

BEFORE THE BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA
JULIE CABOS-OWEN, ADMINISTRATIVE LAW JUDGE

In the Matter of the Recalculation)
of Benefits of:)
) CASE NO. 2010-0825
PAUL G. MAST,)
) OAH NO. 2015030996
Respondent.)
_____)

TRANSCRIPT OF PROCEEDINGS
Los Angeles, California
Monday, November 30, 2015

Reported by:

CLAUDETTE A. HENRY
Hearing Reporter

Job No. :
79620AH

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3 STATE OF CALIFORNIA
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11 Respondent.)
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16 TRANSCRIPT OF PROCEEDINGS, taken at
17 320 West Fourth Street, Suite 630, Los Angeles,
18 California, commencing at 9:00 a.m.
19 on Monday, November 30, 2015, heard before
20 JULIE CABOS-OWEN, Administrative Law Judge,
21 reported by CLAUDETTE A. HENRY, Hearing Reporter.
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24
25

1 APPEARANCES:

2 For the BOARD: JEFFREY R. RIEGER
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6 For the RESPONDENT: PAUL G. MAST
(IN PRO PER)

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I N D E X

RESPONDENT'S:

| Witness: | Direct | Cross | Redirect | Recross |
|-----------|--------|-------|----------|---------|
| Paul Mast | 85 | 90 | | |

E X H I B I T S

| BOARD'S: | Marked for Identification | Received in Evidence |
|-----------------------------|---------------------------|----------------------|
| 1 - Settlement Agreement | | 32 |
| 3 - Letter dated 1/13/79 | 33 | 33 |
| 5 - Letter dated 3/27/95 | | 33 |
| 6 - Letter dated 5/1/95 | | 34 |
| 7 - Letter dated 8/5/96 | | 34 |
| 8 - Letter dated 8/5/96 | 35 | 35 |
| 9 - Letter dated 10/8/96 | | 35 |
| 11- Letter dated 5/10/06 | 35 | 35 |
| 12- Letter dated 6/11/06 | 36 | 36 |
| 13- E-mail to P. Montgomery | 36 | 36 |
| 14- E-mail dated 3/25/08 | | 37 |
| 15- E-mail dated 5/7/08 | | 37 |
| 16- Letter dated 1/7/09 | 37 | 37 |
| 17- Letter dated 9/1/10 | 38 | 39 |
| 18- E-mails dated 9/29/10 | | 39 |

| | E X H I B I T S (Continued) | | |
|----|---|------------------------------|-------------------------|
| | BOARD'S: | Marked for Identification | Received in Evidence |
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 4 | 20- P. Montgomery Declaration | 39 | 41 |
| 5 | 21- P. Montgomery Declaration | 41 | 42 |
| 6 | 22- P. Mast Declaration | | 44 |
| 7 | 23- JRS 1506 | 46 | 46 |
| 8 | 24- P. Mast Declaration | 46 | 47 |
| 9 | 25- Letter to Mason | 47 | 47 |
| 10 | 26- Letter | 48 | 48 |
| 11 | | | |
| 12 | RESPONDENT'S: | | |
| 13 | A - Government Code 75033.5 | 49 | |
| 14 | B - Government Code 75025 | 50 | |
| 15 | C - Letter dated 9/30/87 | 51 | |
| 16 | D - Letter dated 11/16/78 | 53 | |
| 17 | F - Letter dated 6/16/94 | 66 | 66 |
| 18 | G - Letter dated 5/14/81 | 66 | |
| 19 | I - Benefit Calculation | 76 | 143 |
| 20 | J - E-mails between Mast and Montgomery | | 78 |
| 21 | K - Consumer Price Index | 78 | 80 |
| 22 | L - E-mail from G. Patrick to Montgomery | | 80 |
| 23 | | | |
| 24 | M - Document to JRS Members | 81 | 81 |
| 25 | N - Statement of Issues | 81 | 81 |

| | E X H I B I T S (Continued) | | |
|----|-----------------------------|------------------------------|-------------------------|
| | RESPONDENT'S: | Marked for Identification | Received in Evidence |
| 1 | | | |
| 2 | | | |
| 3 | O - Letter dated 9/20/96 | | 82 |
| 4 | P - Letter dated 7/7/97 | 82 | 82 |
| 5 | Q - Calculation dated | | |
| 6 | 1/1/97 to present | | 143 |
| 7 | R - E-mails dated 1/25/08 | | 83 |
| 8 | S - Letter from Mast to JRS | | 83 |
| 9 | T - Letter dated 1/27/09 | | 83 |
| 10 | U - Letters dated 9/12/10 | | 83 |
| 11 | V - Letter dated 5/31/01 | | 84 |
| 12 | W - 1995 Letter | | 84 |
| 13 | X - Letter dated 5/14/11 | | 84 |
| 14 | Z - P. Mast Declaration | | 87 |
| 15 | AA- M. Mast Declaration | | 88 |
| 16 | | | |
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1 Los Angeles, California, Monday, November 30, 2015

2 9:00 a.m.

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5 THE COURT: We are opening the record in the Matter

6 of the Recalculation of Benefits of Paul G. Mast,

7 Agency Case 2010-0825. OAH Case Number 2015030996.

8 This is before the Board of Administration, California

9 Public Employees' Retirement System.

10 It is November 30, 2015. It is approximately

11 9:35 a.m. And this is the date this Matter was set for

12 continued hearing. My name is Julie Cabos-Owen,

13 Administrative Law Judge with the Office of

14 Administrative Hearings.

15 If I could please have appearance of the

16 parties for the record.

17 MR. RIEGER: Jeffrey Rieger on behalf of the Judges

18 Retirement System.

19 MR. MAST: Paul Mast appearing.

20 THE COURT: Thank you. All right. I did receive

21 copy -- I have copies of what we are going to be marking

22 as jurisdictional documents. The first is the Statement

23 of Issues that has been marked as 27 for identification,

24 and Exhibit 28 is Notice of the Continued Hearing.

25 And, Judge Mast, do you have any objection to

1 Exhibit 27 and 28 being received as jurisdictional
2 purpose only?

3 MR. MAST: No objection, your Honor. Do you have
4 the response to the Statement of Issues?

5 THE COURT: I don't have that particular document.
6 I don't believe I have it. If it was filed, I don't
7 have it in front of me in the binder. I will mark it.
8 It is marked. I don't have it in front of me at this
9 point.

10 MR. MAST: I'm sorry. I don't have another copy
11 with me. I didn't -- I just assumed that the Court
12 would have it.

13 THE COURT: Was that filed with OAH?

14 MR. MAST: Yes. That was filed when the proceedings
15 was initiated.

16 THE COURT: All right. Why don't we go off the
17 record for just a minute.

18 (Discussion off the record)

19 THE COURT: We are back on the record. I got a copy
20 of the Notice of Defense that was filed by Judge Mast,
21 and that is marked as Exhibit 29 for identification.

22 MR. RIEGER: Wouldn't that be the letter to go with
23 all the pleadings?

24 THE COURT: All the jurisdictional documents are
25 typically in the Agency binder and admitted for

1 jurisdictional purpose only.

2 MR. RIEGER: I understand.

3 THE COURT: Okay. So Exhibit 29 is admitted for
4 jurisdictional purpose. Just -- we don't have these
5 documents in the packets, I will note for the JRS. I
6 have marked as Exhibit 30 an opposition to Respondent
7 Mast's motion to strike the prehearing brief. That is
8 marked as Exhibit 30.

9 And as Exhibits 31, JRS position statement. As
10 Exhibit 32, JRS response to Mast request for payment from
11 1992 through 1995. I will lodge this as argument in the
12 matter. So that is 31 and 32 are lodged. And for
13 Respondent's exhibits next in order from the binder
14 would be Exhibit Y. That is the Respondent's trial
15 brief.

16 Exhibit Z is Respondent's trial brief
17 declaration of Paul Mast. As Exhibit AA, I have
18 Respondent's trial brief declaration of Marci Mast,
19 M-A-R-C-I. As Exhibit BB, I have as the motion in limine
20 and attachment. As Exhibit CC, I have points and
21 authorities motion to strike.

22 As Exhibits DD, I have Respondent's reply to
23 opposition to motion to strike the declaration of Paul
24 Mast. As Exhibit EE, I have supplemental trial brief.
25 As Exhibit FF, Respondent's reply to JRS response to Mast

1 request for payment from 1992 to 1995.

2 As Exhibit GG, I have response to declaration of
3 Pamela Montgomery, M-O-N-T-G-O-M-E-R-Y, also a
4 declaration of Marci G. Mast. Those are all lodged as
5 argument. And I do need to make a note for the record.

6 We did have a prehearing conference prior to
7 today's hearing. And as parts of that prehearing, there
8 has been some motions that were addressed. And I have
9 those motions that were filed by Judge Mast. They are
10 motions to dismiss that I will mark as Exhibit HH. A
11 motion at issue, which I will mark as Exhibit II, and a
12 motion to strike, which I will mark as Exhibit J.

13 And I do note that the motion -- that the
14 motion to -- I believe I indicated during PRA issue are
15 assumed into the hearing. With regard to the motion to
16 strike, that will be considered as argument. And I know
17 there is a motion to strike that has been filed, and then
18 a motion to dismiss procedure hearing that motion had
19 been withdrawn.

20 But for completion sake, I want to make sure
21 that we have those all marked and included in the record.
22 All right. The jurisdictional documents have been
23 marked and admitted.

24 Did CalPERS have -- JRS have an opening
25 statement before we begin?

1 MR. RIEGER: Sure. Very briefly, your Honor.

2 THE COURT: All right. Actually, for both parties,
3 keep in mind that you have been living with this for
4 decades, and I am coming into this just now. So if you
5 will lay out the steps that has gone before and the
6 calculation and each of the steps the party is alleging
7 is appropriate, that would be helpful as we go along.

8 MR. RIEGER: And as far as specific calculation, I
9 don't think we have that level of detail here today,
10 because I don't think the calculation of what was paid
11 is disputed as calculation of what would be paid under
12 the statute all followed under the law. So I don't
13 disagree with the actual -- in terms of the Judge's
14 pension. But I will try to be respectful of the fact
15 that you are jumping into this.

16 THE COURT: All right. And I understand that there
17 may be -- you may not need to provide calculations, but
18 the statement of issues does anticipate some numbers
19 being --

20 MR. RIEGER: Those have been provided. I will
21 discuss those in the opening statement here duly. I
22 don't believe we are going to be arguing over
23 calculation and numbers. We are going to -- I think
24 numbers were concepts.

25 THE COURT: All right.

1 MR. RIEGER: So primarily what JRS is here today
2 about is that we have an agreement that is unenforceable
3 in the Matter. What we have is an agreement to pay
4 Mr. Mast more than what 800 judges in the whole state
5 receives, in return for his silence.

6 Basically, the deal was that JRS would pay
7 Mr. Mast according to his legal theory. The only thing
8 he had to do in response was to not tell other judges
9 about that legal theory. The idea being that -- I can't
10 look inside the heads of the people at JRS at the time.
11 Maybe they thought this theory had merit.

12 And they made a rather simple calculation that
13 it would be a large amount of money that would be owed
14 to these people and to pay it, I hope that was not what
15 they were thinking. They may have been thinking this is
16 just a sort of action and thought, "We don't want to spend
17 millions of dollars. It would be a lot easier to just
18 pay Mr. Mast off."

19 I don't really know what they were thinking.
20 But I do know this kind of agreement is not lawful. It
21 is not enforceable. It is on its face. If judges are
22 entitled to receive what Mr. Mast received, then all
23 judges should have received it. If judges are not
24 entitled to receive what Mr. Mast received, then no
25 judge should have received it. That's it. Very simple.

1 That's how the law works. That's a free and
2 open democracy the law covers. We don't make special
3 deals for people to cook up strange legal theories and
4 then pay them off. It is different when we are
5 government as opposed to private corporations. Private
6 corporations have to live with the mistake of the
7 employees.

8 It is not so with the government, because --
9 and I put case law throughout my briefs about this
10 issue -- all the cases you can't stop government agencies
11 statute outright. That is the law. Because that is the
12 law, then the retirement benefit of other public
13 services would extend the errors of the people that very
14 -- human beings and flawed computer systems, even
15 sometimes, that helps administer the benefit.

16 It has to be governed by law, not by the extent
17 of error of even inside jobs where we actually have
18 people outside bet for a look into government agency
19 just because one of those employees did that. Beyond
20 that, the whole settlement was based on fluid
21 assumption.

22 It was based on the idea that Mr. Mast was
23 correct that he was entitled to something more than he
24 was being paid. And that is just simply not the case.
25 The theory that he pursued was actually raised in his

1 case about Olson v Cory.

2 This whole theory is about -- under the 1980
3 California Supreme Court case, Olson v Cory. This theory
4 was that for the rest of his life, his pension would have
5 to be calculated based on what a judge would have made
6 if the legislature never changed how salaries were
7 calculated.

8 So a judge's pension is based on a judge's
9 active -- active judge's salary. The salary used to be
10 uncapped and increased by a cost of living. Then the
11 legislature put in a five percent cap. And his theory
12 is that for the rest of his life, he would be making
13 retirement on an uncapped cost of living, so a
14 hypothetical salary, not an actual salary, but a
15 hypothetical salary.

16 So the benchmark for calculating pension is
17 significantly higher than the actual salary paid to sitting
18 judges and justices. So that -- that theory was actually
19 pursued in Olson v Cory by the plaintiff in the Superior
20 Court and was expressly rejected by the court in
21 Olson v Cory.

22 In considering in the Court of Appeals, they
23 literally described the theory and then rejected it.
24 The Superior Court was not as clear about raising up
25 the issue as they should have been, but they clearly did

1 reject it. And it is very clear throughout the opinion
2 that theory was rejected.

3 This is not a close call. This is not a
4 reasonable dispute. This is not the kind of thing where
5 a reasonable -- an attorney at the JRS looked at this
6 and said, "There might be something here. This is a
7 close call. We better --" It is not. It was slammed
8 dunk wrong from the beginning.

9 And these kinds of -- this is -- this kind of
10 contract, even if it was subject to some amount of
11 dispute, the underlying legal theory, we still have a
12 situation where one judge gets something that nobody
13 else gets, solely in exchange for his promise not to
14 tell anybody. That could not possibly be the law.

15 But I think it is even worse here because there
16 is not even legitimate basis for the claim. Mr. Mast
17 may still, here today, argue his version of Olson v Cory
18 and what he thinks it means. That left the barn a long
19 time ago.

20 We just -- in 2014 the Staniforth case, we
21 cited in the brief to the Fourth District Court of
22 Appeal, stated in no uncertain circumstance JRS was
23 correct in Olson v Cory. Mr. Mast is incorrect in his
24 Olson v Cory conclusion. But, in fact, the Court of
25 Appeals initially was not going to publish the opinion

1 because it was such an obvious conclusion.

2 We asked for the opinion to be published
3 because we had some other claims that we were battling
4 off, and also what we are dealing with here today.
5 We asked for it to be published for that reason. I
6 think it was worth asking the Court of Appeal. They
7 didn't think it was that novel or interesting.

8 So what we have here is -- today, I think you
9 have almost everything you need for the primary issue
10 which is before you, which is the question of -- whether
11 the settlement agreement is enforceable is all that is
12 before you.

13 Because the only disputed fact is the fact that
14 it exists, it is signed. What benefits was paid to
15 Mr. Mast all these years according to his theory are all
16 undisputed. So really, the question is just: Is it
17 lawful and what do we do about it now?

18 In terms of the numbers, what you will find in
19 the binder, I have a declaration from Pamela Montgomery.
20 And it actually -- you will find the declarations in the
21 front of Exhibit 20 and 21. So the declaration of
22 Pamela Montgomery, we have Exhibit A and Exhibit B. We
23 served those on Mr. Mast and in compliance with
24 Government Code 11514, I believe.

25 And he did not require Ms. Montgomery to show

1 up today, so I'll -- the first thing is to move
2 Exhibits 20 and 21 into evidence. So Exhibit 20 is just
3 the raw record of all the payments that were made to
4 Mr. Mast over the years.

5 This is just how we reconstructed what he was
6 paid for the last 20 years. Exhibit 21, which would be
7 Exhibit B -- so Exhibit 20 is Exhibit A to Montgomery's
8 declaration. Exhibit 21 is Exhibit B to Montgomery's
9 declaration. With this -- this is just math.

10 This is just comparing -- it is taking,
11 distilling what is in Exhibit 20 to show what he was
12 paid over the years. Then showing what he would have
13 been paid if his pension had been tied to active judges'
14 salary recalculated. There is also a column to show the
15 accumulated interest over the years.

16 CalPERS assumed rate of return. This is how
17 much CalPERS had been harmed -- the JRS, CalPERS funds
18 has been harmed by these payments over the years. I
19 don't believe these numbers in here -- obviously,
20 Mr. Mast disputed he had been overpaid, but I don't
21 believe the number of what has been paid or wasn't paid
22 is under the statute.

23 I don't believe that is being disputed. So
24 that is pretty much all you need in my view and my
25 theory of this case. I think that is all you need. The

1 main reason -- well, we couldn't reach any type of
2 stipulation. Mr. Mast had to be here. Exhibits in.

3 But the other reason we are here today is
4 really to -- I'm going to put on some evidence about our
5 alternative, because there are alternative theories
6 that if the settlement agreement is enforceable, then
7 Mr. Mast breached it and materially breached it in a way
8 that completely defeated the consideration he provided
9 under the agreement.

10 Now, Mr. Mast said we can't have it both ways.
11 We can't have a nonresponsive form and breached it. Well,
12 I agree we can't have it both ways. That's the
13 alternative position, that it is not enforceable. But if
14 the Court disagrees, we cited the case law that explains
15 why you can't have a contract like this. Then at that
16 point, we would have signed a binding contract and he
17 breached it.

18 He breached it in the most spectacular form
19 imaginable. We -- he agreed not to disclose his
20 settlement agreement to other people. What he
21 ultimately ended up doing was team up with his friend,
22 John Rozi, to jointly represent -- first of all, they
23 requested the records of retired judges and justices and
24 then solicited them by mail and said, "We will represent
25 you against JRS. All you have to do is sign here. We

1 will cover all the cost. We will take our contingency
2 fees."

3 This is a case he and Mr. Rozi believed was worth
4 possibly a billion dollars. And they were hoping to make a
5 large percentage of that in contingency fees. JRS had
6 defended against this case.

7 That is the Staniforth case and we prevailed on
8 it. So obviously, the whole point of the settlement
9 agreement was so we didn't have to defend a claim like
10 that. Hence, rounding up a bunch of retired judges and
11 justices and their heirs to assert those claims is
12 exactly the opposite of what was intended by the
13 settlement agreement.

14 We are mostly just here to flush that out and
15 provide the extent of the breach. I think it is
16 important in the documents here, through Mr. Mast's
17 testimony, we will get an idea of how this went down and
18 what he was saying to JRS before he breached and what he
19 did after.

20 And I think that content is important. Other
21 than that, he filed a lot of papers recently. I have
22 responded. I provided a one-page response on one issue
23 cause. I just want to marker down on that one. It is a
24 very simple issue, but there was a lot of papers. Some
25 of them were late based on your prehearing order.

