -- the CalPERS final witness/exhibit list,
11 which is dated and signed by Mr. Kennedy, and it's -- is
12 dated February 12th, 2015, has this document listed as our
13 exhibit. And --

14 MR. JENSEN: Is it listed as "Confidential" as disclosed
15 by the Mr. Alvarez's counsel?

16 MS. KAUR: It's -- it's listed as -- no. It's not
17 listed as who disclosed it. On Item -- it's listed as
18 "Confidential Separation Agreement." So I, based on review
19 of the record, I always assumed there's no issue about it
20 being released or being part of the exhibit list because
21 that's -- it was listed there. I don't --

22 MR. JENSEN: And -- and, your Honor, just -- just as,
23 you know, I will fall on my sword, or my office's sword,
24 as the potential discloser -- inadvertent discloser of this
25 document.

1 However, I believe that it would also be CalPERS and
2 -- incumbent on CalPERS to inform us that there was a
3 document marked "Confidential" that was disclosed, even if
4 potentially inadvertently.

5 So I would seek to claw this document back as being
6 a document that I'm not even aware whether we had possession
7 of this.

8 THE COURT: Well, how would --

9 MR. JENSEN: And --

10 THE COURT: Go ahead.

11 MS. KAUR: What do you mean "claw it back"? And I don't
12 understand what you mean by --

13 MR. JENSEN: Well, anything inadvertently disclosed,
14 confidential, especially attorney-client. If it was given to
15 me in confidence from my client, that would be a confidential
16 document within the privilege, I believe.

17 And if my office inadvertently disclosed it to
18 CalPERS, there's -- or even -- I guess not to Watermaster --
19 then that would be a document that's not -- there's no waiver
20 of privilege in those documents.

21 MS. KAUR: Okay. You were provided the CalPERS final
22 exhibit list. You are provided the exhibits also.

23 MR. JENSEN: I understand. But the issue is -- is the --
24 I think if the Watermaster is -- is the holder of the
25 privilege, they could close it to you; okay? But I'm not

1 allowed to disclose it to you.

2 I was under the understanding if it was on there
3 that they had disclosed it to you.

4 MS. KAUR: That was my understanding that, at least,
5 they had disclosed it. I don't know if you also disclosed
6 it. I'm not sure about that.

7 MR. JENSEN: Well, we -- I can accept Mr. Herrema's
8 representation.

9 MR. HERREMA: My recollection is that it was -- it was
10 disclosed by -- by Mr. Alvarez, and after that time.

11 MS. KAUR: Do you have your Amended Appeal Letter in one
12 of the exhibits?

13 MR. HERREMA: No.

14 MS. KAUR: Because you filed an amended appeal. Let me
15 see.

16 MR. HERREMA: John, it's also your Exhibit 254.

17 (Respondent's Exhibit 254 was marked
18 for identification by the Court.)

19 MR. JENSEN: Then I would just pull it out on both. I
20 mean, I guess our understanding was that it was something
21 that Watermaster had disclosed. I can talk to my staff and
22 ask what our understanding is.

23 THE COURT: All right. Well, let me -- let me ask
24 Mr. Herrema because I think the -- I think you're generally
25 right that the confidentiality provision was primarily aimed

1 at -- at the districts -- the Watermaster's benefit.

2 So what does the Watermaster say about Exhibit 10
3 being made public and being used in the hearing?

4 MR. JENSEN: Or Exhibit 12 and 254.

5 MR. HERREMA: Right. It's been designated by all
6 three.

7 You know, it wasn't our preference that it be made
8 public. If it's necessary for the purposes of the hearing, I
9 think Watermaster was okay with that.

10 THE COURT: Okay. The other concern I have is that, by
11 hook or crook, it looks, to me, in looking at the first --
12 the First Amended Statement of Issues -- that it's pled in
13 Paragraph 8 on Page 4. It talks about a January 23rd, 2012,
14 Confidential Separation Agreement, which --

15 MR. HERREMA: What's the date of that document?

16 THE COURT: The Statement of Issues -- the First Amended
17 Statement of Issues?

18 MR. HERREMA: Yeah.

19 THE COURT: Let's see. I believe it's Exhibit --

20 MS. KAUR: It's Exhibit 3. It was --

21 Yes. It references the Separation Agreement.

22 (Complainant's Exhibit 3 was marked for
23 identification by the Court.)

24 THE COURT: All right. It was signed on February 12th,
25 2015, and served --

1 MR. HERREMA: I think that's shortly after our --

2 THE COURT: -- on the parties.

3 MR. HERREMA: -- our prehearing conference.

4 MS. KAUR: And then the February 12th, 2015 supplemental
5 letter from CalPERS -- that's Exhibit 6, I believe -- also
6 references the Confidential Agreement.

7 (Complainant's Exhibit 6 was marked for
8 identification by the Court.)

9 THE COURT: Ah, okay. That would be the -- a letter that
10 would have gone to Mr. Alvarez saying, "We're supplementing
11 why we're proposing to change your benefits"?

12 MS. KAUR: Yes, your Honor.

13 THE COURT: Okay. Let's see. Let's look at that. So
14 this is Exhibit 6 and --

15 MS. KAUR: Page 2.

16 THE COURT: I see. In the middle.

17 MS. KAUR: Yes.

18 THE COURT: All right. Mr. Jensen --

19 MR. JENSEN: And -- and --

20 THE COURT: My -- oh, go ahead.

21 MR. JENSEN: And let me just address that because it
22 really -- the issue is whether -- I mean, again, who's the
23 holder of the privilege.

