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

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

TRANSCRIPT OF PROCEEDINGS
Glendale, California
Wednesday, April 13, 2016

Reported by:
BREE D. RYAN,
CSR No. 14069
Job No.:
9714OAH

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CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
ERIC C. SAWYER, ADMINISTRATIVE LAW JUDGE

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

TRANSCRIPT OF PROCEEDINGS, taken at
655 North Central Avenue, Glendale,
California, 91203, commencing at 9:00 a.m.
on Wednesday, April 13, 2016, heard before
ERIC C. SAWYER, Administrative Law Judge,
reported by BREE D. RYAN, CSR No. 14069,
a Certified Shorthand Reporter in and for
the State of California.

1 APPEARANCES:

2 For the AGENCY: CalPERS
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13 90064

14 For the RESPONDENT BROWNSTEIN HYATT FARBER SCHRECK
15 WATERMASTER: BY: BRADLEY J. HERREMA
16 2049 Century Park East
17 Suite 3550
18 Los Angeles, California
19 90067

20 Also present: JOSEPH S. JOSWIAK
21 ANGEL GUTIERREZ
22 JESSICA L. DIAZ
23 PETER KAVAOUNAS
24 DESI ALVAREZ
25

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I N D E X

RESPONDENT ALVAREZ'S Witnesses:	Direct	Cross	Redirect	Recross
Anthony La	9			
Meredith Perkins	14			
Desi Alvarez	114	155		
Nicole Horning	169	190		
RESPONDENT WATERMASTER'S Witnesses:				
Peter Kavounas	32	61 63		
Joseph Joswiak	73	83 85	101 105	103

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1 Glendale, California, Wednesday, April 13, 2016

2 9:00 a.m.

3
4
5 THE COURT: On the record.

6 This is the Matter of the First Amended Statement
7 of Issues against Respondents Desi Alvarez and
8 Chino Basin Watermaster. This is the third hearing day.
9 It's April 13, 2016. It's a little after 9:00 a.m. We're
10 in the same venue. Counsel are present. By agreement of
11 counsel, we're taking two of Mr. Alvarez's witnesses at
12 this time.

13 So, Mr. Jensen, you may call your first witness.

14 MR. JENSEN: Thank you, your Honor.

15 Your Honor, I'd like to call Anthony La.

16 THE COURT: Okay. I'm going to ask the court reporter
17 to swear you in.

18
19 ANTHONY LA,

20 called as a witness, and having been first duly sworn by
21 the Certified Shorthand Reporter, was examined and
22 testified as follow:

23 THE WITNESS: Yes, I do.

24 THE COURT: Okay. Good morning.

25 For the record, please state and spell your name.

1 THE WITNESS: First name, Anthony; last name, La,
2 spelled L-A.

3 THE COURT: Okay. Thank you.

4 Before we proceed, we had some discussions
5 yesterday about these two witnesses. Do we need to put
6 any of that on the record, Ms. Kaur?

7 MS. KAUR: No, your Honor.

8 THE COURT: Okay. All right.

9 Mr. Jensen, when you are ready.

10 MR. JENSEN: Thank you, your Honor.

11

12 DIRECT EXAMINATION

13 BY MR. JENSEN:

14 Q Mr. La, when did you first become acquainted with
15 Mr. Alvarez?

16 A Approximately, 1999, when I first was employed
17 with the City of Downey.

18 Q And what was the capacity that you were first
19 employed with the City of Downey?

20 A When I first started, I started as a
21 Principal Engineer for the City of Downey.

22 Q And was that in a -- was that employed for the
23 city itself?

24 A That's correct, employed for the city.

25 Q And what was Mr. Alvarez's capacity when you were

1 working in that capacity?

2 A At that time, he was the Public Works Director.

3 Q And were you acquainted with Mr. Alvarez's
4 reputation for competence at the City of Downey?

5 MS. KAUR: Objection. Vague.

6 THE COURT: Sustained.

7 BY MR. JENSEN:

8 Q Were you acquainted with how Desi Alvarez was
9 perceived, as far as performing his job in Public Works
10 for the City of Downey?

11 MS. KAUR: Same objection.

12 THE COURT: Do you understand what Mr. Jensen is
13 asking?

14 THE WITNESS: Yes, I do.

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

16 THE WITNESS: Yes. Over the years I worked with and
17 for Mr. Alvarez. Engineering is a rather small field. So
18 he's very competent. He's well-regarded, especially in
19 the water industry and very hardworking.

20 BY MR. JENSEN:

21 Q And were you acquainted with Mr. Alvarez's -- his
22 activities prior -- with the City of Downey -- prior to
23 his leaving for the Watermaster?

24 MS. KAUR: Objection. Vague as to time.

25 THE WITNESS: Yes, I do.

1 THE COURT: Oh. I was going to sustain that but --
2 BY MR. JENSEN:

3 Q Okay. What was -- what was Mr. Alvarez doing for
4 the City of Downey in 2010?

5 A He was the Public Works Director. He is
6 overseeing the whole department. Everything from
7 construction to development to fleet maintenance, as well
8 as involved in a lot of water issues.

9 Q And are you familiar with the reasons why
10 Mr. Alvarez chose to leave the City of Downey and apply
11 for a position at the Watermaster?

12 MS. KAUR: Objection. Irrelevant.

13 THE COURT: Mr. Jensen, your offer of proof on this.

14 MR. JENSEN: Yes. There's been some implication or
15 testimony, either in the documents or in this hearing,
16 that Mr. Alvarez was seeking to pension spike or to
17 artificially increase his ultimate CalPERS pension by
18 taking the position at Watermaster.

19 THE COURT: Okay. It's probative. I'll let you
20 answer the question.

21 THE WITNESS: Yes. If you don't mind, repeat the
22 question.

23 BY MR. JENSEN:

24 Q Yes. I was just -- are you familiar with the
25 reasons why Desi Alvarez left the City of Downey and

1 applied for employment at the Watermaster?

2 A Yes. Yes, I am familiar. Mr. Alvarez has, over
3 the years, have a strong interest in groundwater issues.
4 During my tenure in Downey, he was very involved, dealing
5 issues in the central and west basin, which is the
6 groundwater basin in the area.

7 After I left Downey, I moved to the Inland Empire
8 area. I worked for another agency, which is also involved
9 in the Chino Basin area. When the job opening come up, I
10 remember Mr. Alvarez expresses strong interest, just
11 because involved a lot of groundwater issues.

12 Q Great. And do you recall Mr. Alvarez making any
13 indication that he was taking the Watermaster position in
14 order to increase his CalPERS pension?

15 A No.

16 MR. JENSEN: No further questions.

17 THE COURT: All right. Give me one moment. Okay.

18 Mr. Herrema, do you have any questions for
19 Mr. La?

20 MR. HERREMA: No, I don't.

21 THE COURT: Ms. Kaur, do you have any questions for
22 Mr. La?

23 MS. KAUR: No, your Honor.

24 THE COURT: Shall we excuse Mr. La?

25 MR. JENSEN: Yes. Thank you.

1 THE COURT: Thank you for joining us today.

2 MR. JENSEN: Promised it would be quick.

3 THE COURT: Off the record.

4 (Pause in the proceedings)

5 THE COURT: Back on the record.

6 Mr. Jensen, you may call your next witness.

7 MR. JENSEN: Yes. I'd like to call Meredith Perkins.

8 THE COURT: Okay. I'm going to ask the court reporter
9 to swear you in.

10

11

MEREDITH PERKINS,

12 called as a witness, and having been first duly sworn by

13 the Certified Shorthand Reporter, was examined and

14 testified as follows:

15 THE WITNESS: Yes, I do.

16 THE COURT: For the record, would you please state and
17 spell your name.

18 THE WITNESS: Meredith, M-E-R-E-D-I-T-H. Last name is
19 Perkins, P-E-R-K-I-N-S.

20 THE COURT: Okay. It's M-E-R-E?

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you. When you are ready,
23 Mr. Jensen.

24 MR. JENSEN: Thank you, your Honor.

25 ///

1 DIRECT EXAMINATION

2 BY MR. JENSEN:

3 Q Mr. Perkins, thank you for coming in this
4 morning.

5 A Pleasure.

6 Q When did you first meet or become acquainted with
7 Desi Alvarez?

8 A I was elected to the Downey City Council in 1998.
9 I served eight consecutive years. We have term limits.
10 And in all eight years, I had contact with Desi.

11 Q And in what capacity was Desi acting that you --

12 A Public Works.

13 Q And do you remember the position he held?

14 A I don't know the exact title, no, sir.

15 Q Was it a Senior Executive --

16 A Yes, he was. He was on the -- what I call -- the
17 CEO of the city manager's staff.

18 Q And did you have, as Mayor, personal knowledge of
19 how Desi was regarded at the City of Downey?

20 A He was regarded very highly, yes.

21 Q And did that change over the eight years that you
22 were a City Council member at Downey?

23 A No, sir.

24 Q And did Mr. Alvarez, in your understanding, have
25 an ongoing position at the City of Downey, should he had

1 continued to desire to work there?

2 A Yes, sir. I feel he would have retired there.
3 He was there when I left. But if I could just expound a
4 little bit on some of the projects that we worked on.

5 I had an opportunity to work with Desi on a
6 project when I first came into office. Actually, I had
7 four.

8 One of them was to remodel the Rio Honda clubhouse.
9 It's a seven-and-a-half million dollar project. Our motto
10 was "on time, under budget." And due to the guidance and
11 leadership of Desi, we did that. And that's quite an
12 accomplishment when you consider the last thing that was
13 ever built under budget by the government, I think, was
14 the Hoover Dam. It was a great accomplishment and, still,
15 today, a prize of the city.

16 One other opportunity I had to work with Desi --
17 he was in charge of the largest public works in the city.
18 It was Lakewood Boulevard. It wasn't completed when he left,
19 but he initiated the project and it still exists to this day.

20 Another project I worked with Des was underground
21 utilities on the Imperial Highway. Imperial Highway goes
22 through our city. It goes west to east. And working with
23 the Edison people, it's pretty hard to do that. The --
24 because they have more objections than I have pills. But
25 I will say this: With Desi's direction, we worked on that

1 after many, many meetings. With not only the Edison
2 company, but also the cable companies who used the poles.

3 Q And is the positive attitude you have towards
4 Desi shared by other members of the City Council, to the
5 best of your recollection?

6 A When I left -- I feel I can speak for the other
7 four members, yes.

8 Q And at the time that -- were you acquainted with
9 any discussions with Mr. Alvarez at the time he was
10 considering the Watermaster position?

11 A No, sir. I was surprised that he left.

12 MR. JENSEN: I want -- I have no further questions for
13 Mr. Perkins.

14 THE COURT: Okay. Thank you.

15 Mr. Herrema, do you have any questions?

16 MR. HERREMA: No, your Honor.

17 THE COURT: Ms. Kaur.

18 MS. KAUR: No, your Honor.

19 THE COURT: So, Mr. Perkins, you served on city
20 council from 1998 through 2006?

21 THE WITNESS: Yes, sir, to the best of my knowledge.
22 We have term limits in the city. I served two consecutive
23 four years and, probably, would have liked to serve one
24 more. But because of the term limits -- it's an
25 interesting city that we have.

1 It's about 12 square miles. If I could just
2 elaborate on it a little bit. Population of 114,000. The
3 only way our city council gets a raise is cost of living.
4 We do not have a PERS program. We do not have a medical
5 program. All of the cities -- I think you will find, all
6 have PERS retirement and also medical.

7 It's very unique that our charter is set up that
8 way. So we can thank our people many, many years ago,
9 when we were incorporated, when they set up this charter,
10 because what it does for us, it produces people that want
11 to serve the people, not self-serving.

12 THE COURT: Well, I know the L.A. County Office of
13 Education is there in Downey. So I visit that fair city
14 when I go to lay off the poor LACOE teachers.

15 THE WITNESS: Oh, no. Well, we're also very happy
16 that we have the Rancho Hospital that is going under,
17 about, a 4-and-a-half million dollar project, I believe.

18 Our city is very nice. Thank you. We also have
19 our own fire, police, and school district. So I'll get
20 off the commercial.

21 THE COURT: Let me just check with counsel.

22 Did you want to follow up on my question,
23 Mr. Jensen?

24 MR. JENSEN: No, your Honor.

25 THE COURT: Mr. Herrema?

1 MR. HERREMA: No, your Honor.

2 THE COURT: Ms. Kaur?

3 MS. KAUR: No, your Honor.

4 THE COURT: Anything else you'd like to say?

5 THE WITNESS: Don't lay off any of the teachers.

6 THE COURT: I think this year, they're okay. Nice to
7 see you.

8 THE WITNESS: Thank you very much.

9 THE COURT: Off the record.

10 (Pause in the proceedings)

11 THE COURT: Back on the record.

12 MR. HERREMA: Hold on.

13 THE COURT: Off the record.

14 (Pause in the proceedings)

15 THE COURT: Back on the record.

16 Ms. Kaur, let's finish up with your case in
17 chief. I believe we've heard from all your witnesses.
18 Now it's just a matter of going through the remaining
19 exhibits that you would like to offer.

20 Why don't we start with the jurisdictional
21 document. Why don't you walk us through those.

22 MS. KAUR: Exhibit 1 in the CalPERS binder is the
23 Statement of Issues that is dated April 11, 2014.

24 THE COURT: All right. Is there any objection to
25 Exhibit 1 being admitted for the limited purpose of

1 establishing jurisdiction in this case?

2 MR. JENSEN: No, your Honor.

3 MR. HERREMA: No, your Honor.

4 THE COURT: All right. I will admit Exhibit 1 for
5 that limited purpose.

6 (Department's Exhibit 1 was received in
7 evidence by the Court.)

8 MS. KAUR: Exhibit 2 was the initial Notice of Hearing
9 that is dated September 2nd, 2014.

10 THE COURT: Okay. Any objection to 2?

11 MR. HERREMA: No, your Honor.

12 MR. JENSEN: No, your Honor.

13 THE COURT: Okay. 2 is admitted for the limited
14 purpose previously mentioned.

15 (Department's Exhibit 2 was received in
16 evidence by the Court.)

17 MS. KAUR: Exhibit 3 is the Amended Statement of
18 Issues, dated February 12th, 2015.

19 THE COURT: All right. And this is the operative
20 pleadings in this hearing?

21 MS. KAUR: Yes, your Honor.

22 THE COURT: Any objection to Exhibit 3.

23 MR. HERREMA: No, your Honor.

24 MR. JENSEN: No, your Honor.

25 THE COURT: Okay. 3 is admitted for the limited

1 purpose I previously described.

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

4 THE COURT: 4, 5, and 6 are in. So we would move to
5 7.

6 MS. KAUR: 7 is the Notice of Appeal filed by
7 Mr. Alvarez.

8 THE COURT: Okay. So this -- this is the appeal that
9 corresponds with the -- the initial Statement of Issues?

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

11 THE COURT: Okay.

12 MR. JENSEN: I believe it says February 20th, which
13 would be the initial one.

14 THE COURT: Or is that the denial letter?

15 MR. JENSEN: Oh, you know what? It's not a Notice of
16 Defense.

17 MS. KAUR: It's a Notice of Appeal.

18 THE COURT: I see. Okay. Okay. Any objection to 7?

19 MS. KAUR: And we're offering that for jurisdictional
20 purposes.

21 THE COURT: Okay. Any objection?

22 MR. JENSEN: No objection.

23 THE COURT: Mr. Herrema?

24 MR. HERREMA: No, your Honor.

25 THE COURT: Okay. It's admitted for jurisdictional

1 purposes.

2 (Department's Exhibit 7 was received in
3 evidence by the Court.)

4 THE COURT: And moving on.

5 MS. KAUR: Exhibit 8 is the Notice of Appeal by the
6 Watermaster, and that is dated April 19th, 2013. And
7 we're offering that for jurisdictional purposes.

8 MR. JENSEN: No objection.

9 THE COURT: Okay.

10 MR. HERREMA: No objection.

11 THE COURT: All right. It's admitted for
12 jurisdictional purposes.

13 (Department's Exhibit 8 was received in
14 evidence by the Court.)

15 MS. KAUR: Exhibit 9 is the Application for Service
16 Retirement of Mr. Alvarez. That is dated May 2nd, 2012.

17 THE COURT: Okay. Any objection to 9?

18 MR. JENSEN: No objection.

19 MR. HERREMA: No, your Honor.

20 THE COURT: All right. 9 is admitted.

21 (Department's Exhibit 9 was received in
22 evidence by the Court.)

23 THE COURT: Okay. So I've already admitted 10 through
24 18. I'm just double checking to make sure. Yes.
25 10 through 18, those have all been admitted. 19 and

1 beyond haven't been identified in testimony or otherwise.
2 Did you plan to do anything with those, or were those just
3 in case?

4 MS. KAUR: 19 and 20, we'd like to offer them into
5 evidence, if there are no objections. I'm sorry. 19 and
6 21.

7 THE COURT: 19 and 21. Okay. So tell me about 19.

8 MS. KAUR: 19 is the contract -- amended contract
9 between CalPERS and the Watermaster.

10 THE COURT: Okay. So these would cover the years in
11 question? Or is there --

12 MS. KAUR: Yes, they should cover the years in
13 question. I believe they should.

14 THE COURT: Okay. Is there any particular provision
15 in here that's important?

16 MS. KAUR: I'm sorry. I don't understand.

17 THE COURT: Any particular provision that relates to
18 any of the issues?

19 MS. KAUR: It demonstrates that they're a contracting
20 agency.

21 THE COURT: Okay.

22 MR. HERREMA: We can stipulate to that.

23 MS. KAUR: But I'd like to have this admitted.

24 THE COURT: Okay.

25 MS. KAUR: Otherwise, I can have Mr. Joswiak testify

1 about it.

2 THE COURT: Okay.

3 MR. HERREMA: He can testify that they are contracting
4 with CalPERS. I can't say today whether this is the full
5 set of contracts and amendments.

6 THE COURT: All right. It doesn't sound like this is
7 a controversial document one way or the other. Are there
8 objections to it, Mr. Herrema?

9 MS. KAUR: And I --

10 THE COURT: Oh, Ms. Kaur.

11 MS. KAUR: And, I believe, Mr. Jensen has these as
12 part of his exhibits from --

13 THE COURT: Okay. So, Mr. Jensen, what's your thought
14 on 19?

15 MR. JENSEN: You know, I -- just the date of it is
16 what bothers me. I mean, not bothers me -- it's 2001. So
17 I don't know when their most recent one is. The operative
18 period is 2010 to 2011, but I don't know if it's a
19 substance of issue in the case.

20 THE COURT: I'm looking at -- Page 5 looks like it was
21 effective June 2009.

22 MR. HERREMA: I'd be fine with them being admitted as
23 being contracts in the amendments to contract. I can't
24 say, today, whether it's the total scope of the contracts
25 and amendments prior to -- or that would have been

1 applicable in 2011 and 2012.

2 THE COURT: Okay. All right.

3 MR. JENSEN: I have no objections if the Watermaster
4 has no objections and CalPERS has no objection.

5 THE COURT: Okay. I'll admit 19 with that
6 understanding just articulated by Mr. Herrema. Unless
7 someone comes forward and tells me there's something else
8 that's applicable that's missing. It just sounds like
9 this is being offered generally, anyway, and it doesn't
10 sound like there's any provision that defines any of the
11 terms that we're here litigating. I don't sense there's
12 going to be an issue here.

13 (Department's Exhibit 19 was received in
14 evidence by the Court.)

15 THE COURT: All right. And 21 is the other item you
16 mentioned. Tell us how that's relevant, Ms. Kaur.

17 MS. KAUR: This is the Payroll Detail Report of
18 Mr. Alvarez. It demonstrates what was reported to
19 CalPERS.

20 THE COURT: Okay. Mr. Jensen, any objection to 21?

21 MR. JENSEN: There's been no testimony on it. I don't
22 believe -- I don't know what purpose it's being offered
23 for.

24 MS. KAUR: I could have Ms. Horning testify about it.

25 THE COURT: Okay.

1 MS. KAUR: We can hold off, if you have that
2 objection.

3 MR. JENSEN: That's fine. I just don't want it to be
4 admitted and it to be argued in the brief without my
5 knowing -- I just don't want a document being admitted
6 here that there's later argument about that there hasn't
7 been the ability to cross-examine the witness about. If
8 this is gonna be part of your -- contested part of your
9 brief, I would just like to know what the arguments will
10 be beforehand.

11 THE COURT: What use did you contemplate for 21?

12 MS. KAUR: It doesn't do much more than just
13 demonstrate that that's what was reported to us. I think
14 the determination letter references these amounts, but
15 this just breaks it down.

16 MR. JENSEN: I have no objections to it, your Honor.
17 If it's just a documentation of what was reported and it's
18 not in dispute, then no objections.

19 THE COURT: So this would be what was reported to PERS
20 from the Watermaster but also Downey, also?

21 MS. KAUR: Yes. Yes.

22 THE COURT: And it's not comprehensive. It only goes
23 back to July of 2009.

24 MS. KAUR: That's correct.

25 THE COURT: So I'm taking it, then, that, really, the

1 purpose of this is just to show what the Watermaster
2 reported to PERS regarding Mr. Alvarez.

3 MS. KAUR: Correct. And I don't think there are any
4 issues here concerning what was reported by the
5 Watermaster to CalPERS, unless Mr. Jensen is raising any
6 issue.

7 MR. JENSEN: I'm not raising it. So I have no
8 objections.

9 MS. KAUR: This just explains it -- just further
10 explains what is -- the amounts reported and stated in the
11 determination letters.

12 THE COURT: If I'm -- if I read things correctly,
13 PERS' position is that, in terms of Mr. Alvarez's pay
14 rate, they're looking at his final year at Downey as being
15 the operative pay period?

16 MS. KAUR: I believe it provides a time limit -- what
17 we looked at in terms of being the pay period that's used
18 for final compensation. And I think that is captured in
19 this exhibit, Exhibit 21.

20 MR. JENSEN: So --

21 MS. KAUR: So it seems. I'm sorry.

22 MR. JENSEN: Go ahead. Maybe I'll just ask you. This
23 exhibit would serve the dual purpose of showing the basis
24 in which you calculated his reduced pension, pursuant to
25 Downey, and the amounts reported from Watermaster?

1 MS. KAUR: Yes. If you have any -- I mean, it's just
2 supplemental. I don't have any hidden arguments.

3 THE COURT: I'm just asking. Sometimes I look at
4 these documents, and I don't totally understand them. So
5 I just want to make sure I get a sense of what this is
6 about.

7 And so the pay period that PERS is relying on, is
8 it depicted in here?

9 MS. KAUR: I believe so. Let me look at the -- the
10 pay period for the Watermaster is definitely reflected
11 here that was reported that we did not use. And in terms
12 of the City of Downey --

13 MR. JENSEN: Mind if I ask you a question? Does
14 Downey have a one-year or a three-year?

15 MR. GUTIERREZ: I believe it's three-year.

16 MR. JENSEN: So this probably would not take into
17 account all of the Downey time period then?

18 MS. KAUR: The letter references October 22nd, 2007,
19 through April 30th, 2011.

20 THE COURT: So Downey is three years?

21 MS. KAUR: That's what it looks like.

22 THE COURT: So, really, what this does -- it just
23 shows the Watermaster's full reporting to PERS.

24 MS. KAUR: Yes.

25 THE COURT: That's the essence of it.

1 MS. KAUR: Pretty much.

2 THE COURT: All right. Any objection, Mr. Jensen, on
3 21?

4 MR. JENSEN: Not under those parameters. No
5 objection.

6 THE COURT: All right. Mr. Herrema?

7 MR. HERREMA: No. Mr. Joswiak can testify as to what
8 was reported to PERS. We just don't know what this report
9 was generated for and what it was intended to show. If we
10 agree that the utility is just limited to showing what
11 Watermaster reported, then no objection.

12 THE COURT: All right. That's my understanding, and
13 that's how I'll receive it. All right. So I'll admit 21
14 with that understanding in mind that I just expressed.

15 (Department's Exhibit 21 was received in
16 evidence by the Court.)

17 THE COURT: Ms. Kaur, any other of your exhibits?

18 MS. KAUR: That is all, your Honor.

19 THE COURT: Okay. Do you rest at this time?

20 MS. KAUR: Yes.

21 THE COURT: Okay. Thank you. Okay.

22 So, Mr. Herrema, if I remember correctly, you are
23 going to begin presenting the Watermaster's case. And
24 when you are ready, you may begin.