1 So I would certainly hope that we have a
2 post-hearing briefing to sort of cover all of this.
3 With that, that is my opening. We will move on. Thank
4 you.

5 THE COURT: All right. Judge Mast, do you have
6 anything in opening?

7 MR. MAST: Yes, your Honor. Mr. Rieger's statement
8 is completely a perversion of the -- what the facts are
9 and what has occurred in this case. In 1995, when JRS
10 said that my pension should begin, I inquired as to the
11 amount that I would be receiving, how it would be
12 calculated.

13 At that time I discovered, very much by
14 surprise because of things that had occurred before
15 that, that they were not following the law under
16 Government Code 60823, which provided for cost-of-living
17 increases to judicial pension and what the
18 cost-of-living increases had been ruled in Olson against
19 Cory.

20 That it was completely vested -- vested for all
21 times they were earned while the judges were serving
22 their terms during 1970 and through -- during the 1970s
23 and continuing through any terms that began before
24 January 1977, and Olson against Cory said they were
25 completely and absolutely vested.

1 And I questioned them about that. And I wound
2 up filing a claim. The claim was denied. I filed an
3 appeal. It was referred to the Office of Administrative
4 Hearings. There was a Statement of Issues and a
5 response to the Statement of Issues was filed.

6 There was negotiations with the attorney for
7 JRS, Maureen Reilly. And as a result of those
8 negotiations, and as a result of her analysis and
9 consideration of the response to the Statement of
10 Issues, we entered into a settlement agreement. The
11 settlement agreement was entered into in 1996, and it
12 is in the exhibits.

13 The -- pursuant to the settlement agreement,
14 JRS unilaterally computed the retirement benefit -- the
15 deferred retirement benefit that were due to me based upon
16 Government Code 60823, as it was passed in 1969 and before
17 it was changed in 1976. And it was determined by them,
18 and they agreed that those were vested.

19 Now, that agreement was entered into and was a
20 binding agreement on both sides. The calculation that
21 JRS did without my input became an inherent part of the
22 retirement benefits, and a lump sum was paid retroactive
23 to January 1st, 1997. JRS established an amount of
24 benefit that should be paid by -- starting January 1997.

25 And those numbers are our starting point for

1 calculations. The agreement that was entered into
2 contained, at the request of JRS, a confidentiality
3 clause must be strictly interpreted. JRS wrote the
4 clause. I did not. I did not have any part of it.

5 The only part of the -- the only thing the
6 confidentiality clause stated was that I would not
7 discuss the terms of the agreement. Those were the
8 words -- "terms of the agreement" with any party. I did
9 not do that. Now, Mr. Rieger has alleged that a
10 confidentiality clause is against public policy when it
11 is entered into by a government agency.

12 He has not presented any authority for that.
13 Hearing his statement, I don't know whether it is or it
14 is not against public policy. But I know that if it is
15 against public policy, that is a matter between JRS and
16 the public, not between me. I did not violate any
17 policy.

18 Now, that was in there and I lived by the
19 agreement. And I did not breach the agreement. And I
20 did not discuss it with anybody, ever. And in the
21 meantime, as shown in the documents, in the declarations,
22 JRS, and particularly in 2006 to 2010, breached the
23 settlement agreement time after time, after time, after
24 time, particularly with Pamela Montgomery.

25 Starting in October 2006, she was the manager of

1 JRS, who gave her staff explicit direction to not make
2 any cost-of-living increases with me. And the
3 declaration, that is, the trial brief specifically lays
4 out when cost-of-living increases were made and when
5 they were not.

6 There came a point in 2010 after some four
7 years, three or four years of no cost-of-living
8 increases coming to pass, that Pamela Montgomery wrote a
9 conclusion or letter stating what she thought was true.
10 And she paid me a lump sum at that time of \$10,880 for
11 past payments, which she even admitted was due.

12 Now, the effect of that \$10,880 payment was an
13 admission that JRS had breached the agreement over the
14 past four years, even though the number was wrong. It is
15 still an agreement. I disputed her calculations and her
16 conclusions. I wrote a letter, dated September 1st,
17 2010, and I also wrote a letter to the state controller,
18 John Chiang.

19 At that time he was also a member of the Board
20 of the California Public Employees' Retirement System.
21 And I copied the letter to every single member of the
22 California Public Employees' Retirement System and laid
23 out that I did not disclose anything about this in
24 accordance with the settlement agreement.

25 I had not talked about the terms and conditions

1 of the settlement agreement or anything else with
2 anybody throughout the years. And I pointed out to them
3 that Pamela Montgomery's attitude and conclusion and her
4 refusal to properly analyze this, not only was a
5 violation of the settlement agreement and a breach of
6 the settlement agreement, but it left me in a position
7 where I had no other choice but to engage an attorney to
8 represent me in the Matter.

9 I pleaded with them in the letter to help me to
10 not to have to hire an attorney, because if I did hire
11 an attorney, everything would be out in the open and
12 everything that JRS wanted me not to tell other people
13 would be revealed. No one replied to that.

14 There was no response at all from anybody. I
15 still waited nine months after that until May of 2011
16 before engaging an attorney. And when I engaged an
17 attorney, what I expected would happen did happen. And
18 the attorney wanted to represent other judges. Now, it
19 is long after JRS had breached the agreement, but I never,
20 except for showing him a copy of the settlement, I never
21 divulged the terms of the agreement to him or anyone else.

22 And up to this date, I have not revealed the
23 terms of the agreement to anyone else. And the only thing
24 in the confidentiality clause that I was required to do
25 was not reveal the terms of the agreement.

1 Now, I could have discussed the law. I could
2 have gone to the California Judges Associations and
3 given a speech about the vested rights under Olson
4 against Cory. I could have done a lot of things and
5 still not be in breach of the confidentiality clause,
6 but I did not do any of those things.

7 The -- Counsel brought up the Staniforth case.
8 And the Staniforth case does not say what Mr. Rieger
9 said. It only partially states that. The Staniforth
10 case left open the rights of judges who retired -- what
11 they call the protected period.

12 The protected period is, the judge who served
13 before January after -- excuse me -- after January 1,
14 1970, through January 1, 1977, and any term that started
15 before January 1, 1970, is the protected period. And the
16 Staniforth case said those judges who retired during the
17 protected period were entitled to COLA benefits, and
18 that issue remains open.

19 And there is a second appeal on the Staniforth
20 case now in that regard. The Staniforth court said that
21 those should be paid, unless there were some subsequent
22 statute of limitation which would apply. And there is
23 no subsequent statute of limitations that will apply.

24 The issues are not what Mr. Rieger would let
25 this Court -- or would -- not what Mr. Rieger would

1 cause this Court to believe. And I have here today, and
2 I will submit to the Court, the Respondent's brief and
3 reply brief in the Staniforth appeal that is now pending
4 to show the Court exactly what issues are still before
5 the Court in the Staniforth, which is different than
6 what Mr. Rieger specifies.

7 In regard to his summary of exhibits, even if
8 something -- even if his theory that the agreement was
9 completely invalid were true, Section 20164-B-1 of the
10 Government Code -- all of this is in the trial brief --
11 Section 20164-B-1 of the Government Code restricts JRS
12 from re-cooping any errors, omissions, or overpayments
13 to a matter of three years.

14 So the calculations would only go back three
15 years from now. But the main point is that the
16 settlement agreement was entered into in good faith with
17 some lawyers representing JRS and with the settlement
18 agreement signed by the manager of JRS. It was an
19 arms-length transaction. It was negotiated.

20 It was based upon not only my analysis of Olson
21 versus Cory and the fact that the benefits were vested,
22 and completely vested, but also by the analysis of the
23 attorney -- attorneys for JRS, particularly Maureen
24 Reilly. I had my discussion and that agreement was
25 entered into, was settled, and was in effect and is

1 still in effect up to the present time.

2 If someone enters into a settlement agreement
3 and there was improper conduct, such as fraud, the
4 parties have a limited time to challenge the settlement
5 agreement and have it set aside. And this is all laid
6 out in the trial brief with the authorities. That was
7 not done. It was never done.

8 When Pamela Montgomery in 2006 decided she
9 didn't want to abide by the settlement agreement, the
10 proper action she should have taken, which would have
11 been unsuccessful anyway because of the passage of time
12 was -- was to take legal action to set aside the
13 settlement agreement. She didn't do that. Instead, she
14 just spent four years breaching the settlement agreement.
15 The settlement agreement was, and is, a binding agreement
16 between the parties.

17 Now, it is just not conceivable that the
18 agreement entered into at that time could be set aside
19 15 years later was of another case, in another
20 jurisdiction, which held contrary opinion to what the
21 settlement agreement was based upon.

22 As far as the exhibits are concerned that I
23 have presented to the Court, these agreements -- these
24 exhibits are all identified and referred to in my
25 declaration -- perhaps, Marci Mast's declaration, I'm not

1 sure of that -- but also, in the trial brief.

2 Most of the exhibits are documents out of the
3 file of JRS and are identified in the prior trial brief.
4 Mr. Rieger says there is calculation involved here. There
5 are calculations involved here, and the calculations are
6 in the exhibits, Exhibit I and Exhibit Q.

7 And as such, I would offer all the exhibits into
8 evidence based upon the fact that they are referred to
9 in the documents filed in the Court already. The other
10 issue before the Court that Mr. Rieger did not refer to
11 is the matter of the right that was not given to me to
12 receive retirement benefits by my 60th birthday, rather
13 than on my 63rd birthday.

14 And this is also in the declaration and the
15 trial brief and are specifically laid out therein. And
16 it is an issue in this case also.

17 I would at this time offer to the Court the
18 Appellant briefs in the appeal pending at the present
19 time in the Staniforth case, which lays out exactly what
20 is still an issue in the Staniforth case, which includes
21 the issue of the interpretation of the Olson against
22 Cory, which is in addition to being set out in the
23 supplemental trial brief that has been filed with this
24 Court.

25 It was my intention that this matter would be

1 submitted to this Court upon the declarations and the
2 documents filed with this Court already and the exhibits
3 without further testimony, other than cross-examination
4 of myself, which Mr. Rieger has requested. And I think
5 that's all I have.

6 THE COURT: All right. I'm going to go ahead and
7 have you go ahead and present your evidence. And then I
8 will address the exhibits for Judge Mast.

9 MR. RIEGER: Your Honor, may I have just two minutes
10 to respond to one issue that was raised in his comments?

11 THE COURT: All right.

12 MR. RIEGER: I think this is important, as you
13 mentioned you just dropped into this, and we have been
14 involved with this for awhile. I just want to clarify
15 the Staniforth opinion, because it has been completely
16 misrepresented in Mr. Mast's statement.

17 His theory -- the theory of a retired
18 hypothetical judge is unhinged from current judges'
19 salary. That was absolutely, completely rejected by the
20 Court of Appeals, by the trial court, and the court that
21 deals with Staniforth. What keeps it still going is they
22 are -- the factual matter this is simply not true, which
23 I will prove someday if I have to.

24 They have alleged that ten of these people are
25 all deceased. So there are ten deceased judges,

1 justices, and ten of their heirs are pursuing a claim
2 that they were not paid the amount that was correctly
3 due to them under Olson v Cory.

4 So the reason that some amounts were under
5 Olson v Cory is because the Court said you cannot apply the
6 statute judicial salary to an existing term. So for all
7 the existing judicial terms, they had to finish those
8 terms on the old salary statute, but once those terms
9 ended under the new statute and the retirees fall under
10 the actives, the active salary -- the new statute.

11 And then the retirees, whose is based on the
12 active salary, were also tied to the new statute. That
13 is what Olson v Cory said. So in the Staniforth case,
14 Mr. Mast and Mr. Rozi are alleging that back in the '80s,
15 when, like, 30 years ago when Olson v Cory was decided,
16 they are saying these ten individuals never got the amount
17 that were due to them during those protected periods. One
18 of them was actually protected under Olson v Cory. We
19 have never disputed that, reading Olson v Cory.

20 We have always agreed that those ten people were
21 entitled to the amount under Olson v Cory. Actually, I
22 should take that back. Two of them were not because
23 factually they weren't. But eight of them were entitled
24 to those amounts under Olson v Cory.

25 We have never disputed that. They were paid

1 those amounts in the '80s. For some reason, I'm still
2 fighting this case. In the trial court, they sustained
3 our demur based on statute of limitations grounds. Now,
4 we are in the Court of Appeal.

5 If they remand it again, I will go back in and
6 show that these people were paid in the '80s. But the
7 idea that the Staniforth court in any way validated
8 Mr. Mast's theory is just flat wrong. The Staniforth
9 opinion is far more consistent with what JRS has always
10 said. The clean-up litigation we are doing now is based
11 on the false factual allegation, rather than a legal
12 theory.

13 I just want to clear that up.

14 THE COURT: I understand. What is the direction?
15 I have your exhibit binder. Do you have any witnesses?

16 MR. RIEGER: Just Mr. Mast.

17 THE COURT: Okay. Did you want to go through and
18 mark and offer them?

19 MR. RIEGER: Sure.

20 THE COURT: Why don't we go off the record for just
21 a minute.

22 (Recess)

23 THE COURT: We are back on the record after our
24 break. We are going to begin with Complainant's
25 exhibits -- of JRS exhibits.

1 MR. RIEGER: Did you want me to go through all the
2 ones that --

3 THE COURT: Yeah. Why don't we just go through the
4 ones you want to have marked. We will address their
5 admission. And then the ones you don't have marked, I
6 will go ahead and return them to you.

7 MR. RIEGER: I will start with the ones I expect to
8 mark, and then I may add more. Exhibit 1.

9 THE COURT: Behind tab 1, we have the settlement
10 agreement.

11 MR. RIEGER: Yes. This might be a good time to just
12 stipulate. This is the settlement agreement of this
13 whole proceedings.

14 Exhibit 1, would you agree this is the
15 settlement agreement that we are here about?

16 MR. MAST: That's a duplicate of one of Respondent's
17 exhibits, your Honor.

18 THE COURT: Okay. So there is no objection to
19 Exhibit 1, then?

20 MR. MAST: Yes.

21 THE COURT: So Exhibit 1 is admitted.

22 (Complainant's Exhibit 1 was received in
23 evidence by the Court.)

24 MR. RIEGER: 3.

25 THE COURT: All right. As Exhibit 3, we have a

1 January 13, 1979 letter from Judge Mast. That's marked
2 as Exhibit 3 for identification.

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

5 MR. RIEGER: Are we going to go ahead and admit them
6 now if we can?

7 THE COURT: Yeah. You are offering that, right?

8 MR. RIEGER: Yes, I will offer that.

9 THE COURT: Any objection to Exhibit 3?

10 MR. MAST: No.

11 THE COURT: Exhibit 3 is admitted.

12 (Complainant's Exhibit 3 was received in
13 evidence by the Court.)

14 MR. RIEGER: Exhibit 5. I will offer that as well.

15 THE COURT: All right. This is a March 27th, 1995
16 letter from Jim Niehaus, N-I-E-H-A-U-S, to Judge Mast.

17 MR. RIEGER: It is from Judge Mast to Jim.

18 THE COURT: I'm sorry. Yes. Thank you. Any
19 objection to Exhibit 5?

20 MR. MAST: No.

21 THE COURT: Exhibit 5 is admitted.

22 (Complainant's Exhibit 5 was received in
23 evidence by the Court.)

24 MR. RIEGER: Exhibit 6.

25 MR. MAST: There is no objection. That is also a

1 duplicate of one of Respondent's exhibits.

2 THE COURT: And the exhibit behind tab 6 is a May 1,
3 1995 letter to the Judges' Retirement System. And that
4 is from Respondent. There being no objection, Exhibit 6
5 is admitted.

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

8 MR. RIEGER: Exhibit 7.

9 MR. MAST: That also is a copy of one of
10 Respondent's exhibits. There is no objection.

11 THE COURT: All right. And behind tab 7 is an
12 August 5, 1996 letter to Maureen, M-A-U-R-E-E-N; Reilly,
13 R-E-I-L-L-Y, from the Respondent. There being no
14 objection, Exhibit 7 is admitted.

15 (Complainant's Exhibit 7 was received in
16 evidence by the Court.)

17 MR. RIEGER: Exhibit 8.

18 THE COURT: Exhibit 8 is an August 5, 1996 letter.

19 MR. MAST: There is no objection to that and the
20 attachment is Respondent's response to statement of
21 issues is also in Respondent's exhibits.

22 THE COURT: All right. An attachment to the letter.
23 Those are marked collectively as Exhibit 8 for
24 identification. Is there any objection to Exhibit 8?

25 MR. MAST: No.

1 THE COURT: Exhibit 8 is admitted.

2 (Complainant's Exhibit 8 was marked for
3 identification by the Court and received
4 in evidence.)

5 MR. RIEGER: Exhibit 9.

6 MR. MAST: There is no objection. And that, also,
7 is one of the Respondent's exhibits.

8 THE COURT: That is an October 8, 1996 letter to
9 Ms. Reilly from Respondent. There being no objection,
10 Exhibit 9 is admitted.

11 (Complainant's Exhibit 9 was received
12 in evidence by the Court.)

13 MR. RIEGER: Exhibit 11.

14 THE COURT: That is a May 10, 2006 letter to JRS
15 from Respondent. That is marked as Exhibit 11 for
16 identification.

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

19 MR. MAST: There is no objection.

20 THE COURT: Exhibit 11 is admitted.

21 (Complainant's Exhibit 11 was received in
22 evidence by the Court.)

23 MR. RIEGER: Exhibit 12.

24 THE COURT: That's a June 11th, 2006 letter to JRS
25 from Respondent that has been marked as Exhibit 12 for

1 identification.

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

4 MR. MAST: No objection.

5 THE COURT: Exhibit 12 is admitted.

6 (Complainant's Exhibit 12 was received in
7 evidence by the Court.)

8 MR. RIEGER: Exhibit 13.

9 THE COURT: That is purportedly an E-mail from
10 Pamela Montgomery -- excuse me -- to Pamela Montgomery
11 from Respondent. It is two pages in the binder marked
12 as Exhibit 13 for identification.

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

15 MR. MAST: No objection.

16 THE COURT: Exhibit 13 is admitted.

17 (Complainant's Exhibit 13 was received in
18 evidence by the Court.)

19 MR. RIEGER: Exhibit 14.

20 THE COURT: That is a March 25, 2008 E-mail from
21 Respondent to Ms. Montgomery. Any objection? Looks
22 like there is an E-mail at the bottom. There is also
23 prior E-mail exchanges to and from as well.

24 MR. MAST: No objection.

25 THE COURT: Exhibit 14 is admitted.

1 (Complainant's Exhibit 14 was received in
2 evidence by the Court.)

3 MR. RIEGER: 15.

4 THE COURT: The document behind tab 15 is an E-mail
5 from Respondent to Ms. Montgomery, dated May 7, 2008.
6 Any objection to Exhibit 15?

7 MR. MAST: No objection.

8 THE COURT: Exhibit 15 is admitted.

9 (Complainant's Exhibit 15 was received in
10 evidence by the Court.)