24 If it is Watermaster, and they had disclosed it,
25 then that would be fine. However, if it -- if they didn't

1 disclose it, they didn't intend to disclose it, then it was
2 an inadvertent disclosure on our behalf. And then that would
3 be -- I mean, it's just because they have a supplemental
4 statement of issues regarding -- that doesn't necessarily
5 mean that -- that doesn't solve the issue because it doesn't
6 impute knowledge to me that we had inadvertently -- that we
7 had inadvertently disclosed it in discovery because we're not
8 the -- they could waive the privilege at any time.

9 And it's -- I could factually look into it, who
10 disclosed it. It may not be a big deal if Watermaster is
11 going to go forward with it.

12 MR. HERREMA: We are.

13 MR. JENSEN: Then I just -- if it was inadvertently
14 disclosed by my office, it was atypical because it's not
15 Bates stamped. And -- and I would have -- be under the
16 obligation to request that they send it back to us. That
17 would be my obligation as far as my client.

18 THE COURT: Okay.

19 MR. JENSEN: Claw it back.

20 THE COURT: All right. I think this is ultimately a
21 tempest in a teapot. In the reading the separation agreement
22 I do believe the Watermaster was the primary beneficiary of
23 it.

24 And Mr. Herrema's telling us that the Watermaster's
25 preference is for this to be used in the hearing to make a

1 decision on the merits -- if I'm -- and -- and is waving any
2 request or desire to keep this confidential.

3 Am I understanding correctly, Mr. Herrema?

4 MR. HERREMA: There was a discussion with Mr. Kennedy
5 about maintaining its confidentially for the purposes of this
6 process. There was -- I -- my very strong recollection is
7 that it was disclosed by Mr. Alvarez as part of discovery.
8 At that point, Watermaster agreed that it could be part of
9 the case.

10 You know, the -- whenever there's an agreement
11 similar to this one, and it's -- it's intended to be
12 confidential, we prefer that it remain confidential.

13 I'm not sure at this point what -- what more there
14 is to say about it.

15 THE COURT: All right. But are you saying that it's --
16 it's permissible to use it in the course of this litigation
17 but to seal it so a member of the public would not see it,
18 or -- or am I not understanding?

19 MR. HERREMA: That was the discussion that I had with
20 Mr. Kennedy at one point. And I think it just never got
21 taken back up with Ms. Kaur when she came on the case.

22 THE COURT: That it would be used, but we would just seal
23 the -- the specific document?

24 MR. HERREMA: Correct.

25 THE COURT: Okay. The other -- so I --

1 MR. HERREMA: I didn't have -- I had substantially more
2 correspondence and discussion with Mr. Kennedy than I've had
3 with Ms. Kaur.

4 THE COURT: Okay. Do you have any contrary
5 understanding, Ms. Kaur, one way or the other?

6 MS. KAUR: I -- I don't have any understanding concerning
7 that discussion, whether -- what was discussed or what was
8 agreed upon.

9 THE COURT: Okay. I think, ultimately, the problem I have,
10 Mr. Jensen, is however this was disclosed, it got to CalPERS,
11 and CalPERS filed the First Amended Statement of Issues which
12 is the operative document in this case, and it clearly
13 alleged facts that are being used to support the proposal --
14 and in the supplemental letter that PERS sends to its member
15 saying, "We're updating our reason for proposing to change
16 your benefits" -- and it also disclosed that.

17 So I think many months ago there were statements to
18 your client and to you indicating this document was in their
19 possession, and it was going to be used.

20 And I think it's a bit late in the midst of the
21 hearing, to try to claw it back or pull that out of the use
22 of the litigation.

23 MR. JENSEN: And -- and, your Honor, I -- I agree with
24 you and in a certain way. I mean, I don't think it actually
25 is dispositive of anything. So if they're willing to go

1 forward -- and maybe what I would request is that we just
2 enter into a protective order on the testimony and on the
3 document itself to the fullest extent that we can. And --
4 and that would protect the confidentiality privileges and
5 also allow CalPERS to have the right to go forward on
6 its -- on its case.

7 And overall I -- I don't know who disclosed it.
8 But, again, I -- I -- you know, what I -- what I've tried to
9 represent is, you know, it's that it really, probably,
10 shouldn't be an issue in this case, but now that it is, it's
11 fine.

12 With -- with regards to our obligations to try to
13 protect it -- at this point, is only the protective order.
14 So --

15 THE COURT: Okay. All right. So does anybody object to
16 my sealing Exhibit 12 and entering an order that the exhibit
17 itself will be sealed. So if any member of the public
18 requested copies of the exhibits that they would not get 12.
19 And 12 would remain sealed unless there was an order from my
20 office, PERS, or the -- a court of appropriate jurisdiction?

21 MS. KAUR: I -- I think it should not be sealed. It was
22 -- Mr. Jensen was aware of this for a long time. It was
23 included in the determination -- the supplemental
24 determination. It was also included in the exhibit list.

25 I think one of my concerns is also if it goes

1 before the Board, the Board -- before the CalPERS Board.

