

MEETING
STATE OF CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BOARD OF ADMINISTRATION
OPEN SESSION

ROBERT F. CARLSON AUDITORIUM
LINCOLN PLAZA NORTH
400 P STREET
SACRAMENTO, CALIFORNIA

THURSDAY, NOVEMBER 15, 2018

9:00 A.M.

MICHELLE M WILSON, RPR
REGISTERED PROFESSIONAL REPORTER

A P P E A R A N C E S

BOARD MEMBERS:

Ms. Priya Mathur, President

Mr. Rob Feckner, Vice President

Ms. Margaret Brown

Mr. John Chiang, represented by Matthew Saha

Mr. Richard Costigan

Ms. Dana Hollinger

Ms. Adria Jenkins-Jones

Mr. Henry Jones

Mr. David Miller

Mr. Bill Slaton

Ms. Theresa Taylor

Ms. Betty Yee, represented by Lynn Paquin

STAFF:

Ms. Marcie Frost, Chief Executive Officer

Ms. Liana Bailey-Crimmins, Chief Health Director

Mr. Ted Eliopoulos, Chief Investment Officer Land

Mr. Christian Farland, Chief Information Officer

Mr. Douglas Hoffner, Deputy Executive Officer

Mr. Matthew Jacobs, General Counsel

Ms. Donna Lum, Deputy Executive Officer

A P P E A R A N C E S C O N T I N U E D

STAFF:

Mr. Brad Pacheco, Deputy Executive Officer

Mr. Scott Terando, Chief Actuary

Mr. Marlene Timberlake D'Adamo, Chief Compliance Officer

Ms. Kara Buchanan, Board Secretary

Ms. Sabrina Hutchins, Chief, Enterprise Strategy and
Performance Division

Ms. Kim Malm, Chief, Operations Support Services Division

Ms. Kathy Donneson, Health Plan Administration Division
Chief

Mr. Danny Brown, Legislative Director

Mr. John Shipley, Staff Attorney

Ms. Marguerite Seabourn, CalPERS Legal Team

Mr. Michael Cohen, Chief Financial Officer

ALSO PRESENT:

Ms. Tracie Stender, Respondent's Attorney

Mr. Neil Johnson, SEIU Local 1000

I N D E X

	PAGE
1. Call to Order and Roll Call	7
2. Approval of the November 15, 2018 Board of Administration Timed Agenda	8
3. Pledge of Allegiance - Priya Mathur	9
4. Board President's Report - Priya Mathur	9
5. Chief Executive Officer's Report (Oral) - Marcie Frost	20
6. Action Consent Items - Priya Mathur	27
A. Approval of the August 14, 2018 and September 26, 2018 Board of Administration Meeting Minutes	
b. Board Travel Approvals	
7. Information Consent Items - Priya Mathur	28
a. Board Meeting Calendar	
b. Draft Agenda for the December 19, 2018 Board of Administration Meeting	
c. General Counsel's Report	
d. Communications and Stakeholder Relations	
8. Committee Reports and Actions	28
a. Investment Committee (Oral) - Henry Jones	
b. Pension & Health Benefits Committee (Oral) - Rob Feckner	
c. Finance & Administration Committee (Oral) - Theresa Taylor	
d. Performance, Compensation & Talent Management Committee (Oral) - Bill Slaton	
e. Risk & Audit Committee (Oral) - Dana Hollinger	
f. Board Governance Committee (Oral) - Priya Mathur	

I N D E X C O T I N U E D

9.	Action Agenda Items	38
	a. Proposed Decisions of Administrative Law Judges - Priya Mathur	
	1. Patrick Roach	
	2. Veronica Rabanal	
	3. Mark L. Wheeler, Thomas R. Valdez, John M. Lopez, Larry D. Blackwell & Garry G. Cohoe (consolidated)	
	4. Brian A. Dalhover	
	5. Lisa Frederiksen (Kanna S. Birkeland (dec.).)	
	6. Victoria V. Amero	
	7. Sherry L. Mata	
	8. Kimberly Halla	
	9. Darren Sims	
	10. Charles A. Therrien	
	11. Sarah M. Thompson	
	12. Ian W. Pickett	
	13. Marcus R. Tinch	
	14. Derrick L. McGaskey	
	15. Joel J. Violet	
	16. Violet G. Nielsen (Rolland Nielsen (dec.).)	
	17. Anthony Perez	
	b. Petitions for Reconsideration - Priya Mathur	
	1. Paul B. Sheffield	
	2. Sigrid O. Lintag	
10.	Full Board Hearing - Priya Mathur	56
	a. Encina Wastewater Authority/San Elijo Joint Powers Authority (consolidated matter)	
11.	Information Agenda Items	40
	a. Enterprise Performance Reporting - First Quarter Report - Sabrina Hutchins	
	b. State and Federal Legislation Update - Danny Brown	
	c. Summary of Board Direction - Marcie Frost	
	d. Public Comment	

I N D E X C O N T I N U E D

Adjournment	110
Reporter's Certificate	111

P R O C E E D I N G S

PRESIDENT MATHUR: Good morning, everyone.
We're going to bring the Board meeting to order. First
business roll call.

BOARD SECRETARY BUCHANAN: Good Morning.

PRESIDENT MATHUR: Good morning.

BOARD SECRETARY BUCHANAN: Priya Mathur?

PRESIDENT MATHUR: I'm here.

BOARD SECRETARY BUCHANAN: Rob Feckner?

VICE PRESIDENT FECKNER: Good morning.

BOARD SECRETARY BUCHANAN: Margaret Brown?

PRESIDENT MATHUR: Excused.

BOARD SECRETARY BUCHANAN: Matthew Saha for John
Chiang?

ACTING BOARD MEMBER SAHA: Here.

BOARD SECRETARY BUCHANAN: Richard Costigan?

BOARD MEMBER COSTIGAN: Here.

BOARD SECRETARY BUCHANAN: Dana Hollinger?

BOARD MEMBER HOLLINGER: Here.

BOARD SECRETARY BUCHANAN: Adria Jenkins-Jones?

BOARD MEMBER JENKINS-JONES: Here.

BOARD SECRETARY BUCHANAN: Henry Jones?

BOARD MEMBER JONES: Here.

BOARD SECRETARY BUCHANAN: David Miller?

BOARD MEMBER MILLER: Here.

1 BOARD SECRETARY BUCHANAN: Ramon Rubalcava?

2 BOARD MEMBER RUBALCAVA: Here.

3 BOARD SECRETARY BUCHANAN: Bill Slaton?

4 BOARD MEMBER SLATON: Here.

5 BOARD SECRETARY BUCHANAN: Theresa Taylor?

6 BOARD MEMBER TAYLOR: Here.

7 BOARD SECRETARY BUCHANAN: And Lynn Paquin for
8 Betty Yee?

9 ACTING BOARD MEMBER PAQUIN: Here.

10 PRESIDENT MATHUR: We have a quorum. Next order
11 of business is approval of the November 15th, 2018 Board
12 of Administration timed agenda.

13 BOARD MEMBER TAYLOR: Move approval.

14 BOARD MEMBER HOLLINGER: Second.

15 PRESIDENT MATHUR: Motion made by, Ms. Taylor,
16 seconded by Ms. Hollinger.

17 Any discussion on the motion?

18 Seeing none.

19 All those in favor please say aye.

20 (Ayes.)

21 PRESIDENT MATHUR: All opposed?

22 Motion passes.

23 The next order of business is the pledge of
24 allegiance, and I believe we have, -- I'm so sorry, sir,
25 I don't have your name in front of me. Forgive me. Mr.

1 Richards? Mr. Bridges. I'm sorry. Forgive me. Thank
2 you. Mr. Bridges is a -- is a vet and is going to lead
3 us in the pledge of allegiance.

4 (Thereupon the Pledge of Allegiance was
5 recited in unison.)

6 PRESIDENT MATHUR: Thank you very much,
7 Mr. Bridges.

8 And then we are very fortunate to have the choir
9 here with us today, who are going to sing a few songs in
10 honor of our veterans.

11 Let's have the Board come down to the audience.

12 (Thereupon the choir sings.)

13 (Applause.)

14 PRESIDENT MATHUR: So we were so honored to have
15 Mr. Bridges and our choir -- our chorus, share with us
16 their -- their time this morning. On Monday our nation
17 celebrated a very sacred day, Veterans Day, which is
18 more than just a holiday. It's a time that Americans
19 can honor all those who have served, or currently
20 serving in our armed forces, and those who currently
21 serve in reserve status. Today we continue the
22 celebration to honor the veterans who are part of our
23 CalPERS family and extended family of members,
24 employers, and stakeholders.

25 Christopher Bridges, who, so kindly led the

1 pledge this morning, works in our Customer Service and
2 Outreach Division. He joined the U.S. Army six months
3 after 9/11 and served for five years. He was an M1A1
4 Abrams Tank Crewman, stationed at Ray Barracks in
5 Freiberg, Germany, coincidentally, the same base as
6 Elvis Presley. Maybe he has the same musical talent.

7 (Laughter.)

8 PRESIDENT MATHUR: And was assigned to the 1st
9 Battalion, 37th Armored Regiment. In 2006 he was
10 deployed to the Al Anbar region of Iraq and saw combat
11 in Ramadi and the surrounding areas. At the end of
12 Christopher's service, he was a Sergeant E5, assigned as
13 a tank gunner in the 1st Armored Division.

14 And we were, again, very honored to have you
15 lead us in the pledge this morning. Thanks so much for
16 being with us.

17 (Applause.)

18 PRESIDENT MATHUR: I would also like to
19 acknowledge the veterans who work here in our
20 headquarters building and those in our regional offices
21 across the state, and to all the veterans in the
22 audience today, members, employers, and stakeholders, I
23 invite you all to please stand.

24 (Applause.)

25 PRESIDENT MATHUR: We are so honored that you

1 are all here with us today and grateful for your
2 dedication, sacrifice, and courage. On behalf of the
3 Board and all of us here at CalPERS, we thank you for
4 your service to our country.

5 Now I would like to take a brief moment of
6 silence. As we all know, fires are raging all across
7 the state of California and too many have tragically
8 lost their lives. We also recently suffered a terrible
9 event in Thousand Oaks, California where a, deputy
10 sheriff lost his life and others were injured; and so I
11 would like just to take a brief moment of silence in
12 support of our first responders, who put their lives on
13 the line for us every day and also for all of those who
14 have lost their lives in the fires.

15 (Brief moment of silence.)

16 PRESIDENT MATHUR: Thank you.

17 At this moment, I want to do something that's
18 very hard to do. It's always hard to say good bye to a
19 colleague and friend, but it is especially hard to say
20 good bye to Ted Eliopoulos. Ted has been part of the
21 CalPERS family for the past 17 years, and I have had the
22 pleasure of serving with him and knowing him 16 of those
23 17. First, he was a representative on this Board for,
24 for Treasurer, Angelides. Then he was Senior Investment
25 Officer for Real Assets, and for the last four years,

1 and actually a little bit more, he was our Chief
2 Investment Officer.

3 During his tenure, Ted has worked diligently to
4 rebuild our portfolio following the great recession, to
5 restructure our real estate assets, and implement a new
6 vision to strengthen CalPERS investments for the future.
7 Ted provided clear leadership and vision to guide the
8 Investment Team to reduce to complexity of the
9 portfolio, including the challenging -- making the
10 challenging decision to end programs that were no longer
11 meeting our investment goals. This in turn led to
12 millions of dollars saved by CalPERS, to a reduction in
13 fees paid to external managers.

14 Ted has always recognized the importance of
15 diversity and the need to expand our work force with the
16 best new talent in the investment industry. He's also
17 kept a watchful eye on reducing the funds exposure to
18 risk across the portfolio from environmental, social,
19 and governance factors; and I know, Ted has his wife
20 Kelly with him in the audience today. Hi, Kelly.

21 Ted, will you please join me on stage?

22 On behalf of the CalPERS family, I really want
23 to express our deep appreciation for all that you have
24 given to CalPERS, both as a member of this team, which
25 really is a family, and, and to our members who so need

1 the resources that you help provide over the years. So
2 thanks so much, Ted. I'll maybe give this to you.

3 (Applause.)

4 CHIEF INVESTMENT OFFICER ELIOPOULOS: It's an
5 emotional moment, so I wrote out a few notes. Priya,
6 thank you so much, and, I'm trying not to turn my back
7 to you. I'll come over here. Thank you so much for
8 those words, for the friendship and leadership over the
9 last 16 years, together. You know, these, past 17 years
10 have been really intersection of, the majority of my
11 professional life and career and really, deep and
12 profound belief in the mission and people of CalPERS.

13 You know, the -- it is an emotional moment, but
14 the emotion I feel most is gratitude. I am so grateful
15 to CalPERS and this institution and to the many people,
16 past and present, who have contributed so much to
17 CalPERS and to my and my family's life.

18 I look back and I was, 38 years old and father
19 of two young daughters when I started this journey at
20 the Treasurer's Office and representing the Treasurer
21 here at the CalPERS, and I'm so grateful for that
22 opportunity, for my colleagues there, to Treasurer
23 Angelides, who was such a wonderful mentor and intellect
24 and thinking about the intersection of public policy and
25 investments. I feel lucky and grateful to all the

1 treasurers, and controllers, and treasurers'
2 representatives, and controllers' representatives, and
3 governors' representatives, legislative representatives,
4 and all the public officials, and their staffs that I've
5 had, you know, the great opportunity to interact with
6 and, learn from over the year.

7 I am grateful to my Real Estate and Real Assets
8 Team. We took that portfolio, you know, through the
9 great financial crisis. It was, I think, the hardest
10 and toughest professional challenge I've ever gone
11 through, and we made it -- made it through, and as Paul
12 MouChakkaa, you know, reported to this Board last month,
13 we reconstituted and reconstructed that real estate
14 portfolio to one of the great Bedrock-quality Core
15 Portfolios in the institutional world.

16 Few more -- few more -- few more remarks here,
17 so bear with me. It was a long career.

18 (Laughter.)

19 CHIEF INVESTMENT OFFICER ELIOPOULOS: I am so
20 grateful to Joe Dear and Anne Stausboll, who asked me to
21 help out as Acting CIO together with Mr. Feckner, and,
22 you know, it was a very difficult time when Joe asked me
23 to -- to do that. Each in their own way, Joe and Anne,
24 were mentors to me and helped me so much as I look back,
25 you know, to grow and to the position that we're in

1 today.

2 (Thereupon a noise was heard.)

3 CHIEF INVESTMENT OFFICER ELIOPOULOS: I heard
4 the -- I wanted to make sure there wasn't an alarm.
5 Safety first. Safety first.

6 (Laughter.)

7 CHIEF INVESTMENT OFFICER ELIOPOULOS: But they
8 were teaching me and really helping me grow as a human
9 being. Joe really stepped in at a critical time for
10 CalPERS, to help rebuild the Investment Office. He and
11 Janine Gilead and the whole investment team were really
12 a wonder in rebuilding the operating environment and
13 framework for CalPERS.

14 We are so lucky to have had a succession of
15 investment leaders, who really think similarly about
16 risk management and operational integrity. I can see a
17 straight line really of that type of thinking from Joe
18 and Janine, to myself and Wylie Tollette, to Ben Meng
19 and Elizabeth now. Elizabeth is the newcomer, but we're
20 taking her in under our wing and learning from her
21 exceptional experience, and helping, helping us move
22 this Investment Office forward.