11 MR. RIEGER: 16.

12 THE COURT: Behind tab 16 is a January 7, 2009
13 letter to the office of the attorney for Judges'
14 Legislative Retirement System from Respondent. It is
15 marked as Exhibit 16 for identification.

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

18 THE COURT: Is there any objection to Exhibit 16?

19 MR. MAST: No, your Honor.

20 THE COURT: Exhibit 16 is admitted.

21 (Complainant's Exhibit 16 was received in
22 evidence by the Court.)

23 MR. RIEGER: Exhibit 17. Actually, I will clarify
24 this. Mr. Mast wrote -- he actually alluded to this in
25 his opening statement. He wrote this letter on the same

1 day and sent them to several different people. I have
2 included them as a single exhibit. They are very
3 redundant of each other. And they were all sent on the
4 same day. But I'd like to move them all into evidence.

5 THE COURT: All right. They are September 1st,
6 2010 letter to the state controller, John Chiang,
7 C-H-I-A-N-G; to Ms. Montgomery; to Bill Lockyer,
8 L-O-C-K-Y-E-R; looks to be another letter to the state
9 controller; another to Pamela Montgomery.

10 MR. RIEGER: That might be duplicate. I'd like to --

11 THE COURT: Another to the Honorable Rob, R-O-B;
12 last name F-E-C-K-N-E-R.

13 MR. RIEGER: Actually, the reason there is duplicate
14 -- the reason is because in discovery, Mr. Mast produced
15 unsigned copies of these letters. So I believe I put --
16 there may be duplicates because I wanted the signed copy.
17 But anyway, I will introduce all of them into evidence.

18 MR. MAST: These letters are all in the Respondent's
19 exhibits, your Honor.

20 THE COURT: All right. So they are marked as
21 Exhibit 17 for identification.

22 (Complainant's Exhibit 17 was marked for
23 identification by the Court.)

24 THE COURT: I take it there is no objection.

25 MR. MAST: No.

1 THE COURT: Exhibit 17 is admitted.

2 (Complainant's Exhibit 17 was received
3 in evidence by the Court.)

4 MR. RIEGER: 18.

5 THE COURT: All right. 18 is E-mails dated
6 September 29, 2010, to and from Ms. Montgomery and
7 Respondent. Any objection to Exhibit 18?

8 MR. MAST: No objection.

9 THE COURT: Exhibit 18 is admitted.

10 (Complainant's Exhibit 18 was received in
11 evidence by the Court.)

12 MR. RIEGER: 20. So this is the declaration of
13 Pamela Montgomery. It references Exhibit A are the
14 historical records to have payment to Mr. Mast. I did
15 serve this declaration pursuant to Government Code
16 Section 11514.

17 Mr. Mast did not request Ms. Montgomery to
18 appear for cross-examination. So I'd like to move
19 Exhibit 20 into evidence now, along with the declaration,
20 the declaration with Exhibit A.

21 THE COURT: All right. The declaration and the
22 attached Exhibit A are marked as Exhibit 20 for
23 identification.

24 (Complainant's Exhibit 20 was marked for
25 identification by the Court.)

1 THE COURT: Was there any objection to Exhibit 20?

2 MR. MAST: Only because of the volume, your Honor.

3 I pointed out in one of the documents that I filed, that
4 JRS provided for me and attached in my exhibits, an
5 itemized list of each month that the amount of benefit
6 that were paid, which corresponds with this.

7 However, also, your Honor, in the document I
8 filed, I spot-checked -- I didn't check each one of these,
9 but I spot-checked, and one of them that I found had a
10 correct amount for a prior year, which is in a document
11 I filed. But it was not the correct amount for the date
12 that is indicated on this particular sheet.

13 And I say this -- I don't -- I don't really
14 have an objection to these payments, but I would say in
15 order to save the Court time, so the Court doesn't have
16 to go through these 300 individual pages, that these are
17 all consistent with the exhibits produced by JRS, which
18 gave the payments up to 2010.

19 It is also consistent with the Excel spreadsheet
20 as to benefits paid, which is Exhibit Q.

21 THE COURT: All right.

22 MR. RIEGER: Your Honor, we certainly don't expect
23 you to go through 300 pages, either. This is a
24 foundational exhibit. The next Exhibit 21 actually has
25 the relevant data extracted from these and provides a

1 backup, so there is no misunderstanding. We didn't make
2 these documents. They came from the file.

3 THE COURT: There being no objection to Exhibit 20,
4 it is admitted.

5 (Complainant's Exhibit 20 was received in
6 evidence by the Court.)

7 THE COURT: Thank you for not expecting me to go
8 through that stack. I'm assuming 21 is Exhibit B?

9

10 MR. RIEGER: 21 is Exhibit B of Ms. Montgomery's
11 declaration, the first two pages. Now, just as Exhibit
12 B, this just has everything that was in Exhibit A as in
13 Exhibit B in terms of numbers.

14 And then we have also included the amount that
15 he would have been paid had a retirement allowance been
16 tied to an active judge's salary as it's supposed to. We
17 also included a column for assumed, that is 77.5 percent
18 interest.

19 THE COURT: That's marked as Exhibit 21 for
20 identification.

21 (Complainant's Exhibit 21 was marked for
22 identification by the Court.)

23 THE COURT: Is there any objection to Exhibit 21?

24 MR. MAST: Yes, your Honor. I object to this
25 exhibit as immaterial and irrelevant in that there is

1 no cause that the settlement agreement should be revoked
2 at this time. And, also, it is immaterial and irrelevant,
3 even if the settlement agreement were revoked.

4 That according to Government Code 20164-B-1,
5 the Judges' Retirement System can only go back three
6 years from the present time to correct errors and
7 omissions.

8 THE COURT: Those objections are overruled.
9 Exhibit 21 is admitted. Obviously, the argument just
10 stated, I will consider in the proposed decision. As far
11 as admitting 21, that is admitted.

12 (Complainant's Exhibit 21 was received in
13 evidence by the Court.)

14 MR. RIEGER: Exhibit 22.

15 THE COURT: That is the declaration of Judge Mast.

16 MR. RIEGER: This was filed in the Staniforth
17 action.

18 THE COURT: That's marked as Exhibit 22 for
19 identification. Looks like a declaration is attached.

20 MR. RIEGER: Yes.

21 THE COURT: Any objection to Exhibit 22?

22 MR. MAST: Yes, your Honor. Exhibit 22 is
23 immaterial and irrelevant to any of the issues before
24 the Court at this time. And there are portions of this
25 that were not generated by me, but that came from other

1 people. I have not had a chance to study what this is.
2 But just looking at it, there are various attachments
3 that were not generated by me and were not my documents.

4 MR. RIEGER: Your Honor, if I may respond?

5 THE COURT: You may.

6 MR. RIEGER: This document was a declaration that
7 was filed and received as far as the exhibits, including
8 documents that were not generated by E-mails and letters
9 in there. He didn't write initially. He was the one
10 that attached the exhibits to his declaration.

11 So this is -- as I said, this is -- and I have
12 got a signature showing his proof of service that served
13 this declaration on the back of all the exhibits. That
14 is how it was received. His declaration, I believe, as
15 delivered to me, may have been unsigned; not really sure
16 why this one was signed -- I'm sorry.

17 Yes. This declaration, signed by proof of
18 service by Mr. Mast, and he attached all the attachments.
19 So, I mean, I think these are properly before the Court.

20 THE COURT: And the relevance of the declaration as
21 well as the attachment?

22 MR. RIEGER: This goes primarily to a breach, because
23 there is a lot of information in here explaining exactly
24 how he and Mr. Rozi rounded up plaintiffs in the
25 Staniforth matter, what they did to pursue those claims.

1 I believe there is also some aspect of the exhibit that
2 will go to Mr. Mast's credibility in general.

3 I am happy to point out a couple pages that I
4 find relevant if that helps.

5 THE COURT: The objections are overruled. Exhibit 22
6 is admitted to show the breach of confidentiality only.
7 Those are the declaration and attachment. Obviously,
8 the weight that I will give is a whole other issue, I'm
9 not really sure.

10 (Complainant's Exhibit 22 was received in
11 evidence by the Court.)

12 MR. MAST: I would also point out, your Honor, that
13 this was not on the list of exhibits. I do not believe
14 it is on the list of exhibits presented to me earlier in
15 the months when Counsel presented it.

16 MR. RIEGER: I have it right here. This is what I
17 have, a proof of service showing that I sent this to
18 Mr. Mast. It is the same exhibit number. It is exhibit
19 declaration of Paul G. Mast regarding attorney for
20 petition, dated August 14, 2012.

21 MR. MAST: I might be mistaken, your Honor. Sorry,
22 if I am.

23 THE COURT: It is on the list. All right. What was
24 the next?

25 MR. RIEGER: So 22 is in?

1 THE COURT: 22 is admitted.

2 MR. RIEGER: 23, I will just -- to explain why I
3 want this in. This was a declaration from Mr. Mast's
4 co-counsel in the Staniforth case. And I understand
5 obviously he's not here. I'm not -- the main -- there
6 is only one reason I want this in.

7 I think Mr. Mast is going to be able to
8 authenticate the document. Give me one moment. JRS
9 1506, it is towards the end of the exhibit. It is maybe
10 six pages to the end, something like that. Frankly, I
11 would be willing to make that an exhibit if Mr. Mast
12 will agree to admit it now.

13 THE COURT: We are looking at what is behind tab 23,
14 JRS 1506. This appears to be an undated letter signed
15 by Judge Mast.

16 And you want to have that marked as Exhibit 23?

17 MR. RIEGER: Yeah. I would like the whole
18 declaration to be marked. But if Mr. Mast has an
19 objection, I am okay with just 1506.

20 MR. MAST: I will not object to 1506.

21 THE COURT: So if that is the only thing being
22 marked, I'm going to pull out page 1506 and mark that
23 page solely as Exhibit 23. So let me just pull out the
24 remaining documents that are not going to be marked.
25 All right.

1 So Exhibit 23, which is a letter dated from the
2 Respondent -- it is paginated JRS-1506 -- is marked
3 Exhibit 23 for identification. And there is no objection?

4 MR. MAST: No.

5 THE COURT: Exhibit 23 is admitted.

6 (Complainant's Exhibit 23 was marked for
7 identification by the Court and received in
8 in evidence.)

9 MR. RIEGER: And Exhibit 24, which is another
10 declaration from Mr. Mast in the same action, essentially
11 replying. The declaration is on the same issue.

12 MR. MAST: My only objection is as to the relevancy
13 here.

14 THE COURT: That is marked as Exhibit 24 for
15 identification.

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

18 THE COURT: And the relevance of Exhibit 24 is?

19 MR. RIEGER: This again goes to -- just as an
20 example, on page -- on page 1523, it says Mast and Rozi
21 discussed the fees. Rozi told Mast his part would be
22 half and half. Again, it goes to the fact of the two of
23 them teamed up and asserting these claims, the very
24 claim that the confidentiality agreement was defined to
25 protect.

1 THE COURT: Are there any objections to Exhibit 24?

2 MR. MAST: No further objection, except that I will
3 comment that the confidentiality agreement did not cover
4 this. It only covered terms of the agreement.

5 THE COURT: All right. Exhibit 24 is admitted.
6 I'll again -- I'm not sure how much weight it will
7 afford. It is admitted.

8 (Complainant's Exhibit 24 was received in
9 evidence by the Court.)

10 MR. RIEGER: Exhibit 25.

11 THE COURT: And I should clarify Exhibit 24 is being
12 admitted to show breach of confidentiality. Exhibit 25
13 is a letter from -- well, a letter to someone named
14 Mason, M-A-S-O-N. It appears to have Marci and Paul
15 Mast letterhead.

16 That is marked as Exhibits 25 for identification.
17 Any objection to Exhibit 25?

18 MR. MAST: No objection.

19 THE COURT: Exhibit 25 is admitted.

20 (Complainant's Exhibit 25 was marked for
21 identification by the Court and received
22 in evidence.)

23 MR. RIEGER: Exhibit 26 is the same thing, but to
24 another person.

25 THE COURT: This appears to be on the letterhead of

1 Marci and Paul Mast. That is marked as Exhibit 26 for
2 identification. Are there any objections to Exhibit 26?

3 MR. MAST: No.

4 THE COURT: Exhibit 26 is admitted.

5 (Complainant's Exhibit 26 was marked for
6 identification by the Court and received
7 in evidence.)

8 THE COURT: All right. There are some exhibits that
9 have not been marked. When we get to the end of today's
10 session, I will pull whatever was not marked and return it.

11 MR. RIEGER: Sounds good.

12 THE COURT: Did you have anything further in JRS
13 case in chief?

14 MR. RIEGER: Oh, I'd like to call Mr. Mast.

15 THE COURT: In case he does not testify on his
16 own behalf, let's do -- if we can first go through the
17 Respondent's exhibits, and then I will go ahead and have
18 witness testimony. I do have a binder of exhibits.

19 I started, at least, to get together an exhibit
20 list, a list for these particular exhibits. So let's go
21 ahead, and I will go through and mark them. And they are
22 sectioned off in the binder.

23 All right. So behind tab A, I have a copy of
24 Government Code Section 75033.5.

25 MR. RIEGER: Your Honor, I assume that this is the

1 legitimate citation on the code section. I think it
2 makes sense to object to this simply because we go to
3 the law books and we don't want to compare it word for
4 word. Of course, we can both cite 75033.5 in our
5 briefs.

6 THE COURT: All right. Did you want to have this
7 marked?

8 MR. MAST: Yes, your Honor. It is placed as an
9 exhibit for convenience of the Court.

10 THE COURT: Okay. And I actually tend to go to the
11 law anyway. Because I'm going to cite the law. I have
12 to cut and paste it, anyway. I won't be typing from a
13 booklet. So that's marked as Exhibit A.

14 (Respondent's Exhibit A was marked for
15 identification by the Court.)

16 THE COURT: There is an objection that it may or may
17 not be what it purports to be, but --

18 MR. RIEGER: I assume we can just mark it. It does
19 not have to be in evidence. We can just mark it. It is
20 like argument, I suppose.

21 THE COURT: So --

22 MR. MAST: I would point out, your Honor, I don't
23 think there is a difference in this code section, but
24 we are dealing with code sections from 30 years ago or
25 more, which might have amended in the meantime.

1 MR. RIEGER: It is one of the reasons I want to make
2 sure we are using the initial source, because I don't
3 believe it is a current version or some older series.

4 THE COURT: All right. Exhibit A -- well, that code
5 section is marked. It is lodged as part of the argument
6 of Respondent's case. And I will be going to the actual
7 code sections as we go along.

8 We got -- what is behind tab B purports to be
9 Government Code Section 75025. That's marked as Exhibit
10 B.

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

13 THE COURT: And same objection as to Exhibit A?

14 MR. RIEGER: Yes.

15 THE COURT: Exhibit B has been lodged as part of
16 argument in Respondent's case. Behind tab C -- and I
17 understand you want all the exhibits marked; correct?

18
19 MR. MAST: Yes.

20 THE COURT: So behind tab C is a September 30, 1987
21 letter to the California Judges Association from -- I'm
22 going to spell the name E-L-W-O-O-D, last name, L-U-I.
23 That will be marked as Exhibit C for identification, and
24 what appears to be a single-page document, entitled
25 Retirement Allowance Computation. These are marked as

1 Exhibit C for identification.

2 (Respondent's Exhibit C was marked for
3 identification by the Court.)

4 MR. RIEGER: I object, your Honor, on hearsay.
5 Foundation. It is also incomplete. It seems to be --
6 as I understand, this purports to be something
7 circulated by somebody who is not authorized, not
8 represented here.

9 And it also -- I think it was submitted -- I
10 think Mr. Mast tried to submit it because he, in one of
11 his legal theories to the extent that it does at all --
12 it is not relevant to this matter what Judge Lui wrote
13 and outlined in a presentation in 1987, so I object to
14 the entirety of this exhibit.

15 THE COURT: All right. Any response?

16 MR. MAST: Your Honor, this was approved by the
17 manager of the Judges' Retirement System.

18 MR. RIEGER: There is no evidence before the Court
19 of that. There is a note that says the person who wrote
20 this said he would like to acknowledge Sue Myers for
21 assistance in editing this outline. This is hearsay.

22 It is double hearsay, actually, and certainly
23 the fact that she may have helped outline this seems to
24 be at least 11 pages, but only two are here, certainly
25 endorsing any lawyer's view as stated on page 11. And

1 even if she was, it is not relevant in any way because
2 the law is the law, not what Sue Myers thought.

3 THE COURT: All right. The foundation objection is
4 sustained. Exhibit C, the one page of a multi-page
5 outline, those are not admitted.

6 MR. MAST: I would point out, your Honor, that as I
7 said in the trial brief, the entire document is present
8 in Court for presentation to the Court if the Court
9 desires.

10 THE COURT: All right. It is in some of the
11 documents.

12 MR. RIEGER: I make the same objection, even if the
13 full document -- now, it is still hearsay. There is a
14 foundation problem. We have no way of knowing really
15 who wrote this or what relevance it has.

16 THE COURT: All right. So the page that is attached
17 to the letter appears to be part of a summary at the
18 very top page, California Judge Association, California
19 Judicial College 1987 Retirement and Benefit seminar.
20 Apparently, this outline was part of a seminar that was
21 given.

22 So the objections are -- the ruling on the
23 objections stand. Exhibit C, whether or not partial or
24 in entirety with the outline, is not admitted. And then
25 the next document is a November 16, 1978 letter to

1 Judge Mast.

2 A two-page letter -- actually, there are
3 several letters in this -- in this exhibit, there is also
4 a January 2, 1975 letter to several recipients, including
5 the judicial counsel, the state controller's office,
6 and the secretary of state. Those are -- and that
7 letter was purportedly written by Judge Mast.

8 Also, a January 6, 1987 letter to Judge Mast
9 purportedly to the state controller. What appears to be
10 a memorandum to the state controller's office, dated
11 January 10, 1979, a November 13, 1978 handwritten
12 document, a December 19, 1986 memorandum to Sue Myers,
13 M-Y-E-R-S, manager of the Judges' Retirement System from
14 Margaret, M-A-R-G-A-R-E-T; last name H-O-E-H-N.

15 And this is regarding Judge Philip,
16 P-H-I-L-I-P; last name Schwab, S-C-H-W-A-B, and what
17 appears to be pages 9 through 13 of a document. The
18 document appears to be an appeal request for hearing.

19 Those are marked collectively as Exhibit D for
20 identification.

21 (Respondent's Exhibit D was marked for
22 identification by the Court.)

23 MR. RIEGER: One of these, your Honor, is a
24 duplicate of one I put into evidence. It is -- as I
25 said, that I would at least like to ask for an offer of

1 proof as to why these are relevant, because I don't know
2 why any of them are. So maybe we can take them one by
3 one.