2 Are -- are you suggesting that the Board can then
3 state it's open to the public? If there's a hearing before
4 the Board, or --

5 THE COURT: No. Just that the Board would have access to
6 it. I guess the Board could take actions once I've issued a
7 proposed decision. I couldn't do anything to stop it.

8 But my order would just say it's only accessible to
9 the parties, OAH, PERS, and then if the Superior Court orders
10 it unsealed. That's what my order -- that's what my written
11 order would say. Otherwise, any other person, and certainly
12 a member of public, who requested a copy of the exhibits
13 would not get 12.

14 But the parties in this litigation would be able
15 to use it in the midst of the litigation, and question
16 witnesses, and make arguments. It's just a member of the
17 public wouldn't be able to get a copy of it. That's what
18 the sealing order would do.

19 MS. KAUR: I understand. But for the reasons I stated,
20 I do object to that type of sealing order. Mr. Jensen was
21 aware of this being disclosed -- or being part of the exhibit
22 list.

23 And this is -- this is complete news to me. I had
24 no idea that he was going to object to it.

25 MR. HERREMA: The sealing request is something I

1 discussed with Mr. Kennedy prior to you coming on to the
2 case. And I've -- we've had a difficult time connecting and
3 being able to have discussions ahead of this hearing.

4 THE COURT: All right. So I'm taking from that that you
5 don't object to the --

6 MR. HERREMA: I do not.

7 THE COURT: -- exhibit.

8 MR. HERREMA: The sealing.

9 THE COURT: Okay. I'll -- I'll enter a sealing order.

10 Quite frankly, I usually do that with medical
11 records and employment records and things that have
12 people's personal identifying information. So this is a
13 Confidential Separation Agreement. I don't see a problem
14 sealing it.

15 Like I said, everyone here can still use it in this
16 litigation. I'm just keeping members of the public, or
17 media, anyone from getting a copy of it.

18 MS. KAUR: Understood, your Honor.

19 THE COURT: Okay. Let me make a note.

20 MR. JENSEN: And, Brad, just to -- yeah, I apologize to
21 you -- your office, too for disclosure of this.

22 THE COURT: Okay. Mr. Jensen, you also mentioned sealing
23 the transcript?

24 MR. JENSEN: Yeah, if -- what -- we can do it if there's
25 testimony developed about the substance of it. What I can do

1 is -- is sort of try to get an approximate time and -- and
2 line number of transcripts and offer a proposed stipulation.

3 And probably if there's going to be testimony --
4 further testimony about it, we can keep an ongoing record,
5 and then at the end, we can do one sealing. Or at least I've
6 done that in the past.

7 THE COURT: Yeah. I think that's a great idea.

8 MR. JENSEN: Okay.

9 THE COURT: Okay. So we'll let Mr. Jensen carry the --
10 the water on that one. And then he'll report back, and then
11 we'll talk about the -- pardon the pun. Sorry about that.

12 MR. JENSEN: And can I -- can I just ask the reporter
13 just if -- if there's some indication of when you can -- like
14 a line number or a page number or something so that I can
15 start it from there.

16 THE REPORTER: Yes.

17 MR. JENSEN: Thank you.

18 THE COURT: Okay. All right. Thank you.

19 Let's -- let's proceed. If you remember where we
20 were, Ms. Kaur.

21 BY MS. KAUR:

22 Q I think we were looking at Exhibit 12, and we were
23 looking at Page 7.

24 Mr. Kuhn, did you sign this separation agreement?

25 A Yes.

1 Q And were you the Chair at the time?

2 A Yes.

3 Q And I'd like to refer you to the first page of the
4 separation agreement.

5 And it starts off with "This Confidential Separation
6 Agreement," parenthesis, "(The Separation Agreement)," closed
7 parenthesis, "is entered into this 23rd day of January 12th
8 (sic), 2012, by and between Desi Alvarez, Executive, and the
9 Chino Basin Watermaster, the Watermaster."

10 And --

11 A Okay.

12 Q And when I asked you whether you were the Chair, I
13 was referring to January 2012, whether you were the Chair of
14 the Watermaster at that time.

15 Is that when -- would I --

16 A January 1st -- when we -- when we changed officers.
17 So that would be when I became Chairman.

18 Q And prior to January -- January 1st, 2012, you were
19 the Vice Chair; is that correct?

20 A Yes.

21 MR. HERREMA: Objection. Vague as to time frame.

22 THE COURT: Yes. Can you clarify.

23 BY MS. KAUR:

24 Q Prior to January 1st, 2012, you testified you were
25 the Vice Chair. When did you become the Vice Chair for the

1 Watermaster?

2 A To the best of my recollection, it was in 2010,
3 January.

4 Q And why were -- why were you the person signing this
5 separation agreement?

6 A I don't see it on there, but I'm assuming as
7 Chairman.

8 Q Did you draft this Separation Agreement?

9 A No.

10 Q Do you know who drafted it?

11 A I'm going to say Scott Slater's office. I'm not
12 sure who individually did.

13 Q And can you tell us what the purpose of this
14 Separation Agreement was?

15 MR. HERREMA: I'm going to object to the extent the
16 document speaks for itself.

17 THE COURT: Overruled. Just if -- if you can, you can
18 tell us what your understanding of it is.

19 MR. HERREMA: And I'm going to, again, object to the
20 extent it calls for any discussion of what was discussed in
21 closed session by the Board or any privileged conversations
22 with counsel.

