

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SANTA CLARA

3 DEPARTMENT 2

HON. PATRICIA LUCAS, JUDGE

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|----|---------------------------------|---|----------------|
| 7  | SAN JOSE POLICE OFFICERS        | ) |                |
|    | ASSOCIATION,                    | ) |                |
| 8  | PLAINTIFF,                      | ) | CASE NO.       |
|    | VS.                             | ) | 1-12-CV-225926 |
| 9  | CITY OF SAN JOSE, BOARD OF      | ) | SAN JOSE, CA   |
|    | ADMINISTRATION FOR POLICE AND   | ) | JULY 23, 2013  |
| 10 | FIRE RETIREMENT PLAN OF CITY OF | ) |                |
|    | SAN JOSE, AND DOES 1-10         | ) |                |
| 11 | INCLUSIVE,                      | ) |                |
|    | DEFENDANTS.                     | ) |                |
| 12 |                                 | ) |                |

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13  
14 REPORTER'S TRANSCRIPT

15 OF

16 TESTIMONY AND PROCEEDINGS

17  
18 APPEARANCES:

|    |                   |                   |
|----|-------------------|-------------------|
| 19 |                   |                   |
| 20 | FOR THE PLAINTIFF | GREGG MCLEAN ADAM |
|    | SAN JOSE POA:     | AMBER L. WEST     |
| 21 |                   | GONZALO MARTINEZ  |
|    |                   | ATTORNEYS AT LAW  |

|    |                     |                        |
|----|---------------------|------------------------|
| 22 |                     |                        |
| 23 | FOR THE PLAINTIFFS  | JOHN MCBRIDE           |
|    | SAPIEN, HARRIS, AND | CHRISTOPHER E. PLATTEN |
| 24 | MUKHAR:             | ATTORNEYS AT LAW       |

|    |                   |                       |
|----|-------------------|-----------------------|
| 25 | FOR THE PLAINTIFF | TEAGUE P. PATERSON    |
|    | AFSCME LOCAL 101: | VISHTAP M. SOROUSHIAN |
| 26 |                   | ATTORNEYS AT LAW      |

|    |  |                               |
|----|--|-------------------------------|
| 27 |  | ROSE M. RUEMLER, CSR NO. 9053 |
| 28 |  | OFFICIAL REPORTER             |

## APPEARANCES: (CONTINUED)

FOR THE PLAINTIFF       STEPHEN H. SILVER  
SAN JOSE RETIRED        JACOB A. KALINSKI  
EMPLOYEES ASSOC:       ATTORNEYS AT LAW

FOR THE DEFENDANTS     HARVEY L. LEIDERMAN  
CITY OF SAN JOSE,       KERRY K. GALUSHA  
BOARD OF ADMINISTRATION ATTORNEYS AT LAW  
FOR POLICE AND FIRE  
DEPARTMENT RETIREMENT  
PLAN OF CITY OF SAN JOSE:

FOR THE DEFENDANTS     ARTHUR A. HARTINGER  
CITY OF SAN JOSE        GEOFFREY SPELLBERG  
AND DEBRA FIGONE:       LINDA M. ROSS  
ATTORNEYS AT LAW

1 SAN JOSE, CA; JULY 23, 2013

2 DEPARTMENT 2 HON. PATRICIA M. LUCAS, JUDGE

3 ---oooOooo---

4  
5 THE COURT: Good morning. What updates do you  
6 have for me?

7 MR. ADAM: Your Honor, Gregg Adam.

8 I'm pleased to report that we did make some  
9 progress with the City yesterday. The POA met with the  
10 City right after we broke.

11 We've agreed to -- stipulated to 12 documents that  
12 will be admitted. Ten items that will be authenticated  
13 subject to objections as to admissibility from the City.

14 We did have a couple problem areas. Some  
15 documents the City previously agreed to admissibility, the  
16 City is now saying it's not prepared to agree to  
17 admissibility. And one document the City previously  
18 stipulated to authenticity it's also withdrawing. These  
19 were part of an order submitted to the Court last week.

20 That still leaves a number of documents that will  
21 have to be authenticated by Mr. Robb and Ms. Busse, but it  
22 greatly reduces the number. Again, I'm speaking only on  
23 behalf of the POA. Mr. Hartinger has a draft stipulation  
24 that I believe he's going to try to review during the  
25 break.

26 MR. HARTINGER: I disagree with the  
27 characterizations about what we agreed to and what we did  
28 not agree to. There's been a lot of number switching, but

1 let's move beyond that. There is a stipulation that was  
2 delivered to me this morning. I haven't had an  
3 opportunity to review it yet this morning, but I believe  
4 we resolved many of the differences that we had.

5 THE COURT: What's the significance of the fact  
6 that apparently the other plaintiffs are involved in the  
7 stipulation?

8 MR. KALINSKI: Your Honor, speaking for the  
9 Retired Employees' Association, we crafted our own  
10 stipulation with the City. Actually, it's been signed by  
11 all parties. I think each party was taking -- doing their  
12 own private negotiation with the City and, essentially, if  
13 the POA agrees with the City, I think, then, the Retired  
14 Employees' Association would be happy to sign off on that  
15 stip. I don't want to speak for the other plaintiffs, but  
16 I think that's probably the tenor this will take.

17 MR. PATERSON: Your Honor, AFSCME agrees with  
18 that. We also have made progress towards agreeing on a  
19 stipulation for a large volume of documents. I think we'd  
20 like to attempt to read that into the record rather than  
21 draft it if that's acceptable to your Honor. And we also  
22 agree that these -- we'll agree to any stipulation that  
23 our co-plaintiffs agree to with the City.

24 THE COURT: Okay. Written stipulation is a better  
25 use of time. It's more usable.

26 So let's go back to the point of whether, if any,  
27 plaintiff stipulates with the City. All plaintiffs  
28 stipulate?

1 MR. ADAM: Yes.

2 MR. MCBRIDE: Your Honor, on behalf of Sapien, et  
3 al., that's our position. If other co-plaintiffs want to  
4 stipulate, we don't object to that. In other words, we're  
5 not -- we will not raise an objection to anything that's  
6 been stipulated into evidence.

7 THE COURT: So may I hear now from any plaintiff  
8 who has a different position, that is, who disagrees with  
9 the notion that if any plaintiff stipulates with the City  
10 concerning authentication or admissibility, that plaintiff  
11 doesn't want to sign metaphorically?

12 Okay. So that's helpful. Thank you for that.

13 So it sounds like it's still in the works, then,  
14 in terms of finalizing this, but I thank you for your work  
15 and your cooperation in making that progress.

16 So will there be any need to call any witnesses  
17 for the purpose of authentication?

18 MR. ADAM: Yes, your Honor. We still have a  
19 number of documents the City wasn't willing to agree to.  
20 POA will require Mr. Robb and Ms. Busse, both of whom are  
21 in the courtroom at the moment.

22 THE COURT: Okay.

23 MR. PATERSON: Speaking for AFSCME, your Honor.  
24 There are a series of documents that we would expect  
25 Ms. Busse to authenticate as business records, or we would  
26 hope to, and the Retirement System has already done that  
27 in the stipulation. In any event -- and there are some  
28 documents that I believe we will need the City custodian

1 of records to also testify as to the nature of the  
2 documents, the hearsay exceptions under the business  
3 records.

4 THE COURT: Okay. Is that someone other than  
5 Ms. Busse?

6 MR. SPELLBERG: That would be, your Honor, yes.

7 MR. HARTINGER: And I think what we would need to  
8 know from Mr. Paterson is with respect to what documents  
9 he believes the City custodian -- we need to know what the  
10 documents are so we can bring the appropriate custodian.  
11 There was a lot of documents. We have some people here  
12 who are obviously custodians for their area.

13 MR. PATERSON: Your Honor, that's fine. I think  
14 actually there are not that many documents. Most of the  
15 documents we've reached agreements on as to admission, but  
16 I think there are some outliers.

17 THE COURT: If we don't know what the documents  
18 are and we don't know who the witness is, then we can't  
19 call the witness, so you need to do some more work on  
20 this.

21 Anything further on witnesses?

22 MR. MCBRIDE: On documents. You recall there were  
23 three, but one is the PERB complaint. We've handled that.  
24 The other two are 19 and 21, and I have what I believe is  
25 a stipulation prepared by defense counsel which, when I  
26 show it to them, I think they will stipulate to the  
27 authenticity, not the admissibility. I'll do that at the  
28 break.

1 MR. SPELLBERG: Your Honor, I know what counsel is  
2 referring to. I did agree to those. There were three  
3 documents, one of which is already in evidence. The  
4 trouble is, they renumbered them, and I'm not sure what  
5 they are in the numbering. Our agreement is still in  
6 place.

7 MR. MCBRIDE: That takes care of it.

8 THE COURT: That means there's a written  
9 stipulation that the City is going to sign?

10 MR. SPELLBERG: I signed it last week, your Honor.

11 MR. MCBRIDE: I have our copy that we signed. I  
12 can submit that and have counsel sign it.

13 THE COURT: Okay. Does it have the right exhibit  
14 numbers on it?

15 MR. MCBRIDE: Yes.

16 MR. SPELLBERG: No, it does not. It's got the old  
17 numbering. That's the problem.

18 THE COURT: There's more work to do on this one.

19 On the positive side, it looks like everybody  
20 signed the order re motions in limine re expert witnesses.  
21 So I've signed it and you have the original.

22 MR. MCBRIDE: Could we have the clerk make copies  
23 for us, possibly?

24 THE COURT: She has graciously agreed to do that.

25 MR. MCBRIDE: Thank you.

26 MR. PATERSON: If I may, your Honor. One other  
27 housekeeping matter. We are presently filing our reply  
28 papers to the request for judicial notice filed on July

1 16. We've served all parties, and we will lodge one once  
2 we have the file-stamped copy for your Honor.

3 AFSCME will also withdraw the second request for  
4 judicial notice that we filed on July 19 with the idea  
5 that the stipulation that we've tentatively reached with  
6 the City will obviate the need for your Honor to hear  
7 that.

8 THE COURT: Thank you. When you say it's now  
9 being filed, may I have a copy?

10 MR. PATERSON: Your Honor, that was -- I was  
11 speaking on behalf of AFSCME with respect to RJN number  
12 two. I've been reminded that the Retirees' Association is  
13 also part of that and there are various documents.

14 MR. KALINSKI: There are two, your Honor, two or  
15 three that are part of the request for judicial notice  
16 that there's a stipulation to authenticity only.

17 THE COURT: One thing at a time. May I have a  
18 copy of your reply?

19 Are you saying that the Retired Employees'  
20 Association is not withdrawing the second notice filed on  
21 July 19?

22 MR. KALINSKI: Not completely, your Honor. With  
23 respect to three items -- I think it's 646, 48, and 705.

24 THE COURT: Say the numbers again, please.

25 MR. KALINSKI: 646, 648, and 705.

26 THE COURT: So the second request for judicial  
27 notice filed July 18 is completely withdrawn by AFSCME and  
28 is withdrawn by the Retired Employees' Association except

1 for those three items?

2 MR. PATERSON: Pending a final stipulation with  
3 the City as to the documents.

4 THE COURT: Okay. So that means I still don't  
5 know what I have to rule on given that qualification.  
6 Okay.

7 MR. KALINSKI: Your Honor, actually, your last  
8 conclusion, I think, is correct. There are actually a few  
9 other numbers that we would not withdraw, but I don't know  
10 if you need to hear those now.