4 THE COURT: Let me just go through each.

5 MR. MAST: Your Honor, these documents are all
6 included in, and the relevance is stated in the trial
7 brief.

8 MR. RIEGER: So I -- what I saw in the trial brief
9 was that Mr. Mast is claiming that -- let me set the
10 table for this. At some point, when he was still an
11 active judge, he realized he could get his 20 years of
12 service where his benefit topped out, but he had
13 continued to make contributions.

14 So back in the '70s he said that is incredible
15 to me to fix, quote, unquote, "and starting up again,"
16 you know, two minutes later.

17 "Give me all my funds back" and start the
18 clock on 20 years. So he did that. The controller
19 agreed to do it. It all happened.

20 And I understand he is saying in his trial
21 brief that later he had to put money back in at some
22 point. I think he gets service credit back, he never got
23 his full 20 years. I think he is saying he was charged
24 six percent interest, but it should have been three.

25 MR. MAST: That's not true.

1 MR. RIEGER: Whatever his theory is, he said in his
2 brief -- he literally said, "That issue is not before
3 this Court."

4 So I immediately briefed it saying, "Why are
5 we even talking about it if it is not before the Court?"

6 THE COURT: All right.

7 MR. MAST: One of the exhibits on Counsel's list of
8 exhibits inferred that there was some detriment by
9 obtaining a refund of contributions to the Judges'
10 Retirement Fund and then reconstructed them. And that's
11 why these exhibits are in there. And that's what the
12 trial brief was referring to.

13 Because it is clear, as stated in the trial
14 brief, that there is no detriment and it doesn't change
15 the fact of my years of service and how they pertain to
16 Section 75025 of the Government Code by taking funds out
17 of the retirement system and then replenishing into the
18 retirement system together with interest.

19 The matter, in regard to Judge Schwab, shows a
20 common occurrence. And Judge Schwab was actually
21 contesting the fact he was charged, I think, six percent.
22 He was charged a higher rate than three percent. And he
23 prevailed on that only three percent was due. It is a
24 fact that I was overcharged interest at six percent
25 rather than three percent.

1 But that is not an issue before this Court,
2 and I'm not bringing that up. So the fact that I was
3 overcharged interest when I repaid the amount into the
4 fund is not a material issue, because that has not been
5 brought up.

6 THE COURT: All right. So is there relevance to
7 Exhibit D, the various documents in here, with regard to
8 issues in this Matter?

9 MR. MAST: If Counsel is not alleging, as he inferred
10 in his list of exhibits, that it is some detriment
11 withdrawing the funds and then repaying them, then it is
12 not relevant to anything.

13 MR. RIEGER: Which exhibit do you think infers that?

14 MR. MAST: I can't -- I can't say that at this time.

15 MR. RIEGER: I will state on the record Mr. Mast's
16 service credit. He had approximately 13.2 years service
17 credit. I think you would agree with that. So I don't
18 think there is any relevance to these documents.

19 THE COURT: I'm not hearing any -- so the objection
20 is sustained. So Exhibit D is not admitted.

21 The next exhibit in the binder is marked as
22 Exhibit E. It is a one-page document that appears to be
23 handwritten. There are the years and various calculations.

24 I tell you right now, unless this was something
25 that we obtained from CalPERS -- is there an objection?

1 MR. RIEGER: Foundation and hearsay.

2 MR. MAST: This is a document generated and supplied
3 by the Judges' Retirement System from my file. And the
4 relevance is in the center of the page. The Court will
5 see where it says 75025, 5/28/92, age 60. That's when
6 my retirement benefits should have started under Section
7 75025.

8 I was not given the option to have them start
9 at that date, which JRS was required to advise me of.
10 And this is the Hittle case in the trial brief, which is
11 set out. And that is the basis of the issue that my
12 benefit should have started in 1992.

13 THE COURT: Do we have -- is this something that you
14 drafted and went into your file?

15 MR. MAST: No. No. This is a handwritten document
16 from JRS, part of their calculations. And down at the
17 bottom, it says CalPERS 021.

18 MR. RIEGER: It is cut off.

19 MR. MAST: This is the Judges' Retirement System
20 document where they calculated the amount of benefits
21 that I was due.

22 MR. RIEGER: I agree this was a document that was in
23 his file. It was provided to him in the proceedings.
24 But I object to the document on foundation and hearsay
25 grounds. And I will -- just the foundation and hearsay

1 is particularly problematic here because he is trying to
2 extrapolate meaning from one little incident that
3 somehow supports this case.

4 I mean, 75025 allows the judges to be retired at
5 age 60 if they have 20 years of service. It appears
6 somebody wrote here, if he has 20 years of service, he
7 will be able to retire at age 60. If he doesn't wait
8 till he's 63, then it is consistent with the law. It is
9 not relevant, because even if staff members believed
10 Mr. Mast's theory is correct, the fact of what staff
11 members might have thought, that has no bearing as
12 cited in the one-page opposition. The law expresses
13 judges retire still age 63.

14 MR. MAST: That's a misstatement of the law, your
15 Honor. The law states and this is --

16 THE COURT: Well, we will get to that part of the
17 case as far as -- and I'm going to order some
18 post-hearing briefing. But as far as Exhibit E is
19 concerned, the foundation and hearsay objections are
20 sustained because I have no idea who wrote this and
21 what the document purports to be.

22 MR. MAST: Your Honor, are you sustaining the
23 objection to this document?

24 THE COURT: The foundation and hearsay objection,
25 yes.

1 MR. MAST: It is not a hearsay document, your Honor.
2 This is a document created by the petitioner and placed
3 in my file. This is an official record of the State of
4 California that the Judges' Retirement System created and
5 placed in my file. It is an official document. And it
6 is not hearsay.

7 It is part of that -- calculations that they
8 undertook at the time they originally calculated my
9 retirement benefits. It can't possibly be hearsay. It
10 is a document that they created and presented and placed
11 in my file. And all the documents in my file received
12 from JRS are records of the Judges' System in the State
13 of California, and none of them are hearsay or irrelevant.

14 THE COURT: Do you have a response?

15 MR. RIEGER: Well, they come from the file, sure.
16 They are business records in that sense. You know, I
17 put a Bates stamp and I'm not disputing that. The
18 problem is more a foundational issue than anything else.

19 But he is trying to take one scribble of the
20 law and attribute meaning to it and trying to offer it
21 into evidence, and having meaning that he thinks
22 supports his cause without having -- not even knowing
23 who wrote this, not knowing why they wrote it, not
24 knowing what they meant when they wrote it.

25 I mean, this is the definition of problematic

1 foundational, hearsay material. I can't -- like I said,
2 I already offered you a perfectly reasonable explanation
3 of why this is here. That is consistent with the law.

4 MR. MAST: That's a matter --

5 THE COURT: I want to make clear here: I'm looking
6 at the document, and nobody has come in to establish
7 why -- what this is. I understand that is part of the
8 JRS file, but as far as this particular document, unless
9 somebody comes in and says, "I saw a person actually write
10 this and it is part of the file," I don't know what it is,
11 so --

12 MR. MAST: The foundation is in the declaration and
13 trial brief, your Honor --

14 THE COURT: All right.

15 MR. MAST: -- where this document came from.

16 THE COURT: And I have marked the trial brief as
17 Exhibit Y.

18 MR. MAST: I cannot, at this time, specify the exact
19 location in the trial brief, because your Honor has the
20 copy of the trial brief that I brought to Court to use
21 for myself. I would suggest, your Honor, that your
22 Honor might reserve judgment on this until such time as
23 you read the trial brief and see the document at the
24 time that I referred to.

25 MR. RIEGER: I would object to that, your Honor. I

1 think the problem here is foundational. It is -- I
2 don't know what he says in the trial brief. I assume he
3 says in the trial brief, maybe the declaration, is that
4 I received this page from JRS in discovery on this matter.
5 That's probably what it says.

6 That does not go into who wrote it, why they
7 wrote it, what it is, what it means. It is not of
8 value. And this is the kind of thing Mr. Mast conducted
9 in this issue, but he didn't --

10 MR. MAST: It speaks for itself, your Honor. It
11 doesn't matter who wrote it. It was a document created
12 by the Judges' Retirement System. And the document
13 speaks for itself, and says what it says, no more, no
14 less.

15 THE COURT: Off the record for just a minute.

16 (Discussion off the record)

17 THE COURT: We are back on the record. I'm
18 returning the trial brief to you, Judge Mast. I just
19 obtained a copy from the system of Exhibit Y, which is
20 Respondent's trial brief. I just looked in there and
21 could not find anywhere Exhibit E was authenticated.
22 But perhaps you can --

23 MR. MAST: May I approach?

24 THE COURT: Maybe over the lunch break, maybe you can
25 find it. I did not. But it will need to either have

1 some kind of authentication to comport with the hearsay
2 exception.

3 All right. We are at the lunch break, so why
4 don't we take a break. We will reconvene at 1:30.

5 MR. MAST: May I approach, your Honor?

6 THE COURT: Yeah.

7 MR. MAST: It is on page 6.

8 THE COURT: Thank you. I will go ahead and return
9 that to you because I have a copy. That way, you are
10 not operating without your copy.

11 MR. MAST: I'm sorry. I didn't understand you, your
12 Honor.

13 THE COURT: Why don't -- I will take your continued
14 argument in response to that when we get back, and then
15 we will finish with the Respondent's exhibits and take
16 Judge Mast's testimony after lunch.

17 MR. RIEGER: Thank you, your Honor.

18 THE COURT: We are off.

19 (Lunch recess)

20 THE COURT: We are back on the record after the
21 break. And we are continuing to go through Respondent's
22 exhibits. I believe we were on Exhibit E, which is the
23 handwritten note from the JRS file. And I believe that
24 just before the break, Counsel was giving a response.

25 MR. RIEGER: Yes, I do.

1 MR. MAST: I'm sorry. I didn't hear you.

2 THE COURT: Counsel's response to Exhibit E, to the
3 request to admit Exhibit E.

4 MR. RIEGER: The objection has been hearsay and
5 foundation. And I understand that Mr. Mast has pointed
6 the Court to page 6 of the trial brief. And what I see
7 on page 6 is argument about what this document means.
8 It is -- it is not -- I don't see a declaration from
9 anybody.

10 It was -- even if Mr. Mast has explained in his
11 brief, it doesn't matter because it doesn't establish
12 what needs to be established, which is who wrote it,
13 when, and why. And none of that is apparent on the face
14 of this document. Like I said, trying to get one short
15 scribble of law out of context.

16 I mean, in that sense it doesn't matter. What
17 matters is the form. I think I need to object when
18 someone offers something like this. I don't --

19 MR. MAST: Your Honor, this is entirely bizarre.
20 These are records of the Judges' Retirement System, which
21 were produced out of the Judges' Retirement System. There
22 is no -- they are business records.

23 There is no obligation or reason for -- and
24 there is no provision in the Evidence Code or any place
25 else that requires us to go back 20 years to try to

1 determine which employee at the Judges' Retirement System
2 generated and completed a particular document. These
3 are records. And the records are clearly admissible.

4 These were in my file, produced by the Judges'
5 Retirement System, and is referred to in the trial brief
6 and, also, in my declaration as to where this came from.
7 It is at the bottom. It has the stamp of CalPERS with a
8 number showing its authenticity. There is no way that
9 this cannot be admissible in evidence.

10 And as to Mr. Rieger's objection that we are
11 taking one phrase out of this and trying to make
12 something of this. When this one phrase -- this one
13 phrase doesn't stand alone when this is taken with the
14 provision in Judge Lui's outline, when it is taken with
15 the other documents from the Judges' Retirement System in
16 regard to Judge London.

17 It shows clearly that the Judges' Retirement
18 System realized and knew or should have known that
19 benefits were due on my 60th birthday, not my 63rd
20 birthday, and that they failed to advise me pursuant to
21 the Hittle case, which when your Honor reads the trial
22 brief and the other documents submitted to your Honor
23 and the hearing office pursuant to this case, you will
24 see that there is absolute duty of the Judges' Retirement
25 System to give clear information as to every option

1 available, so that a clear understanding, choice can be
2 made as far as retirement benefits.

3 THE COURT: All right. With regard to the
4 objections, the hearsay objection, again, this document
5 does not appear to fall within any hearsay exception,
6 including 12080, which is the record of public
7 employees. So I am not admitting it as direct evidence.

8 I will admit it as administrative hearsay to
9 the extent it will explain at some point other evidence
10 that is presented in the hearing.

11 MR. RIEGER: That's fine. I am not going to argue
12 with you. Can I just respond?

13 THE COURT: Sure.

14 MR. RIEGER: Just to be clear. This was consistent
15 with the presentation he referred to, part of the
16 presentation that was already excluded.

17 THE COURT: I know.

18 MR. RIEGER: When he was referring to Justice -- or
19 Judge London, which I will be objecting to that as well.
20 Anything that this is going to link up to.

21 THE COURT: If there is not, then it is not being
22 admitted for use as direct evidence if there is nothing
23 that is being used to supplement or explain. I can't
24 really use or admit that if there is nothing presented
25 that it will supplement or explain.

1 We are onto now behind tab F. And that is a
2 June 16, 1994 letter to Judge Mast from the JRS. That's
3 marked as Exhibit F for identification. Is there any
4 objection to Exhibit F?

5 (Respondent's Exhibit F was marked for
6 identification by the Court.)

7 MR. RIEGER: No.

8 THE COURT: Exhibit F is admitted.

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

11 THE COURT: Exhibit G is a May 14, 1981 letter to
12 Judge London, L-O-N-D-O-N, from Terry, T-E-R-R-Y; last
13 name K-A-G-I-Y-A-M-A, manager of the Judges' Retirement
14 System. That's marked as Exhibit G for identification.

15 (Respondent's Exhibit G was marked for
16 identification by the Court.)

17 MR. RIEGER: I object to this on hearsay, foundation,
18 and relevance.

19 MR. MAST: Those objections are bizarre, your Honor.
20 This is a document produced by the Judges' Retirement
21 System. It is one of their records. How it was
22 produced is in the declaration and the trial brief.
23 There is no evidentiary reason why documents of the
24 Judges' Retirement Petition of the hearing cannot be
25 used.

1 And it is not necessary to go back to 1981 and
2 subpoena Terry Kagiya into Court to authenticate a
3 letter that was produced by the Judges' Retirement System.

4 MR. RIEGER: Your Honor, just to be clear. I'm not
5 suggesting that we need to subpoena people that wrote
6 them in 1980. There are other ways. They don't need to
7 be here today. But beyond the foundation and hearsay
8 problems, I don't see the relevance to this letter to a
9 different judge.

10 There is nothing in here that has anything to
11 do with this case on the face of this document here.
12 Unless there is an offer of proof, we can talk about
13 that. All I'm seeing here is the judge that is retired
14 and receiving notice that he's retired.

15 THE COURT: What is the relevance of Exhibit G?

16 MR. MAST: Your Honor, the relevance has already
17 been stated by Mr. Rieger today when he alleged, which I
18 don't know that is true, that I am the only judge
19 getting cost-of-living adjustments to my retirement
20 benefit. This is merely a statement he made.

21 There might be hundreds of others receiving
22 retirement benefits. I don't know. But he said it is
23 unjust and intolerable for me alone to be getting that
24 and no one else does. Here, we have Judge London as one
25 of the judges, which I believe is one of many who was

1 receiving benefits pursuant to Government Code 75025.

2 As provided in 75033.5, which is when a judge
3 with at least five years of service retires takes an
4 early retirement, and when he would have qualified under
5 Section 75025 and had continuous service up to 20 years
6 of service before his 60th birthday, then he will qualify
7 under 75025 to get his retirement benefit at his 60th
8 birthday.

9 Not 75 percent for which a judge serving 20
10 years would get 75 percent, but as a pro rata basis of
11 his actual service. And this applies to any judge who
12 was appointed to the bench under age 40 and who retired
13 with less than 20 years' service.

14 And if he had continued on the bench up until
15 he received -- up until he had 20 years of service
16 served, he would qualify for 75 percent benefit at age
17 60. And in the case when a judge serves less than that,
18 it is a pro rata amount of benefit. And in my trial
19 brief it shows that I was appointed at age 33 to the
20 bench.

21 I served 13 years. I had had continuous
22 service to age 53, which would be 20 years. I would
23 have qualified for the retirement benefit under 75025
24 at age 60. And that's what 75033.5 said, notwithstanding
25 any other provision in this chapter. Those are the first

1 words.

2 Any judge with at least five years of service
3 who retires, takes a deferred retirement if he receives
4 retirement benefits at age 60, if he had continuous
5 service after he retired enough to qualify for his 20
6 years prior to age 60. And that is set out
7 specifically and definitely in the trial brief, in Judge
8 Lui's outline.

9 And that is what is in the last exhibit, what
10 the notation 75025 at age 60 would refer to. And it is
11 a benefit to be given to Judge London. And he said it
12 would be entirely improper for the Judges' Retirement
13 System to award to this -- give this retirement to Judge
14 London, but not to other judges.

15 And that's where the relevance is.

16 MR. RIEGER: First of all, I would like to say it is
17 an entirely different issue than the overpayments that
18 were received by Mr. Mast to try to calculate in his
19 presentation. There is no other judge that received
20 what Mr. Mast received. I want to be clear.

21 MR. MAST: There is no evidence of that.

22 THE COURT: Okay.

23 MR. RIEGER: Actually, there were -- in my exhibit
24 binder -- there are numerous letters between you and the
25 Retirement System saying that. But that's fine, first

1 thing.

2 Second thing, with regard to Judge London, I
3 now see -- I think what he's doing -- if you look at the
4 next exhibit, what he's saying -- the exhibit we are
5 looking at is showing that Judge London's retirement --
6 and the next exhibit has his birthday. It shows he's 60.
7 What happened here is an error.

8 And we are not here to litigate that error.
9 Judge London retired a long time ago and has since died.
10 It is an error. Judge London and Mr. Mast are not the
11 only judges who have elected deferred retirement.
12 Obviously, there were dozens or hundreds of them.

13 And out of all those, every now and then JRS
14 makes a mistake. And they made a mistake in Judge
15 London's case. Bottom line here, if we go to Exhibit A,
16 that's his -- he gave you a copy of 75033.5. It says "No
17 judge shall be eligible to receive an allowance pursuant
18 to this section until the attainment of at least 63,
19 unless the judge is credited with 20 years of judicial
20 service attained at age 60."

21 This is the direct rebuke of what he is saying.
22 They wrote this specifically to deal with this issue
23 because you have to have some years of service to retire
24 at age 60 active. That's 75025. If you are active, you
25 need 20 years to retire at age 60. 75033.5 allows

1 judges to leave the bench and defer retirement.

2 If you didn't have this statement in here, the
3 defer judge would be able to retire sooner than an
4 active judge, because the defer judges would turn age
5 60 without 20 years of service. If they have been an
6 active judge, they would retire at 63 because they didn't
7 have 20 years.

8 The legislature specifically puts this
9 provision in here to make sure that it didn't happen.
10 In one case -- Judge London's case, the government agency,
11 they made a mistake. They made a mistake. If he was
12 alive today, I'm sure they would try to correct it.

13 But just one person filed really has nothing to
14 do -- at the end of the day, we will be arguing the law
15 anyway. The law is pretty clear. You have the two code
16 sections. Judge gets retired until 63. That's what
17 he's arguing. He's saying ignore this section that says
18 you have to wait to retire at 63.