23 THE COURT: Okay. So, Mr. Kuhn, don't get into anything
24 that was mentioned in closed session, just what's your
25 understanding of -- we're on 12, still?

1 THE WITNESS: Yes.

2 THE COURT: Yes -- what your understanding of Exhibit 12
3 is.

4 THE WITNESS: Formalizing the separation.

5 BY MS. KAUR:

6 Q The confidential agreement on Page 1, Item I, which
7 starts off with "Termination of active employment," and the
8 first sentence states "Executive's employment in the capacity
9 of chief executive officer of the Watermaster with all of the
10 powers and duties associated here -- therewith ceased on
11 November 9, 2011. And then employment agreement is hereby
12 modified effective as of that date."

13 What is your understanding of that statement?

14 MR. HERREMA: I'm going to object again. It speaks for
15 itself. I'm not sure what the relevance of Mr. Kuhn's
16 understanding as the Chairman of the Board is.

17 THE COURT: I'll overruled it. He -- he's -- he was the
18 Chair at the time he signed the agreement. He speaks for the
19 Board.

20 I don't want you to speculate. If you have an
21 understanding, at the time, of what that meant, you can tell
22 us. I don't want you to formulate any legal conclusions or
23 tell us anything that you don't have personal knowledge
24 about.

25 THE WITNESS: Again, it formalizes the -- the separation

1 dates as to when we first talked to Mr. Alvarez in regards to
2 his employment.

3 BY MS. KAUR:

4 Q Was Mr. Alvarez no longer a CEO of the Watermaster
5 after November 9th, 2011?

6 MR. JENSEN: Objection. Calls for a legal conclusion.

7 THE COURT: Overruled. You can answer.

8 THE WITNESS: I'm not sure how to answer that. He was on
9 standby. So I'm not sure what that really means,
10 "separation" or "no longer CEO." He was no longer active
11 CEO.

12 BY MS. KAUR:

13 Q When you say "active," what do you mean by "he was
14 no longer active"?

15 A He was in on a day-to-day basis.

16 Q What was he doing?

17 MR. JENSEN: Objection. Lacks personal knowledge.

18 THE COURT: Overruled. If you know. Don't guess or
19 speculate.

20 THE WITNESS: I don't know.

21 BY MS. KAUR:

22 Q Did he report to the Board after November 9th, 2011?

23 A Did I?

24 Q Did Mr. Alvarez report to the Board after
25 November 9th, 2011?

1 A Yes.

2 Q How did he report to the Board?

3 A He and I had several phone conversations, again, as
4 acting Chairman and as Chairman.

5 Q I'm sorry?

6 A As both acting Chairman from, say, November 9th
7 through January, and then from January as Chairman.

8 Q And when you're saying "acting Chair" and "as
9 Chair," you're referring to yourself; right?

10 A Yes.

11 Q And you said January -- after January 2012, you had
12 conversations with him, and prior to January 2012, you had
13 conversations with him?

14 MR. HERREMA: Objection. Compound question.

15 THE COURT: Do you understand what she's asking?

16 THE WITNESS: Yes.

17 THE COURT: Okay. Overruled. You can answer.

18 THE WITNESS: Yes.

19 BY MS. KAUR:

20 Q And what was the subject of those conversations?

21 A If the Board or the different committees or the
22 interim CEO had questions, and he could help us clarify, we
23 would discuss those.

24 Q Would it be correct to say that his powers and
25 duties as a CEO were terminated after November 9th, 2011?

1 MR. JENSEN: Objection, your Honor. Misstates the
2 testimony of witness.

3 THE COURT: Overruled. You can agree or disagree with
4 what Ms. Kaur just said, if it's correct or not.

5 THE WITNESS: I'm not sure I understand the difference
6 between "power" and "duties." I would say his power was
7 ceased on November 9th. His duties, in my opinion, my mind,
8 were still active.

9 BY MS. KAUR:

10 Q His duties as a CEO?

11 A Yes.

12 Q And his duties as a CEO, when were they active
13 until? Up to what date?

14 A I'm going to say the end of the contract. I'm -- I
15 don't have a specific date.

16 Q So do you disagree with this statement under Item I
17 which states "power and duties associated therewith ceased on
18 November 9th, 2011"?

19 MR. JENSEN: Objection. Asked and answered.

20 MR. HERREMA: I'm going to object as to relevance.

21 MR. JENSEN: And it's already clearly been asked and
22 answered.

23 THE COURT: Overruled. You can answer.

24 THE WITNESS: I'm going to use the date of November 9th
25 because I don't know what else to refer to. But when we had

1 the original conversation, he agreed to -- and we -- we asked
2 him to, and he agreed to give us any information, when he was
3 active, if we had an issue.