25 Oh, was there something?

1 MS. KAUR: And I just wanted to make a correction in
2 terms of the three years. It seems like the period used
3 for Downey is one year.

4 THE COURT: Okay. Mr. Alvarez, you are saying one
5 year?

6 MR. ALVAREZ: Yeah. Downey -- it may have changed,
7 but when I was there it was highest single year.

8 MR. JENSEN: Can we ask Mr. Gutierrez. Is one year
9 your recollection?

10 MR. GUTIERREZ: I believe it was a one year, yes.

11 MR. JENSEN: Because it's a material issue.

12 THE COURT: Okay. Does that change the purpose of
13 offering 21, or are we leaving 21?

14 MS. KAUR: We can leave it as is.

15 THE COURT: Okay. It doesn't sound like there's any
16 dispute about Downey. I know the argument is the
17 Watermaster. So that seems like it's, pretty much, the
18 sole issue. I don't think we have to worry too much about
19 what happened with Downey.

20 MR. JENSEN: I think that's the case.

21 THE COURT: Okay. Okay. All right.

22 So, Mr. Herrema, when you are ready.

23 MR. HERREMA: Chino Basin Watermaster would like to
24 call Peter Kavounas.

25 THE COURT: Okay. Please come up and have a seat

1 again.

2 MR. HERREMA: I guess I did reserve the right to an
3 opening.

4 THE COURT: Yes. Yes. Give me one moment. Thank you
5 for reminding me. Okay.

6 When you are ready.

7 MR. HERREMA: Just one second, your Honor.

8 THE COURT: Sure.

9 MR. HERREMA: Your Honor, the evidence will show --
10 we've heard already and what we will hear today -- show
11 Watermaster maintained a publicly available pay schedule
12 showing Mr. Alvarez's salary. It was made available when
13 requested. It was available to anyone who would have
14 requested it.

15 It was in compliance with the PERL, at the time
16 it was applicable. And Mr. Alvarez was employed under his
17 employment contract, which was approved and consistent
18 with and pursuant to the rules governing Watermaster's
19 conduct. His employment status was changed in November
20 of 2011. He remained employed by Watermaster. His salary
21 was paid by Watermaster. His CalPERS payments were made
22 by Watermaster through May 3rd of 2012.

23 And, on that basis, we believe that CalPERS has
24 made an error in its determination that Mr. Alvarez's
25 salary -- I'm sorry -- his pension should not be based on

1 his salary while he was at Watermaster, and that he did
2 remain employed by Watermaster for the full one year from
3 May 3rd, 2011, through May 3rd, 2012.

4 We will provide some discussion of what
5 Watermaster is and the rules that govern it. In terms of
6 what the public meeting laws are that are applicable to
7 Watermaster, we'll discuss that. Although, I don't think
8 the Court needs to make any determination on that in order
9 to make the findings that I've previously discussed as to
10 a publicly available pay schedule.

11 THE COURT: Whys that?

12 MR. HERREMA: Because the 570.5 Rules, about approval
13 of a pay schedule in open session, were not effective at
14 the time that Mr. Alvarez was hired or at the time the
15 '11/'12 pay schedule was relevant. In terms of its
16 production and utility by Watermaster, we have evidence
17 that shows that the pay schedule was available and
18 produced when requested. It has Mr. Alvarez's \$228,000
19 salary on it.

20 THE COURT: On --

21 MR. JENSEN: And 570.5 is applicable to Mr. Alvarez's
22 case because there's no provision for retroactive
23 application.

24 THE COURT: Okay. All right. Thank you. All right.

25 Mr. Kavounas, give me one moment.

1 State of California.

2 Q And you testified previously in this Matter that
3 you -- you've been employed as Watermaster's General
4 Manager since September 2012; is that correct?

5 A That's correct.

6 Q Where were you employed prior to being hired as
7 the General Manager for the Watermaster?

8 A I was employed by the City of Glendale.

9 Q And in what position were you employed by the
10 City of Glendale?

11 A I was -- I was hired as the Water Services
12 Administrator, a position which later changed to Assistant
13 General manager of Water Services in
14 Glendale Water and Power.

15 Q And prior to your employment with the
16 City of Glendale, where were you employed?

17 A I was employed by the City of Los Angeles, the
18 Los Angeles Department of Water and Power.

19 Q And what was your position there?

20 A My position there changed over time. I was hired
21 as a Civil Engineering Assistant. And when I left
22 Los Angeles Department of Water and Power, I was a Water
23 Works Engineer.

24 Q Okay. I believe the question was asked on
25 Monday, but could you please, briefly, describe your

1 responsibilities as Watermaster's general manager.

2 A My responsibilities as Watermaster general
3 manager are to ensure the day-to-day running of the
4 Watermaster, to make sure I'm responsible to the Board, to
5 make sure that the judgment is enforced and provisions of
6 the judgment are adhered to, and that the Optimum Basin
7 Management Program is implemented, as required by the
8 Peace Agreement. In addition to that, I oversee expenses
9 and responsible for adhering to the approved budget.

10 Q Roughly, how many people -- how many employees
11 are under your supervision?

12 A Approximately, nine.

13 Q And could you just give a very brief summary of
14 what types of positions those nine folks hold.

15 A We have a group of three that is responsible for
16 data gathering, which is part of our required function.
17 The data gathering is related to groundwater management.
18 There's groundwater level information. There's
19 groundwater quality information. There's surface water,
20 flow, and quality information, as well as ground level
21 information.

22 In addition to that, there's groundwater
23 production information from various wells throughout the
24 basin. That information is gathered by those three folks.
25 It's assembled in databases. It's also produced in

1 geographic information systems.

2 We have Mr. Joswiak and a person that works for
3 him is Janine Wilson. And they're responsible for the
4 accounting functions, the budgeting functions, purchase
5 orders, paying invoices, and so on. And beyond that, we
6 have admin staff that help with the day-to-day
7 administration of the office in the building.

8 Q Could you please describe what the Chino Basin
9 Watermaster is.

10 MS. KAUR: Objection. Vague.

11 THE COURT: Overruled. You can answer.

12 THE WITNESS: The Chino Basin Watermaster was an
13 entity that was created by the court. And when it ruled
14 in 1978 on the Chino basin groundwater rights
15 adjudication.

16 BY MR. HERREMA:

17 Q And what is Chino Basin Watermaster's role,
18 pursuant to -- to that 1978 judgment you referenced?

19 A The role of the Watermaster is to enforce the
20 provisions of the judgment. And that role later expanded
21 to include the implementation of the Optimum Basin
22 Management Program.

23 Q You mentioned the Optimum Basin Management
24 Program. Could you just, briefly, describe what that is.

25 A That is a comprehensive plan for managing the

1 groundwater basin and Chino Basin. It involves the
2 collection of data and the compilation of the various
3 studies related to optimum use of the research in the
4 area.

5 THE WITNESS: If I may, your Honor, I'll take your
6 offer from yesterday to remove my coat.

7 THE COURT: Yes. Sure. Please. Indeed.

8 Mr. Herrema, can you just tell me the name of
9 that again. The Optimum --

10 MR. HERREMA: Optimum Basin Management Program.
11 Sometimes referred to as the O.B.M.P.

12 THE COURT: Okay. Thank you.

13 Folks, try to keep your voices up. This room
14 doesn't have great acoustics, and we want to make sure the
15 reporter gets everything.

16 MR. HERREMA: Yes, your Honor.

17 BY MR. HERREMA:

18 Q Mr. Kavounas, there's a binder before you that's
19 labeled "Watermaster Exhibits." Do you see that?

20 A I do.

21 Q Could you please turn to what's labeled as
22 "Exhibit P." What is Exhibit P?

23 A Exhibit P is the Court's order concerning Motion
24 for Approval of the Peace II documents.

25 Q Is there a date on that order?

1 A December 21, 2007.

2 Q Could I direct your attention to Page 4. There's
3 a paragraph that starts on Line 9. It goes through --
4 looks like -- Line 15 and a half, I guess, on my copy.

5 Could you just read that for us, please, starting
6 with "Watermaster's legal existence."

7 A "Watermaster's legal existence emanates from the
8 judgment. All of Watermaster's enumerated powers
9 originate within and arise from the judgment. It is not a
10 public agency or private entity that has been formed under
11 some general or special law. Its duty is to administer
12 and enforce the provisions of this judgment and any
13 subsequent instructions or orders of the court hereunder.
14 As all special masters, Watermaster operates as an
15 extension of the court and to meet the needs of the court
16 in carrying out its judgment in Article 10, Section 2, of
17 the California Constitution."

18 Q Thank you.

19 How is Watermaster created? I think you may have
20 covered this. By order of the Court?

21 MS. KAUR: Objection. To the extent it calls for
22 speculation, your Honor.

23 THE COURT: I'm sorry. Could you repeat the question,
24 Mr. Herrema.

25 ///

1 BY MR. HERREMA:

2 Q I believe you said earlier that Watermaster was
3 created pursuant to an order of the court; is that
4 correct?

5 A Yes.

6 Q Could I direct your attention to Watermaster
7 Exhibit A.

8 MS. KAUR: Are you looking at Watermaster Exhibit A?

9 MR. HERREMA: "A."

10 MS. KAUR: I don't have anything.

11 THE COURT: Oh, you need a copy of "A"?

12 MS. KAUR: I'm missing that exhibit. There's nothing
13 under the "A" tab.

14 MR. JENSEN: If you want to look --

15 MS. KAUR: Thank you.

16 THE COURT: That looks thinner than what I have.

17 MR. JENSEN: I have 91 pages in mine.

18 MS. KAUR: Mine is front and back. It's double.

19 THE COURT: Same with mine. I wonder if I have two
20 versions of it.

21 MR. HERREMA: Maybe you got her copy.

22 THE COURT: I think that's it. Let me share. Okay.
23 So we should have 95 pages for Exhibit A?

24 MR. HERREMA: Just a single set of 95, yes.

25 THE COURT: Yes. Thank you.

1 BY MR. HERREMA:

2 Q Mr. Kavounas, what is Exhibit A?

3 A Exhibit A is the judgment that adjudicated the
4 Chino Basin water rights.

5 Q And could I direct your attention to Exhibit Q.
6 Do have you that before you?

7 A I do.

8 Q What is Exhibit Q?

9 A Exhibit Q is a subsequent order of the court that
10 is known as the restated judgment. And it incorporates
11 any changes to the original judgment that were made since
12 the beginning until 2012. The restated judgment was
13 ordered by the Court in 2012.

14 Q And you said the date that the restated judgment
15 was entered was in 2012; is that correct?

16 A That's correct.

17 Q And so the restated judgment incorporated all
18 amendments to the judgment between 1978 and 2012?

19 MS. KAUR: Objection to the extent it calls for
20 speculation. There's no foundation laid that Mr. Kavounas
21 was involved in this Matter and to the extent it calls
22 for a legal opinion.

23 THE COURT: Okay. I'll sustain it, just in terms of
24 foundation that Mr. Kavounas would know what changes were
25 made and amendments, et cetera.

1 BY MR. HERREMA:

2 Q Mr. Kavounas, you are the general manager of the
3 Watermaster; is that correct?

4 A That's correct.

5 Q And you testified earlier that the Watermaster's
6 role is to enforce the judgment in the Chino Basin
7 groundwater rights adjudication; is that correct?

8 A That's correct.

9 Q And so, for the purposes of the work that you do
10 in assisting the Watermaster and enforcing the judgment --
11 this restated judgment that's marked as Exhibit Q, is that
12 the operative judgment for the purposes of enforcing the
13 judgment?

14 A Yes, it is.

15 MS. KAUR: And I have a relevancy objection, as well,
16 to the prior question.

17 THE COURT: How is it not relevant?

18 MS. KAUR: I don't see how it is relevant to this,
19 Mr. Alvarez's case.

20 THE COURT: I think right now I'm just getting the
21 background on what the Watermaster is and what role it
22 has, and I think it's just offered for that purpose so
23 far.

24 MR. HERREMA: Correct.

25 THE COURT: Okay. I think a little background is

1 fine, especially for an agency like this that I'm not very
2 familiar with -- this sort of agency. It would help me to
3 figure out who one of the three parties are in the case.

4 Go ahead, Mr. Herrema.

5 MR. HERREMA: Thank you, your Honor.

6 BY MR. HERREMA:

7 Q Who are the parties to the Chino Basin water
8 rights adjudication judgment?

9 A The parties to the judgment are entities that
10 were producing groundwater at the time the judgment was
11 entered into and, through the judgment, were found to have
12 a continuing right. In addition to that, parties to the
13 judgment could be successors to the original water right
14 holders.

15 Q Can someone become a party to the judgment at
16 this time?

17 A Yes. They can intervene into the judgment.

18 Q Who might intervene into the judgment?

19 A Someone who may acquire an entity that has prior
20 water rights, in whole or in part.

21 Q What about any party looking to pump water from
22 the basin?

23 A Any -- I'm sorry. I don't understand the
24 question.

25 Q Anyone who wants to pump groundwater from the

1 Chino Basin must become a party to the judgment; is that
2 correct?

3 A That's correct.

4 Q Is the Watermaster a water utility?

5 A No, the Watermaster is not the water utility.

6 Q Does it sell water?

7 A The Watermaster does not sell water.

8 Q Does the Watermaster have water customers?

9 A No customers.

10 Q Are members of the general public parties to the
11 Watermaster judgment?

12 A Only to the extent that they may hold the right
13 to produce water.

14 Q How does the judgment organize the producing
15 parties?

16 A The judgment organizes the producing parties
17 based on the type of water rights that they hold. If they
18 hold overlying landowners rights, they are separated into
19 a category called The Overlying Landowners Pool. And
20 there are two pools. There's Overlying Landowners
21 Agriculture Pool, which includes agriculture production
22 and the State of California production.

23 There's also Overlying Landowners Non-Agriculture
24 Pool, which includes entities that are commercial and
25 industrial entities, at the time of judgement, that were

1 producing groundwater and were found to have the right to
2 continue.

3 Beyond that, everyone else is grouped into the
4 appropriators -- the Appropriative Pool, which represents
5 water districts and municipalities that may have the right
6 to appropriate groundwater and serve it in their service
7 area but away from land that they may own.

8 Q Can you describe the governing structure through
9 which those parties participate in the Watermaster
10 decision-making process.

11 A Each of the three pools that I mentioned before
12 meets on its own, has its own governing board, and will
13 review matters and make recommendations to an advisory
14 committee. The advisory committee is a body that has
15 representatives from all three pools. The advisory
16 committee, then, will consider matters that are
17 recommended for consideration by the pools and will make
18 recommendations or decisions for the board to consider.

19 Q You mentioned a board. What is the composition
20 of the Watermaster Board?

21 A The Watermaster Board consists of nine people:
22 Three are appointed from the appropriage; two are
23 appropriated from agricultural producers; one is appointed
24 from non-agricultural producers; and three are appointed
25 from municipal water districts that wholesale water within

1 the boundaries of the Chino Basin.

2 Q Has the nine-member board always served as the
3 Watermaster?

4 A At the time of the judgment in 1978, the Chino
5 Basin Municipal Water District, a wholesaler in the area,
6 was appointed to be the Watermaster. That changed by
7 subsequent order of the court in 1998, at which time the
8 nine-member Watermaster Board was created.

9 Q Could I direct your attention to what's marked as
10 Exhibit B. On Page 6 of Exhibit B there is a paragraph
11 that starts with: "The current Watermaster Chino Basin
12 Municipal Water District is hereby ordered to take all
13 steps necessary and proper to ensure a smooth and orderly
14 transition to the new Watermaster Board, including but not
15 limited to any required actions, resolutions, and/or
16 agreements with the transition of all the present
17 Watermaster staff members from their status as Chino Basin
18 Municipal Water District employees to their status as
19 employees of the Watermaster while maintaining all the
20 employment credits and benefit programs."

21 Do you see that sentence?

22 A I do.

23 Q And I think I may have forgotten to ask. What is
24 Exhibit B?

25 A Exhibit B is the Court's 1998 ruling that, among

1 other things, changed the Watermaster from
2 Chino Basin Municipal Water District to its current
3 composition of the nine-member board.

4 Q Is the Watermaster accountable to any entity for
5 its actions?

6 A Yes. The Watermaster is accountable to the
7 judge.

8 Q There's a judge that has continuing jurisdiction
9 in the Watermaster case?

10 A Yes.

11 Q And who can seek review of a Watermaster action
12 under the judgment?

13 A Anyone can seek review. Any party can seek
14 review of the Watermaster's actions. A party,
15 individually, can seek review. Any one of the pools can
16 seek review. The advisory committee -- the judge himself
17 may seek review.

18 Q And where is that -- the mechanism you described?

19 A That is described in the Chino Basin Watermaster
20 Rules and Regulations, Article 2 -- excuse me.

21 That is described in the judgment in paragraph
22 31.

23 Q Thank you. And when you refer to "the judgment,"
24 your reference is --

25 A Restated judgment.

1 Q To the Restated judgment?

2 A Yes.

3 Q You described earlier what the Watermaster does.
4 Could you describe the manner in which Watermaster
5 activities are funded?

6 A Watermaster activities are generally funded by an
7 assessment -- an annual assessment that is paid by all
8 parties that produce groundwater from the basin. The
9 assessment is issued, approximately, November of each year
10 and funds the activities of the approved budget for the
11 present fiscal year. Meaning the July through June period
12 of time.

13 Q I -- forgive me. I don't recall to what extent
14 you may have discussed the budgeting process on Monday.
15 Could you describe, briefly, who participated in the
16 budgeting process?

17 A The budget -- the budget that funds the
18 operations of Watermaster on an annual basis is prepared
19 in house, by staff, and is presented for review by all the
20 parties and pools. Is recommended for approval by the
21 pools to the advisory committee and, eventually, approved
22 by the Board. So the participation is pretty much
23 everyone.

24 Q You mentioned that no -- Watermaster has no water
25 customers. So beyond the assessments to pump, Chino Basin

1 Watermaster doesn't charge any water user within the basin
2 for its water; is that correct?

3 A That's correct.

4 Q To whom does Watermaster provide information
5 about its proposed actions?

6 MS. KAUR: Objection. Vague.

7 THE COURT: Overruled. You can answer.

8 THE WITNESS: Watermaster provides information to
9 anyone that may request information. There's --
10 Watermaster has a policy and a form on its website.
11 Anyone may use that Request for Information Form, and
12 anyone will get information they ask, unless it's involved
13 in litigation.

14 THE COURT: Try to keep your voice up for the
15 reporter.

16 BY MR. HERREMA:

17 Q In terms of -- does the Watermaster Board have
18 regular meetings?

19 A The Watermaster Board meets on the fourth
20 Thursday of every month.

21 Q And are there requirements for Watermaster's
22 noticing of regular board meetings?

23 A There -- there are requirements for noticing
24 Watermaster Board regular meetings.

25 Q Could I turn your attention to Watermaster

1 Exhibit D. Do have you Exhibit D before you?

2 A I do.

3 Q Do you recognize it?

4 A I do.

5 Q What is Exhibit D?

6 A Exhibit G is the Chino Basin Watermaster rules
7 and regulations.

8 Q I believe you may have said "Exhibit G." We're
9 referring to Exhibit D; is that correct?

10 A That's correct.

11 Q And could I turn your attention to the Exhibit E.
12 What is Exhibit E?

13 A Exhibit E is the order granting final approval of
14 Watermaster rules and regulations.

15 Q What is the date of that order?

16 A July 19, 2001.

17 MR. HERREMA: Okay. And I'll represent to the Court
18 and to the other parties that there is an attachment to
19 Exhibit E that's been included. It's exactly the same set
20 of rules and regulations that is Exhibit D. We probably
21 could have just gone with one, but you have both.

22 BY MR. HERREMA:

23 Q Sticking with Exhibit D, the 2001 Rules and
24 Regulations, what's contained in Section 2.7 of the Rules
25 and Regulations?

1 A The Section 2.7 of the Rules and Regulations
2 pertains to giving notice for -- for meetings of the
3 board.

4 Q And are these -- strike that.

5 In providing notice of Watermaster's board
6 meetings, does Watermaster adhere to the requirements of
7 section 2.7?

8 A Yes.

9 Q In terms of Exhibit D, the Rules and Regulations,
10 are those available to the public?

11 A They are.

12 Q Are they posted to Watermaster website?

13 A They are.

14 Q Are Watermaster board meetings open to the
15 public?

16 A Yes, they are.

17 Q Do the Rules and Regulations, to your knowledge,
18 allow the Board to hold confidential sessions?

19 A Yes, they do.

20 Q Section 2.6 of Exhibit D is labeled "Confidential
21 Sessions." Are those the rules pursuant to which
22 Watermaster Board holds confidential sessions?

23 A Yes.

24 Q Directing your attention to 2.6, Subsection 1,
25 Roman at 2. Is that provision, Section 2.6, provide for

1 the discussion of personnel matters of Watermaster
2 employees involving individual employees in closed
3 session?

4 A Yes, it does.

5 Q I'm sorry. Confidential session.

6 A Confidential session.

7 Q Is information regarding Watermaster activities
8 and expenditures, generally, available to the parties to
9 the judgment?

10 A Yes.

11 Q Is that same information available to the public,
12 in general?

13 A Yes, it is.

14 Q Can you describe how that information is
15 available?

16 A Information is provided to the parties as part
17 of -- as part of an agenda package for their monthly
18 meetings. That information is available on the website.
19 So it's provided on a monthly basis to all three pools.
20 It's also provided to the advisory committee, as well as
21 to the Board. All that material is posted on the website,
22 and it's publicly accessible.

23 Q Could I turn your attention to Section 2.1 of the
24 Rules and Regulations, Exhibit D. Do you see Section 2.1?

25 A Yes, I do.

1 Q What's that labeled?

2 A It is labeled "Records."

3 Q And does that section contain the requirements
4 that Watermaster adheres to, in terms of making its record
5 available?

6 A Yes, it does.

7 Q There's a sentence in Section 2.1 that says:
8 "Copies of other records may be obtained on the payment of
9 the duplication cost, thereof, and pursuant to
10 Watermaster policy." Do you see that?

11 A Yes.

12 Q Okay. Could I turn your attention to Watermaster
13 Exhibit N. And what is Exhibit N?

14 A Exhibit N is resolution 01-03, adopting
15 procedures, guidelines, and fee schedule for release of
16 information and documents.

17 Q And is this policy pursuant to which Watermaster
18 makes its records available?

19 A Yes, it is.

20 Q So Section 2.1 of the rules and regulations says:
21 "Copies of other records may be obtained on the payment of
22 the duplicate cost and thereof and pursuant to Watermaster
23 policy." Is this the policy that is consistent with what
24 was referred to under Section 2.1?

25 A Yes, it is.

1 Q Can I turn your attention to Watermaster
2 Exhibit O. Do you have Exhibit O before you?

3 A I do.

4 Q What is Exhibit O?

5 A Exhibit O is a form that we use at Watermaster
6 for anyone to make a request for information.

7 Q And is this exhibit post -- I'm sorry. Is this
8 Request for Information Form posted on the Watermaster
9 website?

10 A Yes, it is.

11 Q And is this form available for use by anyone?
12 Not just the parties to the Watermaster judgment?

13 A That's correct. The form is available for
14 anyone, member of the public or party.

15 Q If I could just turn your attention back to
16 Exhibit N, briefly.

17 Page 2, under "procedure," which is 2-A, general.
18 What does that say, in regard to the timing for response
19 to a written request for copies of documents?

20 A The procedure general reads as follows:
21 "Watermaster staff will attempt to respond to written
22 request for copies of documents within 10 working days
23 following receipt of the request."

24 Q And is that the time frame that Watermaster --
25 within which Watermaster attempts to respond to written

1 requests?

2 A Yes, it is.

3 Q And parties to the judgment and anyone who uses
4 this Request for Information Form is aware that that's the
5 policy; is that correct?

6 MS. KAUR: Objection to the extent it calls for
7 speculation.

8 THE COURT: Sustained.

9 BY MR. HERREMA:

10 Q This policy, which is Exhibit -- and is posted to
11 Watermaster website along with the Request for Information
12 Form -- Exhibit O; is that correct?