19 Because at the beginning of the section, it says
20 notwithstanding any provision. That was the chapter.
21 That is the silliest legal argument I've ever heard, but
22 I do object to these as to relevance and foundation.
23 They don't have anything to do with Mr. Mast's rights.

24 MR. MAST: Your Honor, as you will see when you read
25 the trial brief, the section he is referring to,

1 regarding age 63, applies to retirement and Section
2 75033.5. This retirement that he has referred to here
3 in the first part of the Section 75033.5 is retirement
4 under Section 75025.

5 And when you read the trial brief and read this
6 section, you will see it specifically states that a
7 judge taking the bench with five years of service, if he
8 has continuous service, that would have qualified him for
9 a retirement with 20 years. If he had stayed on the
10 bench for that period of time, then that judge qualifies
11 to receive benefits at age 60.

12 And I would request the judge to take this
13 under advisement until such time and you have been able
14 to study the trial brief and the code section and make a
15 determination as to what it says, because it does not
16 relate to what Mr. Rieger says when he takes one
17 sentence out of context of Section 75033.5.

18 MR. RIEGER: If it makes it any easier, why would he
19 bring in similar letters to the dozens of hundreds of
20 other deferred judges that showed they retired at age
21 63? I could have brought all of those in. I will
22 stipulate to the fact that one judge got what he wants,
23 like, I will stipulate to that.

24 One judge got what he wants. If he will
25 stipulate no other judges got what they wanted, and if

1 you will stipulate that this case is what the law
2 provides, not what JRS paid to one judge. It is up to
3 your Honor to interpret what these code sections mean.

4 THE COURT: All right. Let's just focus on the
5 exhibit right now, because I will be reading the brief
6 more in depth. And we were going to do post-trial briefing,
7 as well. I'm sure I will be adequately briefed. But as
8 far as -- and let me go ahead and mark the next in
9 order, which is Exhibit H.

10 Exhibit H appears to apply to Judge London, as
11 well. It looks to be a worksheet for Judge London. And
12 I understand that your objections are similar to Exhibit
13 G. These are all pertaining --

14 MR. RIEGER: G?

15 THE COURT: G and H.

16 MR. RIEGER: Yes, G and H are my objection. It has
17 nothing to do with the proceeding.

18 THE COURT: Thank you for pointing out that Judge
19 London is deceased. There are some documents I'm not
20 sure how they made their way, other than to Judge London.
21 With regard to --

22 MR. RIEGER: I can answer that. Mr. Rozi and
23 Mr. Mast represented, I assume, heirs of Judge London
24 and got his documents -- and got his document. Because
25 you represented his heirs. Mr. Rozi did.

1 MR. MAST: The only thing I object to, or disagree
2 with, is the heirs. The last time I talked to Judge
3 London, which is approximately a year and a half, two
4 years ago, he was alive.

5 MR. RIEGER: I may be wrong, then. My understanding
6 that he was dead. We should definitely deal with the
7 Social Security number if I'm wrong about that.

8 THE COURT: I would like to take care of that, as
9 well. So I'm actually -- before we even deal with the
10 admitting of G and H. Exhibit H, page 1, has a Social
11 Security number on the top right-hand corner. I'm
12 redacting that from my copy. I'm asking that Counsel
13 and Judge Mast do the same.

14 The second page at the top left has a Social
15 Security number, and I will redact that from my official
16 copy. I'm going to ask Counsel and Judge Mast to do the
17 same. There is other identifying information, but just
18 let me go to page 3.

19 Again, the Social Security number at the top
20 right is being redacted from the official record. I ask
21 that Counsel and Judge Mast do the same. I believe
22 those were the only places that I saw, when I was paging
23 through, that had Social Security numbers. So in an
24 abundance of caution, let's make sure that is out of the
25 public record.

1 MR. RIEGER: My understanding from my client is it
2 was two judges who had received this in error; one had
3 died. That's what I thought. It is possible that Judge
4 London died sometime in the last year and a half when we
5 had the hearing. And it is possible they made an error,
6 as well.

7 I am just not trying to, you know, mislead the
8 Court about his status.

9 THE COURT: In any event, the relevance objection to
10 G and H are sustained. What happened in the other cases
11 is not relevant to this particular case. And quite
12 honestly, if that is argument that Judge Mast is being
13 treated different than others, that's not necessarily
14 going to fly, either.

15 If you are being treated in compliance with the
16 law, so whether or not --

17 MR. MAST: That was the argument Mr. Rieger made in
18 regard to the other issue.

19 THE COURT: Right.

20 MR. MAST: This is illustrative as to the
21 interpretation of the law and the adaption of the law
22 and processing of the law that JRS made, which combined
23 with the other documents that were introduced into
24 evidence, shows and supports the position that the
25 benefits are due at age 60.

1 THE COURT: All right. The ruling was that will be
2 sustained with Exhibit G and H. Exhibit I appears to be
3 benefit calculation. It says Retirement Benefit
4 Calculation. It is a multi-page document.

5 That is marked as Exhibit I for identification.

6 (Respondent's Exhibit I was marked for
7 identification by the Court.)

8 THE COURT: Is there any objection to Exhibit I?
9

10 MR. RIEGER: Yes. I think what I is, is Mr. Mast's
11 calculation of what he believes he's owed because --
12 because of those three years of payment that he claims
13 were missing. He got -- he is saying they were missing.
14 He thinks he is adding ten percent interest to that in
15 the chart. So I have several objections.

16 Number one, ten percent interest is wrong.

17 THE COURT: You object to this document?

18 MR. RIEGER: Well, he created it. This is not a JRS
19 document. There is no background documentation to
20 support what is here. I produced that 300-page
21 documentation. I don't have any background documentation
22 for this chart.

23 THE COURT: All right. This particular Exhibit I
24 was created by Judge Mast?

25 MR. RIEGER: Judge Mast created it. I think he

1 created it.

2 MR. MAST: This is a document that I created, your
3 Honor. And it is authenticated in the declaration and
4 the trial brief. Counsel is wrong. It has a rate of
5 interest that also was stated in the trial brief. And
6 it is ten percent authorized by Article 1, Section 15 --
7 Article 15, Section 1 of the California Constitution and
8 ten percent -- and, also, as by Civil Code Section 3289.

9 MR. RIEGER: The Constitution.

10 MR. MAST: But those are -- those are the trial
11 brief, and the Court can determine that.

12 THE COURT: I think the problem is that today is a
13 hearing. I need to actually get evidence taken today in
14 hearing, and the trial brief is not direct evidence; it
15 is a trial brief. I need somebody here, either testifying
16 or to authenticate.

17 MR. MAST: That is already done in the declaration,
18 your Honor.

19 THE COURT: Which has not been admitted. I don't
20 have the declaration. I don't see where in the
21 declaration it is authenticated. If you point me to
22 that --

23 MR. MAST: Your Honor, the declaration was filed
24 electronically. And as I understood it, you admitted my
25 declaration previously in this proceeding.

1 THE COURT: Anything filed will be lodged, but not
2 necessarily admitted, because there is so much argument in
3 there that it is difficult to determine what is direct
4 evidence and what is just argument. We really do need
5 testimony today or some type of separate declaration.

6 That is assuming Counsel would not object to
7 the declaration having not been served pursuant to 11514
8 of the Administrative Procedure Act. So where in the
9 declaration, which I'm now looking at Exhibit Z -- why
10 don't we go off the record.

11 (Discussion off the record)

12 THE COURT: I'm going to defer ruling on it until we
13 have testimony from Judge Mast. So the next is K. And
14 that -- I am sorry. The next is J. Those are E-mails
15 between Respondent and Pamela Montgomery.

16 MR. RIEGER: No objection.

17 THE COURT: Exhibit J is admitted.

18 (Respondent's Exhibit J was received in
19 evidence by the Court.)

20 THE COURT: All right. Exhibit K is the California
21 consumer price index calculator. Looks to be a chart
22 just behind that calculator. The document in its
23 entirety is 12 pages. That is marked as Exhibit K for
24 identification.

25 (Respondent's Exhibit K was marked for

1 identification by the Court.)

2 THE COURT: Is there any objection to Exhibit K?

3 MR. RIEGER: I don't -- I just don't know what this
4 is. I assume it was printed off the Internet.

5 THE COURT: Is this something --

6 MR. MAST: Your Honor, first of all, as to the first
7 document, the consumer price index calculator, the web
8 page for the Department of Industrial Relation arrive at
9 the calculator is in the trial brief. This first page
10 is only presented for one limited purpose.

11 There is -- there was considerable confusion
12 with JRS that shows also in the trial brief as to
13 whether annual computation or the December computation
14 of the CPI should be used. The -- because of space
15 limitation on the CPI present price index, I used
16 the name only, one word.

17 And the reason I put in the computer price
18 index, one page is only to show that the real
19 designation for annual is annual average. So that is
20 the designation annual used in the CPI index means the
21 average of 12 months, not the end of the year number
22 specified in Government Code Section 60823 and the Olson
23 versus Cory case, and I think now agreed, by JRS anyway
24 that the December to December designation is the one to
25 use. That is the proper one to use.

1 MR. RIEGER: JRS does agree to JRS grade to salary
2 position is still the judge's. If this is a true and
3 correct copy of the consumer price index, the time
4 period stated, I have no problem with it coming in as
5 judicial notice. I just reserve my right to object. I
6 think we can move on.

7 THE COURT: All right. The document that has been
8 marked as Exhibit K is a true and correct copy that you
9 obtained from the website?

10 MR. MAST: It comes from the California Department
11 of Industrial Relation web page.

12 THE COURT: Exhibit K is admitted.

13 (Respondent's Exhibit K was received in
14 evidence by the Court.)

15 THE COURT: Exhibit L is an E-mail from Gale, G-A-L-E;
16 Patrick, P-A-T-R-I-C-K, to Pamela Montgomery, and the
17 attached document, I'm not sure where it necessarily
18 comes from.

19 MR. RIEGER: No objection to L.

20 THE COURT: All right. Exhibit L is admitted.

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

23 THE COURT: Exhibit M is a one-page document. It is
24 just a reminder sent to the Court ruling JRS members.
25 That's marked as Exhibit M for identification.

1 (Respondent's Exhibit M was marked for
2 identification by the Court.)

3 MR. RIEGER: No objection.

4 THE COURT: Exhibit M is admitted.

5 (Respondent's Exhibit M was received in
6 evidence by the Court.)

7 THE COURT: And Exhibit N is the Statement of Issues
8 from the prior case, Case number OAH number L-9625311.
9 It is marked as Exhibit N.

10 (Respondent's Exhibit N was marked for
11 identification by the Court.)

12 THE COURT: Any objection to Exhibit N?

13 MR. RIEGER: I think there are two documents.

14 MR. MAST: The other is the response.

15 MR. RIEGER: Both of them can come into -- I have no
16 objection.

17 THE COURT: So Exhibit N is admitted.

18 (Respondent's Exhibit N was received in
19 evidence by the Court.)

20 THE COURT: And behind tab O, I have a September 20,
21 1996 letter to Respondent from Maureen Reilly.

22 MR. RIEGER: And there is a second letter behind that.
23 I have no objection to that, either.

24 THE COURT: August 5 letter to Maureen Reilly with
25 the settlement agreement attached. There being no

1 objection, Exhibit O is admitted.

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

4 THE COURT: All right. As Exhibit P, I have a July 7,
5 1997 letter and attachment.

6 MR. RIEGER: No objection.

7 THE COURT: That is marked as Exhibit P. There
8 being no objection, it is admitted.

9 (Respondent's Exhibit P was marked for
10 identification by the Court and received
11 in evidence.)

12 THE COURT: All right. I have behind tab Q a document
13 entitled "Retirement Benefit Calculation January 1, 1997,
14 to present. It is four pages in length.

15 MR. RIEGER: I object, your Honor, same as the last
16 chart we saw. This was produced by either Mr. Mast or
17 Mr. Rozi, I am not sure which. Same objection as before.
18 Perhaps you can defer in the same way?

19 THE COURT: I will. Exhibit R --

20 MR. MAST: What was the ruling, your Honor?

21 THE COURT: I will defer ruling as I did on Q, just
22 because we need testimony as to what it is.

23 MR. MAST: All right.

24 THE COURT: All right. Behind tab R, I have E-mails
25 dated January 25, 2008, to and from various individuals.

1 MR. RIEGER: No objection, your Honor.

2 THE COURT: All right. Exhibit R is admitted.

3 (Respondent's Exhibit R was received in
4 evidence by the Court.)

5 THE COURT: Behind tab S, I have several letters to
6 Judge Mast from JRS -- get their dates.

7 MR. RIEGER: No objection to be Exhibit S.

8 THE COURT: Those letter are dated March 24, 1998;
9 August 20, 1999; and February 23, 2000. There being no
10 objection to that, Exhibit S is admitted.

11 (Respondent's Exhibit S was received in
12 evidence by the Court.)

13 THE COURT: I have to mark Chiu, C-H-I-U, from Pamela
14 Montgomery, dated January 27, 2009.

15 MR. RIEGER: No objection to T.

16 THE COURT: Exhibit T is admitted.

17 (Respondent's Exhibit T was received in
18 evidence by the Court.)

19 THE COURT: And behind tab U, I have several
20 September 12, 2010 letters.

21 MR. RIEGER: I think these are already all in, but I
22 will say no objection to U.

23 THE COURT: Exhibit U is admitted.

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

1 THE COURT: I have marked as Exhibit V a May 31, 2011
2 letter, but there is also a September 18, 2015 letter to
3 Respondent.

4 MR. RIEGER: No objection to V.

5 THE COURT: All right. Exhibit V is admitted.

6 (Respondent's Exhibit V was received in
7 evidence by the Court.)

8 THE COURT: As Exhibit W, I have a 1995 letter from
9 Respondent to JRS.

10 MR. RIEGER: No objection.

11 THE COURT: Exhibit W is admitted.

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

14 THE COURT: As Exhibit X, I have a May 4, 2011 letter --

15 MR. RIEGER: No objection.

16 THE COURT: -- that's to Respondent from JRS. There
17 being no objection, Exhibit X is admitted.

18 (Respondent's Exhibit X was received in
19 evidence by the Court.)

20 THE COURT: And as I'd indicated before, I had marked
21 the documents that have been filed electronically, including
22 the declaration and the trial brief, as Exhibit Y through JJ,
23 and they have been lodged as argument.

24 So anything that you want me to use in order to
25 make the factual findings, I need to have, either via

1 testimony or pursuant to 1114 and with the declaration of
2 Pamela Montgomery. All right. So if there is no other
3 documents that need to be marked for Respondent, why don't
4 we go ahead and take testimony. All right.

5 If you can remain at counsel table. If you
6 just raise your right hand to be sworn.

7

8 PAUL MAST,

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

11 THE WITNESS: I do.

12 THE COURT: Could you just state your name for the
13 record.

14 THE WITNESS: Paul Mast.

15 THE COURT: You will be giving testimony on direct;
16 is that correct?

17 THE WITNESS: Yes, I will. Did you want me to
18 testify from here?

19 THE COURT: Yes. Under the circumstances today if
20 you want to testify from there, you can remain because
21 all of your documents are there.

22

23 DIRECT TESTIMONY

24 THE WITNESS: Okay. My testimony on direct relating
25 to Exhibit I and also Exhibit Q these are calculations

1 of the amount due in each of the categories that I
2 performed and calculated myself. The Excel spreadsheets
3 were designed by me and prepared by an accountant to
4 accomplish the purpose.

5 The Excel spreadsheets, how they work are
6 explained in the trial brief, and everything is true
7 and correct. And the numbers indicated thereon are true
8 and correct. In regard to the documents which the Court
9 marked today, starting with Y and following through to
10 JJ, these are documents which were prepared by me, except
11 for the declaration of Marci Mast, which were prepared
12 by her and submitted by me electronically.

13 They are not evidentiary in nature, except the
14 one entitled "Declaration." As far as the declarations
15 are concerned, the truthfulness is sworn to under the
16 laws of the State of California. The other documents,
17 such as the trial brief, are not evidence. They are
18 argument. And all of those documents should be
19 admitted.

20 THE COURT: All right. I have the Declaration. Was
21 there anything you wanted to add on direct examination?

22 THE WITNESS: I believe that will be the end of my
23 direct examination. After the cross-examination, there
24 might be something that I would like to testify to.

25 THE COURT: All right. So I have pulled out

1 documents that were actual declarations filed and
2 opposed to the briefs. And let me just start with what
3 has been marked as Exhibit Z, which is the Declaration
4 of Paul G. Mast.

5 That is ten pages in length with an attached
6 Proof of Service. Are you offering this for all
7 purposes, not just for argument?

8 THE WITNESS: For all purposes.

9 THE COURT: Is there any objection to Exhibit Z?

10 MR. RIEGER: Well, no objection that this is
11 Mr. Mast -- this is his articulation of the facts.
12 There is no -- I have to go through, line by line, to deal
13 with the issue of hearsay. I don't know. I have no
14 problem with the taking of a statement to have that made,
15 under penalty of perjury, as an understanding that it is
16 adopted in everything in the statement here.

17 THE COURT: I understand that. So the Declaration
18 of Judge Mast, which is marked as Exhibit Z, is admitted
19 as if he had testified today.

20 (Respondent's Exhibit Z was received in
21 evidence by the Court.)

22 THE COURT: To those matters in Exhibit AA, which is
23 the Declaration of Marci Mast, are you offering that as
24 well?

25 THE WITNESS: Yes.

1 THE COURT: Is there any objection to Exhibit AA?

2 MR. RIEGER: Beyond the relevance of this
3 Declaration. So I'm asserting relevance objection. We
4 can have an offer of proof that may be helpful, but I
5 didn't understand why this was being submitted.

6 THE COURT: All right. What is the relevance of
7 Exhibit AA, which is the Declaration of Ms. Mast?

8 MR. MAST: It relates to -- it relates to the
9 ongoing controversy and the breaching of the settlement
10 agreement by Pamela Montgomery throughout the years.

11 THE COURT: Is there any other objection to Exhibit
12 AA?

13 MR. RIEGER: No.

14 THE COURT: The objection is overruled. Exhibit AA
15 is admitted.

16 (Respondent's Exhibit AA was received in
17 evidence by the Court.)

18 THE COURT: And then let me get to it. There is a
19 document that is marked as Exhibit GG. There is within
20 GG a response to the declaration of Pamela Montgomery,
21 but a supplemental declaration of Marci Mast.

22 MR. RIEGER: And this one is even more, so I do not
23 understand why this a being offered. For the life of
24 me, I can't figure out what this is pertaining to.

25 THE COURT: Just -- let's get the document listed.

1 You may have had a clerk. I do not. So I am checking
2 and I'm updating my exhibit list. I have the response to
3 the Declaration. I also have the supplemental declaration,
4 as well.

5 And the relevance of this supplemental declaration
6 is?

7 THE WITNESS: The relevance is in response to Pamela
8 Montgomery. That Declaration -- this is the Declaration
9 under penalty of perjury, and this is properly
10 authenticated and admissible in evidence. If anything
11 in it is irrelevant, then that is something that the
12 Court can decide at the time the Court makes its
13 consideration of the evidence.