11 THE COURT: I can't rule on things until you tell  
12 me what I have to rule on, so that means I'm not studying  
13 anything and preparing to rule since you haven't made up  
14 your mind what you're asking me to rule on.

15 MR. KALINSKI: Fair enough, your Honor.

16 THE COURT: When will you tell me what you want me  
17 to rule on?

18 MR. KALINSKI: We can do so this afternoon, after  
19 lunch break.

20 MR. PATERSON: Your Honor, for AFSCME, I think all  
21 we need to do is type up the stipulations, as your Honor  
22 preferred it to be in written form.

23 THE COURT: Okay. Good. Thank you.

24 Concerning the POA request for judicial notice.  
25 This morning I have the City's opposition.

26 MR. ADAM: Your Honor, I would suggest holding on  
27 to that until Mr. Hartinger has an opportunity to review  
28 the stipulation. Then we will reduce the universe of

1 items that are in dispute, and we can see whether we want  
2 to go ahead with the judicial notice or simply put the  
3 witnesses on, try to do it in the most expedient manner.

4 THE COURT: That's fine. I looked at the  
5 opposition quickly, and my suggestion with respect to  
6 incomplete documents -- generally, we have complete  
7 documents. However, I had the impression that many of  
8 these documents are voluminous, so I suggest we might  
9 treat this as a rule of completeness issue so that if  
10 there are pages that are not included that the City thinks  
11 are important, they could be added, but I'm not seeing the  
12 value of having a complete document just for the sake of  
13 having a complete document. Does anybody have a different  
14 view on that?

15 MR. ADAM: We agree with that, your Honor. A  
16 number of our stipulations are along those lines that they  
17 can be augmented if either side believes it's necessary.

18 MR. HARTINGER: I think that's right, your Honor.  
19 In fact, the stipulation we have on admission includes the  
20 caveat that everyone reserves on the issue of completeness  
21 in case somebody discovers before we submit, finally, that  
22 something is incomplete.

23 THE COURT: Just a second. We're going to go off  
24 the record.

25 (Recess.)

26 THE COURT: We're back on the record.

27 So it sounds like more work with respect to the  
28 completion issue. And much of the rest of what I saw in

1 the opposition relates to relevance, so I'm hoping that  
2 you're having a discussion about that. If you can't  
3 resolve it, I will do it.

4 Then is the AFSCME request for judicial notice  
5 that was filed July 16, is that something which is  
6 submitted now?

7 MR. PATERSON: AFSCME's part of it is, your Honor.  
8 I don't know if -- the City, I don't believe, has had a  
9 chance to review our reply papers to comment if they  
10 choose.

11 THE COURT: I see. The City should have that  
12 opportunity. I'll pass that.

13 All right, then. Anything else before we hear  
14 from the first witness?

15 All right. Mr. Adam, is this your witness?

16 MR. ADAM: It is, your Honor. Thank you. The POA  
17 calls Pete Salvi.

18 MR. SPELLBERG: Your Honor, I'm sorry to do this.  
19 I had talked to Mr. Paterson who had asked Ms. Busse to be  
20 here to testify to authenticate documents, and she's here.  
21 She's not available this afternoon. She is available  
22 tomorrow, so I pass that on to Mr. Adam. I do realize he  
23 also is going to call Ms. Busse, but she's only available  
24 this morning, so I ask that we either take her out of  
25 order or make sure she's done, or else she has to come  
26 back tomorrow.

27 THE COURT: How long will this witness' testimony  
28 take?

1 MR. ADAM: I anticipate 15 minutes, your Honor.

2 THE COURT: We'll call Ms. Busse right after.

3 MR. PATERSON: Your Honor, may AFSCME comment on  
4 that? The extent of the testimony I would require from  
5 her would be dependent on the final -- the stipulation  
6 that we reach as to documents. So from my point of view,  
7 I would prefer to put her off until tomorrow, the idea  
8 being that we will have a final stipulation prior to that  
9 point.

10 THE COURT: I'm surprised that there hasn't been  
11 better communication on this issue since this is now the  
12 second time Ms. Busse has come to court. What's the  
13 City's position on this?

14 MR. SPELLBERG: Your Honor, I spoke to  
15 Mr. Paterson last night. He told me he needed Ms. Busse  
16 today. He had suggested right after lunch. I told him  
17 she wasn't available after lunch so I had her come this  
18 morning. When I spoke to him this morning, he said that's  
19 fine, we'll put her on this morning. So I'm somewhat  
20 indifferent, but she's been pulled back and forth a couple  
21 times now.

22 MR. PATERSON: Your Honor, everything he says is  
23 correct.

24 To put it in context, when we spoke, I had not had  
25 any chance to discuss with the City a stipulation. We had  
26 obviously been trying to do this for several weeks. It  
27 hadn't happened for whatever reason.

28 THE COURT: Why would you say that you wanted

1 Ms. Busse today?

2 MR. PATERSON: Because I have to assume that  
3 absent any discussions over stipulation, I don't have one.  
4 Last night, at around -- I think between 5:30 and 7:00,  
5 Mr. Hartinger and I spent a considerable amount of time  
6 reaching and agreeing --

7 THE COURT: It's important that you respect a  
8 witness' time, and having this person come to court twice,  
9 having the representations that Mr. Spellberg said you  
10 made and then standing up to say you're not ready to call  
11 her is not respectful of her time.

12 MR. PATERSON: I understand, your Honor. In that  
13 case, we can proceed.

14 THE COURT: However, calling a custodian of  
15 records before you have exhausted your negotiations about  
16 stipulations is also not a good use of anybody's time.  
17 It's now the second day of the trial. I'm expecting that  
18 this would have been done by now.

19 Ms. Busse is not available this afternoon?

20 MR. SPELLBERG: She is not. She has a prior  
21 commitment. She is available tomorrow, and she's  
22 certainly agreed to come tomorrow if that makes more  
23 sense.

24 THE COURT: I'm sorry, Mr. Salvi. We're almost  
25 ready. Just give us a moment here.

26 I think that we have for today Lowman, Allen,  
27 Doonan, and Martinez; is that right?

28 MR. PATERSON: Yes, your Honor.

1 THE COURT: Ms. Busse is available tomorrow?

2 MR. SPELLBERG: That's correct, your Honor.

3 THE COURT: It's more efficient if she's called  
4 when you have reached an impasse, which apparently you  
5 have not yet. So I regret that she was inconvenienced by  
6 coming today, but it makes the most sense that she come  
7 back tomorrow. So she'll be excused. Thank you for  
8 coming. We'll see you tomorrow.

9 MR. SPELLBERG: Thank you, your Honor.

10 THE COURT: Anything else before we swear  
11 Mr. Salvi?

12 THE CLERK: You do solemnly state, under penalty  
13 of perjury, that the evidence you shall give in this issue  
14 or matter shall be the truth, the whole truth, and nothing  
15 but the truth?

16 THE WITNESS: Yes, I do.

17 THE CLERK: Thank you. Have a seat, please.

18 MR. ADAM: Your Honor, could I just remove one of  
19 these?

20 THE COURT: Yes.

21 THE CLERK: Please state and spell your name for  
22 the record.

23 THE WITNESS: Peter Anthony Salvi, S-A-L-V-I.

24

25 PETER ANTHONY SALVI

26 called as a witness by counsel for the Plaintiffs, being  
27 first duly sworn, testified as follows:

28

DIRECT EXAMINATION

1 BY MR. ADAM:

2 Q. Good morning, Mr. Salvi.

3 A. Good morning.

4 Q. Are you currently employed?

5 A. No, I am not.

6 Q. Were you formerly employed by the City of San  
7 Jose?

8 A. Yes, I was.

9 Q. In what capacity were you employed by the City of  
10 San Jose?

11 A. Police officer.

12 Q. For how long?

13 A. 22 years with the City of San Jose, and I was also  
14 a police officer with the City of Daly City for five  
15 years.

16 Q. Did your Daly City time come before or after your  
17 time with San Jose?

18 A. Before.

19 Q. When did you retire?

20 A. 1998.

21 Q. Were you a member of the San Jose Police Officers'  
22 Association?

23 A. Yes, I was.

24 Q. For how long?

25 A. I was a member -- as a general member, I was a  
26 member for my entire career.

27 Q. And did you ever serve on its board of directors?

28 A. Yes, I did. Approximately 14 years.

1 Q. And did you have any elected office for the POA?

2 A. Yes. I was vice-president for, I believe, five  
3 years, and then on the board of directors for nine years,  
4 and I was also editor of the newspaper.

5 Q. Were you ever involved in negotiations with the  
6 City?

7 A. Yes, I was.

8 Q. Do you recall approximately how many times?

9 A. I don't remember, but an educated guess would be  
10 about three or four times during the course of the period  
11 I was on the board.

12 Q. Do you currently receive a pension from the City  
13 of San Jose?

14 A. Yes, I do.

15 Q. How much is that worth, approximately, annually?

16 A. \$59,000.

17 Q. Did you have a service retirement or disability  
18 retirement?

19 A. I have a disability retirement.

20 Q. What was the basis for that disability retirement?

21 A. I have a couple injuries. One to my feet. I fell  
22 through a ceiling and a flight of stairs and developed  
23 arthritis in my feet and it's difficult to walk. I was  
24 involved in a high speed pursuit on the freeway. It  
25 culminated in a crash, so I have a compressed spinal disk.

26 Q. Do you receive medical insurance from the City of  
27 San Jose?

28 A. Yes, I do.

1 Q. So before you retired, just leading up to your  
2 retirement, what medical benefits did you believe you  
3 would receive from the City during your retirement?

4 A. The same choice as the active officers, including  
5 the free lowest price plan.

6 Q. What was your belief based on?

7 A. At that time, the information that was presented  
8 to me from retirement services when I retired and just  
9 general information from when I was on the board and the  
10 POA.

11 Q. When you actually retired, what medical benefits  
12 did you receive?

13 A. I did choose a premium plan. It was called, at  
14 the time, Lifeguard.

15 Q. So by choosing the premium plan, did that mean you  
16 had to pay over and above what the free plan was?

17 A. Yes.

18 MR. SPELLBERG: Objection. Leading.

19 THE COURT: Overruled.

20 BY MR. ADAM:

21 Q. I'd like to leap forward to 2012. You're still  
22 retired and still receiving medical benefits from the  
23 City; correct?

24 A. Correct.

25 Q. Now, the benefit you were receiving, was that a  
26 individual medical plan or a family medical plan?

27 A. Family plan.

28 Q. And in 2012, were you paying any part of the

1 premium, or was it free?

2 A. At that time, it was free.

3 Q. Was that the lowest cost plan?

4 A. Yes, it was.

5 Q. Do you recall being deposed by counsel for the  
6 City recently?

7 A. Yes.

8 Q. Do you recall counsel asking you whether your  
9 family plan was free or had a monthly cost?

10 A. Yes.

11 Q. Did you have difficulty recalling at that time  
12 whether it was free or not?

13 A. Yes.

14 MR. SPELLBERG: Objection. Leading.

15 THE COURT: Sustained.

16 BY MR. ADAM:

17 Q. After the deposition, did you do anything to --  
18 strike that.

19 Subsequent to the deposition, did you do anything  
20 to determine what your medical payments had been in 2012?

21 A. Yes.

22 Q. What did you do?

23 A. I researched my pay stubs for 2012.

24 Q. I'd like to direct your attention to the binder  
25 that's on your left. There's a couple of pages open in  
26 the right-hand flap. If you can take a look at the first  
27 page.