23 I am grateful to all of them and have learned so
24 much from them, and I really am deeply, profoundly
25 grateful and happy for CalPERS that we've had this

1 continuity into the future. I am very grateful for Eric
2 Baggesen to step into this Acting CIO role. I know what
3 it's like to be an Acting CIO, but more importantly,
4 Eric has been a central leader in our Investment Office
5 over the same period of time that I've been here, and
6 his incredible intellect and experience and way of
7 bringing together the very best of ideas in our
8 investment office is really a marvel, and he really is
9 an example of the type of people we have in this
10 investment office.

11 They come here with incredible experiences
12 across the globe from many different areas of expertise,
13 and they bring their best ideas, their best talent, and
14 an overwhelming sense of mission to benefit CalPERS.
15 CalPERS is so lucky to have, all these investment
16 leaders over the years. You know them all by the first
17 names Curtis, Dan, Kevin, Arnie, Real, and Beth, and
18 Anne Simpson, and, the whole team that have been able to
19 produce the results that we've been able to achieve.

20 I want to thank Theresa Chavarria. She's been
21 an assistant and mentor to all of those CIOs that have
22 been here since Mark Anson, and she's been an incredible
23 partner and helper, not just for me, but the entire
24 Investment Office. We rely on you so much, and it's
25 also emblematic of the great administrative help that we

1 have, Board Services Unit, the Administrative Unit
2 within the Investment Office.

3 You know, my mom her career was as an office
4 technician in a local community college. So I know,
5 one, how important those jobs are and how important
6 opportunity is to grow within the administrative ranks,
7 and we have that ability here. We have such great
8 talent in the Administrative Offices within CalPERS, and
9 we see so much talent grow into so many spots of
10 leadership within the office, and we thank Theresa and
11 all the administrative help we've had over the years.

12 I want to thank our Executive Team. We get
13 together 8:30 every morning, to talk about how we can
14 make things better for CalPERS and, you know, not only
15 the people that you see in this front row, but the roles
16 that they play, our Legal Office, our Administrative
17 Office, our Benefits, our Compliance, our Actuarial, our
18 Communication Help, our Finance Office, our Health
19 Benefits, it's an exceptional leadership team and people
20 of incredible integrity that work together; and no
21 matter how cranky a morning it is, at 8:30 get together
22 to do the best for CalPERS is their sole focus.

23 I want to thank Marcie Frost. I know you don't
24 like the attention. I see you wrinkle your nose as soon
25 as you've been mentioned, but she's a tremendous leader,

1 and I think -- I know how lucky we are at CalPERS to
2 have her at this moment in this time. She's as good and
3 strong an Executive as I've seen in state service, and
4 we're very fortunate to have here, and I know CalPERS is
5 in good hands.

6 Madam President, Members of the Board, I thank
7 you, each and every one of you here sitting today and
8 those that sat in these seats before you, the honor to
9 serve and the opportunity to work with each and every
10 one of you. You've kept me on my toes at these monthly
11 meetings, the questions, and the dialogue are so
12 beneficial to CalPERS, and the fact that we do it in
13 this public setting and open setting is really
14 remarkable what we've been able to achieve and help each
15 other with, over the last two decades for myself.

16 As you can tell, I'm very, very proud of what we
17 collectively do here. The mission that we have the type
18 of people and the character of the people that we have
19 at CalPERS. You know, I've had the honor of doing a lot
20 of orientations for new employees here; and I tell them
21 the same story, and I'll end with that story which is,
22 we get faced with lots of difficult choices in CalPERS.
23 We have awesome responsibilities and accountability for
24 what we do, and sometimes it can seem somewhat abstract
25 to think of \$350 billion and all the complex parts of

1 our portfolio within our policy arenas, and sometimes it
2 can feel a bit abstract to think of the 1.8 million
3 people that depend on us; and what I do whenever there's
4 a particularly difficult decision, is try to personalize
5 those 1.8 million. So I always think of my mom and dad
6 who depended on CalSTRS for their pension, and I kind of
7 think through and see them at the kitchen table when
8 they're in their 50s, and 60s, and 70s, and 80s.

9 And our pensioners rely on us to provide the
10 pensions that have been promised to us, and, as they
11 age, they get less and less able to fend for themselves,
12 and more and more dependant on the work that we do to
13 provide the retirement security for them, and it's the
14 greatest honor and public service that I can think of to
15 have played a small role. So thank you.

16 (Applause.)

17 PRESIDENT MATHUR: We are now going to take a
18 break to celebrate our esteemed friend, Ted Eliopoulous,
19 we have some refreshments outside.

20 (Off record: 9:22 a.m.)

21 (Thereupon a recess was taken.)

22 (On record: 9:41 a.m.)

23 PRESIDENT MATHUR: Okay. We're going to restart
24 the Board meeting. Thanks to all who helped celebrate
25 Ted.

1 So the next order of business is the Chief
2 Executive Officer's Report, Ms. Frost.

3 CHIEF EXECUTIVE OFFICER FROST: Thank you, and
4 good morning, President Mathur and Members of the Board.
5 I'd also like to take just a moment to express my, and
6 the Executive Team, and the team here at CalPERS our
7 appreciation for Ted and as many years of service to,
8 not only CalPERS, but to the State of California.

9 During his tenure, our members have certainly
10 benefited from Ted's careful stewardship of the money
11 entrusted to his team, to fund the retirement benefits
12 that our members and beneficiaries rely on, and his
13 willingness to embrace new ideas, and some very creative
14 ideas, in private equity, our Asset Liability Management
15 Process, which we and the this Board go through every
16 four years, and the fee transparency and the
17 implementation of the PEARS system. These approaches
18 have placed CalPERS in a stronger position for our
19 members and beneficiaries.

20 On a personal note, as Ms. Mathur indicated,
21 it's always very difficult to say goodbye to a friend
22 and a colleague and someone who you really enjoy working
23 with every day. He indicated our 8:30 huddles, and, you
24 know, Ted is the one who comes in bright and chipper
25 because he's usually done his yoga for the day, and it

1 just gets us off to a good start, that we're starting as
2 a team looking at the issues or the items that we need
3 to face together on any given day.

4 Ted willingly shares his wisdom and his approach
5 of working for the years that he has here in State of
6 California, and I certainly have benefited and
7 appreciated his wisdom and advice in my first two years
8 here. So, Ted, on behalf of CalPERS, and I know we've
9 said this already, we wish you and your family all the
10 best in your East Coast adventure.

11 Now I'd like to re-cap our annual Educational
12 Forum that took place just a few weeks ago in Indian
13 Wells, and I know several of you had an opportunity to
14 attend that event as well. We had a record attendance
15 at over 900 employers making this our largest event to
16 date. The educational session rooms were filled to
17 capacity. Appointments with our teams, those one-on-one
18 appoints that our employers really seem to enjoy, those
19 consultations were completely booked as well, and visits
20 to the exhibit hall were very popular. Over the course
21 of the three-day forum, we held a general session each
22 day, which gave us the opportunity to talk to all of the
23 attendees at once about the decisions that we're making
24 here at CalPERS to strengthen the fund, as well as
25 helping them to understand some of our investment

1 strategies moving into the future.

2 One of the highlights of the forum each year is
3 a spotlight on excellence award ceremony, which honors
4 an outstanding public servant or program. This is a
5 peer-nominated award, that gives employers a chance to
6 nominate a colleague or agency for recognition. This
7 year's award went to Manuel Colunga. He is a Field
8 Operation Supervisor with the San Bernardino Valley
9 Water Conservation District. His work has made a
10 significant impact on the region's water customers and
11 also on his community. I'll let the video our team
12 produced tell his story. If we could roll the video.

13 (Thereupon a video was played.)

14 (Applause.)

15 CHIEF EXECUTIVE OFFICER FROST: As you can see,
16 Mannie is clearly passionate about serving his
17 community, and it was a privilege to have him in
18 attendance and get to meet him in person. We'll also
19 have the chance next year to feature another public
20 servant or agency and to engage with our employer
21 community at next year's 20th annual Education Forum.
22 Mark your calendars now. It will be held October 28th
23 through the 30th at the Oakland Marriott City Center in
24 the San Francisco bay area.

25 Moving on now to Investment Committee Business.

1 On Monday, you received a performance review of the
2 public and private equity investment programs. Both had
3 strong fiscal year performance, that even in these
4 volatile markets we're working to build upon. You also
5 had a chance on Monday to continue the discussion we've
6 been having around the private equity models. These are
7 discussions that will continue into next month as well,
8 and we've also been holding meetings with our
9 stakeholders to explain the concepts to them and most
10 importantly to answer their questions.

11 One of the more important publications we
12 produce each year is the Comprehensive Annual Financial
13 Report, or the CAFR. The CAFR provides us with a
14 detailed summary of our financial standing and contains
15 a host of data we use in our decision making, and we
16 also shared that with our stakeholders, central to the
17 report of the financial statements approved in
18 yesterday's Finance and Administration Committee and
19 that come before the full Board today for final
20 approval. The CAFR is in the process of being finalized
21 now, and we expect to release it next month.

22 On to a bit of outreach activity. Switching
23 gears, again, to outreach and stakeholders. Last week I
24 spoke to about 200 fund managers and institutional
25 investors, at the West Investors Annual Meeting in San

1 Francisco. Karen Greene-Ross, from the State
2 Controller's Officer, was in attendance and was hosting
3 a panel as well.

4 The event is really designed to bring together
5 industry thought leaders and institutional investors
6 located in the western states; and I did have an
7 opportunity to talk with them a bit about our efforts to
8 strengthen the fund and our investment strategies for
9 the future. I would say that most of the interest
10 centered around our Emerging Manager and our Transition
11 Manager Programs, however.

12 Tomorrow I'll be participating on a panel in --
13 about long-term value creation, at the Inclusive
14 Capitalism Conference in Washington DC. At the heart of
15 the discussion, is a call for public companies to adopt
16 a framework that's been created by a group of investors,
17 asset managers, and others from the investment industry,
18 on how do we measure and communicate shareholder value
19 beyond quarterly financial returns. So how do we have a
20 framework that measures Human Capital Implications or
21 culture of organizations, and do we see that there's an
22 alignment of interest between the investor community and
23 the corporate community, to understand that these
24 companies are going to continue to grow. And also I
25 would say that grow in relationship to the liabilities

1 that we have at CalPERS. So I look forward to coming
2 back and sharing with you that event at a future
3 meeting.

4 At the end of this month, on November 30th, I'll
5 have the opportunity to interact with attendees at the
6 California School Board Association's Annual Education
7 Conference and that will be the first time that I've
8 attended that vent. These are Board members from school
9 programs throughout the state, and I'll be on a panel
10 and really introducing them again to the messages around
11 the fund and the pension sustainability work here in
12 California.

13 Turning now to Our annual fall fundraising
14 activities. I know some of our employees brought some
15 turkeys out to the turkey drop today, and you may have
16 seen our employees out there wearing masks also, due to
17 air quality issues that are going on here. A couple of
18 weeks ago we completed our events for the Our Promise
19 Campaign. We brought the Chili Cook Off back, that was
20 really important to our team here. We had made a change
21 last year that the cook off didn't happen, but we
22 brought that very popular event back, and I think the
23 team was very appreciate of that. We also did our
24 silent auction during the lunchtime break.

25 In addition to our fund raising efforts, all

1 state workers were provided with the opportunity to
2 select a charity for payroll deduction, which is one of
3 the primary aims of the campaign statewide. I'd like to
4 thank Wayne Davis and Rob Jarzombek, for leading this
5 year's efforts and being co-chairs of the events. They
6 had a big team of volunteers, of course, working with
7 them to host the events, which are always very well
8 received by the employees here at CalPERS. It's part of
9 what makes working here so special.

10 As we near the Holidays, we're also
11 participating in the state employees' food drive, which
12 will last into January of 2019. Employees will be able
13 to make food and monetary donations throughout the
14 fundraising period. These contributions will go to
15 support local food banks and also provide support
16 services to help individuals and families who are
17 experiencing difficult times. This year's donation goal
18 that the team has set is to collect 60,000 pounds of
19 food.

20 And now I will close with investment performance
21 year to date as of August 31. The preliminary one-year
22 rolling return is 8.1; the three year return is 8.7; the
23 five-year return is 8.1; the ten-year return is 6. And,
24 finally, I like to wish everyone a happy Thanksgiving
25 for next week and safe travels, whether that's here

1 locally within the Sacramento area or other places you
2 may be traveling to. Like all state agencies in
3 California, CalPERS headquarters, and all of our
4 regional offices will be closed on Thursday, November
5 22nd, and Friday, November 23 in observance of the
6 holiday.

7 And that does conclude my remarks, and I'm happy
8 to take any questions.

9 PRESIDENT MATHUR: Thank you very much,
10 Ms. Frost. I don't see any requests to speak, so with
11 that we will move on to Agenda Item No. 6, which is the
12 Action Consent Items.

13 What's the pleasure of the Board?

14 VICE PRESIDENT FECKNER: Move approval.

15 PRESIDENT MATHUR: Moved by --

16 BOARD MEMBER HOLLINGER: Second.

17 PRESIDENT MATHUR: -- Mr. Feckner, seconded by
18 Ms. Hollinger.

19 Any discussion on the motion?

20 Seeing none.

21 All those in favor say aye.

22 (Ayes.)

23 PRESIDENT MATHUR: All opposed?

24 Motion passes.

25 Agenda Item No. 7 is the Information Consent

1 Items, and I've had no request to pull anything off of
2 Consent, so that brings us To Agenda Item No. 8,
3 Committee Reports and Actions. First, I'll call on the
4 Chair of the Investment Committee, Mr. Jones.

5 BOARD MEMBER JONES: Thank you, Madam President.

6 PRESIDENT MATHUR: Oh, I'm sorry.

7 BOARD MEMBER JONES: Thank you, Madam President.

8 The Investment Committee met on November 13th,
9 2018. The Committee approved Agenda Item 6A, adopt the
10 revised Total Fund Policy and Real Assets Program
11 Policy. The Committee received reports on the -- on the
12 global equity and private equity annual program reviews
13 and consultants reports. The Chair directed staff to
14 bring bang information about PEARS system assessment.
15 The Committee heard public comments on the following
16 topics. CalPERS existing private equity program and the
17 proposed private equity model.

18 At this time, I'd like to share some highlights
19 of what to expect at the December Investment Committee
20 meeting. Fee Disclosure (AB 2833), Annual Responsible
21 Contract Policy Program, Report to the Legislature -
22 California Public Divest from Iran Act and Sudan Act
23 Compliance, Consultant Review of CalPERS Divestments,
24 and the Emerging and transmission -- Transition Manager
25 Update.

1 The next meeting of the Investment Committee is
2 scheduled for December 17, 2018 in Sacramento California
3 and that concludes my report, madam President.

4 PRESIDENT MATHUR: Thank you very much, Mr.
5 Jones. That brings us to 8b, Pension and Health
6 Benefits Committee, and for that I'll call on the Chair,
7 Rob Feckner.

8 VICE PRESIDENT FECKNER: Thank you, madam
9 President.

10 The Pension Health Benefits Committee, PHBC, met
11 on November 14th, 2018. The Committee recommends and I
12 move the Board approved the following: Agenda Item 6A,
13 Approve the revised proposed regulations for a 15-day
14 comment period and recommend approval to submit the
15 final rulemaking package to the office of administrative
16 law upon conclusion of the comment period, so long as no
17 public comments are received.

18 PRESIDENT MATHUR: On motion by Committee.

19 Any discussion on the motion?

20 Seeing none.

21 All those in favor say aye.

22 (Ayes.)