14 I don't believe there is anything irrelevant.

15 MR. RIEGER: What all I am seeing in this is
16 discussion about what things were like at Mr. Mast's
17 prior employment. I don't see what this has to do with
18 this dispute.

19 THE COURT: So I'm looking at the whole document,
20 the response to the declaration because they are --

21 THE WITNESS: Your Honor, Mr. Rieger is the one that
22 alleged that the inception in 1995, 1996, that I made
23 some sort of phony deal with somebody at JRS or had some
24 improper motives in putting forth my claim of
25 cost-of-living increases. It all relates to that.

1 THE COURT: The portion of the document that the
2 objection as to argument, which is the two-page response
3 to the Declaration of Pamela Montgomery. However, the
4 supplemental declaration of Marci Mast is admitted, so
5 the relevance objection is overruled.

6 Those are the only actual declarations contained
7 in the electronically file documents.

8 And did you have cross-examination?

9 MR. RIEGER: Yes, your Honor.

10 THE COURT: All right.

11

12 CROSS-EXAMINATION

13 BY MR. RIEGER:

14 Q Mr. Mast, could you please turn to Exhibit 3 in
15 the binder that I handed to you. Exhibit 3. And if you
16 look at the third paragraph down. Can you take a moment
17 to read that paragraph?

18 A Yes.

19 Q Have you already read it?

20 A Yes.

21 Q So at the time you retired, you understood that
22 you would be entitled to receive a retirement allowance at
23 63; is that right?

24 A I would be entitled to what?

25 Q To receive a retirement allowance at age 63?

1 A At the time that I retired, I was given
2 instructions by JRS and the controller's office as to
3 what I needed to put in the letter of retirement. I
4 copied what was told me to put in.

5 No -- at no time was I given an option or
6 advised that I had the right to retire, not a right to
7 retire, a right to receive deferred retirement at age 60,
8 pursuant to the section that I have spoken about in the
9 trial brief.

10 Q So just to clarify, it was your understanding
11 that you could retire at age 63?

12 A That's what they told me.

13 Q If you could please turn to Exhibit 5. If you
14 could take a moment to review the first paragraph of
15 Exhibit 5.

16 A Yes.

17 Q So 1995 is when you actually did retire; is
18 that right?

19 A Let me be clear about one thing. The words
20 "when you actually retire" has two meanings. In one
21 section, which I outlined in the trial brief, the Judges'
22 Retirement System, or the code, used the word "retirement"
23 to mean when benefits are actually received, when
24 benefits start to be received.

25 The general meaning of retirement in all other

1 context, except for this Government Code section, is a
2 person retires at the time they leave the bench.

3 Q So let me just make it clear. I'm asking about
4 the first kind, the kind when judges receive retirement
5 benefits. And you began to receive benefits in 1995; is
6 that right?

7 A That's correct.

8 Q That started at age 63; is that right?

9 A Correct.

10 Q So that was still at the beginning of 1995 that
11 you were entitled to begin receiving retirement benefits
12 at age 63?

13 A Correct.

14 Q Please turn to Exhibit 11. I want to direct
15 your attention to about halfway down the fourth
16 paragraph. This is a letter -- this is a letter that
17 you wrote; is that correct?

18 A Yes.

19 Q You wrote it to the Judges' Retirement System in
20 May of 2006?

21 A Yes.

22 Q The fourth paragraph, about halfway down, it
23 says, "I will be very frank with you that I have been
24 living with the guilt of entering into an immoral
25 agreement when I agreed by the confidentiality provision

1 that does not provide the hundreds or thousands of other
2 judges who retired during the same period and have the
3 same right that I was availing myself of, because of
4 the fact the Judges' Retirement System was underpaying
5 them."

6 Do you see that?

7 A Yes.

8 Q So in May 2006, did you believe you entered into
9 an immoral agreement?

10 A No.

11 Q Why did you write this in May 2006 that you
12 entered into an immoral agreement?

13 A The agreement was not immoral. My agreeing at
14 the request of the Judges' Retirement System not to
15 advise other judges of their rights was immoral. And I
16 regretted that. When I entered into that agreement, I
17 was thinking of myself, and myself only. And that was
18 immoral. And that was wrong.

19 Nevertheless, that is what I did. I lived by
20 that agreement and did not -- did not tell anybody about
21 the terms of my agreement. And in addition to not
22 telling anybody about the terms of the agreement, I did
23 not, after the agreement was signed, advise anyone of
24 their rights to COLA increases on their vested
25 retirement benefits that were vested during the 1970's

1 and during the protected period.

2 I will say that prior to that date, I did write
3 an analysis of the Olson against Cory case at the behest
4 of the judge in the Torrance court, which he then took
5 to the California Judges' Association. That was someplace
6 between 1987 and 1990. And my analysis was the basis
7 for my opinion.

8 For my letter of May 1st, 1995, to Jim Niehaus
9 and also for my response to the Statement of Issues
10 filed in the proceeding in 1996 and my letters, which
11 were my letters and conversation with Maureen Reilly, the
12 attorney for JRS, which she took.

13 And after the response to the statement off
14 issue was filed, she called up -- she called me up and
15 agreed that I was right and to confirm it in writing.
16 And she requested that I enter into a confidentiality
17 agreement because of the large amount of money that they
18 would subject themselves to having to pay if I did not
19 do that. And I agreed to that.

20 Q Are you then saying it is not the whole
21 agreement that is immoral? It is the consideration that
22 you provided an agreement that was immoral?

23 A The agreement was not immoral. The thing that
24 was immoral was my agreeing to remain quiet.

25 Q That was the only consideration that was

1 provided out of the agreement; isn't that right?

2 A That is not true.

3 Q Didn't they pay you everything you claimed to
4 be entitled to?

5 A They did not pay me interest.

6 Q So it is your claim that it is them not paying
7 interest and your confidentiality agreement are your two
8 pieces of consideration?

9 A We entered into a negotiation to settle the
10 case. That, in itself, is consideration.

11 Q Okay. But part of the consideration was that
12 you agreed to maintain the confidentiality agreement; is
13 that right?

14 A I don't know if that was consideration. But I
15 did -- I did agree to maintain -- I did agree not to
16 discuss the terms of the settlement with anybody. And I
17 maintained that and never did that until I was forced to
18 contact an attorney. And I gave notice prior to that,
19 nine months prior to that, to every member of the Board
20 of CalPERS, to JRS, and to controller, John Chiang.

21 Q So as I understand that, you are saying now
22 that the confidentiality provision of the settlement
23 agreement was immoral in, your words, 2006; am I right?

24 A It was immoral to me.

25 Q That's all I'm asking about.

1 A The confidentiality agreement was not immoral.
2 I just felt that I had not done the proper thing, by
3 abandoning my fellow retired judges, for my own purposes.

4 Q It was immoral for you. Morality is a
5 subjective standard, but you are saying it was an immoral
6 act?

7 A It is subjective. At the time I didn't
8 consider it immoral. But in retrospect, it was immoral
9 -- an immoral thing for me to do, to abandon these other
10 judges only for my own benefit.

11 Q Do you believe to this day that it was immoral
12 to do that?

13 A Yes.

14 Q Do you believe it is illegal to do that?

15 A Do I believe it is legal to do that?

16 Q Do you believe it is legal to enter into an
17 immoral contract?

18 A I didn't enter into an immoral contract. I was
19 acting immorally as far my definition of immoral -- of
20 morality is. The contract I entered into, or the
21 settlement agreement -- I'm not sure it is really a
22 contract, it is a settlement agreement -- was not immoral
23 in any respect.

24 Now, you have said that the confidentiality
25 agreement is against public policy. I don't know if

1 that is true or not. But it was not my public policy
2 that was violated. If it were against public policy,
3 that was part of the public policy of JRS.

4 And they are the ones to make the decision as
5 to what they should properly do as a matter of
6 public policy; not me to tell them what to do.

7 Q Did you testify that it was JRS, from Maureen
8 Reilly that raised the issue of the confidentiality
9 agreement first?

10 A After filing the Statement of Issues, before I
11 filed the response and before I sent a letter on
12 August 5th to Maureen Reilly. The response was filed
13 August 15th. After the Statement of Issues, about the
14 August 5th letter, we had a conversation, and I explained
15 to her what the law was and how it applied.

16 And she said if they settled, they would have to
17 have a confidentiality agreement because, otherwise, they
18 would be subject to claims of large amounts. That is --
19 one of the documents indicates the amount. She said --
20 I don't know whether it was 200 million or 400 million --
21 whatever it was that she said. It is in one of the letters.

22 And she said that -- and when she said that, I
23 told her that if we settled, that I would enter into a
24 confidentiality agreement.

25 Q So in 2006, after you made the determination

1 that the confidentiality agreement was immoral, why
2 didn't you just breach it at that time? Why didn't you
3 just decide it was an immoral thing to do and, therefore,
4 "I'm going to make it right"?

5 A Because I had signed an agreement, the
6 settlement agreement. And I was bound by it and felt I
7 was bound by it. I felt I was bound not to reveal the
8 terms of the agreement by what I signed. I wasn't going
9 to violate the terms of the agreement.

10 I had never -- I was never going to violate the
11 settlement agreement by disclosing the terms of the
12 agreement, because that is what I had agreed to. This
13 did not stop me. And it did not start until 2006. This
14 did not stop me from having second thoughts about my --
15 the moral of my action in entering into that part of the
16 settlement agreement.

17 Q And you -- I'm just wondering why you have said
18 a few times today that the very specific terms of the
19 agreement you were not to disclose, it was okay to do
20 other things through your legal theory and talk about
21 the general nature of your agreement.

22 Do I have that right?

23 A Confidentiality agreements are strictly
24 construed. And for a proper confidentiality agreement,
25 you must specify everything. I did not write this.

1 They did. And they wrote it in a very, very poor
2 manner. They should have said more than the terms of
3 the agreement.

4 They should have specified everything I was --
5 they did not want me to do. But they did not do that.
6 They only said terms of the agreement, but despite only
7 terms of the agreement. I never -- I never discussed
8 the law or anything else in regard to that with any
9 judge or lawyer during all those years until after the
10 breach by JRS was so extreme that I had no other option
11 but to hire an attorney.

12 And before I hired an attorney, I wanted to
13 seek help and try to stop the situation. And I wrote
14 this letter to not only JRS, but to John Chiang and all
15 members of the Board asking for their help to solve the
16 problem, so I would not have to go to an attorney. And I
17 waited nine months after writing the letter before doing
18 anything.

19 Q So do you believe that the confidentiality
20 provision allows you a fair amount of flexibility of the
21 things that you could do? Do I have that right?

22 A It depends on what you are talking about.
23 Looking at it now, I see that is true. But throughout
24 the years, I considered -- first of all, throughout the
25 years I was not really attuned to the fact that the

1 confidentiality agreement specifically -- must be
2 specifically stated and strictly construed.

3 I felt after signing this settlement agreement
4 that I should not talk to anybody about this. And I
5 didn't talk to anybody. Now, that wasn't because of
6 interpreting any words. It was just I felt that I
7 shouldn't do that.

8 I didn't analyze the agreement to think, "Well,
9 if I don't talk about the terms of the agreement, then I
10 can go talk to other judges about the law."

11 And I didn't consider it. I didn't think about
12 it and it was entirely out of my mind.

13 Q When did you first consider that?

14 A Very, very recent. After all this started with
15 you.

16 Q Started with me when the claim started coming
17 from all the other judges, so had to have been before
18 that.

19 A I will say when I wrote letters on September 1,
20 2010, I felt that the breach -- and I'm certain of this,
21 that the extreme breach of the settlement agreement by
22 JRS and Pamela Montgomery throughout the years breaching
23 the agreement over, over, over, one time after another
24 and, particularly, for four years, 2006 to 2010; that
25 those breaches were the total breach of the settlement

1 agreement and relieved me of any obligation.

2 Q By the time you wrote the September 1st
3 letter -- September 1st, 2010 -- by that time you felt
4 like the confidentiality agreement was not binding you
5 to anything in particular; am I right?

6 A I didn't think about it in those terms. But I
7 knew if I went to an attorney, that it would breach my
8 understanding or my thoughts about the confidentiality
9 agreement, because I would be giving the attorney a copy
10 of the settlement agreement. And a copy of the settlement
11 agreement states the term of the agreement.

12 And I had no option because of the breach of
13 JRS, but to consult with an attorney. But still, I fought
14 it and I didn't want to consult with an attorney. And
15 that's why I wrote the letters of September 1st, 2010,
16 asking for help from the CalPERS Board. And I was
17 extremely frustrated and disappointed that not a single
18 member of the Board responded to the letter in any respect.

19 And nobody contacted me, nobody talked to me,
20 nobody said anything. And I still waited, hoping that
21 something would be done by JRS, CalPERS, or somebody. I
22 waited for six months, till May 2011, before consulting an
23 attorney.

24 Q So at this point in 2010, prior to September 1st,
25 2010, you had come to the conclusion that the

1 confidentiality agreement was immoral. And you had also
2 come to the conclusion that it was the larger agreement
3 that had been breached so significantly by the JRS that you
4 were no longer bound by the confidentiality agreement.

5 Do I have that right?

6 A I didn't think that the confidentiality
7 agreement was immoral. I thought my agreeing to the
8 confidentiality agreement was an immoral act on my part.
9 The confidentiality agreement was not immoral as far as
10 I know.

11 Q It was an immoral act on your part?

12 A I considered -- I considered the extreme breach
13 of the settlement agreement by JRS gave me no choice, but
14 to consult with an attorney. And by handing him a copy
15 of the settlement agreement, that was revealing the
16 terms of the agreement to the attorney.

17 Now, I don't know whether hiring an attorney to
18 represent one in that case is an exception to revealing
19 the terms of the agreement or not. I have not researched
20 that part of the law. I don't know where that part of
21 the law is. But it is nothing that I want to do. I did
22 not want to -- I did not want to reveal anything.

23 And I was forced to consult with an attorney.
24 And as I said in the September 2010 letter, if I consulted
25 with an attorney, there is no attorney in the state that

1 would not try to expand the case to involve other judges.

2 Q Including you, right?

3 A Not including me, no.

4 Q You would not seek to expand to involve other
5 judges?

6 A I did not seek to expand the case.

7 Q You didn't agree to split the fees 50/50 with
8 Mr. Rozi?

9 A I did, but he had already started to follow
10 this procedure. And one of the things that Mr. Rozi, as
11 you know, was incapable of doing was analyzing the law
12 and writing briefs. So I agreed to do that on the case.
13 I did do that on the case. And on the first demur,
14 which you lost in trial court, I did appear and argue
15 that.

16 Q So at the time that you were thinking about
17 consulting an attorney, you were not thinking about
18 representing dozens of judges and justices against JRS?
19 That only came to you later?

20 A That came to me when you wanted to do that, when
21 he was incapable of doing it himself.

22 Q At that point, you decided to split the fees
23 50/50 with him?

24 A That's right.

25 Q So at this point, if you thought that your

1 agreement is -- when I say "this point," I'm referring to
2 September 1st, 2010.

3 If you already came to the conclusion that your
4 agreement to maintain confidentiality was immoral, if
5 you had already come to that conclusion, and if you
6 already felt like the JRS had breached the agreement,
7 why are you still giving the JRS time and more chances
8 to pay you off before you go to an attorney?

9 A Because I thought that was the right thing to
10 do. I did not want this to expand to other judges'
11 requests, which is clearly when we -- when I had my
12 conversation with Maureen Reilly, that is not what she
13 wanted to do. And I still felt that I should do
14 everything possible not to encourage that, because I
15 entered into a settlement agreement as it was.

16 And it was not my intention in September of
17 2010 of involving claims with other judges. If it were
18 my intention, I would have just declared a breach, not
19 ask for help from CalPERS Board or from controller Chiang.
20 I would have just declared a breach and took actions to
21 involve other judges.

22 I did not do that because I don't want to do
23 that. The only thing I wanted to do was to get the
24 accounting done properly and to have the settlement
25 agreement abided by. But there is no way -- in the end,

1 there is no way of doing this with Pamela Montgomery as
2 manager of the Judges' Retirement System, because she
3 had a vendetta that she was refused to do that.

4 She made computation after computation. There
5 were 10 to 12 different computations using different CPI
6 indexes. And she finally came up with using the wage
7 earners' and clerical workers' CPI index.

8 And she didn't go back to January 1997. She
9 went back to 1979 to start her calculation using these
10 other indexes, including the wage earners' and clerical
11 workers'.

12 Q In some of your letters, you mentioned out of
13 respect for the state, you have not brought this matter
14 to an attorney yet; is that right?

15 A That is right.

16 Q What do you mean by that?

17 A I had great respect for California, meaning the
18 Judges' Retirement System, the judiciary, the State of
19 California, and the agreement I entered into. And I was
20 not going to violate that. Even -- even though I felt
21 that my act was not moral, I could not violate the
22 agreement, and I didn't violate the agreement. And I
23 was fighting against going to an attorney and starting
24 up this thing, which has been more headache than I can
25 imagine.

1 Q When you say "the State of California," the State
2 of California was threatened with one billion dollars of
3 liability in your judgment; is that right?

4 A No, not in my judgment.

5 Q In your letters --

6 A Just a minute. I was given a number by Maureen
7 Reilly in 1996 as to the exposure. When I wrote in
8 September of 2010, I took her number and extrapolated
9 it. I didn't have any way of estimating. That was the
10 number of dollars that were involved in 1996, and I
11 didn't have any way of estimating the number of dollars
12 that were involved in 2010.

13 But I extrapolated it because I wanted to get
14 their attention. I wasn't asking for any large amount
15 of money. I want to get their attention. I hoped to get
16 their attention; that somebody would be logical and
17 insightful enough to get together and get the lawyers or
18 somebody involved to work out this situation.

19 Q You wanted to let them know if they didn't pay
20 you about \$140,000, they might be exposed to a billion
21 dollars?

22 A No. When you say it that way, it sounds like a
23 threat, and it wasn't a threat. But I wanted them to
24 know this was an important -- an important issue to get
25 resolved, whether it was \$140,000, \$14,000, whatever it

1 was in the outcome.

2 It was something that needed to be resolved.

3 It was important, and the number that was put in there
4 was showing importance. And I was hoping to get them to
5 come forth with a solution that would solve the problem
6 that I was not able to solve with Pamela Montgomery,
7 because she just was unreasonable in any respect.

8 Her numbers were wrong. The CPI index she used
9 was wrong. She didn't start at the right time. She
10 didn't start at January 1997. Everything was wrong,
11 and there was no talking to her. It was like a brick
12 wall. I was pleading with them to do something to
13 correct the situation.

14 Q So at that time in September of 2010, even
15 though you had already come to the conclusion that your
16 act of agreeing to the confidentiality agreement was
17 immoral, you were still willing to continue perpetuating
18 that immoral act if the JRS paid you \$140,000; is that
19 right?