28 MR. ADAM: Your Honor, this is a document marked

1 as POA 50.

2 MR. MCBRIDE: 50?

3 MR. ADAM: 50, five zero.

4 BY MR. ADAM:

5 Q. Mr. Salvi, are you familiar with this document?

6 A. Yes.

7 Q. What is it?

8 A. It is my pay stub for November 2012.

9 Q. When you say pay stub, pay stub from whom?

10 A. From the City of San Jose.

11 Q. And could you explain to us what it shows with  
12 respect to your -- the medical premium you were paying, it  
13 looks like, in November of 2012.

14 A. I was paying zero. I was paying nothing.

15 Q. Where is that reflected on the statement?

16 A. In the deduction column, second from the bottom  
17 under Kaiser Medical.

18 Q. Now, subsequently, did anything change with  
19 respect to the medical benefits you were receiving from  
20 the City?

21 A. Yes.

22 Q. What happened?

23 A. Previous to that we were advised that we would  
24 have to make a change in plans. If I were to maintain the  
25 current plan that I was receiving, I would have to pay  
26 \$314 a month.

27 Q. How was that information passed along to you?

28 A. It was passed out to several correspondences from

1 the City of San Jose and a membership meeting at the POA  
2 hall given by representatives of Kaiser and the City  
3 services.

4 Q. Now, were you offered any alternative plan to the  
5 one that you were then currently in?

6 A. Yes.

7 Q. What was that?

8 A. There was another plan which would have been free,  
9 but it entailed a lot of high deductibles.

10 Q. Do you recall the level of the deductibles and the  
11 co-pays?

12 A. Not exactly. But in the presentation they had  
13 given us at the time, I had scheduled surgery for my foot  
14 and had determined that if I had chosen that plan, I would  
15 have had to pay 1500, \$2,000 out of my pocket, so it was  
16 not really a good choice for me to pick that plan.

17 Q. I'd like to ask you to look at the second page  
18 under tab 50. Are you familiar with this document?

19 A. Yes, I am.

20 Q. What is it?

21 A. It's my pay stub for the subsequent month,  
22 December of 2012.

23 Q. Now, does this reflect what you paid for 2012 or  
24 does this reflect the charge to you for January of 2013?

25 A. It reflects for the current month. I believe it's  
26 effective -- the changes of medical are effective in  
27 November. So I believe the first payment would be in  
28 December.

1 Q. And so where does it show how much you were now  
2 paying for medical?

3 A. In the same place as previous, the Kaiser  
4 deduction column where it says Kaiser. It shows I'm  
5 paying \$314 a month.

6 MR. ADAM: Your Honor, ask that exhibits -- I  
7 don't know if we want to call them 51-A and 51-B, or 50-A  
8 and 50-B. I'd ask that they be moved into evidence.

9 THE COURT: I think we can just treat both pages  
10 as Exhibit 50.

11 Any objection?

12 MR. SPELLBERG: No objection, your Honor.

13 THE COURT: 50 is received.

14 (Plaintiffs' Exhibit 50, previously marked for  
15 identification, was received in evidence.)

16 MR. ADAM: No further questions, your Honor.

17 THE COURT: Mr. McBride?

18 MR. MCBRIDE: No questions, your Honor.

19 THE COURT: Mr. Paterson?

20 MR. PATERSON: No questions, your Honor.

21 THE COURT: For the retirement employees?

22 MR. SILVER: No questions, your Honor.

23 MR. SPELLBERG: Yes, please, your Honor. Thank  
24 you.

25 THE WITNESS: I thought I was going to luck out  
26 there.

27  
28 CROSS-EXAMINATION

1 BY MR. SPELLBERG:

2 Q. Mr. Salvi, good morning.

3 A. Good morning.

4 Q. You told us that you receive about 58,000 a year  
5 in retirement; correct?

6 A. Correct. 59, I believe.

7 Q. And you also have an antique business that you do  
8 as well?

9 A. Yes.

10 Q. So, Mr. Salvi, what you testified today is that  
11 there was a change in your retiree health care plan where  
12 you were receiving a plan for nothing, but at the end of  
13 2012, the same -- what you thought was the same plan had  
14 gone up in cost; right?

15 A. Yes.

16 Q. And you agree, do you not, that that increase that  
17 you've elected to pay has nothing to do with Measure B, do  
18 you not?

19 A. I don't really know.

20 Q. You don't know either way; right?

21 A. Yes. I don't really know.

22 Q. You agree, though, that when you made the election  
23 at the end of 2012, there was a plan that you could  
24 receive for free; right?

25 A. Correct.

26 Q. The trouble was, you felt that the deductibles  
27 were too high based on the surgery that you had planned;  
28 right?

1           A.    In general, the deductibles were very high, but  
2 including my surgery, yes.

3           Q.    But at the end of 2012, there was still a plan  
4 that was being offered to you that was free; right?

5           A.    Yes.

6           Q.    Free for your family; correct?

7           A.    Yes.

8           Q.    So let's stay on Exhibit 50 for a minute.  If  
9 we're looking at your pay stub, it shows that on the  
10 Kaiser plan --

11           MR. ADAM:  Counsel, are you on 12/31 or the 11/30  
12 version?

13           MR. SPELLBERG:  First page.

14 BY MR. SPELLBERG:

15           Q.    It shows there under Kaiser that you're not paying  
16 anything for Kaiser.  You're receiving that for free;  
17 correct?

18           A.    Correct.

19           Q.    And then it shows that what the City is paying  
20 is -- if you drop a little bit below that, the City pays  
21 1,323.66 for that benefit; right?

22           A.    Correct.

23           Q.    Then when it changed -- if we go to the next  
24 page -- you're paying the 314, and then the City's cost is  
25 1,139.70; correct?

26           A.    Correct.

27           Q.    There were a number of plans you could have  
28 selected when you selected this Kaiser plan that is now

1       \$314 a month to you; right?

2           A.    I don't believe it was a number of plans.  I  
3 believe it was just one other choice.

4           Q.    Weren't there some Blue Shield plans that were  
5 available at the same time?

6           A.    I thought it was one.  Blue Shield was the other  
7 choice.

8           Q.    Blue Shield was the other choice?

9           A.    Blue Shield, Blue Cross, yes.

10          Q.    There were a number of different Blue Shield plans  
11 that you could have selected; isn't that correct?

12          A.    I don't remember.

13                MR. SPELLBERG:  Let's do this.  Your Honor, I  
14 would like to mark what would be the next in order.  I  
15 think the logical number is 551.  What it is is the --

16                THE COURT:  Is this only three digits?  We expect  
17 four digits.

18                MR. SPELLBERG:  5511.  What it is, your Honor,  
19 it's the --

20                        (Defendants' Exhibit 5511 was marked  
21 for identification.)

22                MR. SPELLBERG:  Your Honor, may I approach the  
23 witness with the exhibit?

24                THE COURT:  Yes, you may.

25                MR. SPELLBERG:  Your Honor, I have a copy for you  
26 as well.

27                BY MR. SPELLBERG:

28           Q.    Mr. Salvi, I've marked and provided to you what's

1 Exhibit 551 [sic], which shows at the top it's the City of  
2 San Jose, Department of Retirement Services 2013  
3 non-Medicare Monthly Retiree Rates. You see how it lists  
4 the rates for the various plans?

5 A. Yes.

6 Q. And there's a Kaiser plan. The first two are  
7 Kaiser plans, and you see that you selected the second  
8 Kaiser plan there, the \$314 for family?

9 A. Yes.

10 Q. Now, have you seen this document before?

11 A. No.

12 Q. Does it refresh your recollection that there were  
13 a number of Blue Shield plans that were available to you  
14 that had varying premiums that were to be paid?

15 A. Not really. I was an existing Kaiser member and  
16 was not looking for a change, so I was really unaware of  
17 any other plans being offered.

18 Q. When you went to the meetings that you were  
19 talking about, you said you went to a POA meeting and a  
20 retirement services meeting, did they talk about other  
21 plans besides the Kaiser plans?

22 A. I don't remember if they did, no.

23 Q. In the Kaiser plan that you were on that you were  
24 paying nothing for before you -- let me go back a little  
25 bit. You told us when you left City employment you took a  
26 plan that was called Lifeguard; correct?

27 A. Correct.

28 Q. Then what happened is those premiums became too

1 high and you switched to the low-cost plan which was  
2 Kaiser; correct?

3 MR. ADAM: Objection, your Honor. Misstates the  
4 testimony. The witness never testified to that.

5 THE COURT: Mr. Salvi can address that.  
6 Overruled.

7 THE WITNESS: Not exactly as you stated.

8 BY MR. SPELLBERG:

9 Q. Can you tell me, then, please.

10 A. The Lifeguard plan I had chosen, the company went  
11 out of business, I believe, a year, year and a half after,  
12 and at that time, I chose the alternate premium plan, I  
13 believe, which was Blue Cross, Blue Shield.

14 Q. Then what happened is the Blue Cross plan you  
15 selected, the premiums became too high and you switched  
16 over to the Kaiser plan; right?

17 A. Correct.

18 Q. In a deposition, you told me that when you were on  
19 the low cost Kaiser plan, you were paying some amount for  
20 your family. Do you remember that?

21 A. Yes.

22 Q. Now you're telling us that you were mistaken;  
23 correct?

24 A. Actually, no. There's some confusion in there.  
25 I sort -- I'm glad you brought that up. I looked at the  
26 Department of Services health care plan. I believe in  
27 2011, the Kaiser plan was additionally split so they had a  
28 \$25 deductible which was still free, but the same plan, if

1 I chose a \$10 deductible, I would contribute money for my  
2 family plan. So the confusion in 2011 was whether I was  
3 still paying some of that money for the lower deductible  
4 plan.

5 Q. I see. So at some point you were paying -- from  
6 the lower cost plan, you were paying some amount for your  
7 family; right?

8 A. I believe so.

9 Q. You switched to that low-cost plan in about 2006;  
10 is that right?

11 A. I'm, again, guessing, but I believe it was five  
12 years that I switched from Blue Shield to Kaiser.

13 Q. Perhaps 2007? 2008?

14 A. Could be, yes.

15 Q. And when you switched to that low-cost plan, you  
16 don't know whether that low-cost plan was tied to the  
17 low-cost plan available to active police officers or just  
18 active City employees, do you?

19 A. It's my belief it was tied to active officers.

20 Q. Didn't you tell me in deposition that somebody  
21 from the City once told you that you were -- switching  
22 your low-cost plan was switching from being tied to an  
23 active officer to being tied to just a regular City  
24 employee?

25 A. I don't believe I said that.

26 Q. Mr. Salvi, it's true, isn't it, that you don't  
27 know whether police officers have the same low-cost plan  
28 that you have?

1 A. No.

2 Q. You don't know; right?

3 A. I assume so. I've been retired since '98. I just  
4 haven't verified every year the status.

5 Q. The plan you're on now, do you know if it's the  
6 same low-cost plan that police officers have?

7 MR. ADAM: Objection, your Honor. Asked and  
8 answered.

9 MR. SPELLBERG: It's a different question, your  
10 Honor.

11 THE COURT: It is. Overruled.

12 THE WITNESS: I believe it is. I don't know for  
13 sure.

14 MR. SPELLBERG: Your Honor, I'd like to read from  
15 the witness' deposition, if I could. I would read from  
16 page 40, lines 16 to 18.