23 PRESIDENT MATHUR: Any no's?

24 Motion passes.

25 VICE PRESIDENT FECKNER: The Committee received

1 reports on the following topics: The Committee received
2 an update on the Evaluation of Health Regions for Public
3 Agencies and Schools; and the strategy for a
4 prescription drug reference pricing program.

5 The Committee directed staff to research
6 improving flexibility to access of care by looking into
7 site-of-care as an addition to the live and work policy.
8 For the December PHBC Evaluation of Health Regions and
9 Public Agencies and Schools, remove Scenario E as an
10 option and provide a chart with regions showing the
11 percentage of cost impact and the percentage of members
12 affected. Collaborate with employers on strategies for
13 dealing with variations in cost of care by region.
14 Proceed with Request For Information and Request For
15 Proposal regarding the reference pricing by therapeutic
16 drug program.

17 The Committee heard public comment on the
18 following topics: CalPERS response to the Butte County
19 fires, regional rating and the Health Benefits Program
20 Annual Report. At this time, I'd like to share some
21 highlights at what to expect at the December Pension
22 Health Benefits Committee Meeting. The Committee will
23 review the regions and regional factors for public
24 agencies and schools.

25 The next meeting of the Pension Health Benefits

1 Committee is scheduled for December 18th, 2018, in
2 Sacramento, California. That ends my report, madam
3 President.

4 PRESIDENT MATHUR: Thank you very much,
5 Mr. Feckner. That brings us to Agenda Item No. 8c,
6 Finance and Administration Committee Report, for that
7 I'll call on the Chair, Ms. Taylor.

8 BOARD MEMBER TAYLOR: Thank you, madam
9 President.

10 The Finance and Administration Committee met on
11 November 14th, 2018. The Committee recommends and I
12 move the Board approve the following: Agenda Item 6a,
13 Approve the Draft 2017-18 Basic Financial Statements.

14 PRESIDENT MATHUR: On motion by Committee.

15 Any discussion on the motion?

16 Seeing none.

17 All those in favor aye.

18 (Ayes.)

19 PRESIDENT MATHUR: All opposed?

20 Motion passes.

21 BOARD MEMBER TAYLOR: The Committee recommends
22 and I move the Board approve the following: Agenda Item
23 6b, Approve the Fiscal Year 2018-19 Mid-Year Total
24 Budget of 1.7 billion and 2,875 positions and the
25 transmittal of this agenda item.

1 PRESIDENT MATHUR: On motion by Committee.

2 Any discussion on the motion?

3 Seeing none.

4 All those in favor say aye.

5 (Ayes.)

6 PRESIDENT MATHUR: All opposed?

7 Motion passes.

8 BOARD MEMBER TAYLOR: The Committee recommends
9 and I move the Board approve the following: Agenda Item
10 7a, adopt the proposed modifications to the Financial
11 Necessity Amortization Policy.

12 PRESIDENT MATHUR: On motion by Committee.

13 Any discussion by the motion?

14 Seeing none.

15 All in favor say aye.

16 (Ayes.)

17 PRESIDENT MATHUR: Aye all opposed?

18 Motion passes.

19 BOARD MEMBER TAYLOR: The Committee received
20 reports on the following topics: 2017-18 Year-End
21 Budget and Expenditure Report, the Annual Review of
22 Funding Levels and Risk Report, the Semi-Annual Health
23 Plan and Financial Report, and, I'd like to call Kim
24 Malm right now. The Committee had some questions that
25 she found the answers to, that she was going to give us

1 today.

2 PRESIDENT MATHUR: Ms. Malm?

3 OPERATIONS SUPPORT SERVICES DIVISION CHIEF MALM:

4 Thank you, madam Chair, Members of the Board,
5 Administration, Kim Malm, CalPERS team member. So
6 yesterday there were three questions with regards to the
7 Board election, and I'd like to provide you with the --
8 with those answers.

9 The first question was in regards to the spam
10 fillers, and we confirm with public affairs that we are
11 unable to determine any of the emails that go into the
12 spam filters, since that's a user setting. In regards
13 to the undeliverable mail to our membership, CalPERS
14 team members utilize the United States Postal Service
15 software, and they do a comparison with the addresses
16 that the Postal Service has on file with the addresses
17 we have in My CalPERS twice a year.

18 We then send letters to the new address that the
19 post office has on file twice a year to our members if
20 they are -- there's two separate letters. One for
21 actives, asking them to go and change their address with
22 their employers. The second letter is for retirees,
23 asking them to either go into member self-service and
24 change their address or to contact the call center, and
25 we will change that for them.

1 The third question revolved around the Board
2 election costs and what it costs for just mail versus
3 online and phone. What we did was we utilized the
4 current cycle, and so, of course, this changes per
5 cycle, because it depends on how many members are voting
6 and whether or not we have elections. So we utilize the
7 cycle that we started with the Member-At-Large, having a
8 runoff for the Member-At-Large. The Public Agency
9 Election, we did not have State and School, so that's
10 not included because there was no cost, and then
11 estimated cost for Retiree Election. We haven't done
12 that yet, so these are estimates, but we feel that we're
13 pretty close.

14 The cost for online and phone voting is 2.67
15 million for all of the elections for online and phone,
16 member-At-Large, Runoff, the State School PA, and
17 Retired. The cost for mailed is 4.7 for all of those
18 same elections. Knowing that we didn't have two
19 elections and we haven't done the last one yet.

20 However, if we were to go back at some point, if
21 the Board decided to return to mail only, we would
22 probably make different decisions than we do right now.
23 We can talk about those, like, such as, right now we
24 send a welcome letter, we send the candidate booklet,
25 and we send a ballot, and what we can talk about is

1 sending just the one-page ballot that has instructions,
2 and then they could, you know, our members could
3 possibly go online and read the candidate statements,
4 and we could reduce the amount of paper and printing
5 from about -- it's about twenty pages right now for the
6 mouse, it's about ten, eleven pages for the smaller
7 elections. We could change that to one page.

8 And so, although it won't change our postage
9 because we already have the lowest postage, it would
10 change the amount of paper and printing costs that we
11 spend. So that -- that 4.7 number that I gave you could
12 significantly reduce. So I just wanted to provide those
13 answers that came up yesterday. Happy to answer any
14 other questions if you any.

15 PRESIDENT MATHUR: Thank you.

16 Any questions from the Board?

17 Seeing none. Thank you very much for that
18 update.

19 Ms. Taylor?

20 BOARD MEMBER TAYLOR: Thank you, Ms. Malm. The
21 only other thing the Chair directed staff to do was
22 review of the end-to-end election process during the
23 2020 off election year.

24 At this time, I'd like to share some highlights
25 of what to expect at the December Finance and

1 Administration Committee Meeting. Reporting on
2 Participating Employers. The next meeting of the
3 Finance and Administration Committee is scheduled for
4 December 18th, 2018, in Sacramento, California. Thank
5 you, madam Chair.

6 PRESIDENT MATHUR: Thank you very much, Ms. --
7 Ms. -- sorry. Ms. Taylor. We did not have Performance
8 and Comp and Talent Management Committee, so it brings
9 us to Agenda Item 8e, which is The Risk and Audit
10 Committee, for that I'll call on the Chair, Ms.
11 Hollinger.

12 BOARD MEMBER HOLLINGER: Thank you, madam Chair.

13 The Risk and Audit Committee met on November
14 14th, 2018. The Committee recommends and I move the
15 Board approve the following: Agenda Item 6a,
16 Independent Auditor's Report - Fiscal Years 2017 and
17 2018. Approve the CalPERS Board of Administration
18 Independent Financial Statement Auditor's Draft Reports
19 and accompanying required reports for the fiscal year
20 ended June 30th, 2018.

21 PRESIDENT MATHUR: On motion by Committee.

22 Any discussion on the motion?

23 Seeing none.

24 All those in favor say aye.

25 (Ayes.)

1 PRESIDENT MATHUR: All opposed?

2 Motion passes.

3 BOARD MEMBER HOLLINGER: Agenda Item 6b, Review
4 of the Independent Auditor's Management Letter. Approve
5 the CalPERS Board of Administration's Independent
6 Financial Statement Auditor's Draft Management Letter
7 for the fiscal year June 30th, 2018.

8 PRESIDENT MATHUR: On motion by Committee.

9 Any discussion on the motion?

10 Seeing none.

11 All those in favor say aye.

12 (Ayes.)

13 PRESIDENT MATHUR: All opposed?

14 Motion passes.

15 BOARD MEMBER HOLLINGER: Agenda Item 6c,
16 Independent Financial Statement Auditor's Selection.
17 Approve the cancellation of RFP No. 2018-8484 without
18 awarding the Independent Financial Statement Auditing
19 Services Contract and re-issue the RFP to seek
20 additional fender participation.

21 PRESIDENT MATHUR: On motion by Committee.

22 Any discussion on the motion?

23 Seeing none.

24 All those in favor say aye.

25 (Ayes.)

1 PRESIDENT MATHUR: All opposed?

2 Motion passes.

3 BOARD MEMBER HOLLINGER: The Committee received
4 reports on the following topics: The Enterprise Risk
5 Management Framework Review. At this time, I would like
6 to share some highlights of what to expect at the
7 February Risk and Audit Committee Meeting. The election
8 of the Risk and Audit Committee Chair and Vice-Chair and
9 Review of the Risk and Audit Committee Delegation.

10 The next meeting of the Risk and Audit Committee
11 is scheduled for February 20th, 2018, in Sacramento,
12 California.

13 PRESIDENT MATHUR: Thank you very much,
14 Ms. Hollinger. We also did not have a Governance
15 Committee meeting, so that brings us to Agenda Item No.
16 9, which is the Action Agenda Items on Proposed
17 Decisions of Administrative Law Judges, and for that I
18 will call on the Vice President, Mr. Feckner.

19 VICE PRESIDENT FECKNER: Thank you, madam Chair.
20 I move that the Board of Directors -- the Board of
21 Administration adopt the PDs for both decisions Agenda
22 9a1 and 2 and 4 to 17, as the Board's own decisions,
23 with the modifications argued by staff to agenda items
24 9a2, 7, 10, 12, and 16. If the Board agrees with these
25 recommendations, then we will move forward.

1 BOARD MEMBER MILLER: Second.

2 PRESIDENT MATHUR: Motion made by Mr. Feckner,
3 seconded by Mr. Miller.

4 Any discussion on the motion or any requests to
5 pull any proposed decisions off of that motion?

6 Seeing none.

7 All in favor say aye.

8 (Ayes.)

9 PRESIDENT MATHUR: All opposed?

10 Motion passes.

11 VICE PRESIDENT FECKNER: I move that the Board
12 of Administration, schedule Agenda Item 9a3 for a full
13 Board Hearing.

14 BOARD MEMBER JONES: Second.

15 PRESIDENT MATHUR: Motion made by Feckner,
16 seconded by Jones.

17 Any discussion on the motion?

18 Seeing none.

19 All those in favor say aye.

20 (Ayes.)

21 PRESIDENT MATHUR: All opposed?

22 Motion passes.

23 VICE PRESIDENT FECKNER: 9b?

24 PRESIDENT MATHUR: And then 9b.

25 VICE PRESIDENT FECKNER: Item 9b, I move that

1 the Board of Administration deny the petitions for
2 reconsideration to Agenda Items 9b1 and 2.

3 PRESIDENT MATHUR: On -- is there a second to
4 the motion? Motion made by Feckner, seconded by Miller.

5 Any discussion on the motion?

6 Seeing none.

7 All those in favor say aye.

8 (Ayes.)

9 PRESIDENT MATHUR: All opposed?

10 Motion passes.

11 That bridges us to Agenda Item 10, which the
12 Full Board Hearing.

13 VICE PRESIDENT FECKNER: Did you want to hold
14 that until after 11:00?

15 PRESIDENT MATHUR: Sorry. So we're going to --
16 yes. We're going to hold that until after 11:00. Thank
17 you.

18 And then that brings us to Agenda item No. 11,
19 which is the Information Agenda Items. Enterprise
20 Performance Reporting - First Quarter Report.
21 Ms. Hutchins?

22 (Thereupon an overhead presentation was
23 presented as follows.)

24 ENTERPRISE STRATEGY & PERFORMANCE DIVISION CHIEF
25 HUTCHINS: Good morning, Madam President --

1 PRESIDENT MATHUR: Good morning.

2 ENTERPRISE STRATEGY & PERFORMANCE DIVISION CHIEF

3 HUTCHINS: -- and Members of the Board. Sabrina
4 Hutchins, CalPERS team member. Today I'm joined by
5 members of our executive team to present to you the
6 first-quarter review of our Enterprise Performance
7 Report. This report kicks off the second year reporting
8 cycle of the current 17 through 22 strategic plan. What
9 we want to share with you today is focused on those
10 indicators that are either at risk or off target within
11 this quarter.

12 A little background before we jump in. The
13 framework that the system works within aligns back to
14 our foundation, which captures our mission, our vision,
15 and our CalPERS core values, and, in the simplest terms,
16 represents who we are and what we want to achieve. This
17 includes our strategic plan goals and objective as well
18 as our outcome measures, which outline our high-level
19 operational expectations.

20 --oOo--

21 ENTERPRISE STRATEGY & PERFORMANCE DIVISION CHIEF

22 HUTCHINS: Depicted on this slide is a high-level visual
23 of our Enterprise Performance Management System, which
24 involves the development, implementation, monitor and
25 reporting, as well as ad hoc refinement of performance

1 metrics in support of our mission. The intent of this
2 system is to reinforce CalPERS desire to be transparent
3 and accountable in support of our goals, objectives, and
4 operational expectations.

5 As the system incorporates a significant amount
6 of data and information, we have provided the full
7 details of our strategic and operational reports within
8 your agenda item attachments; however, the focus of our
9 discussion today is to highlight the strategic side of
10 the house.

11 --oOo--

12 ENTERPRISE STRATEGY & PERFORMANCE DIVISION CHIEF
13 HUTCHINS: Our strategic plan alignment map shows you
14 the connection between our goals, objectives, measures,
15 and initiatives. This is attachment A within your
16 package. This map reflects an overlay of status
17 indicators of red, yellow, and green. Additional
18 details for each of the indicators can be found within
19 your attachments C through E.

20 As this is an iterative process, you will see
21 where we denoted where we are either waiting for data to
22 come in on measure, or where measures are currently
23 under development.

24 --oOo--

25 ENTERPRISE STRATEGY & PERFORMANCE DIVISION CHIEF

1 HUTCHINS: So our review and analysis of first quarter
2 information identified that one of our measures
3 refreshed with new data. This was related to our
4 overhead operational cost and is on target, which is in
5 the green. Of our 34 business plan initiatives, the
6 majority are in the green, two reflecting at risk and
7 that's as of September 30th, which we'll discuss in just
8 a moment.

9 Items related to our information security office
10 are presented within closed session, and we have that
11 planned for February and September. So as our members
12 of the executive team speak to these initiatives at
13 risk, provide the root cause, as well as constraints and
14 mitigation strategies in current status as of, again,
15 this is as of September 30th.

16 So with that, I'll hand this over to Scott to
17 start us off within our fund sustainability goal.

18 CHIEF ACTUARY TERANDO: Good morning, Madam
19 President, Members of the Board. Scott Terando, CalPERS
20 team member. And in -- as of September 30th, the AVSRE
21 project, the Actual Evaluation System Refresh, was
22 somewhat off target. It was about two weeks late on the
23 number of the objectives, but I'm happy to report that,
24 as of today, we are back on schedule. In fact, the
25 project was actually completed in October of -- October

1 31st and the system was actually launched. So even
2 though we were behind slightly, as the end of the
3 September, the team was able to get back on track and
4 finish up the project on time and on schedule within the
5 next month.