13 A That's correct.

14 Q We've mentioned a few times that Watermaster
15 maintains a website. Could you just describe, briefly,
16 what is posted to Watermaster website.

17 MS. KAUR: Objection. Vague as to time.

18 MR. HERREMA: During the --

19 MS. KAUR: Go ahead.

20 THE COURT: Yes. He's gonna rephrase.

21 BY MR. HERREMA:

22 Q During the time that you've been employed as
23 Watermaster's general manager, has Watermaster maintained
24 a website?

25 A Yes.

1 Q Can you briefly describe the categories of
2 documents that have been posted to Watermaster's website
3 during that time.

4 A Yes. The Watermaster website contains
5 information and documents. It contains engineering
6 reports. It contains administrative reports. It contains
7 legal documents, any filings with the Court, orders of the
8 Court. It contains information related to the budget, as
9 well as annual audits of Watermaster. It contains notices
10 of meetings. It contains the agendas for all the meetings
11 of the three pools, the advisory committee, and the Board.
12 It contains the minutes after they're approved, the
13 recordings of each meeting. It contains any handouts and
14 presentations that are handed out at any meeting.

15 And beyond that, it has a description of the
16 governance, the description of the membership of each of
17 the pools advisory, as well as the Board's. It contains
18 employment information and links to the parties and other
19 agencies.

20 Q You mentioned earlier that the State of
21 California is a party to the judgment within the overlying
22 agriculture pool; is that correct?

23 A That's correct.

24 Q To your knowledge, has the State of California
25 ever raised any objection to the availability of documents

1 from Watermaster?

2 MS. KAUR: Objection. Vague to the extent it calls
3 for speculation.

4 THE COURT: Overruled. You can answer.

5 THE WITNESS: To my knowledge, they have not.

6 MR. HERREMA: Okay. I'm going to end my direct there,
7 your Honor.

8 THE COURT: Okay. Which of your exhibits would you
9 like to offer that we just identified? I guess, do you
10 want to start with A and work our way down?

11 Did you want to offer A?

12 MR. HERREMA: Yes.

13 THE COURT: Okay. Any objection to Exhibit A?

14 MS. KAUR: No, your Honor.

15 MR. JENSEN: No, your Honor.

16 THE COURT: Okay. A, should I admit it or take
17 official notice of it, since it's a judgment?

18 MR. HERREMA: Either way is fine.

19 MR. JENSEN: Your Honor, can I ask you to take
20 official notice of it. Does that also include -- cause
21 that allows a finding of authenticity, and you can use the
22 substance of it as a matter of law. Is that what official
23 notice does, since it's a judgment?

24 THE COURT: Well, we had this discussion during the
25 demurrer, when I ruled on the demurrer.

1 MR. JENSEN: As far as the applicability of the
2 jurisdiction of the rules that apply to the Watermaster.

3 THE COURT: If I take official notice, I'm just taking
4 any hearsay contained in the document, in the four corners
5 of it, isn't admitted. I would take notice of what the
6 Court's ruling was, its ultimate judgment, but if there's
7 any hearsay within that, it wouldn't be directly
8 admissible. I could just admit the whole thing, but legal
9 court documents are a bit different from other types of
10 evidence. So that's why.

11 MR. JENSEN: Can you admit, and then I'll make an oral
12 motion for official notice in addition to that? So we
13 cover our bases -- admit as a document --

14 THE COURT: If it's admitted, then the whole thing is
15 coming in. If I take official notice of it, then that
16 comes with the restrictions that I just described. So let
17 me ask Mr. Herrema.

18 MR. HERREMA: I'd like it admitted.

19 THE COURT: Any objection?

20 MR. HERREMA: If I could just clarify. The
21 Watermaster is an arm of the court, the court's special
22 master. It contains all these documents that are official
23 records of the court.

24 THE COURT: Understood. But the -- the appellate
25 decisions talk about -- just because a Court has ruled on

1 something, it doesn't mean everything that it writes is
2 correct and without dispute and can never be questioned or
3 recalibrated. So if there's not a dispute, I don't want
4 to create one. It's just -- let me check.

5 Ms. Kaur, what are your thoughts on A?

6 MS. KAUR: I think taking official notice would be
7 fine. In terms of admitting it, Mr. Kavounas was not a
8 party to this. I think it's best to just take official
9 notice.

10 THE COURT: I don't have a problem with Mr. Kavounas
11 authenticating this. The -- he's, basically, saying this
12 is the initial operative document that controls the Board.
13 And so, in light of his position, I'm sure he's very
14 familiar with this document and the subsequent ones. So I
15 don't have a concern, in terms of the foundation, that
16 this witness can offer to authenticate this. I have no
17 reason to believe this is anything other than what it is
18 being offered for.

19 Do you have any concerns or objections with it
20 being -- just with my -- just admitting it, as opposed to
21 simply taking official notice of it?

22 MS. KAUR: That's fine. Admitting it is fine.

23 THE COURT: Mr. Jensen, is that your preference, also?

24 MR. JENSEN: Yeah, I would prefer that.

25 THE COURT: I will just admit Exhibit A. And I can

1 see unique exceptions, perhaps, in this case.

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

4 THE COURT: Okay. B, what would you like to do with
5 B?

6 MR. HERREMA: We'd like to have it admitted as well.

7 THE COURT: Okay. Any objection, Mr. Jensen, to B?

8 MR. JENSEN: No, your Honor.

9 THE COURT: Ms. Kaur?

10 MS. KAUR: No, your Honor.

11 THE COURT: All right. I'll admit B.

12 (Respondent's Exhibit B was received in
13 evidence by the Court.)

14 THE COURT: Next would be D.

15 MR. HERREMA: I'd like to have that admitted as well.

16 THE COURT: Okay. Any objection, Ms. Kaur, to D?

17 MS. KAUR: No, your Honor.

18 THE COURT: Mr. Jensen?

19 MR. JENSEN: No, your Honor.

20 THE COURT: Okay. D is admitted.

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

23 THE COURT: Next would be E.

24 MR. HERREMA: I'd like that admitted, your Honor.

25 MR. JENSEN: No objection.

1 THE COURT: Ms. Kaur?

2 MS. KAUR: No objection.

3 THE COURT: Okay. I'll admit E.

4 (Respondent's Exhibit E was received in
5 evidence by the Court.)

6 THE COURT: I've already admitted F and G. I've
7 admitted I and K. Moving on to N. Are you offering N?

8 MR. HERREMA: I am, your Honor.

9 THE COURT: Any objection, Mr. Jensen?

10 MR. JENSEN: I'm sorry. We're on N. No objection.

11 THE COURT: Ms. Kaur?

12 MS. KAUR: I have no objection.

13 THE COURT: N is admitted.

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

16 THE COURT: Next is O.

17 MR. HERREMA: I'd ask that be admitted as well, your
18 Honor.

19 THE COURT: Okay. Ms. Kaur, any objection?

20 MS. KAUR: None.

21 THE COURT: Mr. Jensen?

22 MR. JENSEN: No, your Honor.

23 THE COURT: O is admitted.

24 (Respondent's Exhibit O was received in
25 evidence by the Court.)

1 THE COURT: Next would be P.

2 MS. KAUR: I'm sorry. Which one?

3 THE COURT: P. P, as in "Peter." Will you be
4 offering P?

5 MR. HERREMA: Yes, your Honor.

6 MR. JENSEN: No objection.

7 MS. KAUR: No objection.

8 THE COURT: P is admitted.

9 (Respondent's Exhibit P was received in
10 evidence by the Court.)

11 THE COURT: Q is next, the Restated judgment,
12 Mr. Herrema?

13 MR. HERREMA: We'd like to have that admitted as well,
14 your Honor.

15 THE COURT: Mr. Jensen, any objection?

16 MR. JENSEN: No objection.

17 MS. KAUR: No objection.

18 THE COURT: Q is admitted.

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

21 THE COURT: I've previously admitted R. Just for
22 information, S was previously identified. I'm assuming
23 you're going to be questioning Mr. Joswiak about --

24 MR. HERREMA: Yes.

25 THE COURT: Okay. We're about 10 minutes out from our

1 morning break. So, Mr. Jensen --

2 MR. JENSEN: I can be very quick, I think.

3

4 CROSS-EXAMINATION

5 BY MR. JENSEN:

6 Q Mr. Kavounas, have you had the opportunity to
7 review the Watermaster's minutes and other official
8 documents where the Watermaster considered the hiring --
9 Mr. Alvarez, in this case?

10 A I have not.

11 Q And is it your testimony that it would be
12 appropriate to hire a CEO in a closed session, under the
13 Watermaster rules?

14 MS. KAUR: Objection to the extent it calls for a
15 legal opinion, legal conclusion.

16 THE COURT: Okay. I'll overrule that. I'll take his
17 answer as something other than expressing a legal opinion
18 or conclusion.

19 You can answer.

20 THE WITNESS: Can you repeat the question.

21 BY MR. JENSEN:

22 Q Would it be appropriate, then, that your
23 understanding of Watermaster's rules to hire a CEO -- I
24 think, in what is called a "confidential session" --

25 MS. KAUR: Objection. Vague.

1 MR. JENSEN: -- under the Watermaster rules.

2 THE WITNESS: I don't believe. I don't believe so. I
3 believe the Board could have deliberations about
4 selection. I think they, ultimately, would make their
5 decision in open session. Or if they did make it in
6 closed session, they would announce it in open session.

7 MR. JENSEN: Okay. Thank you for that clarification.

8 BY MR. JENSEN:

9 Q And, with respect to the Watermaster's rules for
10 providing notice in a meeting, does the rules require that
11 Watermaster only provide notice to active parties?

12 MS. KAUR: Objection. Vague as to "rules" and the
13 term "a meeting."

14 THE COURT: Do you understand what Mr. Jensen is
15 asking?

16 THE WITNESS: I do.

17 THE COURT: Overruled. You can answer.

18 THE WITNESS: Watermaster can provide notice to anyone
19 who's interested or expresses an interest.

20 BY MR. JENSEN:

21 Q But, as far as the requirements of the rules, is
22 the -- parties that are required to be given notice
23 pursuant to the Rules and Regulations described as, quote,
24 "active parties"?

25 A Yes.

1 MR. JENSEN: I have no further questions.

2 THE COURT: Okay. Thank you. Give me one moment.
3 All right.

4 Ms. Kaur, what's your estimate on how long you
5 think you are gonna spend on cross?

6 MS. KAUR: If we could take a break, that would be
7 great.

8 THE COURT: Okay. Why don't we take our morning break
9 at this time. We'll resume at 10:40. Off the record.

10 (Morning recess)

11 THE COURT: Back on the record. We're back from our
12 morning break.

13 Ms. Kaur, when you are ready.

14 MS. KAUR: Thank you, your Honor.

15

16 CROSS-EXAMINATION

17 BY MS. KAUR:

18 Q Based on your understanding, does the Watermaster
19 contract with CalPERS for pension benefits?

20 A Yes.

21 Q Would you agree that the Public Employees'
22 Retirement Law applies to the Watermaster?

23 MR. JENSEN: Objection. Calls for a legal conclusion.

24 MS. KAUR: Based on your understanding?

25 MR. JENSEN: Lacks foundation. Does he have --

1 THE COURT: This ones --

2 MR. HERREMA: This is outside the scope of direct as
3 well.

4 THE COURT: There's a -- under the A.P.A., there's no
5 restriction on cross. Cross can relate to anything
6 relevant.

7 MR. JENSEN: But, your Honor, can I just speak to --
8 there's a book in front of us, which is Public Employees'
9 Retirement Law, which is a very big book. She just asked
10 him, basically, to interpret that whole book with regards
11 to the Watermaster. And I don't think there's anyone
12 alive who can do that, much less someone who's not
13 familiar with the code sections.

14 MS. KAUR: I'm not asking him to interpret the book.
15 He's the general manager of the Watermaster, and he
16 testified he's in charge of the day-to-day operations.
17 And I'm asking for his understanding, whether the PERL
18 applies to the Watermaster, whether he's engaged in
19 day-to-day operation concerning the PERL.

20 He testified -- he's -- the Watermaster contracts
21 with CalPERS for pension benefits. So I'm asking for his
22 understanding.

23 MR. HERREMA: I recognize the lack of a limitation on
24 the scope of cross, but Ms. Kaur put Mr. Kavounas on as
25 her witness on Monday. So I'm just wondering whether it's

1 appropriate for her to apply new ground that I didn't
2 cover and she had the opportunity to cover on Monday.

3 THE COURT: Good point. Answer that.

4 MS. KAUR: Mr. Herrema covered all the regulations
5 that -- the rules and regulations that is applied to the
6 Watermaster. He covered the judgment that applies to the
7 Watermaster. So I'm asking for clarification, whether the
8 PERL also applies to the Watermaster. There's new
9 testimony concerning the status of the Watermaster. So
10 it's building up on what was asked on direct.

11 THE COURT: Okay. That makes sense.

12 MR. JENSEN: Your Honor, can I just briefly address
13 it?

14 THE COURT: Yes.

15 MR. JENSEN: There's many parts to the PERL that
16 wouldn't apply. And it's an overly broad question, at the
17 very least.

18 THE COURT: All right. I'm going to split the baby.
19 Let me ask a question, and we'll take it from there.

20 Do you have an understanding of the applicability
21 of PERL to the Watermaster one way or the other?

22 THE WITNESS: I don't, your Honor. In cases of law, I
23 am relying on attorneys.

24 THE COURT: Okay. All right. Let's take it from
25 there, Ms. Kaur.

1 BY MS. KAUR:

2 Q And, as a general manager, were you ever involved
3 in ensuring compliance with the PERL?

4 MR. JENSEN: Objection. Vague as to the term
5 "compliance with PERL."

6 MR. HERREMA: Objection as to relevancy. Mr. Kavounas
7 has been General Manager since 2012, and Mr. Alvarez's
8 situation took place prior to his employment.

9 MR. JENSEN: And, objection. Vague as to the specific
10 activities compliant with PERL.

11 THE COURT: All right. Mr. Alvarez was on the books
12 till May 2 and --

13 MR. HERREMA: Mr. Alvarez was hired in September
14 of 2012. So --

15 THE COURT: Okay. So what's the relevance, then, of
16 asking this witness his duties after the incident --
17 incidents in question, Ms. Kaur?

18 MS. KAUR: It goes to my question concerning whether
19 the PERL applies to the Watermaster or whether it's his
20 understanding it applies to the Watermaster, and whether
21 he attempted to comply with the provisions of the PERL.

22 THE COURT: All right. I'm gonna sustain the
23 relevance objection. Just -- and because I'm concerned
24 it's gonna bleed over into legal issues. He didn't begin
25 until after the events in question. I think it's going to

1 create more confusion than would be probative.

2 BY MS. KAUR:

3 Q Are you familiar with the California Water Code?

4 A To some extent.

5 Q Is it your understand that the California Water
6 Code applies to the Watermaster?

7 MR. HERREMA: Objection. The Water Code is a
8 collection of 20-plus thousand different sections, plus
9 over a hundred dependences. I'm not sure. I don't think
10 Ms. Kaur would dispute that. Not every provision in the
11 Water Code might apply to the Watermaster.

12 MR. JENSEN: I'm going to make a relevance objection
13 to this case.

14 THE COURT: Generally, I think it's fair if we get
15 more specific in areas that don't have applicability. I
16 think there's a concern there. I think he answered the
17 question, hadn't he? Or why don't you --

18 MS. KAUR: I think he did. I think it was. I can't
19 recall the exact -- I think it was; am I correct?

20 MR. HERREMA: I don't think he answered.

21 THE COURT: Okay.

22 MS. KAUR: Maybe the court reporter --

23 (Record read)

24 THE COURT: All right. You can answer that.

25 THE WITNESS: I would say I don't know. The

1 California Water Code is very large, and if there's
2 specific sections and there's a question as to whether it
3 was applied to Watermaster, I would turn to our attorneys.

4 BY MS. KAUR:

5 Q Is the Watermaster a public agency?

6 MR. HERREMA: Objection. Calls for a legal
7 conclusion.

8 THE COURT: Overruled. You can answer.

9 MR. JENSEN: Objection. Vague as to what a "public
10 agency" is with respect to the prior testimony of it being
11 an entity established by the Court as an instrument of the
12 Court.

13 THE COURT: Overruled. You can answer.

14 THE WITNESS: Watermaster was established by the
15 judgment in 1978 as a special extension of the Court. The
16 language is in one of the exhibits. I would be happy to
17 read it. I would actually be more comfortable reading it
18 than reciting it off the top of my head.

19 BY MS. KAUR:

20 Q But is it your understanding -- what is your
21 understanding whether it's a public agency or not?

22 A I don't know what you mean by "public agency."
23 We are a special master of the Court. We are an extension
24 of the Court.

25 Q I'm sorry?

1 A We are an extension of the Court.

2 Q So just to confirm, is your answer that you are
3 not aware whether it's a public agency or not, although
4 you are the general manager of the Watermaster?

5 MR. JENSEN: Objection. Argumentative.

6 THE COURT: I'm sorry?

7 MR. JENSEN: Argumentative.

8 MS. KAUR: I can restate it.

9 THE COURT: Yeah. I think he just said he doesn't
10 know what you're referring -- or the meaning of the term.
11 He didn't understand what you are referring to.

12 BY MS. KAUR:

13 Q What is your understanding of what a public
14 agency is?

15 MR. JENSEN: Objection.

16 MR. HERREMA: Objection.

17 MR. JENSEN: Relevance.

18 MR. HERREMA: And vague as to "public agency," for
19 what purposes.

20 THE COURT: Sustained. Why don't you rephrase.

21 BY MS. KAUR:

22 Q Just to confirm, is it your understanding that
23 the Watermaster is a public agency?

24 MR. HERREMA: I think asked and answered. Objection.
25 I apologize.

1 THE COURT: All right. Do you understand what she's
2 asking?

3 THE WITNESS: Your Honor, she's asking a question I
4 can't really answer. What a public agency is, is very
5 broad, in my mind. There are very different types of
6 public agencies. I've answered what Watermaster is, and
7 whether that fits into a definition of a public agency, I
8 cannot answer.

9 BY MS. KAUR:

10 Q So are you saying you don't know whether
11 Watermaster is a public agency?

12 MR. HERREMA: Objection. Asked and answered.

13 THE COURT: Sustained.

14 BY MS. KAUR:

15 Q Is the Watermaster required to give notice
16 concerning confidential sessions?

17 MR. HERREMA: Objection. Vague as to what type of
18 notice.

19 THE COURT: Overruled. You can answer.

20 THE WITNESS: Yes.

21 BY MS. KAUR:

22 Q And what type of notice are they required to
23 give?

24 A The notice, as described in Watermaster Rules and
25 Regulations in -- I believe it's section 2.7 of the Rules

1 and Regulations, and it's a notice that is to the parties
2 of the judgment and notice to anybody else who may have an
3 interest, expresses an interest in receiving that notice.

4 Q And based on the experience, does the Watermaster
5 comply to that requirement?

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

7 THE COURT: Overruled. You can answer.

8 THE WITNESS: In my time there at Watermaster, yes.

9 BY MS. KAUR:

10 Q If you could turn to Exhibit O in the
11 Watermaster's binder. You testified a bit concerning
12 Exhibit O. Is this the form that someone from the public
13 would fill out in requesting a salary information for
14 Watermaster employees?

15 A If they felt compelled to. Our salary
16 information is available on the website.

17 Q And when you say "it's available on the website,"
18 is that since you started September 12, 2012?

19 MR. JENSEN: Objection. Lack of foundation.

20 THE COURT: Overruled. You can answer.

21 THE WITNESS: I don't recall if it was on the website
22 before I started or not. It is on the website now.

23 BY MS. KAUR:

24 Q And when you say -- and when you say "it's on the
25 website now," are you referring to this current time

1 frame? What do you mean by "now"?

2 A I mean in the current time frame.

3 MS. KAUR: I have no other questions, your Honor.

4 THE COURT: Okay. Give me one moment.

5 Okay. Thank you, Ms. Kaur.

6 Any followup, Mr. Herrema?

7 MR. HERREMA: No, your Honor.

8 MR. JENSEN: No, your Honor.

9 THE COURT: Okay. Shall we release and excuse
10 Mr. Kavounas?

11 MS. KAUR: Yes, your Honor.

12 MR. JENSEN: Yes, your Honor.

13 THE COURT: Okay. Thank you very much.

14 THE WITNESS: May I stay?

15 THE COURT: If you would like. Does anyone have any
16 problems with Mr. Kavounas staying?

17 MR. JENSEN: No, your Honor.

18 MS. KAUR: No, your Honor.

19 THE COURT: Okay. Thank you very much. Okay. Who's
20 next?

21 MR. HERREMA: Mr. Joe Joswiak --

22 THE COURT: Okay. Come on over.

23 MR. HERREMA: -- Chief Financial Officer.

24 THE COURT: Okay. Give me a moment. Okay.

25 Mr. Joswiak, you understand that today you are

1 under the same oath that you previously took in this
2 Matter?

3 THE WITNESS: Yes, your Honor.

4 THE COURT: Okay. When you are ready, Mr. Herrema.

5

6 JOSEPH JOSWIAK,
7 recalled as a witness, and having been first duly sworn by
8 the Certified Shorthand Reporter, was examined and
9 testified as follows:

10 THE WITNESS: I do.

11 MR. HERREMA: Thank you, your Honor.

12

13 DIRECT EXAMINATION

14 BY MR. HERREMA:

15 Q Good morning, Mr. Joswiak.

16 A Good morning, Mr. Herrema.

17 Q Could you please provide a brief summary of your
18 educational background?

19 A Yes. I have a Bachelors of Arts in Business
20 Administration with an emphasis in accounting from
21 Cal State Fullerton, and I have a Master's Degree in
22 Business Administration from the University of Redlands.

23 Q And you testified on Monday that you've been
24 employed as Watermaster CFO since April of 2010; is that
25 correct?

1 A Yes.

2 Q What do you know about this -- the CEO
3 recruitment process that took place in the spring of 2011?

4 A There was a solicitation that was sent out for
5 the CEO position. There were numerous responses to that
6 solicitation. There were interviews held at the
7 Watermaster office and, eventually, there was an offer for
8 employment.

9 Q The solicitation that you described, is that
10 what's included in Watermaster Exhibit G?

11 A Yes.

12 Q And do you have any knowledge of how many
13 candidates responded to the solicitation?

14 A I do not know how many responded, but I was aware
15 that there was at least three, if not four, who came to
16 the Watermaster office for interviews.

17 Q Did you interview those candidates?

18 A I did not.

19 Q And who interviewed the candidates?

20 A I believe it was the Board of Directors.

21 Q Were you present at the March 31st, 2011, board
22 meeting -- I'm sorry. Closed session, confidential
23 conference call special meeting, the minutes of which are
24 shown in Exhibit J?

25 A Yes, I was in attendance.

1 Q On the second page of that exhibit is a reported
2 action by Scott Slater. Do you see that?

3 A Yes.

4 Q Who is Mr. Slater?

5 A Mr. Slater is the general legal counsel for Chino
6 Basin Watermaster.

7 Q The report that's listed there, under "reported
8 actions by Scott Slater." Do you recall whether that
9 report was given in an open session?

10 A Yes. All reported -- all closed confidential
11 session items that are reportable will be reported out in
12 open session.

13 Q Okay. When did Mr. Alvarez begin his employment
14 as Watermaster CEO?

15 A Mr. Alvarez started as CEO on May 3rd, 2011.

16 Q After that date, at least through November 8th,
17 2011, did you see him in the office on a daily basis?

18 A Yes.

19 Q Did he regularly attend the pool committee
20 advisory and Watermaster board meetings during that time
21 frame?

22 A Yes.

23 Q What salary did Watermaster pay to Mr. Alvarez?

24 A \$228,000.

25 Q And how was that paid?

1 A That was paid in bi-weekly payroll. So 26
2 payrolls a year.

3 Q \$228,000 per year. Does that equate to \$19,000
4 per month?

5 A Yes.

6 Q Did Watermaster make CalPERS contributions based
7 on Mr. Alvarez' paid salary?

8 A Yes.

9 Q How did it make those contributions?

10 A The same as based on payroll. We made payments
11 to CalPERS on a bi-weekly basis. So 26 times per year.

12 Q Did Watermaster make the entirety of the CalPERS
13 contribution? And what I mean by that is, what is
14 sometimes referred to as both the employer and the
15 employee contribution.