4 So I'm -- I'm -- I'm having a problem between the
5 question of power and duties.

6 BY MS. KAUR:

7 Q So what were his duties after November 9th?

8 A To answer any questions that we would ask --

9 Q And --

10 A -- as best he could.

11 Q Aside from answering the questions, anything else?

12 A Not to the best of my knowledge.

13 Q And did the Board hire someone else as the CEO after
14 January, 2000 -- well, after November 9th, 2011?

15 MR. JENSEN: Objection. Misstates the testimony. It was
16 an interim position.

17 THE COURT: Good point. Are you asking interim or full
18 replacement?

19 BY MS. KAUR:

20 Q Interim. Interim or full replacement. Whatever
21 your understanding is.

22 MR. JENSEN: Objection. Compound. Vague. Ambiguous.

23 MR. HERREMA: Object as his testimony is cumulative.

24 THE COURT: Overruled. Do you understand what she's
25 asking?

1 THE WITNESS: Can I ask you for clarification, or her for
2 clarification?

3 THE COURT: Ask her for clarification.

4 THE WITNESS: Are you asking specific interim? Did we
5 appoint an interim?

6 BY MS. KAUR:

7 Q Yes.

8 A Or hire an interim?

9 Q Yes.

10 A We appointed an interim.

11 Q After November 9th, 2011?

12 A After. But I can't tell you the exact date.

13 Q And who was appointed?

14 A Who?

15 Q Yes. Who was appointed -- if you recall.

16 MR. JENSEN: Vague and ambiguous as to which position.

17 BY MS. KAUR:

18 Q The CEO position.

19 A I'm going to say --

20 MR. JENSEN: Objection. Misstates the testimony.

21 THE COURT: The interim. The person you just referred
22 to. Who -- who was that?

23 THE WITNESS: Danni -- and what's her last name?

24 BY MS. KAUR:

25 Q Would it be "Maurizio"?

1 A Yes.

2 Q And was there a position of the CEO of the
3 Watermaster?

4 MR. HERREMA: Objection. There's been lots of testimony
5 from Mr. Kuhn himself that they appointed an interim CEO.
6 He's identified that it was Danni Maurizio.

7 THE COURT: Sustained.

8 BY MS. KAUR:

9 Q Why was Mr. Alvarez separated from employment after
10 November 9th, 2011?

11 MR. JENSEN: Objection. That's a closed session issue,
12 and it's -- we've already had that discussion at length.

13 THE COURT: All right.

14 Mr. Herrema, any thoughts on that?

15 MR. HERREMA: Yeah, I agree. There was a closed session,
16 I believe, on November 8th, 2011, at which this was
17 discussed. It's privileged. This is exactly the discussion
18 we had before about the contents of a closed session.

19 THE COURT: Okay. Just out of curiosity, Mr. Jensen,
20 when you ask questions of your client, are you going to get
21 into any of that?

22 MR. JENSEN: I -- I would not -- I mean, he wasn't in the
23 closed session, as to the best of my knowledge. But I don't
24 anticipate going into any of that -- the -- any substantive
25 dispute -- except I may elicit the testimony. And I will

1 just offer it here, that he doesn't know why he was let go.

2 THE COURT: That was going to be my next question.

3 MR. JENSEN: Yeah.

4 THE COURT: That are there any questions to him of, "Did
5 anyone tell you why this change was happening?" Or --

6 MR. JENSEN: And again, your Honor, I can only
7 express, sort of, the expected testimony. But I believe that
8 he will testify that he does not know why -- was not informed
9 why.

10 THE COURT: Okay. And, Mr. Herrema, is there anything in
11 any of the publicly available documents that describes the
12 reason for this?

13 MR. HERREMA: Our recollection is that in Watermaster's
14 appeal of the CalPERS's initial determination, there's a
15 statement that Mr. Alvarez was not the right fit.

16 THE COURT: Okay. I recall seeing something like that.
17 All right.

18 So your thoughts on this, Ms. Kaur?

19 My concern is if the answer to that question is
20 going to invade the privilege about what was discussed in
21 closed session, then I don't want to get into that. But if
22 there's other publicly available documents or statements,
23 then I think that would be fair game, just in response to
24 those public statements.

25 But what -- what are your thoughts on this?

1 MS. KAUR: So the appeal was pretty much the only public
2 document I had seen concerning why Mr. Alvarez was let go.
3 Particularly, he was not a good fit. So that's -- I had
4 questions around that issue.

5 THE COURT: So when -- when we're stating "the appeal,"
6 are we saying this is a written statement from the
7 Watermaster in response to PERS's initial letter to
8 Mr. Alvarez, or what --

9 MR. HERREMA: Yes.

10 MS. KAUR: Mr. Alvarez and the Watermaster. It's the
11 same determination that's mailed to both of them.

12 THE COURT: Okay.

13 MR. JENSEN: And I don't believe Mr. -- -- that we made any
14 substantive statement about the aspect of his -- and I think
15 it's irrelevant.

16 MR. HERREMA: Yeah, my -- my next statement was going to
17 be to inquire what the relevance is.

18 THE COURT: That's -- that's a good question. How --
19 how is this relevant, Ms. Kaur? How will it help me make a
20 determination whether PERS's proposal is correct or not?

21 MS. KAUR: Can I just take a second?

22 THE COURT: Yes.

23 Okay. While you are doing that, let me ask
24 Mr. Herrema: Are you referring to Exhibit 8 as a document
25 where it's stated that -- the appeal -- where that statement

1 is made or --

2 (Complainant's Exhibit 8 was marked for
3 identification by the Court.)

4 MR. HERREMA: It's the on Page 2, "Shortly after joining
5 Watermaster, it became clear to Watermaster, Mr. Alvarez was
6 not the right person for the CEO position."

7 THE COURT: Okay. I see. All right. Thank you.

8 MR. HERREMA: I believe that's the only place it's been
9 -- perhaps this has been recast in the -- I know there was
10 an Amended Appeal after the Amended Determination. I don't
11 know that -- off the top of my head, I don't remember that
12 there was any further discussion beyond that.