20 A Absolutely. I felt bound by the settlement
21 agreement, and I was not going to change that. I was
22 not going to -- I was bound by that agreement.

23 Q But if they didn't pay the \$140,000, then you
24 would -- then you would do the moral thing? Do I have
25 that right?

1 A No. If they didn't come in and help resolve
2 the problem, then they would have forced me to go to an
3 attorney, which is what happened.

4 Q Which had the natural consequence of a billion
5 dollars liability. Not something you wanted to do. You
6 are just saying the natural consequence?

7 A The thing I told them was I didn't want to hire
8 an attorney. And I didn't want these consequences to
9 occur, and to please help me. They didn't do it, and I
10 eventually had to consult with an attorney. Otherwise,
11 we would still be suffering under this.

12 And in actuality we still are -- well, I am
13 still suffering under this, because as shown in the
14 September 2015 letter that is in evidence from -- from
15 JRS, they are still using wage earners' and clerical
16 workers' CPI index to make adjustment, which is the wrong
17 index to be using. And the Supreme Court of California
18 indicated -- indicated that the correct index to use is
19 all consumer.

20 Q Could please turn to Exhibit 13.

21 THE COURT: Before we go, why don't we take our
22 afternoon break. And we will reconvene in 15 minutes.

23 (Recess)

24 THE COURT: We are back on the record after our
25 afternoon break. We are continuing with Judge Mast's

1 cross-examination.

2 BY MR. RIEGER:

3 Q Judge Mast, excuse me, please turn to page --
4 Exhibit 13.

5 A 13.

6 Q 13. Is this an E-mail that you wrote to Pamela
7 Montgomery?

8 A Apparently. It is not -- I'm not familiar with
9 it, unless -- but go ahead and ask your question.

10 Q If you could turn to the next page, 429. The
11 second to last paragraph says, "I have written to show
12 that I am not some avaricious ogre unfairly taking money
13 from the State of California. Moral or immoral, the
14 agreement I entered into with the state has saved the
15 state hundreds of millions of dollars."

16 Did you write that?

17 A I must have. That is what it says.

18 Q And so how are you distinguishing yourself from
19 an avaricious ogre?

20 A That's a ridiculous question.

21 Q One of the reasons was you think an avaricious
22 ogre could have done what you didn't do?

23 A I have no answer to that.

24 Q You were writing to her to show her that you
25 were not -- you shared with her some facts. And you

1 said, "I'm telling you these facts, so that you know
2 that I am not an avaricious ogre."

3 I'm wondering why you felt the need to convince
4 her that you are not an avaricious ogre.

5 A What you are doing is what you do repeatedly.
6 You take one phrase out of a letter or out of a document
7 and twist the meaning of it. What this E-mail says and
8 what the letter or E-mail in number 14, which is what I
9 thought you were going to ask me about, what they both
10 are -- are saying to Pamela Montgomery, "Please stop your
11 obstructive conduct. Please abide by the settlement
12 agreement."

13 And I assume the benefits, as provided by the
14 settlement agreement in 2007, no adjustment had been made
15 since 2006 in regards to the letter in Exhibit 14 and
16 2008. Two adjustment periods had past.

17 In both of those, I'm asking, "Please do
18 something. Stop the obstructionist attitude, and get the
19 settlement agreement back on track." That was to no
20 avail.

21 Q Do you think it was a good thing that you were
22 saving the state hundreds of millions of dollars?

23 A Do I think it was a good thing? I think it
24 would have been better. I think it would have been a much
25 better thing if the state had lived up to its obligation

1 as set out by Section 608203 and as set forth in Olson
2 against Cory, which stated that these retirement
3 benefits were vested and could not be changed.

4 Q But I'm asking, in this letter you are saying
5 moral or immoral, the agreement with the state has saved
6 hundreds of millions of dollars. The sentence right
7 after that, are you trying to suggest that it was a good
8 thing that you saved the state hundreds of millions of
9 dollars?

10 Do I have that wrong?

11 A No. I was stating what Maureen Reilly had told
12 me. Whether it was a good thing or not was not the
13 subject of this letter.

14 Q You don't have an opinion at this time whether
15 it was a good thing that you were saving the state
16 hundreds of millions of dollars?

17 A Depends on what you are looking at. It was good
18 for the state. It was bad for the judges.

19 Q And good for you, right?

20 A No.

21 Q You got paid?

22 A I got paid what I was supposed to get paid.

23 Q You got paid at the expense of what no other
24 judge was receiving; is that right?

25 A I got paid what I was supposed to get paid and

1 determined by the attorneys for JRS who agreed with my
2 position.

3 Q And you thought it was okay?

4 A I did not get paid at the expense of the
5 judges. I thought it would work out. If I had taken a
6 different position, that's what I mean by "immoral
7 conduct." I don't have to repeat it. If I had not
8 agreed to that, the judges would have been better than
9 -- would have been better for the judges.

10 It would have been worse for the state. That's
11 what -- that's what happened with the settlement
12 agreement. And I did it and lived with it, right or
13 wrong. In this life, I have not done everything right.
14 No one has done everything right in their life. In this
15 instance, I thought of myself, not of other judges.

16 And thinking of myself, I did save the state
17 very much money. Was it the right thing to do, sitting
18 here today looking back? It was not a moral thing to
19 do. But I did it. And right or wrong, I am not proud of
20 what I did. But I did it. And I felt bound by it
21 because I signed a settlement agreement.

22 Q So when you put this statement here, "moral or
23 immoral, the agreement I entered with the state saved the
24 state hundreds of millions of dollars," you are telling
25 me here today that that sentence was not intended to

1 convey the idea that saving the state hundreds of millions
2 of dollar is a good thing?

3 A What that does is -- what the intent of that was,
4 was to convey to Pamela Montgomery, "Look, I am not a bad
5 guy. Stop your obstructionist and let's get this back
6 on track."

7 Q So at this point, you believe your agreement to
8 remain silent was immoral and your letter to Pamela
9 Montgomery that you would continue to implement that
10 immoral conduct, unless you were paid the \$140,000; isn't
11 that what this is?

12 A Not the "unless."

13 Q Why is the "unless" wrong?

14 A I was telling her that I was not going to
15 breach the agreement. And I did not breach the
16 agreement. This was 2007, and I did not breach the
17 agreement. And I was telling her that I would not
18 breach the agreement. I was not demanding a specific
19 sum.

20 I was requesting that she abide by the
21 settlement agreement. We had a disagreement as to what
22 should be done. She unilaterally stopped making
23 adjustment. If she had continued making adjustment
24 late in the wrong amounts, whatever it might have been
25 after she became manager, we wouldn't be here today.

1 Because before -- before this time, JRS didn't
2 know what they were doing as far as the dates and
3 procedure and how it was done, and I did not know. I
4 was relying on JRS. I was accepting what they did. And
5 in retrospect, they were doing things wrong.

6 But when you take my Excel spreadsheet from
7 January 1, 1997, up to the present time, things that
8 were wrong, things that were right, when they underpaid,
9 when they overpaid, those were all washed out. And they
10 are made right in the Excel spreadsheet.

11 Q Could you please turn to Exhibit 14.

12 A Yes.

13 Q Is this an E-mail that you sent to Pam Montgomery
14 on March 27th, 2008?

15 A It appears to be.

16 Q So here, if you look at the third paragraph,
17 the third paragraph, second sentence says, "I agreed with
18 your office" -- let me start it off sooner.

19 It refers to the third paragraph that says, "You
20 should keep in mind at the time of the settlement with
21 the office back in 1995, it was recognize by your office
22 that over a thousand retired judges are entitled to the
23 benefit I was claiming. I agreed with your office, which
24 is not the moral thing for me to do, nor was it a moral
25 thing for your office to propose that the settlement

1 agreement would remain confidential."

2 Do you see that?

3 A I see that.

4 Q So your position -- your claim is that they
5 proposed the confidentiality agreement, not you?

6 A They did not, definitely. Maureen Reilly
7 proposed it.

8 Q Okay. And you reluctantly went along with it?

9 A I didn't, reluctantly. You are adding to that.
10 I agreed to go along with it.

11 Q Weren't you reluctant?

12 A No. At the time I was thinking only of myself.
13 And that's where the immorality came from.

14 Q The next paragraph, the last sentence says,
15 "What is the truth is that I'm receiving only what I am
16 entitled to. And it is others who have been deprived of
17 what they are rightfully entitled to."

18 Do you see that?

19 A Yes.

20 Q And you are talking about other judges, right?

21 A Yes.

22 Q And that is the immoral act that you have been
23 talking about, not letting those other judges know about
24 this?

25 A That is right.

1 Q But in the last exhibit you are explaining how
2 not letting them know is saving the state hundreds of
3 millions of dollars, right?

4 A That's what Maureen Reilly said.

5 Q But you are reminding her of that as you were
6 trying to get more money from her?

7 A I'm not trying to get more money from them.
8 I'm trying to get them to abide by the settlement
9 agreement and pay what they were required by the
10 settlement agreement.

11 Q If you could turn to Exhibit 15, please.

12 Is this E-mail from you to Pamela Montgomery on
13 May 7, 2008?

14 A That's what it appears to be.

15 Q And the third paragraph says, "Unless I receive
16 the funds that are due for the past several years and
17 adjustment to current pension payment amount by the
18 beginning of June, I will take further action. I have
19 not decided what action I will take. I have several
20 alternatives, none of which I wish to take. Anything
21 I do will end up with consequences and ramifications
22 that I do not want to have. This is why I do not want
23 to do them, why I have been patient. Why I'm writing
24 this letter now."

25 What actions are you referring to in this

1 paragraph?

2 A No specific action. Again, you are taking one
3 sentence and overlooking what this means. What I was
4 telling her was, pleading with her to please get on the
5 ball, live by the settlement agreement, do the proper
6 calculations and get it back to where it should be.

7 Q What are the alternatives that you did not wish
8 to take?

9 A I don't know what alternative I was thinking
10 of. I didn't specify any alternative. This is not
11 meant to be a threat. This was writing all these
12 letters, all the communications with her during these
13 years from 2006 to 2010, four years in which she
14 directed her staff not to make any COLA adjustments.

15 I was pleading with her to get on -- get on
16 with the settlement agreement and abide by the
17 settlement agreement. The settlement agreement was
18 binding no one, was setting aside -- if somebody wanted
19 to set it aside, they could have taken legal action to
20 set it aside if they had done it promptly.

21 By 2007, it was already many years past being
22 promptly, according to law, draft to be done within a
23 very short time after January 1997. Nobody did it. But
24 her proper action would have been to get legal advice
25 and proceed with that, rather than taking upon herself to

1 do this action, obstructionist and not do anything as
2 far as abiding by the settlement agreement.

3 Q If you could please turn to Exhibit 17. So
4 Exhibit 17 is a series of letters, dated September 1st,
5 2010; is that correct?

6 A Yes. I wrote to everybody that I could think
7 of, every member of the Board of CalPERS and John
8 Chiang.

9 Q And Pamela Montgomery?

10 A And Pamela Montgomery.

11 Q Bill Lockyer?

12 A He is one of the members of the Board. I think
13 he's the chairman of the Board.

14 Q Okay. And each of these letters -- turning
15 your attention -- in each of those letters explaining
16 that JRS was owing you more money; is that correct?

17 A I'm explaining that JRS did not abide by the
18 settlement agreement or violated.

19 Q And as a consequence, you are saying they did
20 not pay you enough money; is that right?

21 A Yes.

22 Q Also, in each of those letters you are talking
23 about how you agreed to the confidentiality provision
24 and that that saved the state upwards of one billion
25 dollars; is that right?

1 A Whatever it says. I had no way of knowing the
2 amounts. Just as I had no way of knowing the number of
3 judges. This is all extrapolated from what Maureen Reilly
4 told me.

5 Q If you turn to Exhibit 17, page Mast 002. The
6 second page of Exhibit 17, the third paragraph down
7 beginning with the last sentence, "JRS with the
8 confidentiality settlement agreement."

9 Then in the next paragraph, you said at the
10 time 1996 settlement, and asked a representative at
11 JRS if he wanted to confirm the agreement.

12 "I was told no retired judges paid at the
13 dictate of Olson v Cory. That one thousand retired
14 judges have been receiving retirement pay contrary to
15 the dictate of those cases and JRS adjust the amount
16 previously paid. JRS would be paying \$400 million."

17 Is that an accurate statement? Did that happen?
18 Is that what you were told? Sorry for the multiple
19 questions. Let me start over. I didn't mean to ask
20 multiple questions like that.

21 My understanding is that you didn't understand
22 why you wanted the confidentiality agreement, so why did
23 you ask why they wanted it?

24 A I don't think I asked. I was told.

25 Q It says here you asked a representative at JRS

1 why they wanted a confidentiality agreement?

2 A I don't remember that. But it is now 2015. In
3 September 2010, maybe I did remember that.

4 Q Okay. But having read that, do you believe that
5 happened? Did you ask the JRS representative why they
6 wanted the confidentiality agreement?

7 A I have no idea whether I asked or whether
8 Maureen told me. But one way or another, Maureen told
9 me.

10 Q In the letter to the state controller, you
11 said, "Based upon the 1996 estimates at the cost would
12 be \$400 million. I now see current potential liability
13 of one billion dollars."

14 Do you see that?

15 A That's my extrapolation of the numbers that if
16 the number was correct that Maureen Reilly told me, then
17 the second number would also be correct.

18 Q That's so -- then turn to Mast 005. This is a
19 letter to Pamela Montgomery. The top paragraph says,
20 "Out of respect, as you well know, I have -- out of respect
21 for the State of California, not taken it to an attorney
22 prior to this. As to do so would have been a disastrous
23 effect on the state."

24 So it is here you are explaining to them that
25 if you take it to an attorney, it might cost the state a

1 billion dollars; is that right?

2 A That's the disastrous effect. It speaks for
3 itself. It says disastrous effect. I wasn't -- in this
4 paragraph, I wasn't saying the dollar amount. But the
5 intent of all these letters of September 2010 was saying,
6 "Please help me. I don't want to do something that would
7 not be beneficial to the State of California."

8 I signed this settlement agreement. I made the
9 agreement at that time. I am willing to live with it.
10 And all we need to do is -- or all the Board was asked
11 to do was to help and to get a resolution to the
12 agreement.

13 Q But you were willing to deprive all the other
14 judges of what you thought they were entitled to as long
15 as you got what you were entitled to?

16 A That's the immoral decision I made in 1996. We
17 have been through that many times.

18 Q You were still making that immoral decision in
19 2010, because in this letter you are reminding them of
20 what might happen if you go talk to the other judges and
21 you are telling them you have not talked to them, yet.

22 So you are still saying you will not talk about
23 the settlement agreement as long as they pay you off?

24 A That's my immoral decision in 2010. That's an
25 immoral decision I made in 1996. I felt bound by the

1 settlement agreement. I don't enter into an agreement
2 and breach it. I wasn't going to breach it in 2010 if
3 there was some way to get around it. All I was doing
4 was asking for their help. No one came forward.

5 Q And the amount that you were seeking in 2010, in
6 your letter, Mast 007, it says "the amount due, therefore,
7 is \$90,804.25 and plus \$50,960.30 with a total of
8 \$141,764.55." In addition, the monthly pension must be
9 adjusted to you.

10 And this is the amount that you wanted from JRS
11 sending these letters, right?

12 A No. That's not -- that is not correct. That
13 was the amount they calculated was due.

14 Q You wanted them to pay you that?

15 A I wanted them to pay me the amount that was
16 due. This was the amount that I calculated. Now, if
17 they had come up with a accountant and somebody had
18 followed through on the settlement agreement and checked
19 the number and came up with a different number, then I
20 would have happily listened to them. But they didn't do
21 that. This was my calculation.

22 Q But you wanted them to pay you this money,
23 right?

24 A I wanted them to pay. I wanted them to abide
25 by the settlement agreement, and this was the amount

1 that I calculated. This wasn't "Do this or else."

2 "Pay every penny or else." This was what I calculated
3 to be done.

4 Q I understand.

5 A I got no reaction from Pamela Montgomery or
6 anybody else.

7 Q I'm just trying to understand why you are
8 avoiding that sentence. You are telling me that you
9 wanted to abide by the settlement agreement. You're
10 telling me that this is the amount you are owed in the
11 settlement agreement. But you are not willing to say
12 that you wanted them to pay this amount.

13 A I wanted them to pay me that amount or give me
14 calculation where that amount was wrong.

15 Q If you could please turn to Exhibit 18. And
16 this is an E-mail you wrote to Pamela Montgomery on
17 September 29, 2010?

18 A Apparently so.

19 Q And here in the last paragraph, you are saying
20 you pointed out the settlement agreement and the breach
21 of contract by the JRS. And then you say, "Not only
22 prohibited about settlement. Nothing has prevented me
23 from speaking about the law and the fact that your office
24 has been in violation of the law in a method of making
25 payments to some 1,000 to 1,500 retirees in accordance

1 with the Supreme Court cases. Despite not being
2 precluded from doing so, I remained mute on this issue
3 for 15 years. After the way I have been treated by your
4 office, I see no reason to remain mute any further."

5 Did you write that?

6 A Yes.

7 Q So at this point, you believe that you certainly
8 believed that you could share your theories with the
9 other judges; is that right?

10 A I believed that I could talk to -- I believed
11 that I could not reveal the terms of the settlement
12 agreement. But I -- but I could talk about the law and
13 Olson against Cory as far as violating or -- as far as
14 talking about the terms of the settlement agreement. I
15 could have probably done that, also, because of the
16 breaches of JRS before this date.

17 But I was not intending to do that. I did not
18 want to do that. This, again, is the same thing. I'm
19 not writing a letter just without purpose. The purpose
20 is still pleading with her. "Please, let's get something
21 done. And let's not get into this controversy. Please
22 abide by the settlement agreement."

23 Q When did you come to the conclusion that you
24 were not prohibited from speaking about the settlement?
25 I am sorry. I misspoke. Let me start over.

1 When did you come to the conclusion that
2 "nothing is preventing you from speaking about the law
3 and the fact that your office had been in violation of
4 the law in a method of making payment to some 1,000 to
5 1,500 retired judges in accordance to the Supreme Court."

6 When did you come to that conclusion?

7 A When I came to this conclusion was obviously
8 before I wrote the letter.

9 Q Do you think that you came to that conclusion a
10 month before this? You wrote this letter on September
11 1st, 2010. I'm just wondering if you came to this
12 conclusion at the time you wrote those September 1st,
13 letters?

14 A I have no idea what I was thinking five years
15 ago.

16 Q The moment you came to this conclusion, did you
17 go out and tell all these retired judges this was due to
18 your immoral act?

19 A No, I did not.

20 Q Earlier, you said your immoral act to not tell
21 other people about this, now you are telling me that you
22 determined that you could tell other people about this,
23 but you didn't do it?

24 A That's right. Because I was hoping that
25 somebody would wake up and abide by the settlement

1 agreement.

2 Q You just said that the settlement agreement
3 doesn't prevent you from talking about the law. If the
4 settlement agreement doesn't prevent you from talking
5 about the law and your silence up to that point of doing
6 an immoral thing, why didn't you do the immoral thing
7 that was consistent with the settlement agreement?