16 A Yes.

17 Q After November 9, 2011, did Watermaster continue
18 to pay Mr. Alvarez' salary according to your regular
19 payroll procedures?

20 A Yes.

21 Q Did Watermaster continue to pay Mr. Alvarez's
22 CalPERS contributions?

23 A Yes.

24 Q Until what date?

25 A Until May 3rd, 2012.

1 Q The period from November 9, 2011, through
2 May 3rd, 2012, it's been referred to as the "transition
3 period." Are you familiar with that term?

4 A Yes.

5 Q During the transition period, did Watermaster
6 ever report to CalPERS that Mr. Alvarez was no longer an
7 employee of Watermaster?

8 A No.

9 Q I believe that on Monday you testified that,
10 during the transition period, you processed a change in
11 Mr. Alvarez's payroll deduction at his request; is that
12 correct?

13 A Yes.

14 Q And an E-mail documenting your receipt of his
15 phone call and his request is included in CalPERS
16 Exhibit 18; is that correct?

17 A Yes. That's correct.

18 Q You are looking at Exhibit 18. Is that on Page 1
19 of Exhibit 18?

20 A Yes, it is.

21 Q I believe you also testified on Monday that,
22 during the transition period, Mr. Alvarez maintained his
23 Watermaster E-mail address; is that correct?

24 A Yes, he did.

25 Q And that's reflected on -- in the E-mail that is

1 shown on Page 2 of CalPERS Exhibit 18; is that correct?

2 MS. KAUR: I have a belated objection. That misstates
3 prior testimony. I believe the testimony was that he had
4 access to the E-mail. There was no testimony to him
5 concerning maintaining the E-mail.

6 THE COURT: Sustained.

7 BY MR. HERREMA:

8 Q During the transition period, there continued to
9 be an E-mail for Mr. Alvarez at Watermaster; is that
10 correct?

11 A Yes.

12 Q I believe on Monday you testified that the salary
13 schedules that are shown in Exhibits 15 and 16, the --
14 those salary schedules were used as part of Watermaster's
15 development of the labor component of the annual fiscal
16 year budget; is that correct?

17 A Yes.

18 Q Were those salary schedules maintained by
19 Watermaster also available to the public?

20 A Yes.

21 Q If any member of the public had requested the
22 schedules, would they have been able to obtain them?

23 A Yes.

24 Q Are you familiar with Watermaster Information
25 Request Form, which is marked as Watermaster Exhibit O?

1 A Yes.

2 Q To your knowledge, has O been posted on
3 Watermaster's website during the entire time you've been
4 employed as Watermaster CFO?

5 A Yes, it has.

6 Q And that time included both fiscal year '11/'12,
7 as well as the time of the fiscal year '11/'12 budget was
8 developed; is that correct?

9 A Yes.

10 Q Would a member of the public have been able to
11 request the '11/'12 salary schedule from Watermaster?

12 A Yes.

13 Q Did you ever receive an inquiry for the '11/'12
14 salary -- requesting the '11/'12 salary schedule?

15 A Yes.

16 Q Could I direct your attention to Watermaster
17 Exhibit R. Exhibit R is just the two pages of an E-mail
18 chain. And, then, September 15th, 2011, E-mail from you
19 to Tracy Tracy at Monte Vista Water District. Your E-mail
20 indicates that you've attached information that she
21 requested for items 1 and 2. Do you see that?

22 A Yes.

23 Q And what was the request number 1?

24 A The request number 1 was for the employees'
25 salary ranges.

1 Q We have marked as Exhibit S the Chino Basin
2 Watermaster salary schedule 2011-12. It should be right
3 behind that E-mail in your binder. Do you see Exhibit S?

4 A Yes.

5 Q Was Exhibit S attached to your
6 September 15, 2011, E-mail?

7 A Yes, it was.

8 Q If someone who wasn't a party to the judgment had
9 asked for a copy of Exhibit S, would you have provided it
10 to them?

11 A Yes.

12 Q If someone had walked in and asked for a copy of
13 Exhibit S, would they have been provided a copy of it?

14 A Yes.

15 Q And the time -- were you present when
16 Mr. Kavounas testified earlier --

17 A Yes.

18 Q -- this morning?

19 A Yes, I was. I was here.

20 Q Do you recall that we looked at Watermaster
21 policy for release of information in the documents and
22 that the general procedure indicated that documents would
23 be made available within 10 working days, following
24 receipt of a request?

25 A Yes.

1 Q Is it your understanding that that's
2 Watermaster's policy as well?

3 A Yes, it is.

4 Q And so the request for Tracy Tracy came into
5 Watermaster on Thursday, September 8th, around -- you sent
6 her the information she requested Thursday,
7 September 15th, unless there's a holiday in there that I'm
8 not aware of. That would be five working days later; is
9 that correct?

10 A Yes.

11 Q And so this response to Ms. Tracy's request would
12 have been consistent with the Watermaster policy; is that
13 correct?

14 A That's correct, yes.

15 Q Could I just briefly turn your attention to
16 Watermaster Exhibit F.

17 A I have it.

18 Q Do you have Exhibit F before you?

19 A Yes.

20 Q What is Exhibit F?

21 A Exhibit F is a letter that I drafted to
22 James R. Coren (phonetic) to the city and Inland Valley
23 Daily Bulletin in San Bernardino, California, dated
24 October 22nd, 2010, in regards to a public request
25 information.

1 Q And what did you provide to Mr. Coren? Are the
2 items that are listed -- 1, 2, and 3 -- in your letter, is
3 that an accurate summary of what you provided to him?

4 A Yes.

5 Q And does it -- did you provide to him everything
6 that he requested?

7 A Yes.

8 Q And to confirm, under number 1, he requested and
9 was provided a copy of the then current employment
10 agreement for the then CEO; is that correct?

11 A That's correct. At that time, it was
12 Kenneth Manning.

13 Q Do you recall CalPERS contacting you in
14 November, 2012, regarding Watermaster's pay schedules?

15 A Yes, I do.

16 Q Did you -- did CalPERS request information from
17 you?

18 A Yes, they did.

19 Q And did you provide information to CalPERS?

20 A Yes, I did.

21 Q Did you provide information to them that you
22 believed was responsive to your requests?

23 A Yes.

24 Q Do you recall any CalPERS employee specifically
25 requesting, from you, the fiscal year '11/'12 salary

1 schedule?

2 A No. They never asked for fiscal year '11/'12.

3 MR. HERREMA: That concludes my direct, your Honor.

4 THE COURT: Okay. Thank you. Mr. Jensen.

5 MR. JENSEN: Just one question.

6

7

CROSS-EXAMINATION

8

BY MR. JENSEN:

9

Q Mr. Joswiak, you've been sitting in here hearing
10 testimony for the last three days. Is it your opinion,
11 sitting here, that the Watermaster correctly followed all
12 the Rules and Regulations applicable to Watermaster in
13 this Matter?

14

A Yes.

15

MR. JENSEN: No further questions, your Honor.

16

THE COURT: Okay. Give me one moment. Okay.

17

Ms. Kaur, when you are ready.

18

Oh, I'm sorry. Did you want to offer S?

19

MR. HERREMA: I would like to offer S and then --

20

MR. JENSEN: And F, too, I think.

21

THE COURT: Okay. Okay. So, Mr. Jensen, any

22

objection to S?

23

MR. JENSEN: No, your Honor.

24

THE COURT: Ms. Kaur?

25

MS. KAUR: No, your Honor.

1 THE COURT: Okay.

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

4 THE COURT: F, I had previously admitted.

5 MR. HERREMA: Right.

6 THE COURT: And I think those are all the exhibits
7 that you identified with this witness.

8 MR. HERREMA: I think we referred to J, which is also
9 marked as CalPERS 10. The copy we have of J is a signed
10 copy.

11 THE COURT: One moment. Oh, yes. Okay. I'm sorry.
12 What did you say about a signed copy?

13 MR. HERREMA: I don't think the CalPERS version is a
14 signed version. This is a version that's signed by the
15 secretary.

16 THE COURT: Exhibit J?

17 MR. HERREMA: Yes.

18 THE COURT: Mine is not signed. Is yours?

19 MS. KAUR: Exhibit J, mine is signed.

20 MS. DIAZ: Sorry, your Honor, it might have within
21 a --

22 MR. HERREMA: We updated it, and you might have a
23 preliminary copy.

24 THE COURT: Here. Let's swap.

25 MR. HERREMA: It's the only difference between the

1 CalPERS' and the Watermaster's.

2 THE WITNESS: Did you want to look to compare?

3 THE COURT: Okay. Who signed this, though?

4 MR. HERREMA: The secretary of the Board.

5 THE COURT: Is that Haughey?

6 MR. HERREMA: It's Tom. I'm not sure I can pronounce
7 it.

8 THE COURT: H-A-U-G-H-E-Y. Okay. Okay. Any
9 objection to J, Mr. Jensen?

10 MR. JENSEN: No, your Honor.

11 THE COURT: Ms. Kaur?

12 MS. KAUR: No. No objections, your Honor.

13 THE COURT: Okay. J is admitted.

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

16 THE COURT: Were there any other exhibits,
17 Mr. Herrema?

18 MR. HERREMA: I don't believe so.

19 THE COURT: Okay. Sorry for that interruption.

20 Ms. Kaur, when you are ready.

21

22 CROSS-EXAMINATION

23 BY MS. KAUR:

24 Q Mr. Kavounas, you testified concerning Exhibit J,
25 which is CalPERS Exhibit 10. Those are the board minutes

1 for the March 31st, 2011, meeting. And we were -- you are
2 looking at Page 2, and you testified concerning the report
3 by Scott Slater. And is this the report that was provided
4 by Scott Slater -- is that a written report provided by
5 him?

6 A I don't know. You called Mr. Kavounas.

7 Q I'm sorry, Mr. Joswiak. I apologize.

8 Mr. Joswiak, if you could turn to Exhibit 10, or
9 you can turn to Exhibit J, either one.

10 A Okay. I have Exhibit J.

11 Q And if you could turn to Page 2 of Exhibit J.

12 A Okay.

13 Q You refer to a report being provided by
14 Scott Slater. The report that was provided by
15 Scott Slater is under item -- I believe it's Roman numeral
16 "1." What's titled "confidential session, possible
17 action." And then Item 1, CEO position, it states:
18 "Reported actions by Scott Slater." And, underneath,
19 there's a description of -- is that -- there's a whole
20 sentence -- is that what was reported by Scott Slater?

21 A Yes, it was a verbal report.

22 Q If you could turn to Exhibit R in the Watermaster
23 binder?

24 A I have that.

25 Q You testified there was a request by Tracy Tracy

1 for -- there was a request -- part of the request was for
2 the employee salary ranges. Do you know when that request
3 was made?

4 A Yes. That request was made September 8th, 2011.

5 Q And how do you know that?

6 A Because I have an E-mail here from my assistant,
7 Janine Wilson, that forwarded that E-mail to me.

8 Q And why were you asked -- why was the request
9 forwarded to you? Why didn't she just reply to it?

10 A Because I'm the Chief Financial Officer.

11 Q And are you the only one that is in charge of
12 providing the employees' salary or any salary information?

13 A No.

14 Q So why didn't she just provide it?

15 MR. HERREMA: Objection. Calls for speculation.

16 MR. JENSEN: Lacks foundation.

17 THE COURT: Overruled. You can answer.

18 THE WITNESS: I can't answer why she did that. She
19 just simply forwarded the request to me. She may have
20 been busy.

21 BY MS. KAUR:

22 Q Did she have access to the employee salary ranges
23 for the Watermaster?

24 MR. HERREMA: Objection. Vague as to "she."

25 MS. KAUR: I'm referring to your assistant.

1 MR. JENSEN: Vague as to "access."

2 THE COURT: Vague as to?

3 MR. JENSEN: "Access."

4 THE COURT: Overruled. You can answer.

5 THE WITNESS: The access information is -- yes, it's
6 on our file server.

7 BY MS. KAUR:

8 Q So how would she access that? You said it's on
9 the file server?

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

11 THE COURT: Overruled. You can answer.

12 MR. HERREMA: I didn't mean "vague." I don't see what
13 the relevance of the question is.

14 THE COURT: Overruled. It has probative value. You
15 can answer.

16 THE WITNESS: She would log in under my credentials
17 and go onto the accounting server and pull the
18 documentation.

19 BY MS. KAUR:

20 Q And is this a PDF file or a --

21 MR. HERREMA: Objection.

22 MR. JENSEN: Objection. Document speaks for itself.

23 THE COURT: Both of you need to speak up.

24 Mr. Jensen, what's your objection?

25 MR. JENSEN: If she's referring to Exhibit R, the

1 document speaks for itself. The attachment was an Excel
2 file.

3 THE COURT: Okay. Mr. Herrema?

4 MR. HERREMA: Vague. Ms. Kaur has a copy of Exhibit
5 R. I don't know if she's referring to the E-mail or the
6 salary schedule.

7 THE COURT: Okay. Can you clarify.

8 MS. KAUR: I'm referring to Exhibit S, salary
9 schedule, and how you testified that she would log on to
10 your server -- she, meaning your assistant, would log on
11 to your server to obtain the salary schedule. So I'm
12 asking how it's retained in your server. Is it a PDF
13 file? Is it an Excel file?

14 MR. JENSEN: Vague as to "your server." And I think
15 it misstates the testimony that there was a file server.

16 THE COURT: Overruled. You can answer.

17 MR. HERREMA: I'd like to object as to relevance. I
18 don't know that anyone would disagree, from looking at
19 this exhibit, that was what was sent, was an Excel, which
20 is an Excel file.

21 THE COURT: Overruled. It's relevant. You can
22 answer.

23 THE WITNESS: It's an Excel file.

24 BY MS. KAUR:

25 Q And would she be printing out the Excel file and

1 providing it to -- to whoever would request it?

2 MR. HERREMA: Objection. Vague as to speculation.

3 THE COURT: Sustained.

4 BY MS. KAUR:

5 Q You provided this -- you, ultimately, were the
6 one that provided the employee salary ranges in Exhibit S;
7 is that correct?

8 MR. HERREMA: Objection. Asked and answered.

9 THE COURT: You are referring to this particular
10 request or overall, generally?

11 MS. KAUR: This particular request.

12 THE COURT: Overruled. You can answer.

13 THE WITNESS: Yes, I sent it.

14 BY MS. KAUR:

15 Q And did you also get it from the server you were
16 referring to?

17 A Yes.

18 Q And was it in the Excel format?

19 A Yes.

20 Q And I'm looking at Exhibit S. Was this exhibit,
21 this Exhibit S, the salary schedule for the year -- well,
22 it states "salary schedule" and then underneath that, it
23 states "2011/2012." Was that provided to CalPERS by you?

24 A In Exhibit F?

25 Q S.

1 MR. JENSEN: I'm going to make an objection. Vague as
2 to time.

3 MS. KAUR: At any time was it provided to you by
4 CalPERS?

5 THE WITNESS: No one from CalPERS has ever asked for
6 this.

7 BY MS. KAUR:

8 Q Did you ever provide it?

9 A No one has ever asked from CalPERS.

10 Q So my question is, did you provide this to
11 CalPERS?

12 A No. No one has ever asked.

13 Q Can you tell me when this document was drafted,
14 this Exhibit S?

15 MR. HERREMA: Objection. Vague as to "drafted."

16 THE COURT: Why don't you clarify.

17 BY MS. KAUR:

18 Q Was it -- was it amended -- when was the first
19 time it was -- well, were you the one who drafted this
20 document?

21 A Yes.

22 Q And when did you draft it?

23 A It would have been drafted some time in the
24 January, February, March time frame of 2011, when we were
25 working on our budgets.

1 Q After the -- was it ever edited by you?

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

3 THE COURT: Sustained.

4 BY MS. KAUR:

5 Q After you drafted this document, was this a
6 working document or did you just draft it once and that's
7 it?

8 MR. JENSEN: Objection. Compound.

9 THE COURT: Overruled. You can answer.

10 THE WITNESS: This was not a working document. This,
11 to my understanding, is the final document.

12 BY MS. KAUR:

13 Q After you drafted the document, did you ever edit
14 it?

15 MR. HERREMA: Objection. Vague as to time frame. I
16 think he has also asked and answered it.

17 MR. JENSEN: And vague as to which document. If it's
18 final, it's not edited.

19 THE COURT: Okay. Referring to Exhibit S, do you
20 understand what she's asking?

21 THE WITNESS: Mm-hmm.

22 THE COURT: Okay. I'll overrule. You can answer.

23 THE WITNESS: Not to my knowledge. I have never
24 edited or changed information on this document.

25 ///

1 BY MS. KAUR:

2 Q When was that finalized?

3 MR. JENSEN: Objection. Asked and answered.

4 THE COURT: I think, before, he -- didn't he say
5 January, February, or March, during the budget process?

6 MS. KAUR: He said it was drafted.

7 MR. HERREMA: This is the final copy that started
8 being drafted at the beginning of the year.

9 THE COURT: Okay. Let's just clarify, then.
10 Overruled. You can answer that.

11 THE WITNESS: This would have been adopted with our
12 fiscal '11/'12 budget, or as part of the budget.

13 THE COURT: Okay. So I think she's asking for an
14 estimate of when this would have been a final version.

15 THE WITNESS: The budgets are approved -- this would
16 have been approved -- our budget would have been approved
17 in May, towards the end of May 2011.

18 BY MS. KAUR:

19 Q Was this document ever attached to the budget
20 that was presented to the Board in open session?

21 A No.

22 MR. HERREMA: Objection as to relevance.

23 THE COURT: Overruled.

24 BY MS. KAUR:

25 Q If you could turn to Exhibit 16. And if you

1 could turn to the third page of Exhibit 16. It is stamped
2 Page 119 at the bottom. It says "Chino Basin Watermaster
3 Salary Matrix, 2011/2012."

4 A Yes. I see that.

5 Q Exhibit S is a different document from the Page 3
6 of Exhibit 16; is that correct?

7 A Looks like the same document to me.

8 Q Okay. So if you could turn to -- if you could
9 look at the first column on Page 3 of Exhibit 16. And I'm
10 asking you to look at Page 3 of Exhibit 16, the first
11 column. And another document you may want to open up is
12 Exhibit S, also.

13 So if you could take a look at both of those
14 documents, now that you have both of them in front of you.

15 Can you tell me if both are identical, the exact
16 same documents?

17 A They are not identical. The numbers look
18 extremely similar, but they are not, in format, identical.

19 Q So they're not identical documents; is that
20 correct?

21 MR. HERREMA: I think he's already testified to that.

22 MS. KAUR: I just want to clarify.

23 THE COURT: Overruled. You can answer.

24 THE WITNESS: Yes.

25 ///

1 BY MS. KAUR:

2 Q And Exhibit S was not presented to the Board on
3 May 23, 2013, for approval in open session; is that
4 correct?

5 A That's correct.

6 Q And do you know why there are two different
7 documents, two different versions, for the salary schedule
8 for -- well, one says "Salary Matrix." Exhibit 16 says
9 "Salary Matrix" and then Exhibit S says "Salary Schedule."
10 Do you know why there are two different -- these two
11 different documents for the year 2011/2012?

12 MR. HERREMA: Objection. The question is vague for --
13 assumes that there's some reason why there shouldn't be --
14 that there shouldn't be two different documents.

15 THE COURT: Overruled. You can answer.

16 THE WITNESS: They appear to be relative, as far as
17 the numbers -- the numbers are still the same. I can
18 still see that the Chief Executive Officer still has the
19 salary of \$228,000. I can see --

20 BY MS. KAUR:

21 Q Are you saying that you can see that the Chief
22 Executive Officer has a salary of 228 on Exhibit 16,
23 Page 3? Can you show me where -- you can answer that.

24 A Which document?

25 Q I'm referring to Exhibit 16, Page 3. And you

1 said you can see that the Chief Executive Officer has a
2 salary of 228. Can you point out to me where it states on
3 Exhibit 16, Page 3, that the Chief Executive Officer has a
4 salary of 228?

5 MR. JENSEN: And, your Honor, Ms. Kaur is looking at
6 the Bates stamped 120.

7 MS. KAUR: I apologize.

8 THE COURT: Okay. We should be looking at 119; right?

9 MS. KAUR: Yeah, 119. I apologize. And I'll repeat
10 my question.

11 And if the court reporter could read my question
12 about why there's two different versions and could read
13 the answer to it.

14 THE COURT: Your question --

15 MR. JENSEN: Can I just make a motion to strike all
16 that testimony that's referring to -- Counsel was
17 referring to a different document that a witness was
18 referring to.

19 THE COURT: Well --

20 MS. KAUR: Which testimony?

21 THE COURT: 119 also says "Salary Matrix." So the
22 question about the different titles -- I think all the
23 other questions are the same. It was just the last one,
24 where we got to the actual compensation level that we have
25 had the problem. So I'll deny that motion.

1 You want to read back your question about does he
2 know why they have different titles?

3 MS. KAUR: Why there are two different versions for
4 the year 2011/2012. And then I'll pick up from there. If
5 she could read that question and then, also, read the
6 answer.

7 THE COURT: Can you find that?

8 THE COURT REPORTER: The question before all the
9 objections, your last question?

10 MS. KAUR: Not my last question. Before the
11 objections, my question, which was why the 2011 -- why
12 there are different versions of the 2011/2012 salary
13 schedule.

14 MR. HERREMA: I'm going to object. Lacks foundation.
15 One says "Salary Matrix." One says "Salary Schedule."
16 She hasn't established that there's different versions of
17 anything, or that they're not intended to serve different
18 functions. We have two different documents, and they have
19 two different titles. It doesn't mean that they're
20 different versions of each other.

21 THE COURT: That's for you guys to argue later, but
22 it's a fair line of the inquiry.

23 MS. KAUR: I can clarify my question. Can I just ask
24 the question again?

25 THE COURT: Yes.

1 BY MS. KAUR:

2 Q Can you tell us why there are two different
3 documents regarding the salary in 2011 and 2012? And I'm
4 referring to Exhibit S, Page 3, under Exhibit 16.

5 A No.

6 Q And can you tell me what the effective date of
7 Exhibit S is -- well, can you actually tell me if
8 Exhibit S has an effective date -- dates on it?

9 MR. HERREMA: Objection. Relevance.

10 THE COURT: Overruled.

11 THE WITNESS: I do not see an effective date stated on
12 it, but it's because it says '11 -- 2011/2012. That would
13 provide me with the assurance that the effective date
14 should be between July 1st, 2011, and June 30th, 2012,
15 since that's our fiscal year.

16 BY MS. KAUR:

17 Q But this document, itself, has no effective date
18 stated on it; is that correct?

19 A Correct.

20 Q Is there anywhere on this document where it
21 states their revision date?

22 MR. HERREMA: Objection. Relevance.

23 THE COURT: Overruled. You can answer.

24 THE WITNESS: I do not see on this document anything
25 about a revision date.

1 BY MS. KAUR:

2 Q If you could turn to Exhibit F in the Watermaster
3 binder?

4 THE COURT: F?

5 MS. KAUR: Yes, F.

6 THE WITNESS: I have that.

7 BY MS. KAUR:

8 Q And the letter -- this is a letter dated
9 October 22nd, 2010. You testified concerning this letter.
10 It starts off with "Regarding your request for
11 information."

12 Do you know when the request for information was
13 made?

14 A I do not know exactly. My best recollection was
15 it was -- we had numerous telephone calls between this
16 individual. This was when the City of Bell scandal was
17 going on, and I believe we had discussed several times in
18 early October -- this would have been towards the middle
19 to end of October when he finally called me and requested.
20 Again, we had talked on the phone numerous times.

21 Q In the middle of October, was that the first time
22 he made the request for information?

23 A No. It was towards the middle of October when he
24 actually made a formal request.

25 Q And what do you mean by "formal"?

1 A He provided the documentation to request per the
2 public -- per the California Public Records Act.

3 Q What documentation?

4 A He called me on the phone and said, per the
5 request, he's requesting that I provide the information.

6 Q You are referring to -- you're referring to some
7 sort of documentation, did he --

8 A Well, there was -- originally, if I recall, there
9 wasn't any documentation sent to us. It was just a phone
10 call. And I had asked him to provide, per our public
11 request information that we have on the website, and
12 that's when he stated the California Government Code.