17 MR. MCBRIDE: What's the date of the deposition?

18 MR. SPELLBERG: July 12, 2013.

19 THE COURT: Go ahead.

20 MR. SPELLBERG: "Question: Do you know whether  
21 this is the same low-cost plan that's being offered to  
22 active police officers?

23 "Answer: No, I don't."

24 BY MR. SPELLBERG:

25 Q. Mr. Salvi, I asked you this a moment ago, but I  
26 have it in your deposition. Isn't it true that the City  
27 told you at some point that there will be a change; that  
28 you were no longer receiving a low-cost plan tied to

1 active police officers but rather to a low-cost plan for a  
2 City employee?

3 A. In the way you explained it, it's difficult to  
4 answer. The answer is no. I was aware that suddenly  
5 there was a new argument about whether the term employee  
6 referred to a police officer or City employee, but  
7 specifically someone telling me that, I just don't recall.  
8 I was aware of just another argument.

9 MR. SPELLBERG: Your Honor, I'd like to read from  
10 the deposition, page 48, lines 4 through 15.

11 THE COURT: All right. Go ahead.

12 MR. SPELLBERG: "Question: Nobody said to you  
13 from the City that you actually recall that the City would  
14 now only pay -- only make payment of premiums for the  
15 lowest cost plan available to the City employee rather  
16 than the lowest cost plan available to the police  
17 officers?

18 "Answer: Again, I'm not sure who it was, when the  
19 City -- there's a volume of information that came out  
20 representing, but it was left -- I can't say who it was,  
21 but it's left in my mind that the City did say that, yes.

22 "Question: But you don't --

23 "Answer: But who, no."

24 BY MR. SPELLBERG:

25 Q. Do you recall that testimony, Mr. Salvi?

26 A. Yes. I believe it's the same. I said I just  
27 don't really know. The information was out. I don't  
28 really know who told me what the issues were.

1 Q. But you knew some time ago that you were on a  
2 low-cost plan tied to City employees as opposed to a  
3 low-cost plan tied to police officers; right?

4 A. I believe it was still -- my belief, you're asking  
5 me direct knowledge. It was my belief --

6 Q. You were told that, were you not?

7 A. I don't believe I was told. Your question is a  
8 little confusing, and I'm trying to be as clear as I can.  
9 I don't remember who told me in what regards the issues  
10 were, but it was my belief that I was paying the same.  
11 Nobody told me I wasn't.

12 Q. I'm going -- I'll ask one more time just so we're  
13 clear. You were told some time ago, some time in the past  
14 by somebody from the City that your health care was tied  
15 to the lowest cost plan for a City employee as opposed to  
16 a police officer employee. You were told that by somebody  
17 from the City, were you not?

18 MR. ADAM: Objection, your Honor. Asked and  
19 answered.

20 THE COURT: Sustained.

21 BY MR. SPELLBERG:

22 Q. Mr. Salvi, you told us in November of 2012 you had  
23 to select between the two Kaiser plans; right?

24 A. Yes.

25 Q. And you don't know whether the need to make that  
26 selection was caused by Measure B, do you?

27 A. I don't know, no.

28 MR. SPELLBERG: That's all I have. Thank you,

1 your Honor.

2 THE COURT: Anything else?

3 MR. ADAM: Nothing, your Honor.

4 THE COURT: Thank you, Mr. Salvi. You're excused.  
5 You're free to stay or to go.

6 Anything else for the POA at this time?

7 MR. ADAM: I have Mr. Robb to authenticate, but  
8 given we're still in the process, he'll be here today and  
9 tomorrow. He's working on Thursday, Friday, and the City  
10 is not prepared to release him, so we'll have him  
11 tomorrow.

12 THE COURT: Very good, then. Hopefully the  
13 discussions will be complete. We'll know whether that  
14 testimony is necessary tomorrow.

15 Mr. McBride?

16 MR. MCBRIDE: Yes, your Honor. Mr. Platten is  
17 going to take the hot seat for now.

18 MR. PLATTEN: Thank you, your Honor. We call  
19 Thomas Lowman.

20 THE COURT: Is Mr. Lowman present?

21 MR. PLATTEN: I believe he's in the hallway.

22 THE COURT: Before we do that, Mr. McBride, are  
23 you ready to tell me which portion of Exhibit 224 you  
24 wanted me to take a look at?

25 MR. MCBRIDE: I am, your Honor. In fact, what  
26 I've done for clarity sake is made a copy of the two pages  
27 and marked them for you and for counsel. Particular two  
28 pages are page 8 and page 9.

1 THE COURT: All right. Thank you for that.

2 Mr. Lowman, please come forward and be sworn.

3 Stand right there and face the clerk, please.

4 THE CLERK: You do solemnly state, under penalty  
5 of perjury, that the evidence you shall give in this issue  
6 or matter shall be the truth, the whole truth, and nothing  
7 but the truth?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. Have a seat, please.

10 MR. PLATTEN: For the Court's convenience, your  
11 Honor, we'll be referring to Sapien Exhibits 228 and 229.

12 THE COURT: Thank you.

13

14

THOMAS B. LOWMAN

15 called as a witness by counsel for the Plaintiffs, being  
16 first duly sworn, testified as follows:

17

DIRECT EXAMINATION

18

BY MR. PLATTEN:

19

20 Q. Mr. Lowman, can you tell us what your profession  
is.

21

A. I'm an actuary.

22

Q. Can you tell us what an actuary is.

23

24 A. Actuaries are people who work with numbers. In my  
25 case, I'm an actuary, I work on retirement plans doing  
26 costs for -- I need to slow down -- doing costs for plans  
27 and telling people what their contributions are, what  
their liabilities are.

28

THE COURT: Mr. Lowman, it helps if you keep your

1 mouth close to the microphone like I'm doing to keep your  
2 voice up.

3 Go ahead.

4 MR. PLATTEN: Thank you.

5 BY MR. PLATTEN:

6 Q. Mr. Lowman, I take it that required some secondary  
7 education on your part?

8 A. Yes.

9 Q. Can you tell us what your educational background  
10 is.

11 A. Yes. I graduated with a math degree from the  
12 University of Delaware. I took the Exam of the Society of  
13 Actuaries. I'm a fellow of the Society of Actuaries, a  
14 member of the American Academy of Actuaries, enrolled  
15 actuary, and a fellow with the Conference of Consulting  
16 Actuaries.

17 Q. Let's take those one at a time. What's a fellow  
18 of the Society of Actuaries? What does that mean?

19 A. That means I take a series of actuary exams, first  
20 become a associate, then become a fellow, and you learn  
21 about work that we do, how to measure liabilities, present  
22 values, factor in mortality, different events.

23 Q. How long have you been a fellow of the Society of  
24 Actuaries?

25 A. About 31 years. Since 1982.

26 Q. When you say you were an enrolled actuary, can you  
27 tell me what that means.

28 A. For ERISA plans in the private sector, the

1 government requires that the plans have an actuary  
2 certification every year. Minimum funding requirements.  
3 And the Department of Labor and the IRS have a program to  
4 credential actuaries to become enrolled actuaries to sign  
5 those certifications.

6 Q. How long have you been an enrolled actuary?

7 A. Since 1981.

8 Q. How long have you been a fellow?

9 A. Since 1982.

10 Q. You also said that you were a member of the  
11 American Academy of Actuaries. Can you tell us what that  
12 means.

13 A. The Society of Actuaries does education and  
14 research for our profession. The academy does sort of  
15 public policy on the part of our profession. And usually  
16 if you're a member of society, you can also join, become a  
17 member of the academy.

18 Q. How long have you been a member of the academy?

19 A. I believe it was since 1982 also.

20 Q. Are you also a member or fellow of the Conference  
21 of Consulting Actuaries?

22 A. Yes, I am.

23 Q. Can you tell us what that means.

24 A. The conference is a slightly different role, but  
25 basically they are just another actuarial organization  
26 that does education, and in this particular case, they  
27 also have a public plans group that's very active, looking  
28 at public pension issues.

1 Q. So you've been an actuary since 1981?

2 A. Actually, I was an associate in '79. That's my  
3 first actual credential. Then became a fellow in '82.

4 Q. Can you tell the Court where you've worked as an  
5 actuary.

6 A. I worked at a company called William M. Mercer for  
7 about 19 years, and then for the last, roughly, 17 years  
8 at Bolton Partners.

9 Q. At Bolton Partners, do you have a particular  
10 position within that company?

11 A. Yes. I'm the chief actuary.

12 Q. Top dog in the company?

13 A. The owner, Bob Williams, is probably the top dog,  
14 but I'm the technical person.

15 Q. Have you acquired any particular field of  
16 expertise as an actuary in this 33-plus years in this  
17 work?

18 A. Yes.

19 Q. Can you describe that, please, to the Court.

20 A. I have a few areas of expertise, but one of them  
21 that's relevant today is in public pension plans.

22 Q. And what kind of public pension plans do you work  
23 with? Can you describe them.

24 A. Yes. Most of these local government plans,  
25 counties, cities, police and fire plans, general employee  
26 plans.

27 Q. Have you published information, papers, documents  
28 in your field?

1 A. Yes, I have.

2 Q. Can you just briefly describe some of those  
3 papers.

4 A. My three largest papers were with the Society of  
5 Actuaries. One was on cash balance plans. Another was  
6 gain sharing plans, such as SRBR. A paper on something  
7 else as well. It escapes me.

8 Q. When you say gain sharing plans or the  
9 Supplemental Retirement Benefit Reserve -- the acronym  
10 caps SRBR -- which you referred to, can you just briefly  
11 describe for the Court's benefit what a gain sharing plan  
12 is.

13 A. Right. There are many gain sharing plans around  
14 the country. The basic concept is you have a design which  
15 takes excess earnings, so-called excess earnings, and  
16 skims off some of the excess earnings in good years,  
17 provide additional benefits.

18 Q. Is that the general nature of the SRBR plan in San  
19 Jose for the two pension plans?

20 A. Generally, yes. With the slight caveat in the  
21 case with police and fire plan, there's also what I  
22 sometimes called a claw-back provision. It's not  
23 perfectly symmetric. Meaning that excess earnings, some  
24 are set aside, but some can be clawed back to reduce the  
25 employee's contribution.

26 Q. So we got that term, the term is claw-back,  
27 C-L-A-W, back?

28 A. Yes.

1 Q. Sometimes your Chesapeake accent, the microphone,  
2 it's a little distinctive, so please bear with me.

3 Let's talk a little bit about when you were  
4 contacted to work in this case. When did that occur?

5 A. It was about four months ago or so.

6 Q. What were you asked to do?

7 A. I was asked to look at the funding of the plan and  
8 the benefit proposals that were made back in 2011,  
9 roughly, and be prepared to talk about those and how the  
10 plan is basically set up.

11 Q. Have you had experience working with the San Jose  
12 plan prior to 2013?

13 A. Yes, I have.

14 Q. Could you just describe that to the judge.

15 A. Sure. In around 1997, I was involved in what was  
16 called the Bogue arbitration. It was involved with  
17 proposed planned changes for the police and fire fighters.  
18 Then in around 2007, there was another proposed change,  
19 another arbitration that I was involved in with the cost  
20 to improve pension benefits for, again, police and fire  
21 employees. And then in around 2011, I was involved in  
22 looking at benefit changes for the police, the fire, and  
23 the Local 21 Federated employees. As part of that, I was  
24 at the City Council hearing in October of 2011.