6 So with that, I'll take any questions.

7 PRESIDENT MATHUR: That's good news.

8 CHIEF ACTUARY TERANDO: Yes.

9 PRESIDENT MATHUR: I see no questions. Thank
10 you. All right. Within our health goal.

11 HEALTH PLAN ADMINISTRATION DIVISION CHIEF

12 DONNESON: Madam President, Members of the Board, the
13 Pharmacy Benefit Program by reference pricing by
14 therapeutic class, went yellow as of September 30th, as
15 a result of missing the 90-day launch for January 1,
16 2019. With the direction that you gave us yesterday, we
17 will -- it will go green again as we redefine the new
18 schedule for a launch in 2020, and, for the record, I'm
19 representing Liana Bailey-Crimmins, the Chief Health
20 Director. Thank you.

21 PRESIDENT MATHUR: Thank you very much, Ms.
22 Donneson.

23 Any questions? Mr. Jones?

24 BOARD MEMBER JONES: Yeah. Thank you, Madam
25 President. Yes, Ms. Donneson, I was looking at the

1 sheet on health care affordability, and you made
2 reference to a yellow, but I don't see any yellow on
3 that chart. I'm talking about the one in my --

4 PRESIDENT MATHUR: Which attachment? Can you --

5 BOARD MEMBER JONES: It's 535 of the iPad, and
6 it's Attachment C 2 of 40.

7 ENTERPRISE STRATEGY & PERFORMANCE DIVISION CHIEF
8 HUTCHINS: So what we're actually looking at is
9 Attachment D and the actual -- the Business Plan
10 Initiative Area, so this a project driving those
11 measures, so the --

12 BOARD MEMBER JONES: Oh, okay.

13 ENTERPRISE STRATEGY & PERFORMANCE DIVISION CHIEF
14 HUTCHINS: -- actual project activity was off track,
15 which was at risk.

16 BOARD MEMBER JONES: Okay. Thank you.

17 ENTERPRISE STRATEGY & PERFORMANCE DIVISION CHIEF
18 HUTCHINS: Yes.

19 PRESIDENT MATHUR: Thank you. Any further
20 questions on this item? Thanks very much for the
21 update, Ms. Donneson.

22 ENTERPRISE STRATEGY & PERFORMANCE DIVISION CHIEF
23 HUTCHINS: All right. Very good. So our second-quarter
24 report will be in February of next year.

25 PRESIDENT MATHUR: Terrific.

1 ENTERPRISE STRATEGY & PERFORMANCE DIVISION CHIEF

2 HUTCHINS: Thank you so much.

3 PRESIDENT MATHUR: Thanks very much.

4 Okay that brings us to 11b State and Federal
5 Legislation Update. Mr. Brown?

6 LEGISLATIVE DIRECTOR BROWN: Good morning, Madam
7 President and Board members, Danny Brown, CalPERS team
8 member, and I think consistent with Ted's comments
9 earlier, I appreciate the opportunity to return back to
10 the fold, and I look forward with working with you and
11 the great team behind me on state and federal
12 legislative issues for the benefit of our members.

13 With that, I'll start with the state legislative
14 update. I believe the last time you heard an update it
15 was just a few days before the deadline for the governor
16 to sign and veto bills, so the written material in your
17 Board book should now show the final outcome of all of
18 the bills that CalPERS was tracking.

19 I did want to point out two bills that the
20 governor did sign. The first one is CalPERS sponsored
21 bill, AB 2415, which gives the Board the authority to
22 set the salary for the Chief Health Director and Chief
23 Operating Officer, so -- and this bill would go into
24 effect January 1, 2019. With the signing of this bill,
25 it means that all three of the sponsor bills that

1 reached the governors desk were signed. Obviously I
2 can't take any credit for that, but I do just want to
3 acknowledge CalPERS team members for job well done.

4 The second bill is AB 1912, which was supported
5 by the Board. This ensures that members' agencies of a
6 joint powers authority have to have a responsibility for
7 the retirement liability, in the event that they
8 terminate their contract with CalPERS or cease to exist.
9 So this is an important bill for our members to ensure
10 that their retirement benefits are protected.

11 Moving to the state election, I don't think it's
12 any surprise that the assembly maintained their
13 supermajority, and the Senate regained their
14 supermajority after they lost it last year when Senator
15 Newman was recalled for his Gas Tax vote. For those of
16 you that are keeping score, we currently show a count of
17 59 Democrats in the assembly out of 80 members, with one
18 race that's too close to call. Republican is currently
19 leading that race, but, each time the votes come in, the
20 lead diminishes. So it's very possible we'll end up
21 with 60 Democrats in the assembly.

22 The Senate sits at 28 Democrats and 12
23 Republicans. The new legislative session begins on
24 December 3, and they'll come in to be sworn in and adopt
25 roles and take another break for a month and come back

1 in January. So in January we'll start our outreach
2 efforts to the new members and the pertinent Committee
3 members.

4 Looking at the federal elections, the Democrats
5 took control of the House, while the Republicans
6 maintain control of the Senate. As a result of this
7 divided Congress, bipartisanship will remain the
8 essential requirement for any bill to become law;
9 therefore, it will be essential for CalPERS to continue
10 our work with key members on both sides of the aisle on
11 solutions that are consistent with our policy goals.

12 One example of this is our continued efforts to
13 support several provision contained in Senate bill 488,
14 the JOBS and Investor Confidence Act of 2018, or I think
15 it's also referred to JOBS 3.0. Mr. Crowley talked
16 about this in September. It passed out of the House in
17 July on a 406 to 4 vote. There's many provisions in
18 that bill that CalPERS supports, and so we have in
19 October sent a letter to the Chairman and ranking member
20 of the Senate Banking Committee to encourage them to
21 move that bill forward, keeping in the provisions that
22 we like and making sure that they don't add provisions
23 that we don't like.

24 It is possible that this bill will move through
25 the lame-duck session, but, if not, it's a starting

1 point of discussion in 2019. This bill is strongly
2 supported by Maxine Waters, who we anticipate will
3 become the Chair of the House Financial Services
4 Committee next year; and then speaking of leadership,
5 you probably saw in the paper yesterday that Senate
6 Majority Leader, Mitch McConnell, and Minority Leader,
7 Chuck Schumer, were re-elected to their respective
8 posts, and the House Republicans elected Kevin McCarthy
9 as their new leader while Democrats won't hold their
10 elections until after the Thanksgiving Holiday. But we
11 do expect that Nancy Pelosi will be elected Speaker. Of
12 course, what this would mean is that both of the
13 leadership posts will be held by Californians.

14 Over the next few months, once the House
15 Democratic leaderships forms and we find out who all
16 the, kind of, chairmanships go into place, we will
17 provide additional information on what to expect in the
18 next Congress.

19 And then I thought I would just end by pointing
20 out bill introduced at the end of September by
21 Congressman Brady out of Texas, HR 6933, Equal Treatment
22 of Public Servants Act of 2018, which replaces the
23 current WEP Formula, Windfall Elimination Protection
24 Formula, with a formula. This may sound familiar for
25 some of you because, like me, a version of this bill was

1 in front of you in 2015, HR 711, which the Board did
2 support. The bill has struggled to move through the
3 House because this new formula does create winners and
4 losers, and I think this Board can appreciate those
5 types of issues. I think you talked about one yesterday
6 for quite a while.

7 The 2018 version does make a few changes.
8 First, for current retirees beginning in 2020, anybody
9 that's retired, who's in Social Security and subject to
10 WEP, would receive a \$100 rebate. So they would not be
11 subject to the formula, they would just get a rebate.
12 So in a sense, all current retirees would be winners.

13 The new proportional formula would apply for
14 those individuals retiring beginning in 2025, doesn't
15 necessarily address, you know, who may win and who may
16 lose, but it still gives kind of a transitional period
17 to allow people to plan; and then the final thing the
18 bill does it would require the commissioner of Social
19 Security to study and test the feasibility of partnering
20 with state and local pension systems, to improve the
21 collection of information related to noncovered pension.
22 So I think right now they get information on salaries
23 that are covered by Social Security but necessarily all
24 the salaries that are not covered by Social Security.

25 So it's not likely that this bill will move

1 through the lame-duck session, but it just shows that
2 the authors are willing to work with stakeholders, and
3 they're listening and trying to make adjustments, so we
4 will continue to watch this bill and weigh in as
5 necessary, particularly, on the piece about working with
6 the Social Security Administration on data.

7 And with that, I'll stop and answer any
8 questions you may have.

9 PRESIDENT MATHUR: Thank you. We do have some
10 questions. Ms. Taylor?

11 BOARD MEMBER TAYLOR: Yes. Thank you. Thank
12 you, Mr. Brown. Lot's of interesting new stuff
13 happening. The WEP Formula, the only question I had was
14 that you -- the current retirees are going to get a
15 refund in 2020 of 100 bucks; right? And then there's
16 that no-land period between 2020 and 2025?

17 LEGISLATIVE DIRECTOR BROWN: Well, I think
18 everybody between 2020 and 2025, all those retirees in
19 that period will just continue to get this rebate and --

20 BOARD MEMBER TAYLOR: Of \$100?

21 LEGISLATIVE DIRECTOR BROWN: Right. And then
22 it's not until the retirees -- any new retiree beginning
23 2025 that the new formula would apply.

24 BOARD MEMBER TAYLOR: Okay. So the rebate is
25 for --

1 LEGISLATIVE DIRECTOR BROWN: It's for -- it's
2 for individuals that are in Social Security and also
3 schedule to WEP, which is the Windfall Elimination
4 Protection, which means that they're someone that had
5 covered and noncovered service, so they had salaries
6 that were covered by Social Security and also salaries
7 that were maybe were not covered by Social Security, so
8 their Social Security is reduced based on their
9 noncovered service or salaries right now under the
10 current -- under the current law they see a reduction.

11 BOARD MEMBER TAYLOR: Okay. So I just want to
12 clarify then. This doesn't include employees that were
13 also covered with Social Security?

14 LEGISLATIVE DIRECTOR BROWN: No.

15 BOARD MEMBER TAYLOR: Okay. Okay. Just want to
16 make sure. Thank you.

17 PRESIDENT MATHUR: Thank you very much, Ms.
18 Taylor. Mr. Jones?

19 BOARD MEMBER JONES: Yeah. Thank you, Madam
20 President. You answered -- I had the same question
21 Ms. Taylor had, but, in addition, in 2025, the \$100
22 stop, or does it continue after that?

23 LEGISLATIVE DIRECTOR BROWN: I believe it would
24 continue for those individuals. So there'd be like two
25 groups. There would be a group that retired prior to

1 2025 and then a group that retired after that date. We
2 can put together -- we can do some further analysis and
3 put together a kind of a fact sheet or more information
4 that can --

5 BOARD MEMBER JONES: Right.

6 LEGISLATIVE DIRECTOR BROWN: -- spell all this
7 stuff out.

8 BOARD MEMBER JONES: Yeah, and communications
9 strategy, too, because, as you know, a lot of our
10 members are very interested in this provision. So if
11 you can communicate that to our members, that would also
12 be helpful. Okay. Thank you.

13 PRESIDENT MATHUR: Thank you. I see no further
14 requests to speak. It's great to have you part of the
15 family again, Mr. Brown. Thanks for coming back.

16 LEGISLATIVE DIRECTOR BROWN: Great. Thank you.

17 PRESIDENT MATHUR: Okay. That brings us to
18 Agenda Item 11c, Summary of Board Direction.
19 Mr. Hoffner, I didn't hear anything I don't think --
20 well, except to come back, I guess, on that one.

21 DEPUTY EXECUTIVE OFFICER HOFFNER: You had two.
22 9a No.3, the Full Board Hearing, so I would call that
23 out, and then just the item that Mr. Brown just
24 referenced and in terms of more communication strategies
25 as well as the formula, so we can come back with another

1 legislative update at the appropriate time.

2 PRESIDENT MATHUR: Terrific. Thank you.

3 And that brings us to Public Comment. We do
4 have one member of the public who's expressed to wish to
5 speak. Mr. Johnson, if you could please come forward,
6 take a seat to my left. The mic is already on.
7 Identify yourself and your affiliation for the record,
8 and you'll have three minutes to speak. Mr. Johnson?

9 MR. JOHNSON: Good morning, Madam Chair, Members
10 of the Board. My name is Neal Johnson, I represent SEIU
11 Local 1000. I'm here today to speak about
12 Mr. Eliopoulos.

13 His predecessor, Joe Dear, during his term, we
14 talked about good events and Joe was a hero. In Ted's,
15 what, six years as the Chief Investment Officer, has
16 been a hero a number of times. I remember having a
17 brief discussion with him shortly after he took over
18 after Mr. Dears on timely demise, and Ted was, I think,
19 rightfully concerned about how he would do. Joe had
20 cast a large shadow over the organization, and Ted said,
21 you know, "I can't do the same job." I said, "Ted, your
22 job is not to repeat Joe. You're a different person.
23 You're going to do it your way, and you're going to be
24 successful." And I think overall Ted has been very
25 successful.

1 You know, currently, we're -- the fund is about
2 \$360 billion, which speaks to Ted, his leadership, and
3 the rest of the Investment Team and navigating through
4 the tricky waters of the various financial markets,
5 sometimes would have good years, sometimes would have
6 bad years. You know, speaking to Mr. Baggesen a little
7 bit ago, said, "Eric, you got one month. I'm sure
8 you'll do well, but with our over-waiting of public
9 equity, you never know what might happen in two days --"

10 (Laughter.)

11 MR. JOHNSON: " -- you could be a hero, and you
12 could also look not so good." Although I think Eric
13 will do quite well. But I really do want to thank Ted
14 for his years of service. I remember him with
15 Mr. Angelides when Bill was treasurer back in the 1990s
16 and then now with PERS for the last, what, 17 years; and
17 so, Ted, thank you very much for your work and your
18 service to the organization.

19 PRESIDENT MATHUR: Thanks very much, Mr. Johnson
20 for those kind words.

21 That brings us to -- we are going to now take a
22 15-minute break, and then we will reconvene with the
23 Full Board Hearing at 10:45.

24 (Off record: 10:30 a.m.)

25 (Thereupon a recess was taken.)

1 (On record: 10:45 a.m.)

2 VICE PRESIDENT FECKNER: Morning. We're going
3 to reconvene the Board meeting at this point. We're now
4 going to turn to Agenda Item No. 10 and open the record
5 for the full Board hearing and the Consolidated Appeals
6 of the Encina Wastewater Authority and the San Elijo
7 Joint Powers Authority. CalPERS Case No. 2016-0356 and
8 20016-0354. Let us first take roll call.