13 Q So just to clarify, he first made his request for
14 this information by calling you; is that correct?

15 A He called me up, and we were discussing it. He
16 never asked in the first or second phone call. He never
17 asked specifically for this. He was just asking relative
18 questions of details about our organization.

19 Again, he was looking for information from -- in
20 documentation for similar issues that were going on with
21 the City of Bell scandal.

22 Q And after the first or second phone call, did he
23 make a request for this information during a phone call?

24 A Yes. He made an official request.

25 Q And then what was your response?

1 A I provided him the information, dated
2 October 22nd, 2010.

3 Q And when you say "official request," you are
4 referring to him making a verbal request; is that correct?

5 A That's correct.

6 MS. KAUR: I don't have any further questions, your
7 Honor.

8 THE COURT: All right. Thank you. Any follow up,
9 Mr. Herrema?

10 MR. HERREMA: Just a couple questions.

11 THE COURT: Okay.

12

13

REDIRECT EXAMINATION

14 BY MR. HERREMA:

15 Q Mr. Joswiak, if I could turn your attention back
16 to Page 3 of CalPERS Exhibit 16.

17 Do have you that in front of you? It's labeled
18 "P-119" at the bottom.

19 A Yes, I do.

20 Q Ms. Kaur asked you a question, and then she
21 didn't give you an opportunity to answer it.

22 Do you see the salary of 228,000 for the Chief
23 Executive Officer listed on this document?

24 A Yes, I do.

25 Q And that's the very last step, the very bottom

1 step, for Chief Executive Officer; is that correct?

2 A Yes.

3 Q I think you testified extensively about this
4 document on Monday. This is a salary matrix that was
5 adopted by the Board in public session at its
6 May 23rd, 2013 meeting; is that correct?

7 A Yes.

8 Q And at the time this was adopted, it was no
9 longer a fiscal year 2011/2012; is that correct?

10 A Yes.

11 Q And are the salaries that were paid to all of
12 Watermaster employees during fiscal year '11/'12 shown on
13 this document?

14 A Yes.

15 Q And this document is a salary matrix. And the
16 purpose of this salary matrix, is that accurately
17 described in the staff report which is attached?

18 A Yes.

19 Q And Exhibit S, which was the 2011/2012 salary
20 schedule, that was used for the purposes of compiling or
21 working up the 2011/2012 year budget; is that correct?

22 A Yes.

23 Q And at the time that that was provided to Tracy
24 Tracy, that showed the information that was used to put
25 the budget together, in terms of budgeting for salary

1 expenses during that fiscal year; is that correct?

2 A Yes.

3 Q And Exhibit S, additionally, shows a \$228,000
4 annual salary for the CEO position; is that correct?

5 A Yes.

6 MR. HERREMA: Okay. I have no further redirect.

7 THE COURT: Okay. Thank you.

8 Mr. Jensen, any further redirect?

9 MR. JENSEN: I have -- with those clarifications, I
10 have no questions.

11 MS. KAUR: Yes, I have follow up regarding Exhibit 16.

12

13 RE CROSS-EXAMINATION

14 BY MS. KAUR:

15 Q Page 3 of Exhibit 16. Page 3 of Exhibit 16.

16 MR. JENSEN: Are we talking about the one that has
17 "119" on the bottom?

18 MS. KAUR: Yes, it has 119 on the bottom.

19 THE WITNESS: And I have that.

20 BY MS. KAUR:

21 Q Does Page 3 of Exhibit 16 state the effective
22 date of the salary matrix?

23 MR. HERREMA: Objection. Asked and answered.

24 MS. KAUR: I didn't ask about this.

25 THE COURT: I thought you did.

1 MS. KAUR: It was about the other.

2 MR. HERREMA: I think you asked it on Monday.

3 THE COURT: I'll give some leeway on cross.

4 You can answer.

5 THE WITNESS: The effective date for this salary
6 matrix would have been July 1st, 2011, through
7 June 30th, 2012.

8 BY MS. KAUR:

9 Q Does the document itself say "effective date"?

10 A No.

11 Q Does the document itself state when it was
12 revised or state anything concerning revisions?

13 A No.

14 MR. JENSEN: I'm going to object. Objection. Is
15 there any testimony that it was revised?

16 MR. HERREMA: I'm going to object, too, as to
17 relevance. Again, this is -- we've already established
18 the time frame of when 57.5 came into effect and Ms. Kaur
19 has continued to ask questions that are irrelevant to the
20 requirements that were in place at the time that
21 Mr. Alvarez was developed and his contract was approved.

22 THE COURT: Okay. I think it has probative value.
23 We're not gonna spend too much time. Do you remember what
24 she asked?

25 THE WITNESS: Whether there was a --

1 BY MS. KAUR:

2 Q Whether it states -- whether it states when it
3 was revised or if there are any revisions?

4 A No. The only thing that it shows is what the
5 title of the salary schedule is. Again, it doesn't show
6 any revisions.

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

8 THE COURT: Okay. Thank you.

9 Any followup to that, Mr. Herrema?
10

11 FURTHER REDIRECT EXAMINATION

12 BY MR. HERREMA:

13 Q Just keeping your attention on Page 119,
14 Exhibit 16. This was included as part of a staff report
15 for the May 23rd, 2013, Watermaster Board meeting; is that
16 correct?

17 A Yes.

18 Q And these staff reports are typically issued -- I
19 can't remember whether you or Mr. Kavounas testified
20 Monday about the times of the package going out ahead of
21 the Board meeting. But it's usually the Friday before or
22 Thursday before a Board meeting; is that correct?

23 A That's correct.

24 Q So it's most likely that the staff report went
25 out on --

1 A Yes.

2 Q -- May 17th?

3 A Yes. Because we have to have them issued Friday,
4 so that they can be issued to the board members and to
5 anyone in public and posted to the website. Yes.

6 Q And this document has -- was, certainly, not
7 changed after May 23rd, 2013; is that correct?

8 A No, it was not.

9 MR. HERREMA: That's all I have.

10 THE COURT: All right. Thank you.

11 Any followup, Mr. Jensen?

12 MR. JENSEN: No, your Honor.

13 THE COURT: Ms. Kaur, any followup?

14 MS. KAUR: No, your Honor.

15 THE COURT: All right. Shall we excuse and release
16 Mr. Joswiak?

17 MS. KAUR: Yes, your Honor.

18 MR. HERREMA: Yes, your Honor.

19 THE COURT: Okay. Thank you.

20 I assume you are going to stay.

21 THE WITNESS: Yes. I'll go to the other end of the
22 table.

23 THE COURT: Okay. Do have you any other witnesses?

24 MR. HERREMA: I'd like -- did we take care of
25 Exhibit S?

1 THE COURT: Yes. S has been admitted.

2 MR. HERREMA: No, no additional witnesses.

3 THE COURT: Let's talk about your exhibits, then.
4 Going over my list, I'll tell you what has not been
5 identified or offered. C, I don't have anything on C.
6 Were you gonna do anything with it?

7 MR. HERREMA: No. Given that the CalPERS contracts
8 and amendments were covered in CalPERS Exhibit 19, it's
9 unnecessary.

10 THE COURT: Okay. And H, I don't have anything for H.

11 MR. HERREMA: We're not going to use it.

12 THE COURT: Okay. L?

13 MR. HERREMA: L is the same document that's marked as
14 CalPERS Exhibit 11.

15 THE COURT: And how about M?

16 MR. HERREMA: It's CalPERS Exhibit 12.

17 THE COURT: So, then, everything else, between what we
18 have marked as A and S, I have admitted. So is that all
19 your documents?

20 MR. HERREMA: Yes, your Honor.

21 THE COURT: Okay. Do you rest at this time?

22 MR. HERREMA: We do.

23 THE COURT: Okay. Let's go off the record.

24 (Lunch recess)

25 THE COURT: Back on the record. We're back from our

1 lunch break. We are now going to hear Mr. Alvarez's case.
2 And Mr. Jensen has reminded me that he reserved time for
3 his opening.

4 So you may provide that now.

5 MR. JENSEN: Thank you, your Honor.

6 The testimony has shown and will show you that
7 Mr. Alvarez was a long-term public servant who has had
8 inherent interest in water -- water engineering and water.
9 He's worked for a number of different cities, in different
10 capacities, earning many years of CalPERS credits.

11 While at the City of Downey, we had two witnesses
12 testify today that he was a very well-regarded employee
13 who had a -- in front of him, a long career in public
14 service with the City of Downey and, at the time, he was
15 Deputy City Manager.

16 However, a position opened at the Chino Water
17 Basin. It was a publicly announced position that a
18 number of different applicants sought, but it was right in
19 the, sort of, dream bailiwick that Mr. Alvarez had pursued
20 for his whole life. And he applied for the position in
21 arm's length, according to a publicly posted --
22 available job posting, and he got the position.

23 And the -- he sought an increase because it was a
24 different type of position in his salary. And it was a
25 recent agreement that he would be paid \$228,000. The

1 testimony has been -- annually.

2 And, at that time, he was not considering
3 retiring. He was considering to pursue his dream career
4 in water and do it at a high level, for a very
5 sophisticated water entity that is unique -- not unique,
6 because there's other of them, in that it was formed as an
7 arm instrument of the court. Formed by one entity, the
8 court.

9 And so, as the testimony has shown, formation and
10 its rules are established by the court. And, at the same
11 time, although they may strive or be aspirational to
12 satisfy either the Brown Act or the Bagley Keene Act,
13 neither of those laws apply to the Watermaster. And, in
14 fact, the Watermaster -- and there's other Watermasters --
15 it is fairly unique, in that it was a coalition of members
16 established by one entity.

17 And, under the public meeting laws, a coalition
18 of entities that was established by one entity, the court,
19 is not required to follow either of the Bagley Keene or
20 the Brown Act. They're included from the purview of
21 those.

22 But Mr. Alvarez dived in -- to use a pun -- into
23 the water business and was actively involved in furthering
24 the -- the goals of the Chino Water Basin. And one of
25 those -- Chino Basin Watermaster. And one of those was

1 buying water that was available from another entity and it
2 was a large deal that Mr. Alvarez did -- arose during
3 Mr. Alvarez's tenure.

4 And, after he began in May -- and I believe it
5 was something more than \$20 million, a significant deal
6 for the Watermaster, that started when Mr. Alvarez was
7 there and continued -- was not resolved at the time he was
8 placed on administrative leave.

9 And Mr. Alvarez worked every day on different
10 aspects of the Watermaster for that period. He agreed to
11 an annual review at six months, and I think the testimony
12 will show that Mr. Alvarez had no idea that there was
13 anything wrong.

14 And after that review, he was told he was placed
15 on administrative leave. He was not told why he was
16 placed on administrative leave. There was no allegation
17 of wrongdoing. It was just a choice that it was,
18 supposedly, not the right fit.

19 And so Mr. Alvarez -- the testimony will show
20 that after that, being placed on administrative leave, he
21 was available to answer any of the inquiries or assist in
22 information that was necessary to the Watermaster. And,
23 in particular, there was an unresolved issue about how to
24 finance this large purchase of water, which had not been
25 resolved, which had started in his tenure.

1 But the important thing is that Mr. Alvarez was
2 not intending to retire. He was surprised by the
3 administrative leave and was not accused of any wrongdoing
4 and was, in his opinion, available and still under the
5 control of the Watermaster through the May period.

6 And there was instances where he had to answer
7 questions and report to individuals of the Watermaster
8 during that period. And it wasn't until the end of that
9 transition period that Mr. Alvarez went and sought
10 different employment.

11 So even at the end of his -- this transition
12 period, where he was on administrative leave, he was not
13 intending to retire. He was actually searching for
14 subsequent positions that provided CalPERS benefits, or in
15 the water -- municipal water area, which were all CalPERS.

16 But because of the uncertainty about why he was
17 placed on administrative leave, it was difficult for him
18 to find an executive-level position that was at the same
19 level of expertise and authority that he had before. And,
20 so, upon filing for those -- searching out those
21 additional positions and being told that it wasn't likely,
22 then he filed a retirement application.

23 During his tenure at Watermaster, he will testify
24 that he believed or he understood that the pay schedules
25 were publicly available. And since he had a career in

1 public service, with entities that were subject to the
2 Brown Act, he was -- in his capacity as CEO, he
3 voluntarily and actively provided information to -- and as
4 quickly as possible -- to anyone who inquired.

5 There was no intent to hide anything, no intent
6 not to provide information, and it was every intent to be
7 as transparent as possible. And then subsequent to that,
8 after he retired, CalPERS raised these issues. And I
9 think the testimony showed that CalPERS attempts to apply
10 this rule 570.5 regulation, prior to the time of even
11 sending out the circular letters that announce its effect.
12 And the law isn't retroactive. And even the testimony of
13 Mr. Gutierrez says that it was not retroactive.

14 And that the regulation, itself, was not just a
15 clarification, but added additional disclosure
16 requirements that weren't in the prior law. And those
17 additional requirements that are in that law that are new
18 and not retroactive are the problems that CalPERS has in
19 this case.

20 And CalPERS has not looked at the applicable
21 public meeting laws that apply to the Watermaster. Never
22 even asked for them. And has not even attempted, in this
23 Matter, to see if, factually, the publicly available pay
24 schedules -- the pay schedules were made publicly
25 available, pursuant to the laws that apply to Watermaster.

1 They've always been applying different laws.

2 Mr. Gutierrez talked about open sessions and
3 other aspects of that 570.5, which came into effect after
4 Mr. Gutierrez was -- I mean, after Mr. Alvarez was hired.
5 So that's an overview.

6 I'd like to call Mr. Alvarez.

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

9 THE WITNESS: Sure, your Honor.

10

11

DESI ALVAREZ,

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

15 THE WITNESS: I do.

16 MR. JENSEN: Mr. --

17 THE COURT: Hold on a moment.

18 Would you please state and spell your full name.

19 THE WITNESS: Desi, D-E-S-I, Alvarez, A-L-V-A-R-E-Z.

20 THE COURT: Thank you. All right.

21 When you are ready, Mr. Jensen.

22 MR. JENSEN: Thank you, your Honor.

23 ///

24 ///

25 ///

1 DIRECT EXAMINATION

2 BY MR. JENSEN:

3 Q Mr. Alvarez, I'll briefly go through your public
4 service career.

5 First, what is your educational background?

6 A I have a Bachelor of Science degree in Civil
7 Engineering and a Master of Science degree in water
8 resourcing, Environmental Engineering.

9 Q And, at a certain point, did you teach where you
10 earned CalPERS credit?

11 A Yes, I did teach for a couple of years where I
12 did earn CalPERS credits.

13 Q What was your first position hired at a city --
14 or as a City Engineer for the City of Santa Monica?

15 A My first public agency was City Engineer for the
16 City of Santa Monica.

17 Q And did you have a subsequent position to that?
18 What was your subsequent?

19 A After the City of Santa Monica?

20 Q Yes.

21 A After the City of Santa Monica, I went to the
22 East Bay Municipal Utility District.

23 Q And what was your subsequent employer to East Bay
24 Municipal District?

25 A After that, it was the City of Redondo Beach.

1 Q And how long did you work for the City of
2 Redondo?

3 A I believe, close to five years.

4 Q And what was your position at the City of Redondo
5 Beach?

6 A Director of Public Works, City Engineer.

7 Q And did you transition to a different position
8 after that?

9 A I did leave that job, and I went to the City of
10 Glendale.

11 Q And what was the position you worked at the City
12 of Glendale?

13 A I was a City Engineer.

14 Q And how long did you work there?

15 A About two years.

16 Q That's the city we're in right now. Is this
17 Glendale?

18 A Yes.

19 Q That's interesting.

20 What city did you work for after Glendale?

21 A Then I went to work for the City of Downey.

22 Q And what was the position you started at Downey?

23 A Director of Public Works, City Engineer.

24 Q And how long did you work as Director of Public
25 Works, City Engineer?

1 A I worked for the City of Downey for about 11, 12
2 years. The first eight or nine years of that was as
3 Director of Public Works, City Engineer, and then I was
4 Deputy City Manager.

5 Q And during this time, did you purchase additional
6 retirement service credits?

7 A I did purchase additional service credits.

8 Q And does this get us up to the time period prior
9 to your applying to the Chino Basin Watermaster?

10 A Yes, sir.

11 Q So I want to turn your attention to Exhibit 203.

12 THE COURT: The big one.

13 MR. JENSEN: This is in --

14 THE WITNESS: This?

15 MR. JENSEN: Yes. And we're going to go through these
16 fairly quickly.

17 BY MR. JENSEN:

18 Q Have you seen this document before?

19 A I believe I saw this document before, yes.

20 Q And what is this document?

21 A This is, basically, the notification of the
22 Chino Basin Watermaster Chief Executive Officer position
23 being open, and the Watermaster was seeking applications.

24 Q And did you apply, based on this notice?

25 A Yes, sir.

1 Q And let me turn your attention to the next
2 exhibit, Exhibit 204.

3 Do you recognize this document?

4 A It's very similar to the previous document.

5 Q And did you apply to the Chino Basin Water
6 District based on a publicly available CEO search
7 document?

8 A Yes.

9 Q And can I turn your attention to 205.

10 A Yes.

11 Q What is this document?

12 A This is my letter submitting my qualifications
13 for the position of the Chief Executive Officer at the
14 Chino Basin Watermaster.

15 Q And attached to this -- the document that says
16 "professional qualifications."

17 A Yes.

18 Q Can you take a moment to review that quickly.

19 Was that a correct summary of your professional
20 qualifications as of the date of the application?

21 A Yes, sir.

22 Q Can I turn your attention to 206.

23 Do you recollect this document?

24 A Yes, sir.

25 Q What is this document?

1 A It is the application for a position at
2 Chino Basin Watermaster.

3 Q And on Page 3 of the document; is that your
4 signature at the bottom?

5 A Yes, sir.

6 Q And turn your attention to Exhibit 207. Which
7 might be in evidence and then whether --

8 MR. JENSEN: Do you mind, your Honor, if I just enter
9 this one, too?

10 BY MR. JENSEN:

11 Q Do you recognize this document?

12 A Yes, sir.

13 Q And what is this document?

14 A This is the employment agreement.

15 Q And I want to turn your attention to Page 6 of
16 this agreement. Is that your signature on Page 6?

17 A Yes, sir.

18 Q We're going to return to this -- this one later.
19 So I'm going to give you this sticky just so we can get
20 back to it.

21 Let me turn your attention to -- starting
22 Exhibit 215.

23 A Yes, sir.

24 Q Oh, actually, this is not what I was looking for.

25 Let me turn your attention to -- it's the

1 document behind 223.

2 A Yes, sir.

3 Q Was your first board meeting at the
4 Chino Basin Watermaster as Chief Executive Officer
5 starting May 5th, 2011?

6 A This was a meeting -- this was a meeting I
7 attended. And based on this document, it was the
8 appropriate pool.

9 Q And for -- I just want to pause here and get your
10 sense of -- as CEO, were you aware of whether the Chino
11 Basin Watermaster performed its business in a public
12 manner, such as making minutes and agendas and making
13 documents publicly available?

14 MS. KAUR: Objection. Vague as to "business."

15 THE COURT: Overruled. You can answer.

16 THE WITNESS: Watermaster had a policy of preparing
17 minutes and agendas for minutes and meetings and agendas
18 for upcoming meetings and publishing that information.

19 BY MR. JENSEN:

20 Q In your experience, was Watermaster as public as,
21 say, the City of Glendale or City of Downey?

22 MS. KAUR: Objection. Irrelevant. Vague.

23 THE COURT: Sustained.

24 BY MR. JENSEN:

25 Q Did -- in your experience, how would you compare

1 the way Watermaster ran its business or performed --
2 that's compound.

3 In your experience at prior cities, how was
4 Watermaster similar in making documents public?

5 A It would prepare materials for upcoming meetings.
6 It would notice the meetings and make those materials
7 available to the public that was interested in soliciting
8 copies.

9 Q Was there any significant difference between
10 them?

11 A Nothing major.

12 MR. JENSEN: And, your Honor, if I can, I just want
13 to -- there's a bunch of minutes here, and I just want to
14 identify Desi Alvarez as being listed and present on
15 these, without going into individual ones, just to show
16 that he was regularly performing the duties as the CEO.

17 So if that's okay, I'm going to go through a
18 block of these together?

19 MS. KAUR: That's fine.

20 BY MR. JENSEN:

21 Q And, Mr. Alvarez, on the front of 223, do you see
22 that meeting of May 5th, you were listed as the Chief
23 Executive Officer?

24 A Yes, sir.

25 Q And on the next one, 224, do you see in the

1 meeting on May 12, 2011 -- you see where you're listed as
2 Chief Executive Officer?

3 A Yes, sir.

4 Q On the front of Exhibit 225, do you see that
5 under the Watermaster staff present, you were listed as
6 Chief Executive Officer?

7 A Yes, sir.

8 Q On the document behind 226, which is a board
9 meeting of May 26, do you see you listed as the Chief
10 Executive Officer present at the meeting?

11 A Yes, sir.

12 Q On the document in 227, do you see yourself
13 listed as the Chief Executive Officer present at the
14 June 2nd meeting?

15 A Yes, sir.

16 Q At the meeting of June 9th, 2011, do you see
17 yourself listed as the Chief Executive Officer?

18 A Yes, sir.

19 Q At the meeting of June 16, 2011, do you see
20 yourself listed as the Chief Executive Officer?

21 A Yes, sir.

22 Q At the document behind 230, do you see yourself
23 listed as Chief Executive Officer on June 23rd, 2011?

24 A Yes, sir.

25 Q At the document behind 231, do you see yourself

1 listed as the Chief Executive Officer, July 14?

2 A Yes, sir.

3 Q At the meeting that's in evidence, behind 232,
4 also on July 14th, do you see yourself listed as
5 Chief Executive Officer?

6 A Yes, sir.

7 Q Okay. In the document behind 233, the meeting of
8 July 21st, 2011, do you see yourself listed as Chief
9 Executive Officer?

10 A Yes, sir.

11 Q And the document behind 234 -- which is a
12 different date entirely.

13 MS. KAUR: I'm sorry. Which exhibit is it?

14 MR. JENSEN: No, it's just, it's in here
15 inadvertently. We'll skip over that.

16 BY MR. JENSEN:

17 Q And in the document behind 235, do you see
18 yourself listed as the Chief Executive Officer on the
19 meeting of July 28th, 2011?

20 A Yes, sir.

21 Q And the document behind 230 -- sorry. I'm going
22 to skip that one, too.

23 In the document behind 237, do you see yourself
24 listed as Chief Executive Officer in the meeting on
25 August 11, 2011?

1 A Yes, sir.

2 Q And in the document behind 238, do you see
3 yourself listed as the Chief Executive Officer on the
4 August 11th meeting?

5 A Yes, sir.

6 Q And in the document behind 239, do you see
7 yourself listed as the Chief Executive Officer on
8 August 11, 2011?

9 A Yes, sir.

10 Q And the document behind 240, on the August 18,
11 2011, meeting, do you see yourself listed as the Chief
12 Executive Officer?

13 A Yes, sir.

14 Q And in the document behind 241, do you see
15 yourself listed as Chief Executive Officer on the
16 August 25th 2011?

17 A Yes, sir.

18 Q Do you see yourself listed in the document behind
19 242, as the CEO on September 8th, 2011?

20 A Yes, sir.

21 Q And in the document behind 243, do you see
22 yourself listed as Chief Executive Officer on
23 September 8th, 2011?

24 A Yes, sir.

25 Q And the document behind 244, do you see yourself

1 listed as Chief Executive Officer on September 8th, 2011?

2 A Yes, sir.

3 Q And the document behind 245, do you see yourself
4 listed as the Chief Executive Officer in the meeting of
5 September 15th, 2011?

6 A Yes, sir.

7 Q In the document behind 246, do you see yourself
8 listed as the Chief Executive Officer for the meeting of
9 September 22nd, 2011?

10 A Yes, sir.

11 Q In the document behind 247, do you see yourself
12 listed as the Chief Executive Officer on the meeting of
13 the October 13, 2011?