8 A Because that -- even though that was not in the
9 confidentiality agreement as it was written, which is
10 strictly construed, it was my knowledge in signing this
11 settlement agreement that they didn't want me to do
12 that. I wasn't going to do that. And I was going to --
13 I was finding every way I could to get the situation
14 resolved without going to other judges.

15 Q Even though it was immoral to keep the
16 information from other judges to begin with?

17 A That was my immoral act in 1996. I'm sorry for
18 the immoral act. That was a mistake. But I was not
19 going to change it at that time. I was not on a
20 vendetta to go and do anything with other judges.

21 Q And you also said in some of these letters, you
22 played no role in drafting the settlement agreement; is
23 that right?

24 A That's correct.

25 Q Can you please turn to Exhibit 6. This is a

1 May 1, 1995 letter from you to the Judges' Retirement
2 System.

3 Did you write this letter?

4 A Yes.

5 Q In the last sentence of the first part, it
6 said, "The purpose of this letter is to address your
7 concerns by explaining that I'm entitled to benefits
8 which I elected to receive. I am the only pensioner
9 so entitled."

10 Do you see that?

11 A Yes.

12 Q Why would you tell them that when you thought
13 everyone, or a lot of people, were entitled to it?

14 A I have no idea. This was May 1995. And the
15 letter to Jim Niehaus, and I can't say why I put that
16 in there, because I was not the only pensioner.

17 Q Was it also that you were trying to convince
18 Mr. Niehaus to try and go ahead and pay you the amount,
19 because there is nobody else there and it wouldn't cost
20 the JRS a lot?

21 A No.

22 Q That is not possible? As you sit here today,
23 you actually know that you -- what you put in these
24 letters was false; is that right?

25 A No.

1 Q You don't know that?

2 A No, I don't know that.

3 Q Why is this not false when all this time --

4 A I'm not saying -- I am not saying that is not
5 false. I didn't know it was not false. I don't know
6 why it says that in the letter.

7 Q But you wrote --

8 A I cannot remember back at that time. I do know
9 at that time that I had conversations with Jim Niehaus.
10 Jim Niehaus is a very cordial, cooperative person, and
11 we got along very well.

12 Q Do you recall Niehaus at the time, at a
13 convention, trying to convince judges reading Olson v
14 Cory?

15 A No.

16 Q Is it possible that when you first tried to get
17 them to pay you by saying you are the only judge and
18 when they determined that was not the case, then you
19 introduced the concept of the confidentiality agreement?

20 A I didn't agree with the concept.

21 Q Can you please turn to Exhibit 7. JRS 1054.
22 It is the second page of Exhibit 7.

23 A Yes.

24 Q About halfway down the page, the paragraph, "As
25 we were taking the telephone conversation, the only way

1 to resolve this matter is if CalPERS changes its position
2 on the claim. What then can I give to induce you to
3 resolve the claim, question mark. What I can give is
4 complete and total confidentiality."

5 Did you write that?

6 A Yes.

7 Q Did you want to revise whose idea it was to
8 come up with the confidentiality agreement?

9 A No. Because we had a conversation, like I
10 testified before, between the time the Statement of
11 Issues was presented and this August 5th letter which
12 was referred, there was a conversation with Maureen
13 Reilly about that.

14 And that conversation before August 5th is the
15 first time that confidentiality came forward.

16 Q Then why is the letter phrased as question and
17 answer, rather than saying as you explained on the phone,
18 "I could be subject to confidentiality agreement"?

19 Does this look to you like someone was saying
20 what someone else told them when they asked the question
21 and then answered it?

22 A It doesn't appear to be anything. I can
23 remember that she brought up the fact that there would
24 be a certain amount of money involved if all of the
25 judges -- if all of the judges were receiving this

1 benefit. And the only way that they could do that was
2 whether there is a confidentiality agreement, and we
3 left it at that. She was supposed to get back to me,
4 and therein, wrote this letter.

5 Q My questions to you is why you asked this
6 question. This is to Maureen Reilly. And you are
7 saying, "What, then, can I give as an inducement to
8 resolve the claim?" question mark.

9 That is a question and then you answered it.
10 What did you do to confidentiality? Why would you write
11 it that way if she is the one who proposed it?

12 A Why would I write it that way? I don't know
13 why I wrote it that way. But that's the way I wrote all
14 those years ago. I can't remember what was in my mind
15 when I was writing this. I can't remember that there is
16 conversation before this letter.

17 Q The next paragraph, "As part of the settlement,
18 I never discussed or disclosed the terms of the
19 settlement with anyone."

20 Do you see that?

21 A Yes.

22 Q You wrote that?

23 A Yes, that was true.

24 Q Again, your testimony is that this was Maureen
25 Reilly's idea and this was just parroting back her idea

1 to her?

2 A She brought it up first. In here, I was telling
3 her that I never discussed this with anybody, which I
4 hadn't.

5 Q There is no question you thought this through?
6 This wasn't something that came up at the end from JRS?
7 You testified earlier you clearly thought this through;
8 isn't that right?

9 A Clearly thought what?

10 Q You clearly thought through the purpose of the
11 confidentiality agreement when it goes to save the state
12 a large liability by paying you a nice sum for yourself,
13 a relatively small amount for the state?

14 A The first part of your question is true.
15 Maureen Reilly told me about the result of what it would
16 have on the state.

17 Q And so you very clearly understood the purpose
18 of the confidentiality agreement, right?

19 A That's why I abided by it. But even though I
20 abided by it, the purpose of it still doesn't; hence,
21 the situation that the confidentiality agreement is
22 strictly construed and you have to go to it by the word
23 -- terms of the agreement.

24 Q All right.

25 A Confidentiality agreement could have been more

1 in line with the records in this letter, but it was not.

2 Q If you could please turn to the next page of
3 Exhibit 7, 1055. You wrote, "The window of opportunity
4 to resolve the claim is, therefore, very short and is now
5 in resolve. CalPERS is not acceding to my position and
6 is not agreeing that my claim is valid. What CalPERS is
7 doing is recognizing something, the fact of the case, of
8 the possibility that it could lose.

9 "In effect, it is like resolving a \$100,000
10 lawsuit for \$100. This is something no reasonable
11 litigator would turn down, regardless of how responsible
12 he thought his position to be."

13 Did you write that?

14 A Yes.

15 Q What was the hundred thousand dollars and what
16 was the \$100?

17 A This was a sales pitch. I wanted to settle the
18 case, and this was a sales pitch that I was giving.

19 Q So the analogy is "Pay me a hundred dollars, so
20 you don't have to pay all the other judges a hundred
21 thousand dollars"?

22 A Yes.

23 Q Why did you feel you needed to make a sales pitch
24 to Maureen Reilly when she is the one who came up with
25 the idea of the confidentiality agreement?

1 A Because of the date of the letter. The date of
2 the letter was August the 5th. My response was written
3 or filed August the 15th. It was not until after she
4 received my response, understood what the law was, did
5 the search on it, that she decided that it was in the
6 best interest to go ahead with the settlement agreement.

7 Q Do you still think Olson v Cory is right?

8 A Absolutely, it is right. There is no -- there
9 is no doubt in my mind that it is right. And as I
10 pointed out in the briefs, you took a phrase out of one
11 paragraph of Olson against Cory and interpreted it
12 backwards and sold that to the Appellate Court and the
13 attorneys, which did not include me.

14 Q Why didn't they include you?

15 A You know why. Because Rozi dismissed me from
16 the case.

17 Q Why did he dismiss you from the case?

18 A Because he wanted to collect all of the fees
19 and didn't give me any part of it. And the response was
20 written by Professor Ruby at Duke University Law School.
21 And he wrote it in such a manner to prefer his position.
22 He was -- he was, or is, the son of a justice of the
23 Appellate Court who retired during the protective
24 period.

25 He was emphasizing the position of the judges

1 who retired in the protected period, which prevailed,
2 and was ignoring the rights of all the judges and did
3 not properly apply to what you took this one phrase
4 out of a paragraph and reversed its meaning, and sold it
5 to the Court.

6 Q Well, for the record, I did not do that.

7 A That is going to change in the present hearing
8 before the Appellate Court and also going to be
9 different, I'm sure, in the Sacramento case, although I'm
10 not privy to any of the pleadings in that. But I'm sure
11 that will be corrected up there.

12 Q So it is one sentence out of context. I just
13 want to make sure it is your view that I tricked three
14 appellate justices in an unanimous public opinion.

15 A I'm absolutely certain of that. I absolutely
16 am certain of other things that you have done, which I'm
17 not going to express to the Court today. You know what
18 they are.

19 Q You should say it now.

20 A You know my opinion.

21 Q You should say them.

22 THE COURT: If they are not relevant to the issue at
23 hand, I don't want to know them. I have allowed a
24 little of the personality here, but focus on the actual
25 fact and law in this case, because it really comes down

1 to that. I'd rather not get into the personality that's
2 involved. I really need to hear the facts and laws.

3 BY MR. RIEGER:

4 Q And the -- what evidence do you have that I
5 tricked the Supreme Court as well as when they sustained
6 the review?

7 A The Supreme Court did not hear this case. They
8 -- the Supreme Court denied accepting the case. The
9 Supreme Court takes, apparently, two percent of the cases
10 that were requested that they take. They did not take
11 this case.

12 Q Could you turn to Exhibit 8, please.

13 THE COURT: Before you go to Exhibit 8, I typically
14 run 9:00 to 12:30, 1:30 to 4:30. Do you have an
15 estimate for --

16 MR. RIEGER: I think I can finish. I am almost
17 done.

18 THE COURT: And we need to talk about a briefing
19 schedule. All right. Thank you.

20 BY MR. RIEGER:

21 Q So in Exhibit 8, this is when you sent in your
22 copy brief, right? Or this is a memo you sent to her
23 with a copy of your proposed brief, right?

24 A Apparently so. That's what it says.

25 Q Okay. And the reason you sent it to her was so

1 you could have it settled instead of becoming a public
2 matter; is that right?

3 A It would become public record.

4 Q Turn to Exhibit 9, please. This Exhibit 9 is a
5 letter that you sent back to Maureen Reilly in which you
6 made edit to the settlement agreement, right?

7 A Yes.

8 Q Could you please turn to Exhibit 22. Exhibit
9 22 is the declaration for the Staniforth action filed by
10 you.

11 Why did you file this declaration?

12 A Why did I file that?

13 Q Yeah.

14 A I was opposing John Rozi for throwing me off
15 the case.

16 Q Why was he throwing you off the case? You
17 already told me he wanted all the money for himself.

18 A That's right.

19 Q On page JRS 1429, page 3. Page 3, 1429. It
20 says, "Declarant and Rozi agrees that any fees that would
21 be received would be divided equal between the two of
22 them after cost."

23 Is that a true statement?

24 A Yes.

25 Q Did you make that agreement with Rozi?

1 A It was in all agreements, not a written
2 agreement.

3 Q And then you actually prepared the retainer
4 agreement; is that right, with the judges?

5 A I don't know about that. It says it in there.
6 Perhaps I did. I don't remember preparing the retainer
7 agreement. But whatever it says, it says.

8 Q "Declarant John Rozi should offer other judges
9 the Rozi agreement." Is that a true statement?

10 A Yes, that's true. I told him that he should
11 not charge them any cost. He should bear all the cost
12 himself, and that he should not charge 40 percent. He
13 should charge 30.

14 Q And you say "the Declarant wrote the letter to
15 other judges explaining his history of applying for
16 retirement benefit, the procedure to be filed to COLA
17 benefit and resulting proceeding."

18 Do you see that?

19 A Yes.

20 Q Is that a true statement?

21 A It must have been.

22 Q So you wrote a letter about your settlement
23 with JRS for inclusion in the packet with John Rozi to
24 all the retired judges and justices and their heirs?

25 A I don't think -- to my memory, I don't think

1 that that is correct. However, the letter is in here
2 and you have introduced it into evidence.

3 Q Why don't you think it is correct?

4 A Because I don't think that that is what the
5 letter says. But the letter will speak for itself.

6 Q If you can please turn to page 1440. On 1440,
7 the last sentence, you are talking about getting a bunch
8 of new clients. You have 42 clients. That represents
9 \$7 million in your pocket.

10 Are you writing that to John Rozi?

11 THE COURT: I'm sorry. What page?

12 MR. RIEGER: Page 1440. It is the second paragraph
13 on page 1440.

14 BY MR. RIEGER:

15 Q What are you talking about when you are
16 referring to "\$7 million in your pocket"?

17 A It was apparently my estimate if I signed up
18 42 clients that I would be an attorney.

19 Q That also would have been seven million in your
20 pocket, right?

21 A I don't know about that.

22 Q You were splitting 50/50 with him?

23 A I know that. But this letter was apparently
24 written after -- after the demur hearing and he was
25 blowing up, walking down the street, screaming at me

1 about you.

2 Q If you please turn to 1456.

3 THE COURT: 56?

4 MR. RIEGER: 56, yes, your Honor.

5 BY MR. RIEGER:

6 Q The last paragraph 1456, it says, "You call me
7 a, quote, unquote, 'whistle blower'. Come on, John, I
8 gave you a complete case, which will only be profitable
9 to each of us. We agreed to work together and share the
10 proceeds equally. I wrote out a complete theory of law
11 for you that you doubted for a long time. Now, only after
12 preparation for demur you, are convinced we are correct."

13 Do you see that sentence?

14 A Yes.

15 Q What did you mean when you said "call me a
16 whistle blower"? Why were you disputing the idea that
17 you were a whistle blower?

18 A I don't know about "whistle blower." I don't
19 remember that. But it speaks for itself. This was
20 after John had his blow-up after the hearing of the
21 demur. And he was, in effect, firing me, and I was trying
22 to oppose. You know, this -- these letters speak for
23 themselves. I wrote it. I said it.

24 I think you are wasting time. I don't remember
25 writing any of these things.

1 Q Did you believe the case would be unbelievably
2 profitable for you?

3 A It would be very profitable.

4 Q All this stuff that you did, you laid out the
5 theory of the law for John and everything else you did,
6 you didn't think would violate the confidentiality
7 agreement, do you?

8 A No, it didn't. Because it's -- first of all,
9 the terms of the agreement. Besides that, the agreement
10 had already been breached. And we have gone into it
11 before. We don't -- we don't have to repeat all that.
12 It is getting very late.

13 Q If you could please turn to Exhibit 23. This
14 is a letter that you wrote to be included in the packet
15 that John Rozi sent out to judges, justices, and their
16 heirs.

17 A Well, Exhibit 23 is a memorandum of points
18 after we pulled --

19 Q This is the beginning of 1506.

20 A 1506.

21 Q The rest of it has been pulled out?

22 A Yes.

23 Q This letter was included, right?

24 A I think it was.

25 Q If you please turn to number 24, Exhibit 24,

1 1524. Exhibit 24, page 1524. This is an E-mail that you
2 included in your declaration. This is John Rozi
3 talking. But it says, "We don't need more attorneys
4 when money is coming. We need secretaries, chauffeurs,
5 pilots, and vacation planners.

6 We can't trust an attorney. They run off with
7 your business. We have to keep it going until" --
8 something is redacted.

9 Just so -- I'm just wondering. Did you have a
10 conversation with John Rozi about this thing, how rich
11 you were going to be after this case was over?

12 A That was his -- that was his nature reflected
13 in that paragraph.

14 Q All right. Can you please turn to Exhibit 25.
15 Maybe we -- they are already both in evidence. Just for
16 the record, 25 and 26, these are cover letters to retired
17 judges; is that right?

18 A You mean Mason and Cobblers, yes.

19 MR. RIEGER: That's all I have, your Honor.

20 THE COURT: Was there anything you wanted to add?

21 MR. MAST: No, your Honor.

22 THE COURT: I do need to go through the exhibits
23 that have not been marked. So Complainant -- JRS
24 exhibits, I have, Exhibit 4 has been marked.

25 MR. RIEGER: I think 2, also.

1 THE COURT: Yes. 2, so I will be pulling out --

2 MR. RIEGER: That's fine.

3 THE COURT: -- Exhibit 2. That way, for myself and any
4 reviewing courts, anything that is not marked will not be
5 included in the binder. Exhibit 4 is being pulled out
6 because it has not been marked. Exhibit 6 is being pulled
7 out. That's not been marked.

8 MR. RIEGER: I'm sorry. Did you say 6?

9 THE COURT: I'm sorry.

10 MR. RIEGER: I am sorry. 6 should be in there. The
11 first three I have is 2, 4, and 10.

12 THE COURT: Right. Unfortunately, the exhibit list
13 is not -- so 10 is being pulled. 6 was returned. It is
14 stamped on it. 10 is out. The next is going to be 19.
15 That has not been marked. That's being taken out. And
16 that, I believe, is it for the exhibits that are not
17 marked JRS.

18 For Respondent, I have two outstanding exhibits.
19 Exhibit I and Exhibit Q that Judge Mast spoke of, as far
20 as the separation of his documents.

21 Is there any objection to Exhibits I or Q?

22 MR. RIEGER: Yes. I don't think that an accurate
23 foundation was established for these. In terms of the
24 numbers being correct, in terms of his qualification to
25 this, in terms of the back-up material that have gone to

1 generate, like the ones I provided.

2 MR. MAST: Your Honor.

3 THE COURT: That's fine. The objections are
4 overruled. Exhibit I and Exhibit Q are admitted. And
5 I'll give the necessary weight to them with the
6 testimony that was provided regarding how they were
7 prepared.

8 (Respondent's Exhibits I and Q were
9 received in evidence by the Court.)

10 THE COURT: All right.

11 So that takes care of all of that evidence that
12 has been marked in the case of all of those. We do need
13 to schedule briefing. Why don't we go off the record
14 for just a minute.

15 (Discussion off the record)

16 THE COURT: All right. Pursuant to discussion and
17 agreement with the parties, the JRS will file and serve
18 its closing brief addressing, among other things, any
19 issue that must be addressed and raised in Respondent's
20 filed briefs. And that closing brief should be filed
21 and served by the close of business, December 21st, 2015.

22 By January 11, 2016 close of business, the
23 Respondent will have to file and serve its opposition to
24 JRS closing brief. And then JRS will have until close
25 of business, January 25, 2016, to file and serve any

1 reply to Respondent's opposition. And the record will
2 close, then, on January 25, 2016. There is nothing --

3 MR. MAST: Your Honor, I assume these will be filed
4 electronically with the Court?

5 THE COURT: Yes.

6 MR. MAST: Could we also have an agreement that they
7 be served on each of us by E-mail?

8 THE COURT: All right.

9 MR. RIEGER: I've always done that.

10 MR. MAST: I have to -- I want to get away from
11 mailing it to you, also.

12 MR. RIEGER: Oh, yeah, I guess that's fine. Yeah,
13 that's fine.

14 THE COURT: All right.

15 MR. RIEGER: Sometimes it scares me if I get a
16 million E-mails. Don't have back-up. I will take a
17 chance this time.

18 THE COURT: All right. So if there is nothing
19 further, then we are off the record.

20 (Hearing adjourned at 4:35 p.m.)

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