25 Q. You're being paid for your testimony today?

26 A. Yes, I am.

27 Q. Tell the Court what your rate is.

28 A. \$450 an hour.

1 Q. Thank you.

2 What I'd like to do is have you turn in the  
3 exhibit binder in front of you to the very back. We're  
4 going to look at two documents that are marked as Sapien  
5 Exhibits 228, which is a one-page document, and 229. Let  
6 me know when you're there.

7 MS. ROSS: Your Honor, objection. 228 is one --  
8 is the document that Mr. Sapien [sic] testified at his  
9 deposition that he did not know if he was going to talk  
10 about except for funding.

11 THE COURT: There's no question pending and no  
12 document has been offered so I'm not sure what you're  
13 objecting to.

14 MS. ROSS: All right, your Honor. I'll wait.

15 BY MR. PLATTEN:

16 Q. Do you recognize what's been marked as 228?

17 A. Yes, I do.

18 Q. Can you tell the Court what it is.

19 A. This is a document that I prepared to go through  
20 the basics of how the plans are funded, how the actuary  
21 work is carried out. There's some references to pages in  
22 the 2012 police and fire evaluation report, actuary report  
23 that was done that relates to those particular items.

24 Q. Was this a document that you presented in response  
25 to a request to produce documents at your deposition which  
26 was taken by Ms. Ross?

27 A. Yes.

28 Q. And does this basically constitute the testimony

1 outlined with respect to how the operation of the plans  
2 worked here in San Jose?

3 A. Yes.

4 Q. Let's look at the very first bullet point. It  
5 talks about pension benefit cost based on prefunding.  
6 Without looking at the document, Mr. Lowman, can you just  
7 tell the judge how the public pension plan works with  
8 respect to prefunding.

9 A. Right. You could possibly not prefund the plan  
10 and just do what's called pay-as-you-go funding, meaning  
11 when a retirement check is due, you look around and come  
12 up with the cash and have a trust fund. That's not a good  
13 way.

14 Most pension plans are called what's prefunded.  
15 You want to try to accumulate the assets while someone is  
16 working so money is set aside by the time that they  
17 retire. So generally that involves hiring an actuary,  
18 having the actuary sort of allocate the cost of various  
19 years of the employment. And so most pension plans are  
20 prefunded. They have a large trust fund to cover some or  
21 hopefully most of the liabilities that had accrued.

22 Q. Can you differentiate for the Court what is a  
23 defined benefit plan versus a defined contribution plan.

24 A. A defined contribution plan, which this is not,  
25 defines the contribution and what is a three percent pay  
26 for everybody. But what is defined is the benefit. How  
27 much will that provide? We don't know. We have a defined  
28 benefit plan, and defined benefit plan is the benefit

1 plan, not the cost. The cost is variable. That's why you  
2 hire an actuary to determine what's the cost based on  
3 where the plan is at at the point in time.

4 Q. Looking at 228, the first round bullet under the  
5 first entry, there's a following bullet which talks about  
6 cost depending on benefit levels. Can you explain what is  
7 meant by cost depends on benefit levels to the Court.

8 A. The larger the benefits you're providing, the more  
9 the plan is going to cost. Simple as that. The actuary  
10 has got to put a liability measure in on the benefits  
11 being provided because we don't know what the benefits  
12 are. The size of the benefits will affect the size of the  
13 costs.

14 Q. Effectively, the actuary's job is to determine  
15 what the cost of the benefit should be, meaning the cost  
16 of the contributions?

17 MS. ROSS: Objection. Leading.

18 THE COURT: Sustained.

19 BY MR. PLATTEN:

20 Q. What does it mean when you say what the actuary  
21 has to do with the cost of benefits?

22 A. In the case of the annual evaluation, we have to  
23 measure liabilities associated with the benefits that are  
24 being promised.

25 Q. As a result of that, the actuary sets contribution  
26 rates?

27 MS. ROSS: Objection. Leading.

28 THE COURT: Sustained.

1 BY MR. PLATTEN:

2 Q. What does the actuary do once he or she determines  
3 the cost?

4 A. We'll get more later.

5 Basically, you got to measure liabilities, you got  
6 to measure assets, you've got to make a number of  
7 assumptions. And so measure the liabilities is one step  
8 in the process of setting the contribution rate.

9 Q. What is the annual actuarial valuation?

10 A. In this particular plan, currently every year, the  
11 actuary does a valuation plan and sets a contribution for  
12 the following fiscal year. So in this case, we have  
13 behind the next tab, Exhibit 229, 2012 actuarial report.  
14 Just to make one correction, that sets the contribution  
15 for fiscal '14, not '15 as it says here. So they do  
16 valuations every year. This case has a June 30, 2012.  
17 About six months later, the valuation is done. It's based  
18 on the census as of June 20, 2012, and the assets of 2012.  
19 So the information is collected, the actuary does the  
20 valuation. About six months later, has a report in time  
21 to do the budget, fiscal year '14. It's sort of the part  
22 of the budget contribution practice. Every year we see  
23 where the plan is at that point in time. The assets since  
24 last year, what's happened to the liabilities. We measure  
25 everything and say defined benefit plan. We have now  
26 defined the cost for that year. The cost does change from  
27 year to year.

28 Q. So the actuary report, Plaintiffs' Exhibit 229,

1 the plan for this fiscal year that you've described  
2 establishes the actuary's version as to what the cost of  
3 the plan is?

4 MS. ROSS: Objection. Leading.

5 THE COURT: Overruled.

6 THE WITNESS: Correct.

7 BY MR. PLATTEN:

8 Q. What is the concept of actual versus estimated?

9 A. This report does a couple of things. One, it sets  
10 the contribution rate for fiscal -- the following fiscal  
11 year. Fiscal '14 in that case. But it also does a  
12 projection of what it might be in future years, fiscal  
13 '15, '16, '17. So it's nice that they estimate  
14 contributions because you want to know not just what your  
15 cost is this year but what it might be in the future as  
16 well. But those are estimates only for the later fiscal  
17 years. They will be replaced by actual calculations once  
18 future valuations are done. This valuation report is both  
19 a determination of the amount due for a fiscal year and a  
20 projection of amounts for future fiscal years as well.

21 Q. In determining this cost that the actuary puts  
22 together in the actuarial valuation report, there are a  
23 couple key terms that you outlined here. Let's talk about  
24 those terms. Can you tell us what the term "normal cost"  
25 refers to.

26 A. Right. Normal cost refers to the cost allocated  
27 for benefits for the current year service. I wish I could  
28 say it's the cost that's being earned in the current year.

1 That's too much of a simplification. It's actually an  
2 allocation done under this particular funding method;  
3 tries to keep the cost level as a percent of an  
4 individual's payroll over their whole career. There's  
5 allocation of liabilities in the past and future and the  
6 allocation associated with the coming 12-month period,  
7 coming year. It's what's called normal cost. It's like  
8 you're working this year, you're earning a benefit that  
9 year, and there's a pension cost associated with this  
10 year's benefits. So this year service is a better way of  
11 putting it. That's a component of the contribution. I  
12 haven't talked about past service liabilities, but this is  
13 the piece attributable to the coming years of service  
14 credit.

15 Q. In your outline of 228, you reference the  
16 actuarial value report on page 45. Is there something  
17 there on Exhibit 229 on page 45 you want to direct our  
18 attention to?

19 A. In the report -- in the report on page 45 it has a  
20 glossary of terms just as a short definition of the normal  
21 cost. Basically, it's the same concept. It's the cost  
22 allocated for the current year's service credit.  
23 Different ways of phrasing the same thing.

24 Q. Can you explain to the Court what the term  
25 "actuarial liability" means.

26 A. So, again, this is also defined in the report, but  
27 it's a concept of there's -- in addition to the cost for  
28 the coming years, there's a liability for years of past

1 credit. Sometimes called the actual accrued liability,  
2 sometimes called the actual liability. Those past service  
3 liabilities. In many ways it's accumulation of past  
4 normal cost that haven't yet been paid out in the form of  
5 benefit payment, so we have two basic concepts in terms we  
6 develop contribution. One is a normal cost of benefits  
7 coming up in the next 12 months and the other is an  
8 actuarial liability for liabilities for prior years.

9 So, like, in the case of a retiree, they're not  
10 working anymore. They have no normal cost, but their  
11 whole present value of their benefits is the actuarial  
12 liability, actuarial accrued liability. In the case of an  
13 active employee, some of their liabilities in the past,  
14 some is for the coming year or future years.

15 Q. The concept of actuarial value plan assets, can  
16 you explain to the Court what that term means.

17 A. Right. I think most people are familiar with the  
18 concept of you have assets in the plan. There's a value  
19 to those assets, say market value to those assets. And  
20 one problem with the market value is people very well --  
21 you have a good year in the market, the assets are up, a  
22 bad year, the assets are down.

23 And in determining pension contributions, there is  
24 volatility, and the contribution rate in large part  
25 because of investment retirements being higher or lower  
26 than you assume. So in order to sort of smooth out the  
27 market gains and losses on investments, there's a  
28 methodology employed here, common in many other plans,

1 called asset smoothing method, where we smooth out the  
2 investment gains and losses above or below what we expect  
3 we're going to earn.

4 And the result is what's called the actuarial  
5 value assets. It's not a real value in many ways. The  
6 market value is the market value. It's a smoother, less  
7 volatile value of assets. In this particular case, they  
8 take investment gains and losses above the assumed return  
9 and they phase them into a five-year period, which is also  
10 a reason why a valuation not only shows what this year's  
11 contribution does because it does a forecast. Doing a  
12 forecast, you can say, look, there's a market value of one  
13 value, an actuarial value of a different value. That  
14 difference will be phased in over the next five years and  
15 will affect future year contributions.

16 So it's a common method used in many plans to  
17 smooth out the market gains and losses over a five-year  
18 period, and it is what is used to determine the unfunded  
19 liability, is the actuarial value assets, not the market  
20 value that you're going to end up advertising and funding  
21 in this evaluation report.

22 Q. Based on your experience, Mr. Lowman, can you tell  
23 us, are all public plans actuarial valued in this manner  
24 that you've described, normal cost and actuarial prior  
25 service costs?

26 A. Not all plans, but the vast majority of plans have  
27 a calculation like this. Some employers actually don't  
28 fund the actuarial required contribution, which is a

1 problem, but most of my clients, this is how they fund  
2 their plans.

3 Q. You've described the normal cost and you've  
4 described the actuarial liability, which is the past  
5 service cost. Is this what combined leads to the  
6 actuarial reaching a contribution rate?

7 MS. ROSS: Objection. Leading.

8 THE COURT: Overruled.

9 THE WITNESS: They need to do a few more steps  
10 here. We'll get to under key factors like amortization.  
11 But those are the key building blocks in terms of  
12 liabilities and assets.

13 BY MR. PLATTEN:

14 Q. Moving down on Exhibit 228. The next heading is  
15 General Funding Rules in the San Jose Plans Without  
16 Measure B. Can you just describe how the San Jose plans  
17 are funded.