14 A Yes, sir.

15 Q On document behind 248, do you see yourself Chief
16 Executive Officer on the meeting of the October 13, 2011?

17 Q Yes, sir?

18 Q In the document behind 249, do you see yourself
19 listed as Chief Executive Officer on October 13, 2011?

20 A Yes, sir.

21 Q In the document behind Exhibit 250, do you see
22 yourself listed as the Chief Executive Officer on
23 October 20th, 2011?

24 A Yes, sir.

25 Q In the document behind 251, do you see yourself

1 listed as Chief Executive Officer on October 27th, 2011?

2 A Yes, sir.

3 Q And that's the end of that series.

4 So, Mr. Alvarez, can you tell us a little bit
5 about --

6 THE COURT: I'm sorry. We went up to -- what was the
7 last one?

8 MR. JENSEN: 251.

9 THE COURT: Okay. Thank you.

10 BY MR. JENSEN:

11 Q So, Mr. Alvarez, can you tell us a little bit
12 about what was your experience as CEO of the Watermaster?

13 MS. KAUR: Objection. Vague.

14 BY MR. JENSEN:

15 Q What did you -- actually, what did you do as CEO
16 of the Watermaster from May 2011, at least, through
17 November 2011?

18 A I, basically, performed functions as
19 Chief Executive Officer in charge of the Watermaster
20 serving at the pleasure of the Board. Responsible for
21 day-to-day activities, enforcement of the judgment,
22 implementation of the Basin Management Program and,
23 generally, trying to promote the activities of Watermaster
24 in improving the operations of the Chino Basin.

25 Q And after you became CEO, was -- did there arise

1 an opportunity to "buy water from a" -- or the unusual
2 opportunity to "buy water"?

3 A In the summer of 2011, it was a pretty wet year,
4 and there was a surplus of water, if you can call it that,
5 in the State of California. The availability of buying
6 water was there, and it came to the attention of the
7 Watermaster. And I brought that to the attention of the
8 Board, and we pursued acquisition of additional water
9 supplies that year.

10 Q And can you -- was that an unusual opportunity,
11 in your experience?

12 A That was an unusual opportunity in that there was
13 a lot of water available at a very discounted rate that
14 was made available. And you had to act quickly to,
15 basically, tie up that water.

16 Q And can you tell us, without revealing any
17 confidential information, the approximate cost of water?

18 A It was about -- in the \$20 million range that the
19 purchase of all the water would have been.

20 Q And was that a big agenda item for the
21 Chino Basin Watermaster? Is this a big financial expense?

22 A Well, yes. It was the acquisition of,
23 approximately, 50,008 feet of water. I think, in the end,
24 there was less than that that was acquired. But there was
25 initial commitment, and that would have been about

1 \$20 million. And it would have been around my expenditure
2 of money because the budget had been approved without the
3 anticipation of that water becoming available.

4 Q And was that something that you shepherded
5 through the process?

6 A Yes, sir.

7 Q Now, this touches on your interest in water a
8 little bit. Can you tell us -- tell us about your
9 interest in water?

10 A I've always had water as, kind of, the area of
11 practice within the civil engineering field that I've
12 tried to focus on. My Master's Degree was in
13 environmental engineering and water resources. I practice
14 as a consultant in the water area and that's always been,
15 kind of, my field of expertise, if you will, and where I'm
16 more attracted to. So that's where I tend to spend more
17 time, even though I've had jobs that encompassed issues
18 other than water.

19 Q Let me go back to your tenure at Downey. What
20 were you looking -- what attracted you to the Watermaster
21 position?

22 A I was in a position in my career where I was
23 looking to make a change, to go to an agency where I was
24 -- just would be involved in water-related issues. I'd
25 been very active for the previous 10 years in the -- in

1 operating the water department at the City of Downey, it
2 was part of the Public Works Department. And, during that
3 period of time, I got very involved in the adjudication of
4 the Central Basin, which is an adjudicated basin.
5 Adjudicated in the early 1960s. And we were going through
6 an amendment to the adjudication.

7 Q And when you say "adjudicated basin," can you
8 describe what you mean by that?

9 A An adjudicated basin is a basin for the water
10 rights. Basically, are established under the jurisdiction
11 of the Court.

12 MS. KAUR: Sorry. I didn't hear you. Jurisdiction --

13 THE WITNESS: Of the Court.

14 BY MR. JENSEN:

15 Q And does an adjudicated basin mean that there is
16 a Watermaster for that basin?

17 A Generally, that would be the case.

18 Q And are you aware of how many Watermasters there
19 are in California?

20 A No.

21 Q And were you aware that the court retains
22 jurisdiction over the Watermaster pursuant to -- to the
23 adjudication?

24 MS. KAUR: Objection to the extent it calls for
25 speculation. Vague.

1 THE COURT: Overruled. You can answer. Just don't
2 guess or speculate.

3 THE WITNESS: Yes.

4 BY MR. JENSEN:

5 Q And what was your understanding of the Court's
6 role in the Watermaster?

7 MS. KAUR: Objection. Vague.

8 BY MR. JENSEN:

9 Q What was your understanding, the Court's role in
10 an adjudicated basin?

11 A The adjudication stipulates or controls the
12 activities that are gonna be allowed in the basin and the
13 amount of water that's gonna be pumped. And it's also
14 subject to review by the Court. Usually, the
15 implementation of that Judgment is done by a Watermaster.

16 Q And what prior experience had you had with
17 adjudicated basins prior to seeking employment at the
18 Chino Basin Watermaster?

19 A I was primarily involved with the previous
20 10 years in the amendments and adjudication issues with
21 the Central Basin Municipal -- Central Basin. And prior
22 to that, I've been, generally, aware of other basins,
23 where adjudication has taken place. But normally as a
24 practitioner not directly involved in any actives
25 representing the basin, per se, in front of the court.

1 Q So let me explore your intentions when you were
2 at the City of Downey. Were you considering retiring --

3 A No, sir.

4 Q Let me finish the question.

5 Were you considering retiring when you were
6 seeking employment after the City of Downey?

7 MS. KAUR: Objection. Irrelevant.

8 THE COURT: Overruled. You can answer.

9 THE WITNESS: No, sir. I was 57 years old. I was
10 figuring I was gonna work another 5 to 10 years.

11 BY MR. JENSEN:

12 Q And -- so was increasing your retirement any
13 significant reason of why you went to seek employment with
14 the Watermaster?

15 MS. KAUR: Objection. Vague.

16 THE COURT: I'm sorry, Ms. Kaur.

17 MS. KAUR: Vague.

18 THE COURT: Overruled.

19 THE WITNESS: No, sir.

20 BY MR. JENSEN:

21 Q And how would you characterize your conception of
22 the Watermaster job when you were applying for it?

23 A Chino Basin Watermaster was an interesting
24 position because in the nature of the Chino Basin judgment
25 and the way it was structured, it seemed like a position

1 that I would be very interested in pursuing, and I did.

2 Q And without getting into any detail, what did you
3 find interesting about the nature of the Chino Basin
4 judgement?

5 A It allowed for storage. It had a more
6 comprehensive view and active management of the basin that
7 had developed over the period of time since the initial
8 adjudication. And that was, basically, it.

9 Q And prior to seeking employment with the
10 Chino Basin Watermaster, you had learned some significant
11 information about it from -- did you learn that
12 information from the Chino Basin Watermaster itself?

13 A I think I learned it just in generically being in
14 the business and paying attention to how other
15 adjudications were implemented.

16 Q So, before we move forward, what was your salary
17 at the City of Downey? Do you recall what your salary
18 was?

19 A I think it was probably around \$190,000.

20 Q And did the City of Downey also pay your PERS
21 contributions?

22 A Yes, it did.

23 Q And are you aware of what the final compensation
24 period for the City of Downey is? Is it a one year or
25 three year?

1 A It's a one year.

2 Q And did you inquire about the -- when you were
3 applying to the Watermaster, did you inquire about CalPERS
4 benefits as you were seeking employment?

5 A No, I did not, specifically.

6 Q And was all of your application and your
7 interviews -- well, let me just say this: Were you
8 personally acquainted with any of the board members of the
9 Chino Basin Watermaster -- let me withdraw that.

10 Q Were you personal friends with any of the members
11 of the Chino Basin Watermaster, who were involved with
12 hiring you as CEO?

13 A I was not.

14 Q Would you describe it as an arm's length
15 negotiation?

16 A Yes, sir.

17 Q And how were you paid at the Chino Basin
18 Watermaster? Were you paid every two weeks?

19 A I was paid every two weeks.

20 Q And did -- did the Watermaster pay your CalPERS
21 contributions as well?

22 A Yes, sir.

23 Q So I'm going to ask you a little emotional issue
24 here about the administrative leave. Tell us the
25 circumstances of how you learned about you being placed on

1 administrative leave?

2 A I was having a six-month review that we had
3 agreed to early on when I was retained or hired. That I
4 would have a six-month evaluation, and I expected that.
5 As a result of the six-month evaluation, I was basically
6 told, you know, that I would change employments, in terms
7 of your day-to-day responsibilities.

8 MS. KAUR: And I have a belated objection, your Honor,
9 as misstates facts. Well, states facts not in evidence.
10 There's no evidence that Mr. Alvarez was placed on
11 administrative leave.

12 BY MR. JENSEN:

13 Q Mr. Alvarez, were you placed on administrative
14 leave?

15 A That's what I was told that day.

16 Q And who told you that?

17 A Scott Slater.

18 Q What did he tell you?

19 MR. HERREMA: I'm going to -- it might be anything
20 covered by privilege.

21 MR. JENSEN: Is Mr. Slater an attorney?

22 MR. HERREMA: Yes, he's the counsel for the
23 Watermaster.

24 MS. KAUR: Was he representing Mr. Alvarez at the
25 time?

1 MR. HERREMA: No, he was representing the Watermaster,
2 but I don't know what the discussion was beyond that.

3 MR. JENSEN: I don't either. So the instruction is,
4 if there's any confidential information --

5 MR. HERREMA: To the Watermaster.

6 MR. JENSEN: -- that the Watermaster's attorney
7 communicated to you, prior to this issue of raising the
8 administrative leave -- let's not discuss that. But it
9 could be determined that it would be adverse -- well, not
10 even adverse because he's still an employee. So I'll just
11 stay away from that.

12 MS. KAUR: Your Honor, I still don't understand how
13 the privilege applies.

14 MR. HERREMA: He's an employee having a conversation
15 with Watermaster legal counsel.

16 MR. JENSEN: And, unfortunately, I, kind of, generated
17 the question because I didn't know it was the -- Slater
18 was the attorney who did it.

19 THE COURT: Okay. I'm not sure either, but my sense
20 was Mr. Jensen was going to move away from this. So,
21 perhaps, we'll revisit it later, depending on questioning.

22 MR. JENSEN: Your Honor, can I just instruct my
23 client, just so he doesn't inadvertently say anything
24 that's confidential because there's some issues about this
25 document getting out that is unclear.

1 THE COURT: Okay. I think the easier thing to do,
2 when Mr. Jensen is questioning you, don't repeat anything
3 that Mr. Slater told you during that meeting. If the
4 other attorneys ask you questions about that, then we'll
5 revisit this. But Mr. Jensen is saying his questions
6 don't intend to elicit comments from Mr. Slater. Does
7 that sum it up?

8 MR. JENSEN: Yes, your Honor. Thank you.

9 BY MR. JENSEN:

10 Q So, Mr. Alvarez, did anyone else, other than the
11 counsel for Chino Watermaster, indicate to you that you
12 were on administrative leave and still an employee?

13 A No, sir.

14 Q And so -- after this meeting, did you understand
15 that you were still an employee of the Chino Basin
16 Watermaster?

17 MS. KAUR: Objection. Vague as to "this meeting."

18 BY MR. JENSEN:

19 Q When did this meeting -- six-month review occur?

20 A It could have been around November 9th.

21 Q After November 9th, did you consider yourself
22 still an employee of Chino Basin Watermaster?

23 A I did.

24 Q And did you still have an E-mail address at the
25 Chino Basin Watermaster?

1 A I did.

2 Q And did you receive a check from the Chino Basin
3 Watermaster every two weeks?

4 A Well, it was direct deposited.

5 Q Sorry. And did you -- well, what did you do
6 during this period from November 9th through May 2nd
7 within the context of employment? Did you make yourself
8 available to the Chino Basin Watermaster to answer
9 questions and provide information?

10 MS. KAUR: Objection. Compound. Leading.

11 THE COURT: Sustained.

12 BY MR. JENSEN:

13 Q What did you do during this period of
14 November 9th, in an employment aspect, for the Chino Basin
15 Watermaster?

16 A I was available to, pretty much, do as I was
17 doing at the pleasure of the Board and, primarily, I was
18 available -- had some conversation with various board
19 members, during that period of time, to address some of
20 their questions. And, I believe, I also had some
21 conversations with Mr. Jeske, who was -- became the
22 day-to-day active, interim CEO.

23 Q Now, let me specifically ask you about this, and
24 I'm going to use the word "buy water" --

25 MS. KAUR: I'm sorry. I didn't hear the term.

1 MR. JENSEN: It's a colloquialism. I don't know the
2 technicalities of it, so I'm just using the phrase "buy
3 water."

4 BY MR. JENSEN:

5 Q Had the Chino Basin Watermaster yet closed the
6 deal to buy water that you had initiated early in your
7 tenure with the Watermaster?

8 A Yeah.

9 MS. KAUR: Objection. Vague as to time.

10 MR. JENSEN: Let me rephrase it.

11 THE COURT: Lay a little foundation.

12 BY MR. JENSEN:

13 Q After May 3rd, 2011, you were involved in
14 initiating this \$20 million effort to buy water for the
15 Watermaster; is that correct?

16 A Yes, sir.

17 Q By the time that you were placed on
18 administrative leave on November 9th, had the financing
19 for that deal been completed?

20 A No, it was not a hundred percent completed.
21 Total purchase of water, and I don't recall exactly, was
22 never the full 50-acre feed. I think it ended up being
23 less than that amount because of some of the delays in
24 getting the deliveries. And so the financing was, pretty
25 much, in place, but not finalized.

1 Q And was this a significant initiative by the
2 Watermaster that was still unresolved at the time you were
3 placed on administrative leave?

4 A There were some loose ends.

5 Q And were you one of the few people who was
6 familiar with how to resolve those loose ends?

7 A I was one of.

8 Q And did you have any specific expertise in that
9 deal that the Watermaster would -- that you had that other
10 people wouldn't have?

11 A I did have expertise that's probably pretty
12 limited.

13 Q And by "limited" do you mean --

14 A Limited to me.

15 Q Limited to you. And are you aware when that --
16 that issue of buying water was actually finally resolved?

17 A Sometime in the subsequent six to nine months.

18 Q And were there other issues that had arisen
19 during your initial tenure that you had significant, let's
20 say, expertise on that the Board would want to keep you
21 available to answer information on?

22 MS. KAUR: Objection. Vague. Compound.

23 THE COURT: Sustained.

24 BY MR. JENSEN:

25 Q Were there other initiatives that had begun the

1 first part of your tenure that you had specific --
2 specific expertise in that were unresolved at the time of
3 your administrative leave?

4 MS. KAUR: Objection. Compound.

5 THE COURT: Overruled.

6 THE WITNESS: There -- there wasn't any initiative.
7 There were other activities that I had information about
8 that the Board may, from time to time, want to ask about.

9 BY MR. JENSEN:

10 Q And, in fact, did the Board call on you, or
11 individuals associated with the Watermaster, in that
12 period of November 2011 to May of 2012?

13 A I did have some phone calls from board members.

14 Q So let me ask you about some of the language used
15 in these terms. And let me just look at this, What's
16 called the "confidential settlement agreement," again.

17 MS. KAUR: Are you referring to the separation
18 agreement?

19 MR. JENSEN: Yeah. Actually, I misspoke. Yes.

20 MS. KAUR: It's Exhibit 12 in CalPERS binder.

21 MR. JENSEN: Thank you.

22 BY MR. JENSEN:

23 Q And, first, let me just clarify a little bit of
24 background. Did you provide this document to me in the
25 course of your initial discussion in this Matter?

1 A I don't believe I provided this document to you.

2 Q Let me just direct your attention to the first
3 page, where it says "termination of active employment."
4 This uses the term "termination." Did you understand that
5 you were terminated?

6 A No, I was not terminated, in terms of employment.
7 I was terminated, in terms of the role in, and my role
8 changed.

9 Q And -- so let's look at this transition period.
10 Was it your understanding that you were still an employee
11 who was, in effect, transitioning your knowledge to the
12 next CEO from November 9th to May?

13 A Yes, sir.

14 Q And let me just turn your attention to -- it says
15 "transition period duties." Did you continue to have
16 duties that you felt you owed to the Watermaster after
17 November 2011?

18 MS. KAUR: Objection. Vague. Compound.

19 THE COURT: Overruled. You can answer.

20 THE WITNESS: I had a responsibility to the
21 Watermaster, yes.

22 BY MR. JENSEN:

23 Q Did you feel like the Watermaster had a right to
24 control what you did after November 2011 till May?

25 A Yes, I was not free to do anything I wish to do.

1 Q And did you actually work full-time for anyone
2 else during that period?

3 MS. KAUR: Objection. Irrelevant.

4 THE COURT: Overruled.

5 THE WITNESS: No, I did not work full-time.

6 BY MR. JENSEN:

7 Q And let me turn your attention to the second
8 page, here, and it says "C" -- "There's compensation of
9 benefits" and then there's two words in quotes. It says,
10 "Severance Compensation." Did you -- what's your
11 understanding of severance compensation?

12 MS. KAUR: Objection to the extent it calls for a
13 legal opinion.

14 MR. JENSEN: Let me just ask a different question.

15 BY MR. JENSEN:

16 Q In your opinion, were you severed -- did
17 Watermaster severe you from employment in November 2011?

18 A No.

19 Q And why not?

20 A Because they did not.

21 Q And did you feel like you continued to work for
22 them?

23 A Yes, sir.

24 Q And were you paid a lump sum of the rest of the
25 monies due to you under the contract, at the time you were

1 placed on administrative leave on November 2011?

2 A No.

3 Q If you had been severed, would you have been --
4 would you have expected to receive a lump sum of the
5 monies due on the contract?

6 MS. KAUR: Objection to the extent it calls for
7 speculation. Irrelevant.

8 THE COURT: Sustained.

9 BY MR. JENSEN:

10 Q So let me ask you why, on the front of this
11 document, on Page 1, it says "Separation Agreement"? Did
12 you feel like you were separated from the Watermaster as
13 of November 2011?

14 MS. KAUR: Objection. Vague.

15 THE COURT: Overruled.

16 THE WITNESS: Basically, my responsibility had changed
17 and that was what happened as of that date.

18 BY MR. JENSEN:

19 Q So there's been a -- you've been sitting here for
20 the last couple days listening to the testimony; is that
21 correct?

22 A Yes, I have.

23 Q And there's been a lot of testimony as to what
24 these terms mean about "separation" or "severance." When
25 you signed this agreement, were you reading these terms as

1 having a legal effect on your employment relationship with
2 the Watermaster?

3 A Yes.

4 Q And what was the legal effect that you were
5 having?

6 MS. KAUR: Objection to the extent it calls for a
7 legal opinion.

8 MR. JENSEN: What was your interpret --

9 MS. KAUR: Go ahead.

10 BY MR. JENSEN:

11 Q What was your feeling that the legal effect of
12 this agreement had?

13 A It, basically, stipulated to the change of my
14 responsibilities as Watermaster.

15 Q And what were your new responsibilities arising
16 under this agreement?

17 A That I was no longer responsible for the
18 day-to-day responsibilities. And day-to-day
19 responsibilities are things like: Budgeting, and
20 personnel, and other functions of that nature, preparing
21 for correspondence, and actively representing Watermaster
22 before its Board and the pools, et cetera.

23 Q Under your initial employment agreement, were you
24 required to do whatever the task or duty the Board assumed
25 you to do?

1 A Yes, sir.

2 Q And did this agreement change that, in that the
3 Board was now still assigning you duties and
4 responsibilities?

5 MS. KAUR: Objection. Vague.

6 THE COURT: Overruled.

7 THE WITNESS: I was still there to serve the Board, as
8 to the assigned responsibilities.

9 BY MR. JENSEN:

10 Q And there was some testimony by -- when the
11 CalPERS witnesses -- that, you know, maybe you could have
12 answered the question, maybe you didn't have to answer the
13 question that Watermaster asked you.

14 Did you feel like you had a legal obligation to
15 continue to assist Watermaster until May 3rd, 2012?

16 A Yes, sir.

17 Q You felt -- did you feel like you had an
18 obligation and a responsibility to perform tasks or duties
19 for the Watermaster?

20 MS. KAUR: Objection. Vague.

21 THE COURT: Overruled.

22 THE WITNESS: I did feel a responsibility, a
23 professional moral and legal responsibility, to be
24 available to the Watermaster during the term of my
25 employment.

1 BY MR. JENSEN:

2 Q Now let me just -- and then at a certain point,
3 did you seek a different position -- you know what? It's
4 in the second binder. I apologize. It's Exhibit 265 in
5 the small binder here.

6 At a certain point, did you start seeking work,
7 again, at an executive level, in the -- in your expertise
8 of water management?

9 A Yes.

10 Q And can I turn your attention to 265. What is
11 this document?

12 A This is an E-mail from myself to Norm Roberts.

13 Q And is this a position that was going to be open
14 after the end of the May 3rd, 2012, period?

15 A This was -- there were a couple of positions that
16 came to my attention, recognizing my employment was coming
17 to an end, and it takes time to go through the process of
18 applying. And, eventually, if one is fortunate enough to
19 get appointed to these positions, it's several months'
20 period of time. So when these positions became available,
21 and I was aware of them, I pursued applying for the
22 positions.

23 Q And just -- this is your E-mail on the top? You
24 sent this E-mail?

25 A I did.

1 Q And let me just turn your attention to the bottom
2 of this E-mail from Norm Roberts, where it says, "We
3 expect to be recommending a limited number of candidates
4 for interviews in early to mid April." And so the start
5 date of the position, would it be after that? Is that
6 your understanding?

7 A Yes, sir.

8 Q And it would be -- the start date of this
9 position would be after the end of your continued tenure
10 with Watermaster through May 2012; is that correct?

11 A More than likely.

12 Q And did you get this position?

13 A I did not.

14 Q And, at that point, were you intending to retire?

15 A No, I was not.

16 Q And what led you to decide to file a retirement
17 application?

18 A After pursuing these two positions and not being
19 invited for an interview with either -- let me back up.
20 In my career, I moved around quite a bit. I'm of the
21 opinion -- and with the exception of the City of Downey --
22 where I probably lasted longer than anywhere else -- I
23 moved every two to five years. I've always in -- in
24 applying for positions, at least gotten invited to the
25 dance.

1 And this was one of those times where I did not
2 get, basically, invited for an interview. So that led me
3 to question, kind of, what was up. Norm was very
4 professional. He just said "Hey. You know, they chose to
5 interview a handful of other candidates. You are not on
6 the short list."

7 I then reached out to another headhunter to, kind
8 of, just say, "Hey. Kind of, what's the situation out
9 there?" Not that I didn't anticipate it. It was -- you
10 try to keep things confidential, but things aren't always
11 confidential.

12 So in talking to another headhunter, his advise
13 was, "It's gonna be a little bit tough to explain the
14 situation. And you'd be better off just not looking for a
15 position for a while, or you might want to consider a
16 lower-level position."

17 At the time, I was really -- and to this day, I'm
18 not interested in a lower-level position, you know. I
19 wanted to be General Manager or that level. And so it was
20 like, yeah, writing's on the wall right now. So I said, I
21 probably ought to go ahead and retire.

22 Q And let me just back up just a little bit. Were
23 you ever given an explanation why you were placed on
24 administrative leave by the Watermaster, outside of any
25 confidential communication?

1 MS. KAUR: I'm sorry. I'm having a hard time hearing.

2 BY MR. JENSEN:

3 Q Were you ever provided an explanation of why you
4 were placed on administrative leave, and then I said,
5 outside of any confidential information?