13 THE COURT: Okay. Okay. Thank you.

14 MS. KAUR: And I'll -- I'll withdraw that question, your
15 Honor.

16 THE COURT: Okay.

17 MR. JENSEN: And, your Honor, can I just make one point
18 on that -- is that he was placed on administrative -- paid
19 administrative leave. So that's -- you know, it wasn't a --
20 a severance at that point, or a termination. He was just
21 placed on leave.

22 THE COURT: Okay. Well, I think we're getting to that.
23 So that will be revealed, I suspect, in due time.

24 Okay. Ms. Kaur, go ahead.

25 ///

1 BY MS. KAUR:

2 Q Item I on Page 1 of Exhibit 12 states it's a
3 termination of active employment.

4 A I'm sorry. Where are we at?

5 Q We're -- we're looking at first page of Exhibit 12.

6 A Yes.

7 Q And there's Item I listed --

8 A Oh, I'm sorry. Yes.

9 Q And there it states "termination of active
10 employment."

11 Is this -- would you consider this as a termination
12 without cause?

13 MR. HERREMA: Objection. Call for a legal conclusion.

14 MR. JENSEN: And it's vague and ambiguous as to time.

15 THE COURT: I'm going to overrule on both counts.

16 Like I said before, though, I want to make sure you
17 just tell what your understanding is. You're not being
18 forced to make any sort of legal assessment of conclusion.

19 THE WITNESS: The Board felt it was operating without
20 cause.

21 MR. HERREMA: I'm going to object and move to strike to
22 the extent that that's a product of any discussions in closed
23 session.

24 THE COURT: The --

25 MR. HERREMA: And -- and the answer is nonresponsive.

1 The question was Mr. Kuhn's opinion, not what the Board's
2 understanding was.

3 THE COURT: Okay. Let -- I'll grant that. Let me strike
4 that.

5 Let's try it again. Re-ask the question, and then
6 Mr. -- we'll let Mr. Kuhn answer it.

7 BY MS. KAUR:

8 Q Was this a termination without cause?

9 A Yes.

10 Q And if you turn to Page 2. Item C --

11 A Okay.

12 Q -- discusses compensation and benefits. And there's
13 a discussion concerning severance pay.

14 MR. JENSEN: Objection. Misstates --

15 BY MS. KAUR:

16 Q I'm sorry. Severance compensation. Do you see
17 that?

18 A Yes.

19 Q And it states "The compensation and benefits
20 provided hereunder shall be referred to 'severance
21 compensation.'"

22 Is that severance pay?

23 MR. JENSEN: Objection. Calls for a legal conclusion.
24 And the document speaks for itself. And the document, your
25 Honor, is ambiguous in itself, taken on the whole of the

1 document.

2 And I'd like to make an offer of proof, if I may?

3 THE COURT: Okay.

4 MR. JENSEN: Just looking at this document, and I'm not
5 that familiar with it, but there's a transition period on
6 Page 1.

7 And it says in here "Executive acknowledges and
8 understands he doesn't have authority. However, his duty
9 during the transition period shall be to assist and provide
10 information to the Watermaster as requested with respect to
11 the pending projects and the transition of his duties."

12 So in this paragraph on Page 1, it's talking about
13 duties over a transition period which starts -- which
14 reflects this period after November 9th until May 3rd. And
15 so there's specific duties being given for this period.

16 And there's pay being given to this period in the
17 next -- in Subsection C, "During the transition's period,
18 Executive shall receive his base pay at the rate effective of
19 that." And so there're -- in this agreement, there are
20 duties being required from Mr. Alvarez to perform, from
21 certainly November through May, and pay associated with those
22 duties.

23 And the term "severance" would reflect a different
24 arrangement where actually he was -- his -- he was
25 terminated, he was severed from employment with no longer any

1 duties to perform. So in a certain sense, in a backdoor
2 phraseology, Ms. Kuhn (sic) is asking --

3 MS. KAUR: Ms. Kaur.

4 MR. JENSEN: -- Ms. Kaur is asking Mr. Kuhn to adopt an
5 idea that there was -- that Mr. Alvarez was actually severed
6 as of November, when actually he had continuing employment
7 and the duties, which Mr. Kuhn has already testified to.

8 And so --

9 THE COURT: Okay.

10 MR. JENSEN: And so I -- I just don't -- you know, in
11 the whole context of the -- of this -- of this document,
12 I think it's unfair to Mr. Kuhn to try to seek testimony and
13 characterize those payments as something other than what the
14 actual facts were.

15 THE COURT: Okay. I think you've -- thank you for
16 clarifying.

17 I don't want the witness to not answer the questions
18 provided to him. And this document is unique. So it's good
19 to avoid confusion. I'll let Mr. Kuhn answer questions about
20 that provision, however, so long as he understands what's
21 being asked of him.

22 And if you want -- if you need to read the document
23 to refresh your recollection, you're certainly entitled to do
24 that. No one expects you to remember every line of this.

25 But generally, I think it's a fair line of inquiry,

1 just provided Mr. Kuhn knows what Ms. Kaur's asking him.

2 MR. JENSEN: And -- and, your Honor, just to -- the
3 endorsement of the severance part as being a legal conclusion
4 is what I was objecting to.