9 BOARD SECRETARY BUCHANAN: Rob Feckner?

10 VICE PRESIDENT FECKNER: Good morning.

11 BOARD SECRETARY BUCHANAN: Priya Mathur?

12 VICE PRESIDENT FECKNER: Excused.

13 BOARD SECRETARY BUCHANAN: Margaret Brown?

14 VICE PRESIDENT FECKNER: Excused.

15 BOARD SECRETARY BUCHANAN: Matthew Saha for John
16 Chiang?

17 ACTING BOARD MEMBER SAHA: Here.

18 BOARD SECRETARY BUCHANAN: Richard Costigan?

19 BOARD MEMBER COSTIGAN: Here.

20 BOARD SECRETARY BUCHANAN: Dana Hollinger?

21 BOARD MEMBER HOLLINGER: Here.

22 BOARD SECRETARY BUCHANAN: Adria Jenkins-Jones?

23 BOARD MEMBER JENKINS-JONES: Here.

24 BOARD SECRETARY BUCHANAN: Henry Jones?

25 BOARD MEMBER JONES: Here.

1 BOARD SECRETARY BUCHANAN: David Miller?

2 BOARD MEMBER MILLER: Here.

3 BOARD SECRETARY BUCHANAN: Ramon Rubalcava?

4 BOARD MEMBER RUBALCAVA: Here.

5 BOARD SECRETARY BUCHANAN: Bill Slaton?

6 BOARD MEMBER SLATON: Here.

7 BOARD SECRETARY BUCHANAN: Theresa Taylor?

8 BOARD MEMBER TAYLOR: Here.

9 BOARD SECRETARY BUCHANAN: And Lynn Paquin for
10 Betty Yee?

11 ACTING BOARD MEMBER PAQUIN: Here.

12 VICE PRESIDENT FECKNER: Thank you. I want to
13 remind all the Board members that once we start the
14 hearing, you all need to stay in the room. So if you
15 for some reason needed to leave early, I would recommend
16 doing so before we start the hearing. That's what
17 happened with Ms. Mathur, she had a conflicting
18 appointment and didn't think she could stay for the
19 whole thing, so she has left early.

20 The proposed decision in this case was
21 originally considered by the Board at the September 2018
22 Board meeting. At that meeting, the Board rejected the
23 proposed decision and scheduled this matter for a full
24 Board hearing on the question of whether the value of
25 purchase rental and maintenance of employer-provided

1 uniforms should be included in the impacted members
2 final compensation calculations.

3 I note for the record that all parties received
4 notice of this Full Board Hearing along with copies of
5 the Statement of Policy and Procedures of full Board
6 hearings before the Board. In addition, all parties
7 have been informed in writing that oral argument would
8 be limited to ten minutes for each position, and
9 rebuttal will be limited to three minutes each position.

10 Would counsel please take a moment to introduce
11 themselves, starting with Staff Counsel and then the
12 Members Counsel.

13 STAFF ATTORNEY SHIPLEY: Good morning. John
14 Shipley on behalf of CalPERS.

15 MS. SEABOURN: Marguerite Seabourn, CalPERS'
16 legal team.

17 VICE PRESIDENT FECKNER: Thank you.

18 MS. STENDER: Good morning. Tracie Stender, on
19 behalf of the Respondents, Encina Wastewater Authority
20 and San Elijo Joint Powers Authority.

21 VICE PRESIDENT FECKNER: Thank you. Let the
22 record also reflect that Chirag Shah, the Board's
23 independent counsel on administrative appeals, is
24 present in this proceeding and will serve as the Board's
25 only legal adviser in this matter. Mr. Shah will also

1 provide a brief summary of the case before we begin oral
2 arguments.

3 As stated previously, each position will have
4 ten minutes for oral argument. Mr. Shipley will first
5 have ten minutes to present -- present Staff's argument.
6 After that, Ms. Stender will have ten minutes to present
7 argument on behalf of the two agencies. Neither side is
8 compelled to use the full ten minutes; however, if a
9 party concludes argument in less than the time allotted,
10 it will not be permitted to carry that time to another
11 portion of this proceeding.

12 After both sides have presented oral arguments,
13 each side will be provided three minutes for rebuttal
14 arguments in the same order as the original
15 presentation. First, Mr. Shipley for Staff, then
16 Ms. Stender for the agencies. Here, too, a party may
17 but does not have to use the entire -- entire time
18 allotted -- allocated for rebuttal, but if a party
19 decides to use less time, however, there will not be
20 another opportunity to use any time remaining during
21 rebuttal. In other words, there are no rollover minutes
22 in this proceeding.

23 There's a timer in front of you, which will be
24 set for ten minutes for initial argument and three
25 minutes for rebuttals. The timer will begin when you

1 start to speak. Please pay close attention to the timer
2 as you make your presentation in order to avoid going
3 over your allotted time. When the timer turns -- light
4 turns red, your time will have expired. After all sides
5 arguments and rebuttals are concluded, the Board may ask
6 questions of any of the parties to this proceeding, as
7 well as our independent counsel. The alternatives
8 available to the Board are set forth in Agenda Item 10
9 of the Board meeting materials.

10 Any questions so far? Do all parties understand
11 the procedure?

12 STAFF ATTORNEY SHIPLEY: Yes.

13 MS. STENDER: Yes.

14 VICE PRESIDENT FECKNER: Thank you. Now then,
15 Mr. Shah, please provide a brief summary of the case.

16 MR. SHAH: Thank you, Mr. Vice President,
17 Members of the Board, good morning to all of you. As
18 you said, my name is Chirag Shah, and I'm the Board's
19 independent counsel on full Board hearings. My summary
20 this morning, as usual, will be very brief. I will let
21 each counsel educate the Board on the details and the
22 merits of their respective positions.

23 This consolidated hearing is for two separate
24 but substantially similar disputes, involving an item of
25 special compensation under Subsection C6, of Section

1 20636, of the Public Employees' Retirement Law, or PERL,
2 and its implementing regulation at California Code of
3 Regulations, Title 2, Section 571, Subsection A5.

4 Although the parties consolidated the cases into one
5 hearing, the administrative law judge has issued two
6 proposed decisions that are up for the Board's
7 consideration today.

8 The Respondents in the both cases operate
9 wastewater treatment facilities, that process raw
10 sewage. Section 20636 of the PERL provides in relevant
11 part that the value of uniforms and related costs must
12 be reported as an item of special compensation. In
13 implementing this statutory provision and precedential
14 caselaw, mainly the 1981 opinion in *Rose v. City of*
15 *Hayward*, the Board has adopted as what is now known the
16 uniform allowance regulation, which reads in its
17 entirety as follows and I quote:

18 "Uniform allowance, compensation paid or the
19 monetary value of the purchase, rental and/or
20 maintenance of required clothing, including clothing
21 made from specially designed protective fabrics, which
22 ready substitute for personal attire the employee would
23 otherwise have to acquire and maintain. This excludes
24 items that are solely for personal health and safety,
25 such as protective vests, pistols, bullets, and safety

1 shoes."

2 The specific issue before the Board in both
3 appeals is whether the monetary value of the purchase,
4 rental, and maintenance of uniforms provided to certain
5 employees by the agencies should be reported as an item
6 of special compensation, so that it may be included in
7 the affected employees' pension calculations and the
8 agency's contribution obligations. Both appeals arose
9 after routine staff audits and ensuing determination
10 letters, in which CalPERS took the position that the
11 agencies failed to properly report the value of the
12 purchase rental and maintenance of uniforms provided to
13 the impacted employees. In so doing, CalPERS permitted
14 only some items to be classified in the Health and
15 Safety Exception of the Uniform Allowance Regulation.

16 The appeals involve the items of clothing that
17 CalPERS staff determined does not satisfy the Health and
18 Safety Exception because in CalPERS' view, they are a
19 quote "ready substitute for personal attire." The
20 agencies, on the other hand, argue that the -- take the
21 position that the uniforms are provided solely for the
22 health and safety of their employees, their families,
23 and the general public, and, therefore, are not ready
24 substitute for personal attire.

25 The details of the case, the history of the

1 litigation, and the merits of each party's position are
2 presented in the written arguments and the
3 administrative record before the Board at Agenda Item
4 10. At this point, Mr. Vice President, Members of the
5 Board, I conclude my brief summary this morning so that
6 the parties may proceed with their arguments.

7 VICE PRESIDENT FECKNER: Thank you, Mr. Shah.
8 Let us now turn to the preliminary evidentiary issues.
9 As all parties are aware, we are not here to relitigate
10 factual issues or resubmit evidence into the
11 administrative record; however, in rare circumstances,
12 the interest of achieving a just result may require
13 consideration of newly discovered relevant documentary
14 evidence, which could not, with reasonable diligence,
15 have been discovered and produced at the hearing before
16 the administrative law judge and which, therefore, is
17 not part of the administrative record.

18 Under no circumstance may the Board accept new
19 witness testimony or any kind of examination or
20 cross-examination of anyone, including Board members, in
21 today's proceeding. Under the Board's procedure,
22 requests to introduce newly discovered documentary
23 evidence must have been submitted in the writing to the
24 Board's secretary no later than a date -- due date for
25 written argument, which in this case was October 31,

1 2018.

2 In order to avoid interruptions during each
3 parties respective time today, please let us know now if
4 either party has any relevant newly discovered evidence,
5 which could not have been discovered and produced at the
6 hearing, that it seeks to be admitted into the
7 administrative record today, as to which a timely
8 written request was submitted.

9 STAFF ATTORNEY SHIPLEY: No.

10 MS. STENDER: No.

11 VICE PRESIDENT FECKNER: Thank you. Seeing that
12 there are no requests to submit newly discovered
13 evidence, let us begin oral arguments.

14 Mr. Shipley, please present Staff's argument.
15 Please start the clock for ten minutes when Mr. Shipley
16 begins argument.

17 STAFF ATTORNEY SHIPLEY: Good morning, Mr. Vice
18 President and Board members. CalPERS has a duty to
19 treat all members fairly and equally and to apply the
20 law in a consistent matter that ensures all members
21 receive the benefits they are legally entitled to
22 receive. Nothing more, and critical to this case,
23 nothing less.

24 The issue in this case is whether CalPERS
25 members, who are provided shirts and pants to wear while

1 at work, will receive all of the benefits to which they
2 are entitled under the law. The law provides that if a
3 uniform substitutes for personal clothing, the monetary
4 value of the uniform must be included in the computation
5 of the member's retirement benefits. To date,
6 Respondents have failed to properly report uniform
7 allowance to the detriment of their employees, which, in
8 turn, deprives their retired employees from retirement
9 benefits they are owed.

10 These employees, these CalPERS members, are
11 entitled to receive the pensionable benefit of the
12 cotton and polyester shirts and pants they receive
13 because they replace the personal clothing the employees
14 would otherwise have to purchase. CalPERS request the
15 Board reject the proposed decisions, to ensure that
16 these members receive all of the benefits granted to
17 them under the law.

18 Over 35 years ago, the court of appeal
19 determined that uniform allowance must be included as a
20 pensionable item of compensation. The court of appeal
21 held that if the uniform is a ready substitute for
22 personal attire, the value of the uniform must be
23 considered pensionable income, because it functions as a
24 benefit for the member. The uniform is a benefit
25 because it replaces items of clothing the member would

1 otherwise have to purchase.

2 The court distinguish uniform items, such as
3 pants and shirts worn by police officers and
4 firefighters, from ammunition and other safety items
5 that would not be purchased but for the specific type of
6 employment. After the court's ruling, the legislature
7 amended the statutory scheme, defining pensionable
8 income to include uniform allowance.

9 CalPERS adopted uniform allowance regulation to
10 clarify the scope of what is reportable. The current
11 regulation ensures that all uniforms are reported if the
12 uniform is a ready substitute for personal attire, even
13 those uniforms made from specially designed protective
14 fabrics. In other words, the key question in
15 determining whether a member is entitled to the uniform
16 allowance benefit is whether the uniform replaces
17 personal attire, period. The employer's stated intent
18 for providing the uniforms or how the employer
19 characterizes the uniforms, is irrelevant in reaching
20 the answer to that question.

21 The members at the center of this dispute are
22 employees who work in wastewater facilities operated by
23 Respondents. Every morning they come to work and are
24 provided cotton or polyester shirts and pants. These
25 uniforms are no different than clothing that can be

1 purchased at any number of retail stores. They change
2 out of their personal clothing, put on the uniforms, go
3 to work, and then before leaving for the date, they
4 change back into their personal clothing. The only
5 remarkable thing about the uniforms is that they
6 identify the member as one of Respondents' employees.
7 What are the uniforms? They are shirts and pants that
8 replace the clothing the members would otherwise wear
9 while at work.

10 On the other hand, the members are also provided
11 safety items, such as coveralls to wear over their
12 uniforms, when they are likely to encounter dangerous
13 materials. The coveralls for wastewater facility
14 employees are analogous to bulletproof vests for police
15 officers and turnout gear worn by firefighters when
16 actively fighting a fire. They would not be necessary
17 but for the type of employment the individuals are
18 engaged in.

19 As you can see, the members are provided two
20 very different types of clothing. The coveralls, it's
21 an item that would not be needed but for the specific
22 job the members perform; however, the cotton shirts and
23 pants at issue here today replace the personal attire
24 they would otherwise be required to wear while at work,
25 and, for that reason, are reportable as pensionable

1 compensation. Admittedly, the uniform allowance can
2 appear counterintuitive. The uniforms, mere cotton
3 shirts and pants, are considered a pensionable benefit
4 to the member, but the items that actually keep the
5 members safe are not.

6 Perhaps the easiest way to understand why the
7 uniforms are a type of pensionable compensation is to
8 consider a member's income and budget. Let's assume a
9 member's income is \$50,000, and let's assume that each
10 year the member spends 10 percent of his or her income
11 on clothing, so \$5,000; and let's say 50 percent of the
12 clothing budget is for clothes they would buy to wear at
13 work. So a member spends \$2,500 a year on clothes. If
14 instead a member is provided a uniform each day, they do
15 not have to spend any money on work clothes, and this
16 essentially amounts to increase in their income of
17 \$2,500, the amount they otherwise would have spent on
18 work clothes.

19 The law requires that employers report this
20 alternative form of compensation. This item of special
21 compensation as uniform allowance. CalPERS must include
22 the uniform allowance in the members' final compensation
23 when determining their retirement benefits. To due
24 otherwise would deprive the members of benefits granted
25 to them by the legislature, and that's precisely what

1 Respondents are doing in this matter. They are not
2 reporting to CalPERS the value of the uniforms, which in
3 turn is reducing the members' pensionable income and
4 their retirement benefits. Again, benefits which have
5 been granted to the members by the legislature.

6 In this matter, the administrative law judge in
7 granting Respondents appeals made two critical errors.
8 First, the ALJ found that the cotton shirts and pants
9 are not a ready substitute for personal attire. There
10 was little explanation as to how the ALJ reached this
11 conclusion, and there is simply no support for it. What
12 constitutes a ready substitute for personal attire?
13 Common sense would dictate that clothes you wear instead
14 of personal clothing are a ready substitute for personal
15 attire. Here, the members are provided shirts and pants
16 to wear at work. The members wear these clothes instead
17 of wearing their own personal clothing. The uniforms
18 are ready substitute for personal attire, and, for that
19 reason and that reason alone, the value of the uniforms
20 must be reported as pensionable income.

21 The ALJ's second and related error was
22 misinterpreting the scope of the exclusion to the
23 uniform allowance benefit. The narrow exclusion was
24 intended to cover items that would not be needed but for
25 one's job, such as ammunition, bulletproof vests, and

1 turnouts used by firefighters. The proposed decisions
2 found that Respondent showed a reasonable connection
3 between the uniforms and the personal health and safety
4 of the members; however, that is not the appropriate
5 test.

6 The test for the exclusion under the current
7 regulation is whether the uniforms are solely issued for
8 the personal health and safety of the members. Here,
9 the cotton shirts and pants replace personal attire the
10 members would otherwise be required to purchase.
11 Therefore, at a minimum, the uniforms serve a dual
12 purpose. They replace personal attire, and they provide
13 a minimum amount of protection. If the term "solely" is
14 to be given any meaning, cotton shirts and pants that
15 serve a dual purpose, cannot qualify under the
16 exclusion.

17 At the beginning, I emphasized that CalPERS must
18 treat all members fairly and equally and apply the law
19 consistently to ensure that all members receive the
20 benefits to which they are entitle under the law. The
21 proposed decisions beg the question, if mere cotton
22 shirts and pants are not reportable under the uniform
23 allowance, what is a reportable uniform? If the
24 proposed decisions are adopted, the cotton shirts and
25 pants issued to these members would not be pensionable.