18 A. As a general matter, the employees pay 3/11ths of  
19 the normal cost of the year. The normal cost is a fairly  
20 stable number. It has changed a little bit in the last  
21 few years as the investments return assumption or discount  
22 rate has been lowered, but other than that, it's a pretty  
23 stable number, a percent of the payroll.

24 Q. You used a term we haven't defined yet, "discount  
25 rate." Can you describe to the Court what the term  
26 "discount rate" refers to.

27 A. I'll explain it later, also, maybe under key  
28 factors. Basically, when you do your valuation, you have

1 to make a number of assumptions. The most key assumption  
2 is what you think assets are going to earn in the future,  
3 because we generally are going to fund this assuming some  
4 level of future investment return, expected rate of  
5 return. That's sometimes referred to as a discount rate  
6 because when you're determining the actuarial liability,  
7 what you're doing is you're talking future benefit  
8 payments and discounting back to today. So it's an actual  
9 present value concept of discounting future payments to  
10 get them into today's dollars, more or less. So that  
11 discount rate is probably the most critical of all the  
12 assumptions.

13 Q. You say it's critical. Can you explain what does  
14 it mean, for example, if the discount rate is reduced?

15 A. If the discount rate is reduced, the normal cost  
16 increases, the actual liability increases, the City's  
17 contribution increases, the employees' share normal cost  
18 increases, and you have a more conservative set of  
19 assumptions.

20 Q. Conversely, if the discount rate is assumed at a  
21 higher level?

22 A. All is reversed. The normal cost goes down, the  
23 actuarial liability goes down, the City's cost goes down,  
24 and you have a less conservative set of assumptions.

25 Q. Is that because if it goes higher, you're assuming  
26 that your value of asset growth in the future will be a  
27 higher figure?

28 MS. ROSS: Objection. Leading.

1 THE COURT: Overruled.

2 THE WITNESS: It also implies that more of the  
3 benefit to be funded through investment return of the  
4 trust fund and not from the principal that's actually  
5 contributing to the trust fund. Because at the end of the  
6 day, you've got to pay benefits either from the money you  
7 put into the plan or what the fund earns.

8 BY MR. PLATTEN:

9 Q. You said the employees in San Jose plans pay  
10 3/11ths of normal cost. What's the City's contribution  
11 rate?

12 A. It's the other 8/11ths of the normal cost plus the  
13 unfunded liability cost which is a more volatile number.  
14 There's more details when we cover that that are in the  
15 report on page 1.

16 Q. Let's take a look at those. 229, page 1. What  
17 are the details you wish to bring to our attention?

18 A. On page 1, the middle of the page there's  
19 something called evaluation basis, and there's three  
20 bullet points defining the member contributions and five  
21 bullet points defining the employer contributions. This  
22 has changed a little bit over time, but the first bullet  
23 point is the bulk of the employees' contribution. They're  
24 paying 3/11ths of normal cost.

25 The second bullet is, there's a \$3 million  
26 expense. We're talking about 3 million out of about \$120  
27 million for administrative expenses to run the plan. Not  
28 the investment manager fees but the other fees that run

1 the plan. And this is allocated, being basically built  
2 into the normal cost and actuarial liability and saying  
3 3/11ths accrued, but the actuary, a couple years ago,  
4 changed to what's term funding basis, just added  
5 \$3 million to costs, and this is explained in more detail,  
6 which you probably don't want to go over, on page 37, 38  
7 of the report. Basically, it's still tied to the 3/11ths  
8 concept, just a little different. Again, I can spend a  
9 lot of time explaining it. It's basically a 3/11ths  
10 concept but a little different than what it used to be.

11 Q. The third bullet point?

12 A. In 1996, as part of the award decision, there was  
13 benefit improvements made, but there was a delay between  
14 sort of when they were adopted and really when they were  
15 put into effect, and there was a normal cost for a period  
16 of time that the employees should have paid their share  
17 but they didn't. It took a while for the decision to get  
18 made. So a portion of the cost had to somehow get charged  
19 to the employees in the form of future normal cost.  
20 Normal cost owed a period of time in the past. There was  
21 a special rate set up for that. It's a very small number.  
22 If you look at page 22 of the report, you can see the  
23 first line in that table. It says 1996 benefit  
24 improvement, and you'll see a member contribution for the  
25 police officers of \$110,000 and the fire members \$67,000.  
26 Page 21, first line also shows the outstanding balance is  
27 about \$400 million left of unfunded liability to pay off.

28 Basically, what you have is they're not

1 responsible for all the unfunded liabilities for benefit  
2 improvements, just for the liabilities being accumulated  
3 past cost just for that period of time between the  
4 effective date and adoption date of this benefit change  
5 because, again, they couldn't put it in right away so they  
6 decided to sort of capitalize their present value and  
7 amortize over a period of years.

8 Q. I want to see if we can understand that Bogue  
9 decision. You participated in that arbitration?

10 A. Yes.

11 Q. An expert witness on behalf of labor organization?

12 A. Yes.

13 Q. That was Fire Fighters Union and the Police  
14 Officers' Association?

15 A. Yes.

16 Q. And when benefit improvement or benefit  
17 enhancements is implemented, is there a prior service  
18 cost?

19 A. Often there is.

20 Q. Can you explain why that would be to the Court.

21 A. This particular change was made retroactive. It  
22 applied to all their service credit. So when that  
23 happens, the liabilities go up and the normal cost goes  
24 up. And what we're focused on here at this particular  
25 bullet point is I got involved in 1997. So the question  
26 is what happens with that normal cost in '96, '97? Pre  
27 '96, it was sort of the City's responsibility, but from  
28 '96 to '97, a share of it was the employee responsibility,

1 but that time had passed. They couldn't ask all the  
2 employees to write a check for a year or two. Instead  
3 they said we'll just amortize and pay over a period of  
4 time.

5 Q. Looking at page 22, the chart from Exhibit 229,  
6 that figure for the 1996 benefit improvement, then,  
7 represents that loss normal cost that is now being paid  
8 over time?

9 A. It's the amortization of that.

10 Q. There's a second entry on that chart, Mr. Lowman,  
11 UAL. What does that refer to?

12 A. That's unfunded liability. If you go back to page  
13 21 it looks like it was established in 2003. It looks  
14 like -- you notice there's really nothing before 2003  
15 except for the 1996 piece that the employee is responsible  
16 for. So it looks like in 2003, they took the unfunded  
17 liability and sort of reamortized it all. What you see on  
18 pages 21 and 22 is layers on unfunded liable. There is an  
19 unfunded liability. There isn't just one number amortized  
20 over a period of time because usually every year there's  
21 another layer added. There's another unexpected actuarial  
22 gain or loss. Usually every year you add one or more  
23 layers. You may add one because of experience being good  
24 or bad, you may add a layer because of benefits  
25 improvements or assumption changes. So there's a whole  
26 series of layers, but it looks like in 2003, all those  
27 layers were consolidated to one layer. Except, again,  
28 they held back the '96 piece because that was the

1 employees paying for that.

2 Q. The chart on page 22 reflects that the employees  
3 paid nothing for that; is that correct?

4 A. That's correct.

5 Q. Is that what is a portion of prior service, this  
6 UAL figure?

7 MS. ROSS: Objection. Leading.

8 THE COURT: Sustained.

9 BY MR. PLATTEN:

10 Q. What is this UAL figure as compared to the notion  
11 of prior service?

12 A. It is a slice of the past service liability,  
13 unfunded past service liability.

14 Q. That is covered entirely by City contributions  
15 that's reflected in the chart?

16 MS. ROSS: Objection. Leading.

17 MR. PLATTEN: I'll rephrase, your Honor.

18 THE COURT: Okay. Please rephrase, and then I  
19 want to be sure I understand what you and the witness were  
20 referring to when you said UAL figure.

21 BY MR. PLATTEN:

22 Q. Can you point out to the Court on chart -- on the  
23 chart on page 22 of Exhibit 229 the second entry there  
24 that's labeled in caps UAL. Do you see that?

25 A. Yes.

26 Q. What does UAL stand for?

27 A. It's --

28 THE COURT: I got that. I just didn't know what

1 you were referring to when you said the UAL figures. I  
2 think it was singular. Please clarify that.

3 BY MR. PLATTEN:

4 Q. Does the chart reflect any contribution by members  
5 towards the UAL cost?

6 A. No.

7 Q. Who picks up the UAL cost of the operation of the  
8 plan?

9 MS. ROSS: Objection. Leading. Calls for legal  
10 conclusion.

11 THE COURT: Overruled.

12 BY MR. PLATTEN:

13 Q. Mr. Lowman?

14 A. Generally it's the City pays it off.

15 THE COURT: Maybe I can just ask a question. So  
16 Mr. Lowman, the whole chart is called UAL Amortization  
17 Payments. Then there's an item on the left-hand column  
18 that says UAL. So what are you talking about when you  
19 said UAL figure as compared to prior service figures?

20 THE WITNESS: Maybe if I can just back up to page  
21 21 just for a second. So at the bottom there's a total  
22 line there. It's the total unfunded liability. They  
23 break it up between two pieces of retirement COLAS.  
24 Basically you get a number of 346 million and 380 million  
25 dollars. You add them together, that's the unfunded  
26 liabilities of the plan. And we're going to put them into  
27 layers. Usually every year we add a layer. Sometimes  
28 more than one layer. They will add up to whatever the

1 unfunded liability is. We do it in layers because you may  
2 want to pay off a layer every 20 years. You started ten  
3 years ago so you've got ten years to pay off that layer.  
4 When you're done, that layer disappears.

5 In the case of the second source entry, the UAL,  
6 it is the oldest entry except for this special 1996 entry.  
7 And what that tells me is that in 2003, they sort of  
8 abandoned the layer concept or restarted it, at least, and  
9 consolidated the unfunded liability into one layer which  
10 now is five years left to pay off.

11 So UAL is interesting because it's not the current  
12 UAL, total UAL, unfunded actuarial liability, but it is,  
13 with the exception of the '96 benefit improvement, the  
14 only -- what the UAL was back in 2003.

15 So page 22, 21, is the amount of the unfunded  
16 liability which is the layer, and page 22 are the payments  
17 toward each of the layers. So when you get to page 22,  
18 when you have a payment, you find that there are -- we're  
19 now having -- breaking it up between who pays for it.  
20 Does the member pay for it or does the City pay for it.  
21 So now we have sort of a column of members, column for  
22 City, column called total. We have three columns for the  
23 police, three for the fire. They've been separating these  
24 costs for the policemen and firemen. City probably  
25 carries most of the total City contribution, but that's  
26 how it's divided up here. There are a few entries here,  
27 looks like three where there's a member contribution  
28 toward a amount of unfunded liability. But the majority

1 of the unfunded liabilities is just the City that pays for  
2 that.

3 And what Mr. Platten was getting at was why do the  
4 members have so many unfunded liabilities, because as a  
5 general rule, it is the City that pays the whole unfunded  
6 liability and the members just pay a portion of the normal  
7 cost.

8 THE COURT: Okay. I think it's time for another  
9 question.

10 MR. PLATTEN: Thank you, your Honor.

11 BY MR. PLATTEN:

12 Q. Going back to 228, Mr. Lowman. You've described  
13 to us what the discount rate is. Can you explain to us  
14 what the term "assumed future pay increases" referred to?