5 THE COURT: Right.

6 MR. JENSEN: Okay.

7 THE COURT: And again, I want to make sure the witness
8 understands he's not being asked to formulate a legal
9 conclusion. It's just, basically, what's his understanding
10 as being one of the signatories to this. And I know he's a
11 layperson. So what -- you know, what his understanding is.
12 That's good enough.

13 I'm not going to take any of his answers as a
14 binding legal statement. I'm just going to consider it
15 evidence with all the other evidence and give it the weight
16 I think it's worth, based on his status and his involvement
17 and all of that.

18 MR. JENSEN: Thank you. That's all we'd ask.

19 THE COURT: Okay. Why don't we -- oh.

20 Yes, sir.

21 MR. HERREMA: Sorry.

22 THE COURT: That's okay.

23 MR. HERREMA: I think it should be clear in the record
24 that "severance compensation" is a defined term in quotation
25 marks.

1 THE COURT: Yes. Where -- where will we find that
2 definition?

3 MR. HERREMA: Well, I think it's intended to represent
4 the whole of the "compensation and benefits provided
5 thereunder."

6 THE COURT: Oh, I think this is the defining --

7 MR. HERREMA: Right.

8 THE COURT: Okay.

9 MR. HERREMA: But I think Ms. Kaur has asked a question
10 about the term "severance compensation," and it should be
11 made clear that the term "severance compensation" is a
12 defined term intended to capture a concept in this document,
13 and it's not used as a reference to any -- any other concept
14 of severance pay, whatever it might be.

15 THE COURT: Okay. Okay. Understood.

16 Okay. So why don't you pick up where we left off,
17 Ms. Kaur. I know you had a question pending. I think you
18 were basically asking was this severance pay or not.

19 But why don't you state your question again, and
20 then we'll take it from there now understanding how this
21 provision fits in with the rest of the Agreement.

22 BY MS. KAUR:

23 Q So Mr. Alvarez was to continue receiving his base
24 salary until May 4th, 2012. Was this severance pay?

25 MR. HERREMA: Object. I don't know that that's accurate.

1 I think that it says that he would be employed until May 3rd,
2 2012.

3 BY MS. KAUR:

4 Q So in terms of the date May -- May 3rd, 2012, so
5 was that severance pay?

6 MR. HERREMA: I'm going to object. Object again to the
7 extent it calls for a legal conclusion.

8 MR. JENSEN: And object to the question of asking to make
9 a different -- the document speaks for itself.

10 It says "The compensation benefits provided
11 hereunder shall be referred to as severance compensation."
12 There's no "severance pay" anywhere.

13 THE COURT: Okay. You can -- overruled.

14 Mr. Kuhn, you can answer that question.

15 THE WITNESS: I'm not sure, your Honor, I understand the
16 definition of "severance."

17 I'm just going to say that at no time did I think
18 his unemployment had stopped -- or his employment had
19 stopped, per se. I think his active day-to-day did.

20 BY MS. KAUR:

21 Q I'm sorry?

22 A I don't understand the definition of "severance."

23 So was he on standby? Could I call him? Did I feel
24 comfortable calling him? Yes. So -- we did have
25 conversations.

1 Q Did he have the title of the CEO after November 9th,
2 2011?

3 A No.

4 Q Did the Board recognize him as a CEO after
5 November 9th, 2011?

6 MR. HERREMA: I'm going to object as to -- it's vague as
7 to the Board's recognition of someone as CEO.

8 MR. JENSEN: And -- and also lacks foundation. Lacks
9 personal knowledge. He can't speak for the Board itself.

10 THE COURT: Overruled. You can answer.

11 THE WITNESS: Can you ask it again? I'm sorry.

12 BY MS. KAUR:

13 Q Did the Board recognize Mr. Alvarez as a CEO after
14 November 9th, 2011?

15 THE WITNESS: I don't know about the Board. I didn't.

16 MS. KAUR: I don't have any further questions, your
17 Honor.

18 THE COURT: Okay. Thank you.

19 Mr. Herrema, any questions?

20 MR. HERREMA: Just a couple. Hopefully they'll be very
21 quick.

22 THE COURT: Okay.

23 ///

24 ///

25 ///

CROSS-EXAMINATION

BY MR. HERREMA:

Q Good afternoon, Mr. Kuhn.

A Good afternoon.

Q Can I ask you to turn to Watermaster Exhibit I. This will be in a different binder right in front of you there.

A Okay.

Q It's a -- titled "Watermaster Closed Session Conference Call Special Meeting." Looks like an agenda, for the March 31, 2011, meeting. Do you see that?

(Respondent's Exhibit I was marked for identification by the Court.)

THE WITNESS: Yes.

BY MR. HERREMA:

Q Okay. That lists Ken Willis as Chair and Mr. Bob Kuhn as Vice Chair. Do you see that?

A Yes.

Q So is this -- is this consistent with your recollection that in 2011 Mr. Willis was Chair, and you may have chaired meetings where he was absent?

A Yes.

Q Can we go back to CalPERS Exhibit 12, which is the Confidential Separation Agreement.

A Okay.