1 On the other hand, uniforms worn by firefighters and
2 police officers are currently reported and treated as
3 pensionable.

4 If the proposed decisions are adopted, it would
5 be entirely inconsistent to continue to treat
6 firefighter and police officer uniforms as pensionable.
7 CalPERS would be in a position where members are being
8 treated differently, and the law is not being applied
9 consistently. The proposed decisions conflict with the
10 purpose of the uniform allowance as stated by the court
11 of appeal, the legislature, and this Board.
12 Consequently, CalPERS argues the Board should decline to
13 adopt the proposed decisions and issue a decision where
14 all members, including the members who work for
15 Respondents and are issued uniforms, receive the uniform
16 allowance benefits to which they are entitled. Thank
17 you.

18 VICE PRESIDENT FECKNER: Thank you, Mr. Shipley.
19 Please start the clock for ten minutes for Ms. Stender
20 to present the agency's argument.

21 MS. STENDER: The issue before this Board is a
22 practical one. It's whether cotton and blend shirts,
23 pants, and coats, provided to protect sanitation workers
24 from the potentially deadly hazards they are exposed to
25 working with raw sewage, should be reported as special

1 compensation.

2 The proposed decisions found that these items
3 are not reportable for two items. One, they're not a
4 ready substitute for personal attire, and, two, they are
5 provided solely for health and safety and so finding the
6 proposed decisions found that Respondent's witnesses had
7 the quote "monopoly of experience and expertise and
8 technical knowledge of the potential threats in this
9 work place and the most reasonable ways to address those
10 threats and protect their employees." Whereas CalPERS'
11 Staff had no expertise and no substantial evidence to
12 support their findings.

13 Yet, Staff urged this Board to reject the
14 undisputed evidence, to substitute speculation for
15 expert judgment, and to interpret the uniform allowance
16 regulation in a manner that is arbitrary, that is
17 impractical, and that is plainly inconsistent with the
18 language and intent of the regulation. That intent, as
19 embodied by the court of appeals in *Rose v. City of*
20 *Hayward*, is that benefits that merely offset the risk
21 inherent in employment are not pensionable. That is the
22 health and safety exception that's at issue here.

23 I'm now going to walk you through some of the
24 evidence that's contained in your record. That is
25 uncontradicted and compelling and explains some of the

1 inconsistencies in Staff's argument.

2 Respondent's Directors of Operations and Safety
3 Manager, experts with decades of experience in the
4 sanitation industry, testified about the hazards that
5 employees are exposed to as a part of their employment
6 and testified about how their uniforms provide an
7 essential level of protection against these risks, which
8 include exposure to blood born pathogens like Hepatitis,
9 HIV, and Ebola, and contaminants like Silica Dust.

10 (Thereupon a photograph was held.)

11 MS. STENDER: If you look at Attachment F,
12 Exhibit 42, Page 5, you'll see this photograph; and what
13 this depicts is the first level in the treatment process
14 at Encina's facility. What you're looking at are the
15 back of bar screens that rattle down into a channel of
16 raw sewage that enters the treatment facility and then
17 pull out solids, like rags, condoms, and tampons and put
18 them on this conveyer belt. You'll see that these
19 white, sort of, paddles are caked in feces. Our
20 employees work in this environment. They maintain this
21 equipment, and they risk being splashed with sewage --
22 raw sewage as a part of their job duties.

23 (Thereupon a photograph was held.)

24 MS. STENDER: Next, Attachment F, Exhibit 43,
25 Page 9. This depicts the same first level of treatment,

1 but it San Elijo's facility. Instead of a conveyer belt
2 they have a shoot where all of the solids, like
3 contaminated diapers and rags, fall down into; and,
4 here, you'll see an employee wearing one of the uniforms
5 in question and what he's doing is unclogging one of
6 these shoots, and these rags are all soaked with raw
7 sewage; and this employee risks, as part of his job
8 duties, being slashed. He may not know in this moment
9 that he's being splashed. There's not a huge risk that
10 might require a Tyvek Suit, but there's enough of a risk
11 that he should be wearing a uniform that will provide
12 some sort of barrier between his skin and exposure.

13 (Thereupon a photograph was held.)

14 MS. STENDER: Next, Attachment F, Exhibit 43,
15 Page 3. This photograph was taken inside a Digester,
16 which is essentially a huge tank used later in the
17 treatment process; and you'll see an employee down here
18 on the right, and he's, -- or your left -- or on the
19 left, and essentially that black stuff he's standing in
20 is concentrated raw sewage; and you'll see this employee
21 is wearing one of the white shirts that in question, and
22 he risks being exposed to pathogens and other
23 contaminants while he's performing this work. He may be
24 wearing extra levels of protection, like waders, but
25 he's also wearing his first level of protection, which

1 is the pants and shirts.

2 (Thereupon a photograph was held.)

3 MS. STENDER: Finally, Attachment F, Exhibit 43,
4 Page 7. This photograph depicts an employee cleaning
5 debris from a shoot, after the final stage in the
6 treatment process at San Elijo, and you'll see he's
7 wearing, again, the disputed uniform and some bits of
8 Class A -- or excuse me. Class B biosolids have fallen
9 on to his shirt. So, again, this employee is wearing
10 his uniform, which is acting as a first level of
11 protection.

12 Respondent's witnesses testified that uniforms
13 play a vital role in keeping employees safe while they
14 work in these hazardous conditions. Respondent's safety
15 manager, a chemical engineer with over 28 years of
16 experience with Cal OSHA compliance, stated that
17 employees' shirts, pants, and coats, though made of mere
18 cotton, still act as an effective barrier between an
19 employee's skin and potential contaminants.

20 By providing these uniforms, Respondent's are
21 providing their employees with a first level of
22 protection against exposure; and you can see this first
23 level of protection at work looking at these photos.
24 Employees working in the bar screens may be splashed and
25 not know it, but, thankfully, Respondents provide them

1 with these uniforms that they then change out of the at
2 the end of the day, shower, leave at the facility to be
3 professionally laundered, and then employees change into
4 their regular attire to go home for the day. Employees
5 are not allowed to wear these uniforms to and from work.
6 They have to wear their regular attire to and from work.

7 The proposed decisions found that this evidence
8 overwhelmingly proves that uniforms are not reportable
9 because they're not a ready substitute for personal
10 attire. Common sense dictates that if something can't
11 be worn as personal attire, it's not personal attire,
12 but even if it was personal attire, these uniforms are
13 still not reportable because they are provided solely
14 for employee health and safety. That's the only reason
15 Respondents provide these uniforms to its employees, to
16 offset the risks that are inherent in their employment.

17 CalPERS' Staff don't deny that uniforms provide
18 some safety function, instead they speculate about how
19 effective that protection is if sometimes other levels
20 of protection are needed. This speculation comes
21 without any qualification or expertise in being able to
22 assess the hazards present in these facilities or the
23 most reasonable methods to protect employees from those
24 hazards.

25 Staff also makes a series of random

1 distinctions, which, if adopted, would lead to absurd
2 and inconsistent results. For example, Staff argues
3 these quote "not remarkable uniforms" are too common;
4 they're made of cotton; you can buy them at a store.
5 However, the rule-making file clearly states that
6 whether or not a uniform is made of a special fabric is
7 irrelevant. So the fact that these are not remarkable
8 and made of cotton is irrelevant.

9 CalPERS circulars have provided that coveralls
10 and orange shirts are not reportable because they're
11 reported solely for health and safety. The public
12 agency reviews that CalPERS conducts find that other
13 agencies' orange shirts, which are substitute for a
14 shirt someone might otherwise wear, are not reportable.
15 The regulation itself says that safety shoes are
16 provided solely for health and safety and are not
17 reportable, even though they substitute for shoes that
18 an employee might otherwise wear.

19 There's no reason that sanitation workers
20 shirts, pants, and coats should be treated any
21 differently than a mechanic's coveralls or road worker's
22 orange shirt, which CalPERS repeatedly found are exempt.
23 These items are commonly available. They replace
24 regular attire that employees would otherwise wear.
25 None of these distinctions change the fact that

1 Respondents provide uniforms to their employees solely
2 for health and safety and for no other reason.

3 If the Board accepts Staff arguments, it will be
4 going against its own advice and it will be treating its
5 members inconsistently. We and other sanitation
6 agencies that operate wastewater treatment plants, urge
7 this Board to adopt the proposed decisions and set a
8 practical commonsense standard. Thank you.

9 VICE PRESIDENT FECKNER: Thank you, Ms. Stender.
10 Mr. Shipley, would you like to offer rebuttal?

11 STAFF ATTORNEY SHIPLEY: I'm ready for rebuttal.

12 VICE PRESIDENT FECKNER: Please start the clock
13 for three minutes for Staff's rebuttal.

14 STAFF ATTORNEY SHIPLEY: Again, the critical
15 question --

16 VICE PRESIDENT FECKNER: Microphone, sir. Thank
17 you.

18 STAFF ATTORNEY SHIPLEY: The critical question
19 in this matter is whether the shirts and pants provided
20 to Respondent's employees are ready substitute for
21 personal attire. Whether Cal OSHA requires them to
22 provide uniforms, whether Cal OSHA requires them to
23 laundered in a certain way, is not important to this
24 case. This case is about what is pensionable, what
25 qualifies as a pensionable item of compensation under

1 the PERL; and the regulation says, if it's a ready
2 substitute for personal attire, it's a pensionable item
3 of compensation. These are shirts; these are pants;
4 these are what they wear instead of wearing their own
5 personal clothing, and, as I said, for that reason and
6 that reason alone, the items must be considered an item
7 of special compensation and pensionable.

8 The regulation does require that an item issued
9 solely for personal protection of the employee be
10 excluded; however, these are -- the shirts and pants are
11 not items that qualify under that exclusion. As the
12 court of appeal indicated in the Rose decision, items
13 that would qualify would be: Ammunition, it would be
14 the asbestos, the full turnout coats and uniforms that
15 firefighters wear while actively fighting a fire. Those
16 are the type of items that are excluded under the
17 regulation.

18 Here, we're talking about cotton shirts,
19 polyester shirts, they're even listed as polo shirts and
20 pants. These are not something that -- these are
21 something that simply are a ready substitute for
22 personal attire. They are not something that equates to
23 what should be excluded under the regulation.

24 In addition, the regulation requires that they
25 be solely issued for personal health and safety, and, as

1 the Respondents have indicated, there's a variety of
2 reasons why these uniforms are issued. But the critical
3 question is are they solely issued for personal health
4 and safety, and the answer to that question is no.
5 They're issued for a variety of reasons, but that in
6 itself excludes them from being something that should
7 fall within that narrow exclusion, that was first
8 provided by the court of appeal in the Rose decision and
9 since adopted by this Board in the Uniform Allowance
10 Regulation.

11 This case is really about do shirts and pants
12 are they a ready substitute for personal attire. They
13 might not be the same exact clothes that the people wear
14 when they come to work, and they might not be the same
15 exact clothes when they leave to go home from work. But
16 the question is, are they personal attire when they are
17 at work, and the question to that answer is, undoubted,
18 yes. Thank you.

19 VICE PRESIDENT FECKNER: Thank you.
20 Ms. Stender, would you like to offer rebuttal?

21 MS. STENDER: Yes, please.

22 VICE PRESIDENT FECKER: Please set the clock for
23 three minutes for agency's rebuttal.

24 MS. STENDER: There's some very concerning
25 circular logic being offered to this Board. The

1 regulation itself, which you were quoted at the
2 beginning, provides that uniforms that are ready
3 substitute for personal attire are not reportable except
4 for items provided solely for health and safety. The
5 argument that's being made right now is this -- these
6 uniforms aren't provided solely for health and safety,
7 because they're a ready substitute for personal attire.
8 That's circular.

9 The issue is, even if something is a ready
10 substitute for personal attire, if it's provided for
11 health and safety, then it's still exempt. That's how
12 exceptions work. So, here, even if you believe that
13 these shirts and pants are a ready substitute for
14 personal attire, even though employees can't wear them
15 home without endangering the safety of their family or
16 wear them to the grocery store without endangering the
17 safety of the people there, they're still exempt because
18 they are provided solely for health and safety.

19 There's a statement made that these uniforms are
20 provided for a variety of reasons. There's no evidence
21 in the record that these uniforms are provided for any
22 reason but to protect employees' health and safety, to
23 provide that first level of protection as the
24 Respondent's safety manager testified to; and, as the
25 court held in *Rose v. City of Hayward*, if a uniform item

1 is provided merely to offset a risk in employment, it's
2 not pensionable. Here, these pants and shirts and coats
3 are provided only to offset the risk of exposure
4 inherent in working in and around raw sewage.

5 There's no risk that finding that these shirts
6 and pants are exempt will lead to all shirts and pants
7 being exempt. All work places are different. The
8 employees who work in these sanitation facilities face
9 different and constant hazards than a firefighter might
10 face while he's wearing a shirt or that a police officer
11 might face. So this is really -- should be based on the
12 facts before this Board, which are this specific work
13 place, which is gated, closed off from the public
14 because of the dangers, and which presents a constant
15 risk of exposure to potentially deadly contaminants.
16 The uniforms these people are being provided are just
17 provided to help protect them from those risks. Thank
18 you very much.

19 VICE PRESIDENT FECKNER: Thank you. So now I'll
20 open it up to questions from Board members. Are there
21 Board members that have questions? Ms. Taylor?

22 BOARD MEMBER TAYLOR: Yes. Thank you, Mr.
23 President. And I'm sorry. I didn't catch your name.

24 MS. STENDER: That's okay. It's Tracie Stender.

25 BOARD MEMBER TAYLOR: Tracie Stender. Okay.

1 Ms. Stender, you had mentioned earlier in your argument
2 about Tyvek Suits. Do you provide those in addition to
3 these?

4 MS. STENDER: Correct. Those are available for
5 certain types of work.

6 BOARD MEMBER TAYLOR: So the work that you have
7 pictures of here in our evidence isn't part of that
8 work?

9 MS. STENDER: I can show you an example of when
10 an employee might wear a Tyvek Suit.

11 (Thereupon a photograph was held.)

12 MS. STENDER: And if you look at this photo,
13 that channel of raw sewage I was talking about,
14 sometimes employees have to literally get into that
15 channel. They put on a Tyvek Suit for that.

16 BOARD MEMBER TAYLOR: And waders?

17 MS. STENDER: Correct.

18 BOARD MEMBER TAYLOR: And waders?

19 MS. STENDER: Yeah.

20 BOARD MEMBER TAYLOR: Okay. So I think I'm --
21 I'm a little lost as how you can call -- because I'm
22 looking at this guy, and I don't -- it's Joint
23 Exhibit 43, and I don't know which page it is. Let me
24 see. Maybe it starts at the beginning, two, three,
25 four, five, six, six.

1 He's in a polo shirt and his pants, I can't tell
2 if he's got waders on. It might -- he might. He's
3 filthy, so how is that protective? I'm a little
4 confused as how is that protective. He's uncovered from
5 here down. His arms are filthy; he has gloves on. So
6 how does this shirt serve as a protective garment.

7 MS. STENDER: So there's basically levels of
8 risk and that's what the Respondent's safety manager
9 testified to. So what they're handling at this point
10 may be something from much later in the treatment
11 process that presents little to no risk, but, still,
12 they want to have something available to these employees
13 that they can change out of, have laundered at the
14 facility, not take home just in case there's some
15 exposure.