6 A Not really.

7 Q And was -- you heard the testimony here, that it
8 was not for a cause. Is that your understanding?

9 A Yes.

10 MR. JENSEN: Your Honor, if I can just have a moment
11 to go through.

12 THE COURT: Yes.

13 MR. JENSEN: I'm just making sure I have all the
14 documents I need.

15 THE COURT: Okay.

16 BY MR. JENSEN:

17 Q So, Mr. Alvarez, let me just turn your attention
18 to one last thing: When you were CEO, were you aware
19 whether the Watermaster maintained a pay schedule that
20 listed your CEO salary at \$228,000 that was publicly
21 available?

22 MS. KAUR: Objection. Vague as to the term "pay
23 schedule" and to the extent it calls for speculation.

24 THE COURT: Overruled. You can answer, if you know.

25 THE WITNESS: I was aware that the Watermaster

1 maintained a schedule listed of all the positions,
2 including the CEO.

3 BY MR. JENSEN:

4 Q And if I can just turn your attention to, I think
5 it's their S, which it doesn't have a tab on it.

6 Mr. Alvarez -- in the Watermaster exhibits. It
7 would be the last one, I think.

8 A This?

9 Q The next page.

10 A Okay.

11 Q Is this the document -- do you recognize this
12 document?

13 A Yes.

14 Q And what is this document?

15 A Basically, a matrix that shows all of the
16 different positions that are authorized and respective
17 salary ranges.

18 Q And did you -- do you have any recollection, now,
19 that when you were CEO, that this document, in this form,
20 was available to the public, when you were CEO at
21 Chino Basin Watermaster?

22 A Yes.

23 MR. JENSEN: I think that's it, your Honor. I'm just
24 going to go through these again to make sure I have --

25 ///

1 BY MR. JENSEN:

2 Q Actually, let me just direct your attention to
3 Exhibit 225, Mr. Alvarez.

4 That would be 225.

5 A Yes, sir.

6 Q I'm sorry. I misread that. It's 255. Sorry.
7 Do you recognize this document?

8 A Yes.

9 Q And what is it?

10 A It's, basically, the description of the CEO
11 position and --

12 Q And is one of the duties, the CEO receives
13 direction from and is responsible to the Watermaster Board
14 of Directors?

15 MS. KAUR: I'm sorry. Are you looking somewhere here?

16 MR. JENSEN: Yeah, I'm reading it.

17 MS. KAUR: Where are you reading?

18 MR. JENSEN: In the general description.

19 BY MR. JENSEN:

20 Q Is part of the CEO's job to receive direction and
21 be responsible to the Watermaster Board of Directors?

22 A Yes, sir.

23 Q And did it remain one of your duties to receive
24 direction from and be responsible to the Watermaster Board
25 of Directors from May 2011 to May 2012?

1 MS. KAUR: Objection. Vague as to the term
2 "responsible."

3 THE COURT: Overruled.

4 THE WITNESS: Yes, sir.

5 MR. JENSEN: I have no further questions. Although, I
6 would like to redirect.

7 THE COURT: Okay. Let's go over your exhibits that
8 you identified with Mr. Alvarez. I'm assuming you
9 intended to offer those.

10 MR. JENSEN: Yes, I'd like to offer -- there's chunks
11 of them. If we can go -- I think 203 to 207 have to do
12 with his application and his employment. I'd like to
13 offer those as a group.

14 THE COURT: Yes. Mr. Herrema, any objection to 203 to
15 207?

16 MR. HERREMA: No objection.

17 THE COURT: All right. Ms. Kaur?

18 MS. KAUR: I have no objection, your Honor.

19 THE COURT: Okay. Then I will admit 203, 204, 205,
20 206, and 207.

21 (Respondent's Exhibits 203 through 207 were
22 received in evidence by the Court.)

23 THE COURT: The next, I think, are the minutes.

24 MR. JENSEN: I believe those started on 223.

25 THE COURT: Yes.

1 MR. JENSEN: So there's a chunk of minutes wrongly
2 dated. So let me just try to offer chunks.

3 MR. HERREMA: (Inaudible)

4 THE COURT REPORTER: I'm sorry. I can't hear you.

5 THE COURT: He said there's more than one.

6 MS. KAUR: And there are at least two.

7 THE COURT: Okay. So 223 through 233. That's the
8 first group.

9 MR. JENSEN: Great.

10 THE COURT: Any objection to any of those?

11 MR. HERREMA: No, your Honor.

12 MS. KAUR: No, your Honor.

13 THE COURT: Okay. So I will admit 223 through 233.

14 (Respondent's Exhibits 223 through 233 were
15 received in evidence by the Court.)

16 THE COURT: 234 was the one out of sequence, so I'm
17 assuming you didn't intend to offer that one.

18 MR. JENSEN: I withdraw 235.

19 THE COURT: 235, I believe, you did want to offer.

20 MR. JENSEN: Yes, your Honor.

21 THE COURT: Any objection to 235?

22 MR. HERREMA: No, your Honor.

23 MS. KAUR: No, your Honor.

24 THE COURT: Okay. That's admitted.

25 (Respondent's Exhibit 235 was received in

1 evidence by the Court.)

2 THE COURT: And then picking up at 237 straight
3 through to 251, I believe, are the next group of minutes.
4 Is that right?

5 MR. JENSEN: That's -- yes, that's is correct, your
6 Honor.

7 THE COURT: Any objection to 237 through 251?

8 MS. KAUR: No, your Honor.

9 MR. HERREMA: No, your Honor.

10 THE COURT: All right. Then 237 is admitted and so
11 are the remaining exhibits through 251.

12 (Respondent's Exhibits 237 through 251 were
13 received in evidence by the Court.)

14 THE COURT: Okay. Then you identified 255, I think,
15 just a moment ago.

16 MR. JENSEN: Yes. I'd like to offer 255.

17 THE COURT: Okay. Any objection to 255?

18 MS. KAUR: No, your Honor.

19 MR. HERREMA: No, your Honor.

20 THE COURT: All right. 255 is admitted.

21 (Respondent's Exhibit 255 was received in
22 evidence by the Court.)

23 THE COURT: I had previously admitted 258 and 259.
24 265, you had identified earlier. That's the E-mail with
25 Mr. Robert's consulting group.

1 MR. JENSEN: Yes. Yes, I'd like to offer 255.

2 MS. KAUR: 265.

3 MR. JENSEN: I would like 265. Sorry.

4 THE COURT: Yes. Any objections to 265?

5 MS. KAUR: No, your Honor.

6 MR. HERREMA: No, your Honor.

7 THE COURT: All right. 265 is admitted.

8 (Respondent's Exhibit 265 was received in
9 evidence by the Court.)

10 THE COURT: I had previously admitted 266 and 267. I
11 believe that that should resolve all of the exhibits that
12 had been identified. Let me just double check.

13 MS. KAUR: I believe 264 was withdrawn.

14 THE COURT: Yes. That was an understanding. Let's
15 double check though. Thanks for bringing that up.

16 MR. JENSEN: And, your Honor, parts of this -- I
17 believe this is -- the attachment was incorrect or a
18 draft, and this -- yes. It's withdrawn.

19 THE COURT: Okay. Okay. Thank you, Mr. Jensen.

20 MR. JENSEN: Thank you, your Honor.

21 THE COURT: Mr. Herrema, I'm assuming you go next.

22 MR. HERREMA: I have no questions.

23 THE COURT: Okay. All right.

24 Ms. Kaur, when you are ready.

25 Okay. Mr. Alvarez, remember to keep your voice

1 up, especially since you are probably -- and you are going
2 to be looking away from the reporter. It's important that
3 she understand what you are saying so we have a clear
4 record. When she and I keep asking you to keep our voice
5 up, that's our main concern. Also, I want the other
6 attorneys to hear what you are saying, too.

7 MR. JENSEN: Just one -- Mr. Alvarez has medical
8 restrictions on his voice. So -- so he's limited in his
9 ability to vocalize.

10 THE COURT: Okay. All right.

11 THE WITNESS: I'm okay.

12 THE COURT: Keep us posted on that. If I see anything
13 happening over there.

14

15 CROSS-EXAMINATION

16 BY MS. KAUR:

17 Q Mr. Alvarez, if you could turn to CalPERS exhibit
18 binder. It's to the very left.

19 A It's this one?

20 Q Yes. And if you could turn to Exhibit 11 in that
21 binder.

22 A Yes.

23 Q And on the first page of Exhibit 11, which is an
24 employment agreement, Chief Executive Officer -- well,
25 actually, let's turn to the very last page. Is that your

1 signature on this agreement? It would be Page 6.

2 A Yes.

3 Q So if you could turn back to the first page of
4 this exhibit, Exhibit 11.

5 A Yes.

6 Q On the very first page, under Item 1, which is
7 labeled "employment," the second sentence says, "During
8 the employment term (as here and after defined), Executive
9 will have the title, status, and duties of CEO and will
10 report directly to Watermaster Board of Directors
11 (Board)."

12 After November 9th, 2011, did you have the title
13 of CEO?

14 A As far as I'm concerned, I did. I was never
15 assigned any different title.

16 Q And if you could turn to Exhibit 12. That's the
17 separation agreement. And if you could turn to what is
18 numbered at the very bottom, Page 7, of this confidential
19 separation agreement. Is that your signature on the
20 separation agreement?

21 A Yes, ma'am.

22 Q And if you could turn to the first page of the
23 confidential separation agreement?

24 A Yes, ma'am.

25 Q And under Item 1 of the separation agreement, it

1 reads, "Termination of active employment. Executive
2 employment in the capacity of Chief Executive Officer of
3 the Watermaster with all of the powers and duties
4 associated there when ceased on November 9th, 2011."
5 And -- so let me just stop there.

6 So despite this language in the separation
7 agreement that you signed, is it still your opinion that
8 you were the Chief Executive Officer after November 9th,
9 2011, for the Watermaster?

10 A Yes, ma'am. My position -- I was never given a
11 different title. And when I signed this, my understanding
12 was we're just basically documenting that your
13 responsibilities are being modified, and they were being
14 modified effective on November 9th, 2011, which is what
15 the agreement does state.

16 Q It appears to state that you are no longer the
17 CEO. Do you disagree with that?

18 MR. JENSEN: Objection. Asked and answered.
19 Argumentative.

20 THE COURT: Overruled. Why don't you answer again.

21 THE WITNESS: The agreement, basically, states that my
22 capacity as CEO had changed, effective of
23 November 9th, 2011 --

24 MS. KAUR: So can you --

25 THE WITNESS: -- and were modified to reflect

1 different responsibilities.

2 BY MS. KAUR:

3 Q So I see the term "ceased." Can you point out to
4 us where it says "changed"?

5 A I'm sorry?

6 Q I see the term "ceased" in that sentence. It
7 says, "Executive employment in the capacity of
8 Chief Executive Officer of the Watermaster with all the
9 powers and duties associated there, have ceased on
10 November 9th, 2011?"

11 MR. JENSEN: Objection. Document speaks for itself.

12 MS. KAUR: Well, I'm asking a question.

13 THE COURT: Overruled.

14 BY MS. KAUR:

15 Q Can you point out where it says "changed"? I
16 don't see the term "changed" there.

17 A "And the employment agreement is hereby modified,
18 effective as of that date." So maybe the word "changed"
19 is being used interchangeably with the word "modified." I
20 don't have a Websters in front of me, but we can look it
21 up.

22 Q And if you could turn back to Exhibit 11, the
23 first page of Exhibit 11.

24 Is it your understanding that the Watermaster had
25 two CEOs as of November 9th, 2011?

1 MR. JENSEN: Objection. Misstates the testimony.

2 THE COURT: Overruled. You can answer.

3 THE WITNESS: Yes.

4 BY MS. KAUR:

5 Q And who were those?

6 A It was myself and, I think for a while, it was
7 Danny and then Ken Jeske.

8 Q And did you have the status of a CEO for the
9 Watermaster after November 9th, 2011?

10 A My status did not change.

11 Q So it is your understanding that you had a status
12 of a CEO?

13 MR. JENSEN: Objection. Asked and answered.

14 THE COURT: Overruled. You can answer.

15 THE WITNESS: Yes.

16 BY MS. KAUR:

17 Q Why is that?

18 A Because my status did not change. No one changed
19 my position title.

20 Q And what about your duties as a CE -- what about
21 your duties after November 9th, 2011, did they remain the
22 same as your duties that were in place when you were
23 hired?

24 A No. My duties were changed.

25 Q Did you provide day-to-day leadership of the

1 Watermaster after November 9th, 2011?

2 A I was not responsible, after November 9, 2011,
3 for day-to-day responsibilities.

4 Q And if you could turn to -- if you could turn to
5 the binder for -- it's titled "Desi Alvarez and Chino
6 Basin Watermaster." So this is the binder for -- that was
7 prepared.

8 A This one?

9 Q No. It's the big binder. Yes, that one.
10 And if you could turn to Exhibit 255 in that
11 binder?

12 A 255?

13 Q Yes.

14 A Yes, ma'am.

15 Q And this is a job description for the CEO; is
16 that correct?

17 A Yes, ma'am.

18 MR. JENSEN: And I'm going to make an objection as
19 vague as to time.

20 THE COURT: How so?

21 MR. JENSEN: It's unclear when this job description
22 and job duties was effective.

23 THE COURT: Didn't you question Mr. Alvarez about
24 whether this depicted his --

25 MR. JENSEN: But his job duties when he started, as in

1 May -- maybe my testimony wasn't clear -- May 2003. But
2 the testimony is -- I think Mr. Alvarez's testimony was
3 that there was different duties afterwards.

4 THE COURT: After November 9th.

5 MR. JENSEN: After November 9th.

6 THE COURT: Okay. All right.

7 MR. JENSEN: So to the extent that can be
8 differentiated.

9 MS. KAUR: I'm sorry?

10 MR. JENSEN: Just as far as creating a record, it
11 would be helpful to differentiate the time periods and the
12 applicable duties in each.

13 BY MS. KAUR:

14 Q So looking at Exhibit 255, were these your job
15 duties when you started as a CEO with the Watermaster in
16 May 2011?

17 A Yes, ma'am.

18 Q And under the typical duties, Item 1. After
19 November 9th, 2011, were you responsible for ensuring
20 compliance with the budget, the piece agreement, the
21 procedures, Rules and Regulations established by the
22 Watermaster to implement the O.B.M.P. and other court
23 mandates prescribed?

24 A Not on a day-to-day basis.

25 Q How were you responsible for this duty, if not on

1 a day-to-day basis?

2 A I was responsible, still, for duties as assigned
3 by the Board, which is part of the description of the job
4 duties. And, you know, you read selectively. Reading the
5 typical duties through the end, "Otherwise carryout
6 policies by the Board." I was available and did as the
7 Board directed, during that period of time.

8 Q Did you solicit, analyze, and negotiate
9 conjunctive use storage recovery programs of other
10 agencies in private industry after November 9th, 2011?

11 A I analyzed.

12 Q And was that part of you providing information to
13 the Board upon requested?

14 A Yes, ma'am.

15 Q Did you develop and manage the Watermaster
16 budget?

17 A No, ma'am.

18 Q Did you provide a motivating work climate for the
19 Watermaster employees after November 9th, 2011?

20 A No, ma'am.

21 Q Did any of the employees from the Watermaster
22 report to you after November 9th, 2011?

23 MR. JENSEN: Objection. Are you reading something on
24 here?

25 MS. KAUR: No. I'm asking a question. Not from here.

1 MR. JENSEN: Okay.

2 THE COURT: You can answer.

3 THE WITNESS: No, ma'am.

4 BY MS. KAUR:

5 Q Do you know who they reported to?

6 MR. JENSEN: Objection. Lacks foundation.

7 THE COURT: Don't -- if you know. Don't guess or
8 speculate.

9 THE WITNESS: No.

10 BY MS. KAUR:

11 Q Did you ensure the maintenance of the facilities
12 of the district? And I'm looking at Item 6.

13 A No, ma'am.

14 Q Did you develop and administer personnel policies
15 and procedures?

16 A No, ma'am.

17 Q You said you worked for the City of Downey prior
18 to working for the Watermaster; is that correct?

19 A Yes, ma'am.

20 Q And can you notify me, again, what position you
21 held there before you left the City of Downey?

22 A Before I left, I was Deputy City Manager.

23 Q Did you receive any inquiries from the
24 City of Downey after you left your position as a
25 Deputy City Manager?

1 MR. JENSEN: Objection. Vague as to time and
2 relevance. And vague as to what "inquiries" are.

3 THE COURT: Overruled. You can answer.

4 THE WITNESS: No.

5 BY MS. KAUR:

6 Q The October 27th, 2011, board meeting. Was that
7 the last board meeting where you were present as a CEO?

8 A I am not sure. Probably.

9 THE COURT: I'm sorry to interrupt. We're around our
10 afternoon break. How much more do you have?

11 MS. KAUR: I do -- I'm not quite sure.

12 THE COURT: Okay. Why don't we take our break now.
13 That way no one will have to rush anything.

14 We'll resume at 2:50.

15 Mr. Jensen, was there something you wanted to
16 say?

17 MR. JENSEN: Is Ms. Horning still --

18 MS. KAUR: I'll go check if she's there.

19 THE COURT: Okay. We'll go off the record.

20 (Afternoon recess)

21 THE COURT: Back on the record. We're back from our
22 afternoon break.

23 Ms. Kaur, please continue.

24 BY MS. KAUR:

25 Q Mr. Alvarez, if you could turn to Exhibit 16 of

1 the CalPERS binder.

2 A Is that this one?

3 Q Yes, Exhibit 16. And if you could turn to Page 3
4 of Exhibit 16.

5 A Yes.

6 MR. JENSEN: Just for clarification, is this with the
7 119 on the bottom?

8 MS. KAUR: Yes, "119" on the bottom.

9 BY MS. KAUR:

10 Q This document, Chino Basin Watermaster Matrix
11 2011/2012. Do you know if this was available to the
12 public or provided to the public in -- when you were the
13 CEO?

14 A Yes, it would have been available to the public.

15 Q Do you know how it would have been available to
16 the public?

17 A If the public would have made a request for it,
18 it would have been provided.

19 Q And how would the public make a request?

20 A They would either come into the office or make a
21 phone call and ask for a salary schedule.

22 Q And in that instance, do you know which salary
23 schedule from 2011-2012 would be provided? Would it be
24 the salary schedule under Exhibit 16, Page 3, or would it
25 be the salary schedule under Exhibit S?

1 MR. HERREMA: I'm going to object. One is titled
2 "Salary Matrix," the other is titled "Salary Schedule."
3 We also have testimony from Mr. Joswiak about -- I don't
4 know that we have a foundation that this existed at the
5 time Desi was employed.

6 THE COURT: Okay.

7 MR. HERREMA: Or Mr. Alvarez. I apologize for my
8 informality.

9 THE COURT: It's a fair question to ask whether he
10 knows if this version, Page 3 of 16 or Exhibit S, which
11 one, if either. I think that's basically what you are
12 asking.

13 MS. KAUR: Yes.

14 THE COURT: Do you understand, Mr. Alvarez?

15 THE WITNESS: Maybe you can just clarify, just so we
16 all have an understanding of what you are actually asking
17 for.

18 BY MS. KAUR:

19 Q You said if the public makes a request, they can
20 obtain the salary matrix under Exhibit 16, which is
21 Page 3; is that correct? And this was when you -- I'm
22 talking about the time frame when you were the CEO of the
23 Watermaster.

24 A My answer to your question, then, would be that
25 if the public made an inquiry as to the salary, we would

1 provide a salary schedule. The salary schedule, actually,
2 I remember seeing, wasn't this specific one. It was the
3 other one that had some additional salaries on it.

4 Q And "the other one," which one are you referring
5 to?

6 A We saw it earlier. I forget the exhibit number.

7 MS. KAUR: Is that Exhibit S?

8 MR. JENSEN: Let me show it.

9 MS. KAUR: That would be the Watermaster exhibit
10 binder.

11 THE COURT: At the very end.

12 MS. KAUR: The exhibits are by letters.

13 MR. JENSEN: And if, your Honor, I can just instruct
14 the witness to the best of his recollection.

15 THE WITNESS: To the best of my recollection, I
16 remember seeing this one.

17 THE COURT: Okay. Referring to what's been marked as
18 Exhibit --

19 THE WITNESS: Oh, I'm sorry. Referring to Exhibit S.

20 THE COURT: Thank you.

21 BY MS. KAUR:

22 Q And you are saying Exhibit S is a salary -- or is
23 the document that would have been provided if the public
24 requested information concerning the salary of the
25 Watermaster employees; is that correct?

1 A That is my understanding, yes, ma'am.

2 MS. KAUR: I don't have any further questions, your
3 Honor.

4 THE COURT: Okay. Thank you. Redirect?

5 MR. JENSEN: I don't have any. Let me just look at my
6 notes.

7 THE COURT: Okay.

8 MR. JENSEN: I have no redirect.

9 THE COURT: All right. Thank you. Any followup,
10 Mr. Herrema?

11 MR. HERREMA: No, your Honor, no questions.

12 THE COURT: Okay. Thank you, Mr. Alvarez. You can
13 return to your seat.

14 THE WITNESS: Thank you.

15 MR. JENSEN: Thank you, Desi.

16 So I would like to call Ms. Horning.

17 Nicole Horning, who is a CalPERS witness.

18 THE COURT: All right. Let's go off the record.

19 (Pause in the proceedings)

20 THE COURT: Back on the record. Mr. Jensen, you may
21 call your next witness.

22 MR. JENSEN: I'd like to call Nicole Horning.

23 THE COURT: I'm going to ask the court reporter to
24 swear you in.

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NICOLE HORNING,
called as a witness, and having been first duly sworn by
the Certified Shorthand Reporter, was examined and
testified as follows:

THE WITNESS: Yes.

THE COURT: And for the record, please state and spell
your name.

THE WITNESS: Nicole Horning, N-I-C-O-L-E,
H-O-R-N-I-N-G.

THE COURT: Okay. Thank you.

THE COURT: All right. When you are ready,
Mr. Jensen.

DIRECT EXAMINATION

BY MR. JENSEN:

Q Thank you. And I appreciate your patience, too.

A No problem.

Q Where are you currently employed?

A I'm currently employed at CalPERS.

Q And in what division do you work?

A Information Technology.

MS. KAUR: Sorry. I'm having difficulties.

MR. JENSEN: I'm sorry. I'll speak up.

MS. KAUR: No problem.

///

1 BY MR. JENSEN:

2 Q How long have you worked at CalPERS?

3 A Approximately, 14 years.

4 Q Oh, my. And what did you -- I'm sorry. You look
5 too young for having worked as CalPERS for 14 years.

6 A Thank you.

7 Q So that was my surprise.

8 What was the first position you started at at
9 CalPERS?

10 A I was an Office Assistant in Member Services.

11 Q And, at some point, did you join the
12 Compensation Review Unit?

13 A Yes, I did.

14 Q And when was that?

15 A August of 2011.

16 Q And what was your position in the
17 Compensation Review Unit?

18 A It was a Manager I.

19 Q And did you oversee employees in that division?

20 A Yes, I did.

21 Q And did you oversee Mr. Gutierrez?

22 A Yes, I did.

23 Q And were you the individual who instructed the
24 R.P.S. II in how to exercise discretion?

25 MS. KAUR: Objection. Vague.

1 THE COURT: Sustained.

2 BY MR. JENSEN:

3 Q Did you oversee R.P.S. II?

4 A Yes.

5 Q And did -- was your approval required for an
6 R.P.S. II to clear a case from their desk?

7 MS. KAUR: Objection. Vague.

8 THE COURT: Overruled.

9 THE WITNESS: It would depend on the type of
10 determination. But, yes, I reviewed the work that my
11 staff did.

12 BY MR. JENSEN:

13 Q And do you remember whether you reviewed this
14 Matter of Mr. Alvarez and the Chino Basin Watermaster?

15 A Yes, I did.

16 Q And how many employees did you have -- did you
17 oversee?

18 MS. KAUR: Objection. Vague as to time.

19 BY MR. JENSEN:

20 Q During this period, when you were Manager I in
21 the Compensation Review Unit, how many employees did you
22 oversee?