1 Q Turn to Page 6.

2 A Okay.

3 Q The paragraph on Page 13 that's entitled "Entire
4 Amendment." It says --

5 THE REPORTER: I'm sorry. It's entitled? -- I'm sorry.
6 I couldn't hear you. It's entitled what?

7 MR. HERREMA: "Entire Amendment" --

8 THE REPORTER: Thank you.

9 MR. HERREMA: -- "Entire Agreement." I apologize.

10 THE REPORTER: Thank you.

11 MR. HERREMA: It says the -- "This Agreement constitutes
12 the sole agreement between the parties with respect to the
13 subject matter hereof, supersedes all prior discussions,
14 negotiations, understandings, or agreements, whether oral or
15 written, among the parties relating to the subject of the
16 Separation Agreement expressly including the Employment
17 Agreement."

18 Do you understand that this Agreement, including the
19 provisions in Paragraphs 1 and 2 that Ms. Kaur referred to,
20 accurately reflects what the Board's understanding was at the
21 time that you signed the Agreement?

22 A Yes.

23 MR. HERREMA: Okay. I have no other questions.

24 Thank you, Mr. Kuhn.

25 THE COURT: Okay. Thank you.

1 Mr. Jensen?

2 MR. JENSEN: I have no questions for Mr. Kuhn. Thank
3 you.

4 THE COURT: Any follow-up, Ms. Kaur?

5 MS. KAUR: No, your Honor.

6 THE COURT: All right. So for this witness, shall we
7 release and excuse him?

8 MS. KAUR: I am fine with that.

9 MR. HERREMA: Fine with me.

10 MR. JENSEN: I am fine with that, too.

11 THE COURT: Okay. Mr. Kuhn, you are released and
12 excused, meaning you don't have to come back. Thank you for
13 joining us --

14 THE WITNESS: Thank you.

15 THE COURT: -- and thanks for your patience today.

16 MR. JENSEN: Yeah, thank you very much.

17 MS. KAUR: Thank you.

18 THE WITNESS: Thank you.

19 THE COURT: Okay. Let's go off the record for a moment.

20 (Off the record)

21 THE COURT: Let's go back on the record.

22 All right. Ms. Kaur, Exhibit 12 was identified and
23 obviously the subject of excessive discussion. I've already
24 ordered that I'm going to seal 12.

25 What did you want to do with 12 in terms of -- offer

1 it for admission, or --

2 MS. KAUR: Yes. Offer it for admission, your Honor.

3 THE COURT: Okay. Provided I seal 12, is there any
4 objection -- any other objections to 12, Mr. Herrema?

5 MS. KAUR: No, your Honor.

6 THE COURT: Mr. Jensen?

7 MR. JENSEN: No, your Honor.

8 THE COURT: All right. So I'll admit 12. I'm going to
9 seal it. I'm going to issue a sealing order.

10 (Complainant's Exhibit 12 was received
11 in evidence by the Court.)

12 THE COURT: What that means is at some point after the
13 record's closed and before I issue a proposed decision,
14 you're going to get in the mail a copy of the order that
15 I'm going to tape to the -- the actual envelope that I use
16 to seal this. And it will describe exactly what the order is.

17 But it's going to be as I described before. It
18 doesn't impact your use of this exhibit, just prevents people
19 from the public from having access to it.

20 All right. And then Exhibit I. We talk about that.
21 Does anyone wish to offer Exhibit I?

22 MR. HERREMA: I'd like to offer it.

23 THE COURT: Okay.

24 Mr. Jensen, any objection to I?

25 MR. JENSEN: No objections.

1 THE COURT: Ms. Kaur, any objection to I?

2 MS. KAUR: No objections, your Honor.

3 THE COURT: Okay.

4 (Respondent's Exhibit I was received in
5 in evidence by the Court.)

6 THE COURT: So Ms. Kaur, your next witness will be whom?

7 MS. KAUR: My next witness will be Mr. Gutierrez, and
8 then it will be Ron Gow -- Ronald Gow.

9 THE COURT: Okay. And --

10 MS. KAUR: That's it.

11 THE COURT: Okay. The -- the other person from PERS,
12 you don't plan on calling?

13 MS. KAUR: I do not.

14 THE COURT: Is she here at the request of one of the
15 Respondents?

16 MS. KAUR: Yes. Mr. Jensen.

17 MR. JENSEN: Yes.

18 THE COURT: Okay. So do you think you'll be finished by
19 or before lunch tomorrow?

20 MS. KAUR: I believe so. Depends on, of course --

21 THE COURT: The cross.

22 MS. KAUR: -- opposing counsel has -- yeah. But I
23 believe I should be.

24 THE COURT: Okay. All right.

25 Has -- have the Respondents decided amongst

1 themselves who will present after PERS goes?

2 MR. JENSEN: I'll defer to Mr. Herrema.

3 MR. HERREMA: I think we would.

4 THE COURT: Okay. So the Watermaster will go next?

5 MR. HERREMA: Uh-huh.

6 THE COURT: Okay. And then, last but not least --

7 MR. HERREMA: I think it probably makes sense for -- you
8 have two witnesses on Wednesday morning; right?

9 MR. JENSEN: Right.

10 THE COURT: Okay. Okay.

11 Anything else we need to discuss on the record
12 today?

13 MS. KAUR: No, your Honor.

14 MR. HERREMA: No, your Honor.

15 MR. JENSEN: No, your Honor.

16 THE COURT: Okay. Great. We're off the record.

17 (Hearing concluded at 4:26 p.m.)
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