16 That also being said, employees do have some
17 amount of discretion when they're selecting what uniform
18 items to put on. The agencies issue guidelines, and
19 they have available a spectrum of personal protective
20 equipment. So looking at this particular photo, I'm not
21 positive what these employees are working with, so it
22 may be something low hazard, but an hour later they
23 might go into the Headworks, which is the first facility
24 that you see, and have to clean something off the bar
25 screens, in which case there's a heightened risk of

1 hazard.

2 BOARD MEMBER TAYLOR: But I'm still confused as
3 to how that -- any of these shirts, because they're just
4 cotton shirts, provide any measure than any other shirt
5 that I would wear to work of protection, because it's
6 just a cotton shirt. So if I can take a shirt from home
7 and wear it to work to do the same thing, then aren't we
8 invalidating your argument?

9 MS. STENDER: Well, you couldn't necessarily
10 because, for example, some employees work around flash
11 hazards. So if you brought a shirt in from home, and it
12 had some polyester blend and you were about to work in a
13 flash-hazard area, there would be some risk of --
14 there's some fire Risk and burn risk to you.

15 The other issue is you would then have to leave
16 your personal work at shirt for us to professionally
17 launder, because you can't bring these items home and
18 wash them or have them around a family member who's
19 immune suppressed or something like that.

20 BOARD MEMBER TAYLOR: So if this -- also another
21 concern of mine, if this is a concern of bringing these
22 uniforms home, I have two questions. One is, why
23 wouldn't a Tyvek Suit been worn all the time; and,
24 number two, are these contractually obligated uniform
25 requirements by the employees groups?

1 To address your first question. The Tyvek Suit
2 is recommended based on the level of hazard. So, again,
3 they're working around heavy machinery and equipment. A
4 Tyvek Suit may not be appropriate around some of that
5 equipment, because it's baggy and may create additional
6 hazards. So the chemical engineer, who makes these
7 assessments, has determined cotton still provides some
8 level of -- some barrier between the skin and the
9 contaminant and that can be sufficient for a lot of the
10 lower level hazards. When the hazard increases and it's
11 appropriate based on what conditions the employees
12 working with, they may then opt for a Tyvek Suit.

13 The second question the employees here are
14 unrepresented. The unions at these facilities were
15 de-certified. So I'm not aware of, like, a contractual
16 obligation to wear the uniforms, but, in their employee
17 handbooks, it does say that you are required to wear
18 these uniforms and employees are subject to discipline
19 if they don't wear the uniforms.

20 BOARD MEMBER TAYLOR: Okay. And the -- and the
21 requirement that you guys also just mentioned was the
22 shirts and the pants have to be 100 percent cotton?

23 MS. STENDER: It depends on the employee, but,
24 generally, most of the shirts and pants are 100 percent
25 cotton.

1 BOARD MEMBER TAYLOR: Why does it depend on the
2 employee?

3 MS. STENDER: My understanding is if you're
4 working around a flash risk or flash hazard where
5 there's potential for fire, polyester can burn and melt,
6 so they don't want employees wearing that. I think most
7 of the uniforms have switched to cotton, if not all,
8 100 percent cotton.

9 BOARD MEMBER TAYLOR: Okay. So then I can still
10 buy 100 percent cotton clothing and bring it into work
11 and provide the same kind of protection that you are
12 stating is the sole purpose of these clothing. So
13 that's where I think I'm having a problem with this.
14 But, I think you answered all the questions I had. I'll
15 let someone else.

16 VICE PRESIDENT FECKNER: Thank you. Mr. Miller?

17 BOARD MEMBER MILLER: Yeah. I just want to see
18 that I understand this. In a work place when there are
19 hazards, and I -- I'm a professional scientist I've been
20 doing field-science work on and off for over 30 years,
21 and we have folks in uniform, Fish and Wild Life, other
22 places, Department of Toxics, have people in the field
23 all the time, hazardous substances, hazardous materials,
24 law enforcement, all these folks on a daily basis are
25 potentially exposed to infection agents. Our folks deal

1 with Hantavirus out in the field. Our law enforcement
2 partners, certainly in the correctional and out in the
3 streets, deal with potential exposures to blood-born
4 pathogens, bodily fluids, you name it; and, for all of
5 us if I do that work and I'm wearing this suit, it
6 provide me some level of protection just as a
7 correctional officer's uniform, or a paramedics, or a
8 Department of Toxics person cleaning up, or
9 investigating sites, industrial sites.

10 Our folks are out in the field every day in
11 uniforms doing work with wildlife, with other natural
12 hazards, and their uniforms do provide them some level
13 of protection. But, if I, as a responsible for a team
14 in the field in consultation with an industrial
15 hygienist, believe that there is any significant risk
16 for them of exposure to infectious agents, blood-born
17 pathogens, ticks, Hantavirus, hazardous materials,
18 hazardous substances, I'm going to provide them, without
19 getting into too much technical detail, you know, Level
20 D, Level B, Level C personal protection.

21 And what you're describing scares the heck out
22 of me because if these people really are relying on a
23 cotton shirt as a primary and sole purpose of that
24 rather than having them be out there without additional
25 protection, it doesn't sound sensible to me. I think

1 any uniform provides you some basic level of protection,
2 whether it's from the hazards of sunshine or snakebite
3 or whatever, and I think -- so this would say, to me,
4 that anyone who wears -- is required to wear any kind of
5 clothing on the job -- it just doesn't seem to make
6 sense to me -- versus things like having to wear safety
7 boot or having to wear a personal firearm or having to
8 wear a safety vest for specific job, where there's
9 specific risk.

10 So I'm having a hard time understanding how you
11 would apply that to all of these employees who have to
12 wear a uniform, which incidentally does provide them
13 some minimal level of protection, but which is a ready
14 substitute for the clothing that they could and perhaps
15 would be wearing on the street.

16 MS. STENDER: I appreciate the question, and I
17 think the key is what -- what are we focussing on, and I
18 think what the regulation requires us to focus on and
19 what the court of appeal was focused on is, what are the
20 specific risks that the employees is facing. I can't
21 speak to how prevalent or common the risks -- health and
22 safety risks are for employees in other work places.
23 This specific work place necessarily involves exposure
24 to raw sewage. That's what these men do all day. So
25 it's not an offhand risk. It's not a secondary risk.

1 It's just something that they are dealing with
2 necessarily as part of their employment every day.

3 The issue about, you know, sort of, this isn't
4 very technical material, it's not at a higher level of
5 protective material, doesn't change the fact that it
6 does provide a level of protection for the specific
7 risks and hazards faced by these specific employees; and
8 I want to point again to the orange shirts that CalPERS
9 has repeatedly found are exempt for health and safety
10 reasons. It's just an orange shirt. There's nothing
11 special about it, but the fact that you can buy an
12 orange shirt at Wal-Mart doesn't change the fact that
13 that employee, performing those specific job duties in a
14 road or whatever, is now having this extra layer of
15 protection or this health and safety benefit just
16 because the shirt's orange.

17 So the fact that, you know, these uniforms
18 aren't highly technical doesn't matter, and the
19 rule-making file supports that the type of fabric that
20 the uniform is made of is irrelevant. What's relevant
21 is, what are the risks being faced by these employees
22 and what does the evidence in the record show. It shows
23 that highly qualified individuals with significant
24 amount of experience working around these hazards, have
25 determined that cotton shirts and pants are generally

1 sufficient to provide a first level of protection.

2 STAFF ATTORNEY SHIPLEY: Mr. Vice President, may
3 I just respectfully object to Ms. Stender's testimony
4 regarding orange shirts? It's not in the evidence.
5 She's providing her own testimony that isn't part of the
6 record. The record is very limited as to what --
7 especially the admitted evidence in the record is very
8 limited as to what those orange shirts actually were.
9 So I think it's inappropriate for her to testify about
10 the orange shirts that is testimony that's not part of
11 the record before the Board.

12 MS. STENDER: I'd refer Counsel and the Board to
13 Attachment F, Exhibit 37, Page 15, and in it is a
14 CalPERS circular, where CalPERS -- here. I can read it
15 just to set the record. So this is a circular from
16 January 11th, 1985. It starts on Page 9 and on Page 15
17 there's a question:

18 "With respect to safety equipment, would safety
19 equipment include the coveralls we provide to mechanics
20 and maintenance workers to protect them from paint, hot
21 tar, chemicals, oils and grease, and the orange shirts
22 we provide to employees working in public streets."

23 Answer: "Yes. Safety equipment would include
24 the coveralls and orange shirts."

25 VICE PRESIDENT FECKNER: Mr. Slaton?

1 BOARD MEMBER SLATON: Yes. So following up the
2 last question. It seems to come down to the word,
3 "solely," in my estimation, as I look at this case. So
4 are there a set of procedures for the employees for
5 these agencies that say -- that declare the range of
6 protective assets?

7 MS. STENDER: It's not so much a set of
8 procedures, but they have adopted guidelines and
9 designations of personal protective equipment that is
10 available, and it's my understanding that the cotton
11 shirts and pants are designated as a type of personal
12 protective equipment, in addition to waders, Tyvek
13 Suits, goggles, you know, lab coats for those types of
14 employees.

15 BOARD MEMBER SLATON: Is there evidence in the
16 record, and I didn't see it, where it's defined as
17 protective clothing.

18 MS. STENDER: Give me one second to look.

19 BOARD MEMBER SLATON: I think that -- while
20 you're looking for that, I think the issue of whether
21 it's cotton or some other higher level of protection, I
22 would suggest, is an agency determination, not CalPERS
23 looking over the transom at what the proper level of --
24 I mean, that's not our business. So I think that it's
25 incumbent upon the agency to have defined what is

1 protection, especially, if we're -- if the case is
2 trying to hang on the issue of solely for that purpose.

3 For instance, I could go out and buy steel-toed
4 boots. I could buy safety boots. They're available in
5 the marketplace. I could wear them anywhere I want to
6 go personally. So -- but the question is, is it being
7 provided solely for the purpose of safety. I also think
8 the issue of taking clothing home is a safety issue, and
9 I presume, and maybe you can confirm this, that, in
10 fact, in the employee procedures, it is defined as you
11 have to leave them here and the reason being that it's a
12 safety issue rather than convenience issue.

13 MS. STENDER: Correct. That's absolutely
14 correct, and I think the evidence in the record that
15 will support this is in Attachment F, Exhibits 30
16 through 33. You'll find the human resources and
17 employee handbooks for the various agencies, and you'll
18 also find the Blood-Born Pathogen Exposure Control
19 Plans. These documents combined set forth the
20 requirements that the employees wear the uniforms, the
21 requirements that the uniforms be left on site to be
22 professionally laundered and not taking home, and that
23 employees will be disciplined for violating that, and
24 that these uniforms --

25 BOARD MEMBER SLATON: Are we referring to Page

1 480 in the -- it's, -- I think it's 480, 9.21 Dress and
2 Grooming Standards, is that where you are?

3 MS. STENDER: Correct.

4 BOARD MEMBER SLATON: Okay. It's 480 on the
5 iPad.

6 BOARD MEMBER TAYLOR: That's Exhibit 32.

7 BOARD MEMBER SLATON: Yeah --

8 BOARD MEMBER HOLLINGER: It says on 481 that
9 they may not be removed from the premises.

10 BOARD MEMBER SLATON: Okay. So back to my first
11 question. You were looking for the reference.

12 MS. STENDER: So in the Blood-Born Pathogen
13 Exposure Control Plans, which I'm trying to get the page
14 number for you. Starts with Exhibit 32.

15 BOARD MEMBER SLATON: So it does -- I see the
16 3.0 on 482. This is Exhibit 32. EWA management's
17 responsible for the development and implementation of
18 this policy procedure to control exposure to pathogens.
19 Is that what you're referring to?

20 MS. STENDER: Yeah. There's a -- essentially,
21 it covers methods of compliance. Page, for me, it's
22 page 2 of 12, starting the Bate Stamp Number is EWA61.
23 It discusses personal protective equipment, and it says
24 includes -- it doesn't mention the shirts and pants here
25 but -- oh, if you look down at the next Page 62, Letter

1 F at the bottom: Employee shall use the locker room
2 facilities for changing clothes and footwear before
3 going home.

4 BOARD MEMBER SLATON: So C: All employees with
5 potential occupational exposure of blood-born pathogens
6 are required to wear EWA provided uniforms.

7 MS. STENDER: Correct. Thank you.

8 BOARD MEMBER SLATON: Okay. Okay. All right.
9 Thank you.

10 VICE PRESIDENT FECKNER: Thank you.
11 Ms. Hollinger?

12 BOARD MEMBER HOLLINGER: Yes. I view this as
13 really the purpose of changing into the uniforms as
14 actually the health and safety here is then being able
15 to control the contamination that might be possible if
16 these clothes were taken home, they're thrown in a
17 laundry basket. So and so I see that as a health and
18 safety factor of containing that, and I think that when
19 I look at the compliance, it's strict adherence to this,
20 you can be terminated, and so I think it actually
21 protects society and families that the pathogens that
22 would come from bringing this particular clothing home.
23 So I do see it as health and safety.

24 VICE PRESIDENT FECKNER: Mr. Jones?

25 BOARD MEMBER JONES: Yeah. Thank you, Mr.

1 President.

2 The -- I'd like to get information about the
3 employee who traditionally comes to work with the
4 uniforms that they're provided. During the course of
5 their duties and work, are there situations that require
6 them to go and get protective clothing and wear over
7 that -- those existing clothing or to change and wear
8 the protective clothing alone?

9 MS. STENDER: There are situations where an
10 employee may go and add additional protective clothing.
11 They're always wearing their base uniform, but, like the
12 example I gave of an employee who needs to wade down
13 into that channel of sewage, they'll go and they'll put
14 on additional protective clothing like a Tyvek Suit and
15 waders; and there could be situations where someone is
16 sprayed and saturated, in which case they're immediately
17 going to go shower and change out of their uniform and
18 into a new uniform, but they're always wearing this
19 first level of protection.

20 BOARD MEMBER JONES: So that does suggest then
21 that there is a difference in the protective uniform
22 versus the traditional clothing that's provided.

23 MS. STENDER: There's definitely a different in
24 levels of protection provided, but it doesn't change the
25 fact that that uniform, the shirts and pants, as

1 providing a first level of protection.

2 BOARD MEMBER JONES: Okay.

3 VICE PRESIDENT FECKNER: Ms. Taylor?

4 BOARD MEMBER TAYLOR: I'm just following on
5 Ms. Hollinger and Mr. Slaton's questions about your
6 calling these uniforms for health and safety, and I
7 think you in the beginning had talked about blood-born
8 pathogens, humanly bodily fluids, so my question to you
9 is, in a hospital there's uniforms worn as well, but for
10 blood-born pathogens, infectious, there's specific ways
11 to dispose of that.

12 I'm not clear on how this clothing protects an
13 employee after being -- coming in contact with a
14 blood-born pathogen, especially, some of these shirts
15 that I'm looking at. I can see maybe the long sleeve
16 shirt, but I'm not sure, and I'm not sure that I'm
17 seeing anywhere in this evidence that you guys have a
18 specific level of danger and what kind of clothing is
19 worn for each specific event. And so I'm a little
20 confused about that as well. If -- if some of this
21 clothing is worn to prevent contact with some of the --
22 I'm looking at the CDC recommendations here for HIV,
23 HPV, HCV, blood-born pathogens, I don't see how, if it
24 soaks through those cotton shirts, it's still going to
25 touch your skin.