15 THE COURT: This sounds like a new topic.

16 MR. PLATTEN: It is.

17 THE COURT: Perhaps this is a good time for our  
18 ten-minute break.

19 MR. PLATTEN: At your discretion.

20 THE COURT: Very good. We're in recess for ten  
21 minutes.

22 (Recess.)

23 THE COURT: We're still missing the POA.

24 Thank you, Mr. Platten. Go ahead.

25 BY MR. PLATTEN:

26 Q. Before we continue, Mr. Lowman, during the break,  
27 I think the reporter put her hands in ice, so I want to  
28 make sure and remind you to speak into the microphone and

1 as slowly as possible. Okay?

2 We left off on Exhibit 228. We're returning to  
3 the key factors. I believe you described discount rate.  
4 Is there anything else you want to say with respect to  
5 discount rate?

6 A. No. I think I covered probably enough.

7 Q. The next bullet talks about assumed future pay  
8 increases. What does that refer to?

9 A. The benefits are tied to salaries. So when you  
10 determine liability, you're trying to determine the future  
11 benefits they're going to get paid, and projecting future  
12 pay levels is an important factor. So the higher your  
13 assumed rate of pay increases in the future, the higher  
14 your projected benefits, the higher your liabilities, the  
15 more you want to fund now.

16 Similarly, if it's a pay cut, then the benefit  
17 liabilities will go the other way. They will be reduced.  
18 They're expecting to pay smaller benefits payment. The  
19 discount rate is the most important assumption. This may  
20 be number two as far as importance.

21 Q. Let me see if I understand your testimony,  
22 Mr. Lowman. If I assume pay in a particular level, but in  
23 fact there is a pay cut, what does that mean?

24 A. That the benefits will be smaller than you  
25 anticipated and the liabilities will be reduced and the  
26 dollar amount and contribution will be reduced.

27 Q. That, I believe, you've identified along with the  
28 discount rate is the second critical factor in coming to

1 cost analysis?

2 MS. ROSS: Objection. Leading.

3 THE COURT: Overruled.

4 THE WITNESS: There are, again, many factors like  
5 mortality tables, retirement rates, but generally, again,  
6 discount rates is the most important, the strongest impact  
7 when you change that. And pay increase usually is a  
8 distant second. Usually the second.

9 BY MR. PLATTEN:

10 Q. You reference a page from the Exhibit 229, page  
11 45. Is there anything on that page you wish to point out  
12 to the Court?

13 A. No. I don't think so.

14 Q. The next bullet talks about funding method. What  
15 do you mean by funding method?

16 A. You can determine the value of the benefits to be  
17 paid, but somehow you have to allocate those benefits  
18 costs to particular years. So in this plan, like many  
19 plans, the main funding is entry age normal funding  
20 member. It's a method that takes for employees and  
21 allocates the cost of benefits being provided over their  
22 entire career in a fashion such that the cost is a level  
23 percent of payroll over their entire career. It isn't the  
24 only method that can be used. There are other funding  
25 methods as well that allocate costs differently.  
26 Different years of service. But you have to have a  
27 funding method to determine your contribution rate.

28 Q. In your experience, Mr. Lowman, is the entry age

1 normal cost method the predominant method used across the  
2 United States for public pension plans?

3 A. Yes.

4 Q. Is there anything on the actuarial valuation  
5 report, Exhibit 229, that you wish to point out to me in  
6 court?

7 A. On page number 26, it sort of highlights the key  
8 parts of this valuation. It mentions the valuation date.  
9 This is the June 30, 2012, valuation. Mentions every  
10 funding method, which is entry age normal. We're going to  
11 talk about amortization methods. It talks about the fact  
12 we do layered amortization. It talks about the equivalent  
13 single amortization period, 14 years.

14 Basically, the unfunded liability is put on  
15 layers, but on average, you got about 14 years left to pay  
16 off your unfunded liability. There's a five-year  
17 smoothing method for the assets that we take, gains and  
18 losses, and we phase them over five years.

19 It talks about the investment return assumption of  
20 7.25. That's the discount rate we were talking about  
21 before. It talks about wage inflation and cost of living  
22 adjustments. This sort of summarizes a lot of the key  
23 aspects of the plan. Other parts in the report are more  
24 details, some of these assumptions and methods that are  
25 being used.

26 THE COURT: The entry age normal funding method  
27 refers to a level percentage of payroll contribution over  
28 the course of an employee's employment?

1 THE WITNESS: Yes. That's the goal.

2 THE COURT: Thank you.

3 BY MR. PLATTEN:

4 Q. Just to clarify or draw your attention to one  
5 entry on page 26, the box table V-2. There's also listed  
6 three actuarial assumptions. We're going to get to  
7 actuarial assumptions in a moment, but I want to have you  
8 draw your attention to the cost of living adjustment of  
9 three percent per year. What does that reflect?

10 A. It's actually a footnote there. Basically, the  
11 benefits that are being provided here are not just the  
12 initial benefit time of retirement but they go up every  
13 year. In this particular case, it goes up fixed three  
14 percent every year. It's not actually tied to the CPI or  
15 cost of living, say fixed three percent. In some ways  
16 it's not really an assumption. It's actually a planned  
17 provision. The planned provision is it goes up three  
18 percent in the year, and the actuary is assuming these are  
19 going up three percent each year. When the actuary  
20 determines its values and the actual liability and costs,  
21 it has built into it an assumption of three percent a year  
22 increases the benefits after you retire.

23 Q. That is the planned provision itself?

24 A. Yes. Which is why it's footnoted as such.  
25 Normally, here you put your assumptions, but the CPI, COLA  
26 might be, but here it's actually a planned provision.

27 THE COURT: Is that a typo in the footnote?  
28 Should it say plan provision?

1 THE WITNESS: Yes.

2 BY MR. PLATTEN:

3 Q. Back to 228, the last of the four bullets on key  
4 factors is, in fact, amortization period. We talked a  
5 little bit about that. Can you tell the Court what is  
6 meant by that term, referring if you need to to any of the  
7 pages on Exhibit 229.

8 A. Again, we have an actuarial liability or past  
9 service liability, we have a value of assets. In this  
10 case, smooth or actuarial value assets and the difference  
11 between the two is the unfunded liability. The unfunded  
12 liability, we can ask the City to write a check to pay it  
13 all off. Not good funding practice. It would be very  
14 volatile. So what you want to do is the actuary and the  
15 board will adopt an amortization procedure, how many years  
16 to amortize the unfunded liability.

17 Q. You said it was not good practice, very volatile.  
18 Can you explain that to the Court.

19 A. One of the goals in developing a good funding  
20 policy is to be concerned about, in a generational equity,  
21 including taxpayers, and especially if the plan gets  
22 larger, the unfunded liability is volatile. It does  
23 change. One year the market is up, it gets to be large.  
24 The market -- it gets very small when the market is bad.  
25 The liability gets very large. And we don't want to  
26 simply say the unfunded liability changed by \$300 million  
27 this year, let's go ahead and write a check for  
28 \$300 million. Or the other way. The market did great.

1 We have a surplus. Let's pull the money out of the plan.  
2 It's not going to work that way.

3 Instead what you want to do when you have unfunded  
4 liability to come up with a period of years over which to  
5 amortize. You don't have too many. On the other hand,  
6 you don't have too few. One year is too few, it means you  
7 write a check. The unfunded liability every year. The  
8 plan has a practice to amortize the unfunded liability  
9 every layer, with either -- I believe it's 16 or 20 years,  
10 depending on the source of the unfunded liability, has  
11 practice to do it in layers. And you could take more of  
12 your time to pay off. You could take perhaps 30 years to  
13 pay it off, but there's a balance, and the planned years  
14 decided to pay off the unfunded liability in layers so  
15 they won't run out. They will be paid off every year, 16  
16 or 20 years.

17 Q. To your knowledge, have there been occasions when  
18 this police and fire plan in San Jose has had more assets  
19 than liabilities?

20 A. Yes.

21 Q. And does that mean the plan is then called over  
22 funded?

23 A. That would be one definition of over funded.  
24 Wouldn't be the only definition. That would be a common  
25 reference.

26 Q. Can you recall for the Court when the years were  
27 that the plan was over funded with assets in excess of  
28 liabilities?

1           A.    I know before the 2001 time frame, it was over  
2 funded. I believe more recently there was a short period  
3 of time, the 2008 time frame, it was over funded as well.

4           Q.    I interrupted you, Mr. Lowman. You were  
5 explaining amortization periods. If you can pick up the  
6 thread of your statement of your testimony, I'd appreciate  
7 it.

8           A.    So I think we've already looked at pages 22 and  
9 21, and it just shows the layers of amortization. If you  
10 go back to page 21, you can see like in 2012, a course  
11 column and date column. You see two pieces set up, 2012,  
12 experience loss and assumptions change. Experience loss,  
13 which is largely a carry over of the investment losses  
14 from 2008 and 2009 that were being phased in. It was  
15 amortized for 16 years. The remaining period says 16  
16 years in 2012 experience loss. The last line with the  
17 remaining period line is the assumption change. That's  
18 when largely they lowered the discount rate, the  
19 investment assumption. That generated an increase of  
20 unfunded liability. That's amortized over 20 years.  
21 Generally, they're amortizing assumption changes every 20  
22 years and experience gains and losses every 16 years.

23                I think I mentioned this before, but it's a little  
24 complicated when you have all these different layers,  
25 which is why they do what they do in 2003 and sort of  
26 restarted, one single line, but on page 26, it does say on  
27 page 26 that the average -- the equivalence single  
28 amortization period is 14 years.

1           One way of looking at it while it is in layers and  
2 will get paid off individually when their time period has  
3 expired, on average you've got about 14 years left to pay  
4 off the unfunded liability.

5           Q.   Anything else with respect to the amortization  
6 period?

7           A.   No.

8           Q.   So we've now produced the actuarial report. I  
9 take it that combines a number of these items; is that  
10 correct, Mr. Lowman?

11          A.   Yes.

12          Q.   And looking at the next entry on 228, you talk  
13 about the specific factors combined. Can you just go  
14 through that for the Court's benefit.

15          A.   Basically, what the actuary has to do every year  
16 is ask the City, usually, for the census. Information on  
17 all the retirees, what their payments are, what their  
18 dates of birth are, all the employees' dates of hire, and  
19 so on. The census of the members in the plan are  
20 collected every year. Then we take that, and we also get  
21 the asset information every year. This particular report,  
22 Exhibit 229, they get the June 30, 2012, asset  
23 information.

24                They have assumptions and methods. Maybe the same  
25 assumptions and methods they used the year before where  
26 they may update some. Like in this particular case, they  
27 lowered the discount rate by a quarter percent between the  
28 2011 valuation and 2012 valuation. Many of the

1 assumptions stay the same from year to year. They don't  
2 change all that frequently.

3 Then we have the benefit provisions. Once I have  
4 the census of the projected peoples' salary or when I  
5 think they're going to leave or become disabled or die, I  
6 put that together with benefits. I have provisions. I  
7 calculated benefits. When you put all that information  
8 together, you now can calculate cost, actual liability,  
9 your unfunded liabilities, and you can calculate the  
10 contribution due goes with the budget for the next fiscal  
11 year. In this case, it can be 2012. This is the budget  
12 number for 2014.

13 And they also do a projection of contributions in  
14 future years. Again, those are just projections. The 14  
15 numbers pretty much locked in. For the most part, the  
16 evaluation is done, and then future years is just this is  
17 what we think is going to happen so you can sort of budget  
18 for future years. They'll get -- we placed with actual  
19 numbers once their evaluation gets done in a later year.