23 A Approximately, six to seven.

24 Q And before we get into this Matter, let me just
25 ask, how long were you in the Compensation Review Unit?

1 A Two years.

2 Q And was there any reason you left the
3 Compensation Review Unit?

4 MS. KAUR: Objection. Irrelevant.

5 THE COURT: Sustained.

6 BY MR. JENSEN:

7 Q And where -- what division did you go to after
8 the Compensation Review Unit?

9 A The Information Technology.

10 Q And is that the unit you are still in?

11 A Yes.

12 Q And are you a manager in that division?

13 A No. I'm a Senior Information Systems Analyst.

14 Q And what does a Senior Information Systems
15 Analyst do?

16 A At this point in time, I'm doing a lot of work
17 with our data and report requirements.

18 Q And is this a managerial position?

19 A No.

20 Q All right. And -- and that's the position you
21 maintain now?

22 A Yes.

23 Q Do you recall how this Matter first came to your
24 attention about Desi Alvarez and Watermaster?

25 THE COURT: Mr. Jensen, try to keep your voice up.

1 MR. JENSEN: Yeah, I'm sorry. I don't want to project
2 too much.

3 BY MR. JENSEN:

4 Q But do you recall how the Desi Alvarez
5 Chino Water Basin came to your attention?

6 A It's been quite some time. So I don't, exactly,
7 remember. But, generally, escalated cases would come to
8 my desk.

9 Q And what is an "escalated case"?

10 A If there is -- was a phone call, or if my staff
11 needed help in making a determination, then I could get
12 involved.

13 Q And do you recall that this became an escalated
14 case?

15 A No, I don't. I'm sorry.

16 Q So let me just turn your attention to Exhibit 18.
17 And this -- there's some additional documents that have
18 been added. So if -- in the witness -- the exhibit book
19 you have, may not be in it, but it's likely in this one.

20 And on Page 5, at the bottom -- it was actually
21 five, six, seven, eight, nine, and ten. And they should
22 be, sort of, paginated in red ink.

23 A Right.

24 Q Do you want to take a moment to refresh your
25 recollection of these E-mails?

1 A I think I'm okay.

2 Q Okay. Great. Starting in the -- I think that's
3 -- the first one would be the one near the end and on Page
4 9 and 10. It appears to be an E-mail from you to
5 Mr. Joswiak on February 22nd, 2013, at 2:19.

6 A Correct.

7 Q Do you see that?

8 A Yes.

9 Q And is it typical for -- for you to communicate
10 directly with a Human Resources Department of a
11 contracting agency?

12 A It would be typical for me to reach out and help
13 my staff with any workload that they had going on.

14 Q So, in other words, something happened prior to
15 this that generated your involvement; is that what you are
16 saying?

17 A Yes.

18 Q And do you recall what that might have been?

19 A I do not. I'm sorry.

20 Q And -- so let's just look at this series of
21 E-mails and, in particular, I want to turn your attention
22 to the page that's paginated eight -- internally paginated
23 as Page 8, and it says -- it's an E-mail from you, and it
24 says -- on Tuesday, March 19, 2013, at 1:30. And it says
25 "Hi, Joe. Sorry for the delay in responding." Do you see

1 that?

2 A Yes.

3 Q And next line, "Have you been able to locate any
4 of the documents that you sent to newspapers as part of
5 the previously maintained P.R.A.s?"

6 A Yes, I see that.

7 Q And why were you asking that?

8 A Well, I would always ask for any documentation
9 possible just to get a full picture of each case. So we
10 could make an informed determination.

11 Q And is it relevant to you that -- or how is it
12 relevant that it was, or was it important -- let me ask it
13 differently.

14 Was it important to you that this document was
15 sent to a newspaper?

16 A I think that I mentioned the newspaper because
17 that was where he told me it had gone to.

18 Q Okay. And as far as P.R.A.s, are you referring
19 to Public Records Act?

20 A Yes.

21 Q And is an agency providing information, pursuant
22 to the Public Records Act Request, an important piece of
23 information to you?

24 MS. KAUR: Objection. Vague as to the term "agency"
25 and the remainder of the question.

1 MR. JENSEN: Well, I can rephrase it.

2 THE COURT: Okay.

3 BY MR. JENSEN:

4 Q Is -- I will refer to as a contracting agency --
5 okay -- for the purposes of showing the relationship
6 between CalPERS.

7 Is it important to you that an agency sends
8 documents pursuant to -- pursuant to -- to a
9 Public Records Act request?

10 MS. KAUR: Objection. Vague and irrelevant.

11 THE COURT: Why don't you clarify. Important to her
12 how?

13 BY MR. JENSEN:

14 Q In -- at this time, what was the issue that you
15 were evaluating?

16 A With Mr. Alvarez's case?

17 Q In this E-mail here?

18 A In this E-mail. As I previously said, I was just
19 trying to get an entire picture of everything that was
20 going on, so we could make an informed decision.

21 Q And, in particular, was there an issue about
22 whether a salary schedule or pay schedule was publicly
23 available?

24 A Yes.

25 Q And what do you look at to determine something

1 that's publicly available?

2 A Publicly available, we look at the law and
3 what's laid out in the law. And we'd see if it was ever
4 approved in an open board meeting. If it was available on
5 the website of the contracting agency. If it was posted
6 at the office, which I did not have an opportunity to do
7 just because of the distance. Those are the types of
8 things that we would look for.

9 Q Now, how -- you started in the
10 Compensation Review Unit in August 2011; is that correct?

11 A Yes.

12 MS. KAUR: Mr. Jensen, I'm having a hard time hearing
13 you. I'm sorry.

14 MR. JENSEN: I also have a reporter here, too.

15 BY MR. JENSEN:

16 Q In August 2011, you started in the
17 Compensation Review Unit. Were you aware that there was a
18 regulation 570.5 that was inactive, just about at the same
19 time that you came in the Compensation Review Unit?

20 A Yes.

21 Q And what was your understanding of the -- the
22 effect of the regulation 570.5 on publicly available pay
23 schedules?

24 MS. KAUR: Objection to the extent it calls for legal
25 opinion and vague.

1 THE COURT: Okay. I'll overrule that. We're just
2 looking at her understanding of it. Not for a legal
3 conclusion or statement.

4 If you had an understanding at -- which time
5 frame is it? When these E-mails were --

6 MR. JENSEN: Right. Actually, yeah.

7 BY MR. JENSEN:

8 Q Let's -- well, let's do it, actually, in
9 August 2011, when you first came into the Compensation
10 Review Unit?

11 A It was my understanding that these regulations
12 just clarify the existing law.

13 Q And did you -- have you looked at the circular
14 letters of that time period?

15 A Yes.

16 Q And -- If I can, actually, point them to 260 --
17 they're probably in the back of this one. Oh, here they
18 are. Let me just turn your attention to 266. And then
19 the first sentence where it says, "Clarify existing law
20 and make specific the requirements."

21 Is it your understanding that the regulations
22 made these publicly available pay schedules, the
23 requirements of them, more specific?

24 A No. I think my understanding, really, was that
25 it just made it -- it just clarified the existing law that

1 was already there.

2 Q So that second part doesn't have any particular
3 meaning?

4 MS. KAUR: Objection. Vague. Calls for speculation.

5 THE COURT: Overruled. You can answer.

6 THE WITNESS: As far as I'm concerned, no.

7 BY MR. JENSEN:

8 Q Okay. And did your -- when you were in the time
9 period of these E-mails, which is about a year and a half
10 later, you're inquiring into whether Mr. Joswiak should --
11 and I'm referring, actually, to that same
12 March 19th, 2013, E-mail. It says, "If you can contact a
13 newspaper to see if that information still exists in
14 archives, and they can provide to it, that may help."
15 What did you mean by that?

16 A I meant it may help us get a clearer picture of
17 the case and the information available, so that we could
18 make a determination.

19 Q So if the information -- if the newspaper had the
20 information, it would inform you about whether it was
21 available?

22 MS. KAUR: Objection. Vague. Misstates prior
23 testimony.

24 THE COURT: Overruled. You can answer.

25 THE WITNESS: It really would have just given us a

1 clearer picture to be able to see the entire case as a
2 whole and what existed.

3 BY MR. JENSEN:

4 Q Okay. And, in this case, is it important that
5 this information existed outside of the Watermaster?

6 MS. KAUR: Objection. Vague.

7 THE COURT: Sustained.

8 BY MR. JENSEN:

9 Q Is it important that the information existed in
10 the archives of the newspaper outside of the Watermaster?

11 A No, not necessarily. It just -- I was just
12 looking to see what information existed at all.

13 Q And so let me turn your attention to the document
14 that's Page 7 here. And this is a little confusing to me
15 because mine is not in the colored ink.

16 MS. KAUR: Mine is not either.

17 THE COURT: Mine either.

18 MR. HERREMA: Sorry. Which page?

19 MR. JENSEN: I'm talking about Page 7 of this. Can
20 you tell us --

21 THE COURT: It's the one that says Joe's reply is in
22 red. None of ours has red.

23 MR. HERREMA: This is a copy that was produced by
24 Mr. Alvarez. I'm sure the Watermaster could find one with
25 the color. So we're probably working from one that was

1 probably produced to Alvarez and then produced back during
2 discovery.

3 THE COURT: Right.

4 MR. JENSEN: And I apologize.

5 THE COURT: It's probably not going to be an issue.

6 MR. JENSEN: We just give out what we get, so the
7 color part escapes us often.

8 BY MR. JENSEN:

9 Q Can you tell us, just if you can remember, in
10 this E-mail, which parts of this are yours? Without, you
11 know, if you can give it now without guessing or
12 speculating.

13 MR. HERREMA: If I might interrupt. I think you
14 can -- the March 19th E-mail and see that's additional in
15 the E-mail that was an hour and a half later.

16 THE COURT: Do you think that's so?

17 THE WITNESS: Yes, it's fairly simple. He just broke
18 apart his E-mail and addressed each piece.

19 BY MR. JENSEN:

20 Q Okay. Have you been able to locate any of the
21 documents? And I see -- and then. Got it. Okay. And
22 then when he sent back this web link, did you check on
23 that? Did you hit that link?

24 A Yes.

25 Q And what did you find?

1 A From what I can recall, I found a pretty vague
2 article that didn't have any specific information about
3 salaries.

4 Q Okay. Let me ask you, did you ask the
5 Watermaster for a pay schedule for the 2011/2012 pay
6 period?

7 A I don't recall. I'm sure I would have, but that
8 also could have been my staff asking for that information.

9 Q And if -- if your staff -- there's no indication
10 that your staff asked for that, what would you think of
11 that?

12 MS. KAUR: Objection. Vague.

13 THE COURT: Sustained.

14 BY MR. JENSEN:

15 Q If there's no indication that your staff asked
16 for that, would that have been an error on the part of
17 CalPERS?

18 MS. KAUR: Objection. Vague.

19 THE COURT: Do you understand what he's asking?

20 THE WITNESS: I believe so.

21 THE COURT: Okay. You can answer.

22 THE WITNESS: I wouldn't say that it would have been
23 an error.

24 BY MR. JENSEN:

25 Q So let me ask you to look at that E-mail, which

1 is on that Page 7. And the first one, it says, "Joe,
2 thanks so much for the information. Do you have any
3 meeting agendas and minutes and attachments available from
4 the last time your pay schedule was approved?" And, in
5 that, what were you searching for?

6 MS. KAUR: I'm sorry. Where are you referring to?

7 MR. JENSEN: It's Bates Stamped "A.L.V. 199." And
8 it's the first E-mail that starts on the top of that page,
9 March 19, at 4:08, from Ms. Horning to Joe Joswiak and
10 Peter Kavounas.

11 BY MR. JENSEN:

12 Q So were you requesting the 2011/2012 pay
13 schedule?

14 A Well, it looks from the E-mail that I was
15 requesting anything from the last time a pay schedule was
16 approved.

17 Q Okay. And -- so in that inquiry, were you trying
18 to tie it to the time that Desi Alvarez was employed with
19 Watermaster?

20 A Yes. Since we were working on his case, that
21 would have been the most appropriate time frame to ask for
22 it.

23 Q And -- so could it be -- there's just a cross
24 signal, then, that the 2012/2013 pay period wasn't the
25 applicable time period for Mr. Alvarez?

1 A I suppose.

2 Q And then -- and I'm turning to Page 6 here, where
3 Mr. Joswiak responds with information from the 2012/2013
4 budget that was May 12th.

5 MS. KAUR: I'm sorry? I keep losing you. It's hard
6 for me to hear you.

7 MR. JENSEN: Do you mind if I stand up?

8 MS. KAUR: No problem.

9 MR. JENSEN: Help me project and help me stay awake.

10 BY MR. JENSEN:

11 Q So I'm looking at the top of Page 6, which would
12 be Mr. Joswiak's response. And, apparently, in response
13 to the question of meeting agendas, minutes, attachments
14 from the last time your pay schedule was approved that the
15 Chino Water Basin sends. I'm not quite sure how to
16 describe this, but it looks like a screen shot of the
17 website, and I don't know if that's the correct way of
18 describing it. That's on A.L.D. 198.

19 Do you see that, Ms. Horning?

20 A Yes.

21 Q How would you describe that image in the center?

22 A A screen shot of the website.

23 Q And is there a -- a link, I guess, is what it is,
24 underneath that?

25 A Yes.

1 Q Did you click on that link?

2 A Yes.

3 Q And did you download this material?

4 A Yes.

5 Q And did you use it in your evaluation of
6 Mr. Alvarez's determination of his compensation?

7 A Yes.

8 Q Now, I want to turn your attention to this,
9 Page 5, which is A.L.V. 197. This is, again, Page 5 of
10 18. On the bottom there's an E-mail. It's Tuesday,
11 March 19, 2013, at 6:32 p.m. Do you often work at
12 6:32 p.m.?

13 A Unfortunately.

14 Q Are you an exempt employee?

15 A Yes.

16 MS. KAUR: Objection. Irrelevant.

17 BY MR. JENSEN:

18 Q Did you -- did you write this E-mail?

19 A It appears so, yes.

20 Q And in the first page -- I mean, first paragraph,
21 it says, "Thanks. As I look through this, I don't see
22 anywhere that actually lists out each position and salary
23 that is required of the public available pay schedule."
24 So you looked through those documents, and there wasn't a
25 pay schedule?

1 A According to my E-mail, yes. I don't remember,
2 specifically, but I wrote it here.

3 Q And, then, it says, in the third paragraph down,
4 "If you have a board meeting coming up soon, it would be
5 advisable to present the pay schedule for approval in an
6 open session." And so why did you advise the Watermaster
7 to do that?

8 A So that they would not continue to have an issue
9 with retirees from their agency.

10 Q And would that apply to Mr. Alvarez, too?

11 A No.

12 Q And why not?

13 A Because it would have been a new pay schedule.
14 It would not have been for the time frame that he was
15 working.

16 Q But had you requested the time period for which
17 he was working?

18 A As I said before, it was a long time ago. So I
19 can't say for sure.

20 Q So you were just relying on whatever's in this
21 documentation?

22 A Yes.

23 Q And in this fourth paragraph down, it says, "We
24 have issued two circular letters in the past couple of
25 years to specifically address these requirements. I've

1 included links to where they reside on the website."

2 Do you see that?

3 A Yes.

4 Q And so why did you send those to the -- why did
5 you write that and send those links to the Watermaster?

6 A Because, as a manager, it was my practice to give
7 good customer service and educate our employees on what
8 they need to do.

9 Q And was this prospective advice?

10 A Yes.

11 Q So this wouldn't apply retroactively?

12 A No.

13 MS. KAUR: Objection. Vague.

14 THE COURT: Overruled.

15 BY MR. JENSEN:

16 Q And then Mr. Joswiak responds and says,
17 "Additional information" -- oh, that's to Mr. Alvarez.

18 So in this -- and I'll point this out to you.
19 At some point in here, and I'm paraphrasing, but I believe
20 Mr. Gutierrez said it is up to the contracting agency on
21 how to make the documents publicly available, as long as
22 they also satisfy 570.5.

23 MS. KAUR: Objection. Misstates prior testimony.

24 MR. JENSEN: And I'll just find it.

25 MR. HERREMA: 259.

1 MR. JENSEN: 259. Thank you.

2 MS. KAUR: Are you referring to Exhibit 259?

3 MR. JENSEN: Yeah.

4 BY MR. JENSEN:

5 Q I'm just gonna ask you to look at -- on
6 the bottom half of the page, first page of 259, there's an
7 E-mail from Mr. Gutierrez. It's November 16, 2012. And,
8 at this time, were you Mr. Gutierrez's supervisor?

9 A Yes.

10 Q And prior to that time period, had Mr. Gutierrez
11 raised these elevated concerns to you about Desi Alvarez's
12 case?

13 A I don't remember specifically, but I would
14 imagine so.

15 Q And there's a sentence here, "There's a
16 requirement that salary information be publicly
17 available. How you go about doing that is up to the
18 agency." Is that the policy of the Compensation Review
19 Unit?

20 A Well --

21 MS. KAUR: Objection. Vague.

22 THE COURT: Overruled. You can answer.

23 THE WITNESS: I -- he was just referring to the law.
24 There's multiple options to make it publicly available.

25 ///

1 BY MR. JENSEN:

2 Q And let me just ask you. There's a reference in
3 the 570.5 to applicable -- I think applicable public
4 meeting law. Yeah. Applicable public meeting law. I
5 want to turn your attention to Exhibit 4.

6 MS. KAUR: Are you looking at Page 2?

7 MR. JENSEN: Yes. And, well, we can dispute whether
8 570.5 applies in this Matter.

9 BY MR. JENSEN:

10 Q What is the applicable public might law that
11 applies to the Watermaster?

12 MS. KAUR: Objection to the extent it calls for
13 speculation, legal conclusion.

14 MR. JENSEN: I can restate the question.

15 BY MR. JENSEN:

16 Q In your analysis of this case, which law did you
17 use or refer to as the applicable public meeting law?

18 MS. KAUR: Same objection.

19 THE COURT: Overruled. If you derived an
20 understanding while working on this case, you can answer.

21 THE WITNESS: The only law that we refer to is the
22 Public Employees Retirement Law. And, within that, is our
23 understanding that public meetings are open noticed public
24 meetings with the governing body.

25 MR. JENSEN: I don't think I have further questions.

1 THE COURT: Okay. Give me one moment.

2 MR. JENSEN: Thank you.

3 THE COURT: Thank you, Mr. Jensen.

4 Mr. Herrema?

5 MR. HERREMA: Very briefly.

6 THE COURT: Okay.

7

8 CROSS-EXAMINATION

9 BY MR. HERREMA:

10 Q Ms. Horning, good afternoon.

11 A Hi.

12 Q If I could ask you to look at that Page 5 --
13 sorry. Page 8 of CalPERS Exhibit 18, which is marked
14 A.L.V. 000200 on the bottom. And, specifically, your
15 March 19, 2013, E-mail to Joe Joswiak. Do you see that?

16 A Yes.

17 Q Okay. There's a -- it's the second paragraph,
18 you asked Mr. Joswiak "Have you been able to locate any of
19 the documents that you sent to newspapers as part of
20 previously mentioned P.R.A.s, or if you could contact the
21 newspapers to see if that information still exists in
22 their archives, and they can provide it to you. That may
23 help." And I think Mr. Jensen asked you what you meant
24 when you said "that may help." Do you recall how you
25 answered that question?

1 A Yes.

2 Q Can you repeat that for me, or just remind me
3 what you meant when you said that may help?

4 A What I meant was it would give us a clear picture
5 of the entire case if we could have all of the
6 documentation available.

7 Q Okay. And the date of this E-mail is March 19,
8 2013?

9 A Yes.

10 Q And I believe that CalPERS issued its initial
11 determination, in regard to Mr. Alvarez's compensation, on
12 February 20 of that same year. And that's in Exhibit --
13 Alvarez, Exhibit 4. So are you saying that CalPERS didn't
14 have the entire documentation or the full picture when it
15 issued its determination letter?

16 A We issued our determination after gaining as much
17 information from the contracting agency as we could, and
18 once that was issued, we got more questions from them.

19 Q Okay. So you -- your statement here that it
20 would help to have this additional information means it
21 would help you have a clearer picture after the
22 determination had already been made?

23 A Yes.

24 Q Why would you need a clearer picture after you
25 made your determination?

1 A Because it was clear that the Watermaster did not
2 think that our determination was appropriate, and we would
3 always continue to look for more documentation to ensure
4 that we are enforcing the laws correctly and providing the
5 correct retirement to our members.

6 Q And having -- with CalPERS having already made
7 the determination, why did you think it would help to have
8 this information about the publication in the newspaper?

9 A Just to give a bigger picture. If there was more
10 documentation anywhere available, we would want to see it.

11 Q Why would that specific information be helpful?

12 MS. KAUR: Objection. Asked and answered.

13 THE COURT: Overruled. You can answer.

14 THE WITNESS: Because it was the specific information
15 that Mr. Joswiak indicated may exist.

16 BY MR. HERREMA:

17 Q Is there a particular factor in the evaluation
18 that you were doing that you thought it might apply to?

19 MS. KAUR: Objection. Vague.

20 THE COURT: Sustained.

21 BY MR. HERREMA:

22 Q Is there a particular element of the public
23 availability determination that you were making that you
24 thought that information might apply to?

25 A Like I said, I was just really trying to get to

1 every piece of available documentation so that we could
2 ensure that our determination was correct.

3 MR. HERREMA: Okay. I think that's it for now.

4 THE COURT: Okay.

5 MR. HERREMA: Can I just have one second to review a
6 document?

7 THE COURT: Yes. Yes.

8 MR. JENSEN: And, your Honor, all of 14 -- all of
9 Exhibit 14 is -- it's not 14.

10 MS. KAUR: 18?

11 MR. JENSEN: Is in evidence because we added some of
12 those additional pages.

13 THE COURT: Yes. Whole thing is in. Yes.

14 MR. HERREMA: I have nothing further.

15 THE COURT: Okay. Thank you. Ms. Kaur?

16 MS. KAUR: I have nothing. I have no questions,
17 your Honor.

18 THE COURT: Okay. Mr. Jensen, any followup to
19 Mr. Herrema's questions?

20 MR. JENSEN: No. I just want to thank Ms. Horning for
21 coming and being very patient and appreciate your
22 testimony.

23 THE WITNESS: Of course. Thank you.

24 THE COURT: Okay. We will thank and excuse
25 Ms. Horning. Thank you very much.

1 MR. JENSEN: Thank you, again.

2 THE COURT: Okay. Do you have anymore evidence,
3 Mr. Jensen.

4 MR. JENSEN: No. I think we've gone through
5 everything -- all the exhibits.

6 THE COURT: I believe we have. Let me just double
7 check, make sure everything is accounted for. Yes.

8 MR. JENSEN: 259 is in too?

9 THE COURT: Yes, it is.

10 Okay. So do you rest at this time?

11 MR. JENSEN: Yes, your Honor.

12 THE COURT: Okay. Thank you. Ms. Kaur, will there be
13 any rebuttal evidence?

14 MS. KAUR: No, your Honor.

15 THE COURT: Okay. So I think I have everyone's
16 exhibits, and I've heard from everyone's witnesses. So
17 why don't we now talk about closing briefs, and then we'll
18 get out of here by or before 4:00.

19 Let's go off the record.

20 (Pause in the proceedings)

21 (Discussion off the record)

22 THE COURT: Back on the record. Okay. Off the
23 record, I discussed with the parties the closing briefs.
24 Because the issue of who is carrying the burden of proof is
25 in dispute, I've asked the parties to cover that in their

1 closing briefs; however, there is agreement that the
2 standard of proof is the preponderance of the evidence
3 standard.

4 The parties have agreed to file concurrent
5 opening briefs by the close of business on June 17th. And
6 there is a 35-page limitation. The parties have also
7 agreed to file reply briefs concurrently by the close of
8 business on July 15th, and there will be a 15-page limit
9 on those.

10 And Mr. Jensen has indicated on behalf of
11 Respondent, Alvarez, he will be lodging a copy of the
12 hearing transcript with O.A.H., which will be sent to us
13 electronically. And the parties have agreed to accept
14 service of that lodging, also electronically.

15 So let's go around the table and see if there's
16 anything else that we need to put on the record today.

17 Ms. Kaur?

18 MS. KAUR: No, your Honor.

19 THE COURT: Mr. Herrema.

20 MR. HERREMA: No, your Honor.

21 MR. JENSEN: No, your Honor.

22 THE COURT: Thanks to everyone for being so collegial
23 and productive. I'm very happy that we got this done in
24 the first setting. Off the record.

25 (Proceedings concluded at 4:52 p.m.)

1