1 MS. STENDER: Yeah. And that's, again, the
2 situation I described where someone may be inadvertently
3 splashed. It's not soaking through, but there's some
4 contamination on that uniform and it's provided a
5 barrier between that employee's skin and that splash.
6 It's still providing a barrier and the level of
7 protection. If an employee is soaked, they're going to
8 go change and they're going to shower, or if they think
9 there's a risk of soaking, they might put on an extra
10 level of protection.

11 But the first level of protection is protecting
12 the employee from small exposure. It's a conservative
13 measure, and then it's also protecting people at large
14 because, again, some of these pathogens can live for
15 days on a surface, so if that employee is, you know,
16 wearing this to the supermarket or wearing it home then
17 it's creating this additional health and safety risk.

18 BOARD MEMBER TAYLOR: So I'm really concerned
19 then that you don't provide additional clothing they
20 must wear all of the time, because if this is something
21 that these guys in their polo shirts are getting on
22 their skin and can sit on their skin for weeks at a
23 time, that seems tremendously unsafe for your employees
24 to begin with. So I'm not clear on how these cotton
25 shirts and pants provide enough safety that you can

1 claim these are safety -- health and safety only shirts.

2 MS. STENDER: Well, as I mentioned, all
3 employees are required to shower before they leave. So
4 I agree sometimes I look at these pictures and you'll
5 see they've rolled up their sleeves in San Diego it's
6 hot and maybe that's why, but they're still going to
7 wash before they leave. So they're still washing their
8 skin, and they're leaving that uniform that potentially
9 still has contaminants on it at the work place. So the
10 risk, from my understanding, is neutralized.

11 BOARD MEMBER TAYLOR: Just if you have
12 commentary on this. Thank you.

13 STAFF ATTORNEY SHIPLEY: I did have a little
14 bit. First of all, to kind of address your question.
15 The question was asked of one of the witnesses, "Would
16 long sleeve shirts protect an individual from blood-born
17 pathogens?" And the answer was, "If they get soaked
18 through, no. I mean, that's why we have them shower."

19 So clearly these shirts and especially if
20 they're wearing short sleeve shirts, they're not going
21 to provide protection against blood-born pathogens. So
22 I think common sense would hopefully dictate that if
23 they are actually in a hazardous situation, that they
24 would change into a Tyvek Suit, which, of course, is
25 something that CalPERS has determined should not be

1 reported because it's not a ready substitute for
2 personal attire.

3 The other thing I would just briefly like to
4 address is, there is a public safety component to not
5 having the uniforms taken home, but I think we have to
6 focus, again, on what the language of the regulation is.
7 The regulation provides that they are solely for
8 personal health and safety. So that's where the caselaw
9 came to. Is this solely for the personal health and
10 safety of the individual? If it's a public health and
11 safety, of course, it benefits everybody. It benefits
12 the employer because they're reducing their liability by
13 not having these dangerous -- but here -- and I'm not
14 here to judge whether they're doing what they're doing
15 correctly or not.

16 I'm just here to say, what does the law say,
17 what does the PERL say? And the PERL says, it it's
18 substitute for personal attire, it's reported, and to be
19 an exclusion it has to be solely for personal health and
20 safety. So when you add all these other components, a
21 public health component, to identify them as an
22 employee, that's not for personal health and safety so
23 it doesn't qualify under the exclusion.

24 BOARD MEMBER TAYLOR: And I just had one other
25 quick question, and this was discovered through an

1 audit. It wasn't like somebody tried to retire and
2 wanted that. It was discovered through an audit that
3 CalPERS performed; correct?

4 STAFF ATTORNEY SHIPLEY: That's correct. The
5 CalPERS Audit Office went down, collected evidence to
6 ensure were they making the correct determination. The
7 evidence showed that these were cotton shirts and pants,
8 that these were polo shirts, and deemed that these were
9 a substitute for personal attire because they wear them
10 at the work instead of wearing their personal clothing.

11 BOARD MEMBER TAYLOR: And I will say that it's
12 generally not CalPERS practice to find things to pay
13 extra for. So I think that's an interesting way that
14 this came about so I just was --

15 STAFF ATTORNEY SHIPLEY: Well, I would just
16 respectfully say it is our practice to apply the law
17 correctly and consistently to all members, and, if that
18 in this case indicates that the members are entitled to
19 greater retirement benefits, that's what the law
20 requires.

21 BOARD MEMBER TAYLOR: Right. Thank you.

22 VICE PRESIDENT FECKNER: Mr. Slaton?

23 BOARD MEMBER SLATON: I want to pick up on the
24 point that you just made. That counsel just made --
25 CalPERS Counsel. On this issue, the personal safety, so

1 if the uniforms -- it would be impractical, I presume,
2 for people to take their personal clothing, leave it
3 there, and have it been laundered. That creates all
4 sorts of potential problems for an employer as well as
5 an employee. So that's kind of impractical if you're
6 going to need to have control on the clothing reaching
7 outside the facility -- getting outside the facility.

8 I can make an argument that personal safety
9 includes being exposed to that clothing outside the work
10 place. From what I gather and counsel for the agency
11 can maybe confirm this, that the requirement, and I read
12 it, you required to shower. You're required to leave
13 the clothing there. It seems to me that one could make
14 an argument that that is for personal -- your own
15 personal safety. So that you don't then put your
16 clothing that was exposed to whatever it's exposed to
17 put it in a bag or a gym bag and take it home with you.

18 Now, I would say there's an ancillary benefit of
19 public health there, but it doesn't exclude personal
20 health of not touching that clothing after you -- when
21 you change clothes, and then you're required by the
22 regulation to shower. So what am I, I guess, counsel
23 for CalPERS, what am I missing here? If the argument
24 could be made -- forget the issue of whether things
25 could go through cotton or not go through cotton. It's

1 clear that things can get on the clothing. I don't
2 think anybody's arguing that point. So the question is,
3 could it be construed that personal safety, by leaving
4 it there and being required to leave it there, fits that
5 personal safety issue.

6 STAFF ATTORNEY SHIPLEY: I would say in
7 addressing that, I think the safety is more from the way
8 the clothing is handled whether it's laundered. So the
9 actual item is not what is providing safety to the
10 employees.

11 BOARD MEMBER SLATON: It's the procedure.

12 STAFF ATTORNEY SHIPLEY: Huh?

13 BOARD MEMBER SLATON: It's the procedure.

14 STAFF ATTORNEY SHIPLEY: It's the procedure.
15 So, yes, the procedure does provide some additional --
16 but what we're looking at is the actual item of
17 clothing. It's the item of clothing that's being
18 provided free of charge to the member, which is a
19 benefit. So the case in *Rose v. City of Hayward* it did
20 discuss that of course the employer is going to gain
21 some ancillary benefits from providing uniforms to their
22 employees, but the focus, because this is a question of
23 what retirement benefits the members get, must be on
24 what advantages provided to the member; and, in this
25 case, the members' advantages, they don't have to buy

1 any work clothes and that's a benefit to them. They
2 save money because they no longer have to purchase any
3 clothes for work.

4 BOARD MEMBER SLATON: Okay. But to take that
5 argument one step further. Let's suppose that what we
6 are talking about was hazmat suits. When they arrive at
7 work, they have to put on a hazmat suit. So if they
8 have to put on a hazmat suit, that would not be a
9 benefit that would be pensionable because it falls under
10 it's solely for safety.

11 STAFF ATTORNEY SHIPLEY: But I don't believe
12 anybody would consider a full hazmat suit as a ready
13 substitute for personal attire.

14 BOARD MEMBER SLATON: But it could fall under
15 the -- I grant you that, but it could also fall under
16 the exception, could it not?

17 STAFF ATTORNEY SHIPLEY: I would say that the
18 hazmat suit would fall under the exception, but we would
19 never get to the question of whether it's pensionable or
20 not, because it's not a ready substitute for personal
21 attire.

22 BOARD MEMBER SLATON: Right. So there's a
23 two-part test. You got the first general language and
24 then you've got the exception. If you don't fall into
25 the general wording, i.e. it's not a good substitute,

1 you never get to the exception; is that correct?

2 STAFF ATTORNEY SHIPLEY: I believe that would be
3 correct --

4 BOARD MEMBER SLATON: Okay.

5 STAFF ATTORNEY SHIPLEY: --if it's not a ready
6 substitute, then it's never going to be.

7 BOARD MEMBER SLATON: So we fall into the ready
8 substitute. Now the question is, does the exemption
9 apply, and I think what -- I think the argument is,
10 whether this is solely for safety or not solely for
11 safety. That seems to be the argument, and I guess
12 we're going to decide. This Board is going to have to
13 make that decision. Okay. Thank you.

14 VICE PRESIDENT FECKNER: Mr. Rubalcava?

15 BOARD MEMBER RUBALCAVA: Thank you. I think it
16 is a good thing that the agency does provide and launder
17 uniforms, and I note that in joint Exhibit 12, which is
18 the salary solution for the non-represented unit, the
19 last attachment to that is a listing of benefits. It
20 says, "Benefits." That's what it's called, "Benefit
21 Description." Starts with medical insurance, and, at
22 the very end, it says uniforms provided and laundered by
23 EWA is required. Then the last entry is safety boots,
24 \$250 per year per group member.

25 So clearly, boots are, you know, the agency

1 provides them, which it's a good thing. It defines that
2 as safety. Uniforms are just listed as uniforms. If it
3 is seen as a key part of the first level of protection,
4 why isn't it listed as saying, "uniforms for safety,"
5 or, "required for safety"? Why is it just so generic if
6 it's reported to the agency as a first level of
7 protection?

8 MS. STENDER: I'd imagine it's just for brevity
9 sake, because, elsewhere, in the Blood-Born Pathogen
10 Exposure Control Plans and in the Human Resources Policy
11 Manual, it extensively discusses how uniforms provide a
12 safety function. And I think it's also important to
13 point out that safety boots listed as a benefit here,
14 are exempt for health and safety reasons.

15 So just because something's listed as a benefit
16 here doesn't mean that it's not provided solely for
17 health and safety and that it's not exempt. Presumably
18 employees have to wear shoes. So we are essentially
19 giving you money to buy shoes that you would otherwise
20 have to buy. So it doesn't matter that we're also
21 paying for uniform for a shirt that you might otherwise
22 have to buy. Just like it doesn't matter that some road
23 workers get an orange shirt to replace a shirt they
24 might otherwise have to buy.

25 The Reg talks about why is the uniform provided.

1 It says, "Except for items provided solely for health
2 and safety." So the analysis should look at what is the
3 intent of this agency and providing this uniform? The
4 only reason we're providing these uniforms is for health
5 and safety, thereby they're exempt.

6 VICE PRESIDENT FECKNER: Anything else from
7 Mr. Rubalcava?

8 BOARD MEMBER RUBALCAVA: No. Thank you.

9 VICE PRESIDENT FECKNER: Mr. Miller?

10 BOARD MEMBER MILLER: Yeah. I have two kind of
11 areas. One, just following up on that. When it comes
12 to something like safety boots, safety shoes, safety
13 footwear, they're very specific specks that they have to
14 meet for specific crush loads, et cetera. There are
15 ANSI specs. Same thing with reflective clothing,
16 high-vis stuff. It's -- they're not really a substitute
17 for what you wear around on the street. They're
18 specific, they're different, they're expensive, and
19 they're clearly a safety article, whether it be a
20 reflective vest or -- or different levels of crush-proof
21 footwear.

22 And so one of the things that I keep trying to
23 resolve in my mind, and this may be more the question
24 part for CalPERS is, we have -- folks that I deal with
25 all the time were in the field. Some of them are

1 uniform folks, some of them aren't doing the same kind
2 of work.

3 In my department we routinely have people like
4 me in the field that have to put on personal protective
5 equipment, Tyvek, respiratory protection, eye
6 protection, and pretty regularly anyone who's done that
7 kind of work knows that does not keep you from getting
8 contaminated, and your personal clothing or your uniform
9 gets contaminated and sometimes you have to go home and
10 something you brought with you as a spare or that the
11 department may have some sweats there that you can put
12 on because you have to leave your personal, you know,
13 Levis behind, or your uniform stuff has to stay and go
14 with either the decontamination or deconstruction, if
15 it's hazardous waste or biological agents.

16 So it seems like for CalPERS this would imply,
17 if we accepted, this view that virtually everybody who
18 wears any kind of uniform, whether they're in a bakery
19 or laboratory or whether -- or if they're not in a
20 laboratory, maybe they should, that would be all out the
21 window; and it all now wouldn't be a benefit, uniforms
22 anymore. So it -- it seems like that has much more far
23 reaching ramifications that are really contrary to what
24 we're trying to accomplish.

25 STAFF ATTORNEY SHIPLEY: Just to briefly address

1 that. I would agree. I think if you start to take
2 truly what are non-safety items, cotton shirts, cotton
3 pants, and you say, "Okay. Those now qualify under a
4 narrow safety exclusion," then you've essentially
5 allowed the exclusion to swallow the rule. Nothing is
6 going to be able to qualify as an item that's a ready
7 substitute for personal attire because everything, I
8 mean, let's face it, clothes, all clothes, I think there
9 was a comment they provide protection from the sun, they
10 provide protection from different ingredients, different
11 materials, so everything becomes protection; so,
12 therefore, the exceptions fall as the rule and the
13 regulation shouldn't be interpreted in a way, in a
14 manner in which basically the uniform allowance
15 regulation is rendered meaningless.

16 VICE PRESIDENT FECKNER: All right. Seeing no
17 other requests to speak. The Board will now go into
18 closed session. Don't -- parties stay close. We will
19 probably will be back shortly, but the Board will move
20 into the back room, along with its independent counsel.

21 (Off record: 11:58 a.m.)

22 (Thereupon the Board goes into closed session.)

23 (On record: 12:13 p.m.)

24 VICE PRESIDENT FECKNER: Board meeting back to
25 order. Mr. Jones?

1 BOARD MEMBER JONES: Yeah. Thank you, Mr.
2 President -- Vice President. I move that the Board
3 reject the proposed decisions of the administrative law
4 judge, deny the appeals and issue the Boards own final
5 decisions in both cases as argued by Staff.

6 BOARD MEMBER MILLER: Second.

7 VICE PRESIDENT FECKNER: All right. It was
8 moved and seconded. We have a motion before us. Please
9 turn on the voting machines.

10 (Thereupon voting is displayed on overhead
11 projection.)

12 VICE PRESIDENT FECKNER: That's voted
13 electronically.

14 Motion carries.

15 Thank you very much. We thank you all for your
16 attendance today and for presenting to us. We will now
17 move on to our Board closed session, so we're going to
18 adjourned the open session, and we will move into closed
19 session as soon as we can clear the room. So thank you
20 very much. We'll see the rest of you next month.

21 (Thereupon the California Public Employees'
22 Retirement System, Board of Administration
23 open session meeting adjourned at 12:15 p.m.)

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

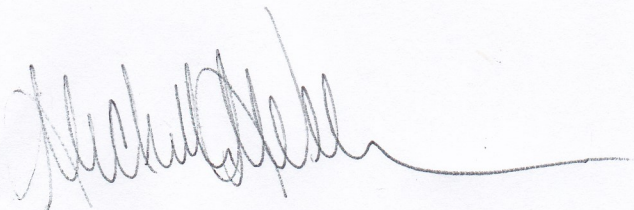
C E R T I F I C A T E O F R E P O R T E R

I, MICHELLE M. WILSON, a Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California Public Employees' Retirement System, Board of Administration open session meeting was reported in shorthand by me, Michelle M. Wilson, a Registered Professional Reporter, and thereafter transcribed under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand
This 17th day of November, 2018.



Michelle M. Wilson
Registered Professional Reporter