20 Q. Is there anything on the actuarial value report  
21 that we haven't looked at yet that you want to walk the  
22 Court through?

23 A. If I start walking through, I'm afraid I'm going  
24 to cover every page. I think we probably covered enough.

25 Q. Let's turn back to something we touched upon  
26 briefly, which is the SRBR benefit, which I believe,  
27 Mr. Lowman, correct me if I'm wrong, you referred to as a  
28 gain share plan; is that correct?

1 A. Yes.

2 Q. Now, what makes up the corpus or the initial  
3 funding of the SRBR?

4 A. First, if I can mention on page 43 of the report,  
5 Exhibit 229, it actually defines the benefit and the  
6 Supplemental Retiree Benefit Reserve that defines the  
7 benefit. The basic concept is you're going to take some  
8 of the so-called excess assets or returns above the  
9 assumption. In this case, ten percent, and you're going  
10 to sort of skim them off.

11 So your question is where does the money come  
12 from? The money goes with the SRBR account, comes from  
13 earnings on the fund, and the fund, of course, arises from  
14 contributions made by the members and by the City.

15 Q. Is there a cost to the SRBR to the plan?

16 A. Yes.

17 Q. What is that cost?

18 A. The plan actuarial in this report put a cost of it  
19 of 22 basis points times the plan assets. Let me find the  
20 number.

21 Turn to page 18, table III, line 2. There's a  
22 number there of \$5.8 million. But I probably should spend  
23 a little more time defining how it's designed.

24 Q. Please do.

25 A. The SRBR, like any gain sharing, provides a  
26 benefit; therefore, it has a cost. And the question is,  
27 sort of, how do you determine what that cost is. Because  
28 in some years, the fund does earn return and there's no

1 cost. You can say because there's no money being skimmed  
2 off to go to benefits. In other years, the fund does  
3 well, and some percent, ten percent is skimmed off to  
4 provide more benefits.

5 So what the actuary did was to derive at this  
6 number of \$2.8 million was to figure out on average, more  
7 or less, in an average year how much is being skimmed off  
8 based on the current value and the assets and the fund,  
9 and they arrived at a number of \$5.8 million. That was  
10 determined to be the cost, not normal funding basis, but  
11 what I call a term cost basis. The average cost for this  
12 year based on these assets. So that's one way of  
13 determining the cost for the SRBR is looking at sort of an  
14 average cost based on the current year's assets. It's not  
15 the only way, but it is a way.

16 Q. The SRBR in the San Jose police and fire  
17 retirement plan has been in existence since about 2001; is  
18 that correct?

19 MS. ROSS: Objection. Leading.

20 THE COURT: Overruled.

21 THE WITNESS: Right.

22 BY MR. PLATTEN:

23 Q. To your knowledge, at that point in time, did the  
24 actuary -- the then actuary of the plan raise issues that  
25 the SRBR had some sort of cost that needed to be  
26 considered?

27 MS. ROSS: Objection. Lacks foundation.

28 THE COURT: Overruled.

1 THE WITNESS: Yes.

2 BY MR. PLATTEN:

3 Q. Let's go now to something else, Mr. Lowman.  
4 That's the retiree health care. Back to Exhibit 228 if  
5 you would, please. You talk in the last major category  
6 here on 228 about retiree or retirement medical benefits,  
7 and you use the term "other post employment benefits" or  
8 the acronym in caps, OPEB, pronounced OPEB. Can you tell  
9 the Court what that's in reference to.

10 A. When the accounting profession, in this case the  
11 Governmental Accounting Standards Board, GASB, created  
12 some rules years ago about how to measure employees'  
13 expense for retiree health care benefits, they coined the  
14 term OPEB, or other post employment benefits. What  
15 happened is the accounting profession had a set of rules  
16 in how to account for pension benefits and a different set  
17 of rules on how to account for retiree medical benefits  
18 which is the bulk of what this is.

19 Q. Just so we're clear, Mr. Lowman, so the reporter  
20 is clear on the record, you used the term GASB. That  
21 acronym in caps, GASB; is that correct?

22 A. Yes. Again, it stands for the Governmental  
23 Accounting Standards Board. So we've generally referred  
24 to them as OPEB benefits and picked up one of the  
25 accounting profession's terminology. We're talking about  
26 generally the retiree medical and dental benefits.

27 Q. Are the retiree health care benefits and dental  
28 benefits in San Jose funded in the same way that pension

1 benefits are funded?

2 A. No.

3 Q. Can you explain to the judge how they're funded.

4 A. The funding has changed over time. Initially,  
5 there was a -- called an unusual ten-year funding plan,  
6 which was better than what I'll call pay-as-you-go  
7 funding. Many governments had health care benefits for  
8 retirees. They use pay-as-you-go funding, meaning they  
9 figure out what that year's cost is going to be for  
10 current retirees and they fund that. They don't prefund  
11 it. They don't build up a trust fund.

12 For years in San Jose, these benefits, OPEB  
13 benefits had an unusual sort of ten-year funding basis  
14 where they figured out what the benefits paid for in the  
15 next ten years were worth, how much they had set aside and  
16 funded the difference over the next ten years. This is  
17 sort of a rolling ten-year funding plan. It wasn't  
18 prefunding. It wasn't the basis that the accountants used  
19 for accounting expense. It didn't measure any liabilities  
20 for benefits paid beyond ten years. And what's happened  
21 in the last several years, is that the City and employees  
22 have moved away from this ten-year funding plan.

23 Although there is some similarity, one of the key  
24 factors with OPEB is the cost sharing is different. In  
25 the case of the OPEB benefits, the deal is that employees  
26 and the City both pay for half of the OPEB benefits.  
27 That's not the deal with pension. When I say half, I mean  
28 half of everything including both normal cost and the

1 unfunded liability, but that really isn't how it's  
2 calculated. They're both paying the same amounts for  
3 these benefits, but it's really the key there.

4 So what's happened is that the contribution was  
5 moved off of this unusual ten-year funding plan basis and  
6 heading in the direction of true prefunding, trying to pay  
7 for the normal cost and amortization for the unfunded  
8 liability. The unfunded liability, in a relative sense,  
9 is much larger of the OPEB benefits because they have a  
10 history of prefunding. So the funded ratio of the OPEB  
11 benefits is a lot smaller. As a result, things like the  
12 amortization period tends to be a lot longer as well.

13 But while we're moving toward what I'll call real  
14 prefunding, like pension plan, there are caps that are  
15 applied to the employer and the contributions, and these  
16 caps are keeping the contribution below the level of full  
17 prefunding as you would with a pension plan.

18 Q. These are caps negotiated and set forth in  
19 collective bargaining agreements?

20 MS. ROSS: Objection. Lacks foundation.

21 THE COURT: Would you clarify whether this is a  
22 matter of his expert opinion or whether he's a percipient  
23 witness to this matter.

24 BY MR. PLATTEN:

25 Q. Do you have knowledge concerning the caps that are  
26 contributed to the retiree health care plan for the plans  
27 in San Jose?

28 A. Yes.

1 Q. What is that knowledge based on?

2 A. I was involved when the benefits were being  
3 bargained -- the funding was being bargained for.

4 Q. Does that include knowledge that there are caps  
5 and contributions by employees and by the City to the  
6 retiree health care benefits in both plans, less than full  
7 prefunding?

8 MS. ROSS: Objection. Lack of foundation and  
9 hearsay.

10 THE COURT: Are you putting forward Mr. Lowman as  
11 a percipient witness of this fact, or are you saying as an  
12 expert, this was part of the information you received?

13 BY MR. PLATTEN:

14 Q. As an expert, are you aware of this information as  
15 part of what you received, Mr. Lowman?

16 MS. ROSS: Objection, your Honor. We are now  
17 going way beyond what was covered in the deposition. In  
18 the deposition and in your in limine order --

19 THE COURT: What's the legal basis for your  
20 objection?

21 MS. ROSS: Violates your in limine order. He's  
22 limited to talking about funding, which is what is covered  
23 in the deposition, and this was not -- this is not a  
24 funding topic.

25 MR. PLATTEN: This goes directly to funding.

26 THE COURT: That objection is overruled. We're  
27 determining whether the information that was the subject  
28 of your previous objection as to that, Mr. Lowman is being

1 put forth as a percipient witness, which it sounds like  
2 from the rephrasing of your question he's not, or whether  
3 this is a assumption he's making as an expert. So go  
4 ahead.

5 BY MR. PLATTEN:

6 Q. Did you receive information concerning  
7 contribution caps on the employers and the employees in  
8 the City of San Jose for payment towards prefunding  
9 retiree health care benefit?

10 A. Yes.

11 Q. Was that information contained in collective  
12 bargaining agreements?

13 MS. ROSS: Objection. Hearsay.

14 THE COURT: He's basing his opinion on this, which  
15 he's entitled to do. It's overruled.

16 BY MR. PLATTEN:

17 Q. Mr. Lowman?

18 A. Yes.

19 Q. I think we're down to two final questions,  
20 Mr. Lowman. You talked and you explained GASB to us and  
21 the accounting standards. Does the City, under the GASB  
22 requirement, book its liability for the pension plans?

23 A. Under the current accounting rules, all the City  
24 would book would be whether they didn't make the actuarial  
25 required contributions. They had been making those  
26 contributions so they don't book in the current rules.  
27 Those county rules are going to change, though, in fiscal  
28 '15.

1 Q. How about with respect to the retiree health care  
2 plan?

3 A. The City is not paying determined contribution  
4 amounts but caps, and, therefore, the difference between  
5 what the actuarial determined contribution would be and  
6 what they actually are funded and cast in place is  
7 creating what's called a net OPED, O-P-E-D, net OPED  
8 obligation, or NOO. That is probably showing up in the  
9 City's books.

10 Q. Is that obligation 100 percent of the cost or 50  
11 percent of the cost?

12 A. A complicated question. The City is responsible  
13 for half the cost of the plan. However, the way they've  
14 applied the accounting rules here is that they determined  
15 the full funding requirement and have subtracted from that  
16 the employees' current share, and I understand they booked  
17 the difference. That actually ended up being something  
18 between the full amount and 50 percent. I think it's a  
19 flaw in the accounting rules, but that's accounting. At  
20 the end of the day, I think the key issue is that -- that  
21 was a little different, by the way. Basically medical.  
22 The City is responsible for 50 percent of the obligation.

23 Q. Last question, Mr. Lowman. I'm going to ask you  
24 about a term that doesn't appear on 228, and that's the  
25 term "actuarial soundness." You've heard that term  
26 before?

27 A. Yes.

28 Q. Can you describe to the Court what that term means

1 and whether you have any reservations about the use of  
2 that term.

3 A. Yes. It's a word I try to avoid using. It's a  
4 word my clients usually want to hear me say. And my  
5 concern is basically that you've got three different  
6 issues here. One is, can a plan B actuary sound say it's  
7 not 100 percent funding. Plans only say 80 funding can  
8 they be actuarial sound. Some would say yes, as long as  
9 you can afford the plan. As long as you can afford the  
10 cost and the amortization for the funding, you're  
11 actuarially sound.

12 To some, actuarial sound means you can afford the  
13 plan. To others, actuarial sound might mean at this  
14 discount rate of 7.25 percent, you're 100 percent funded  
15 and they're not looking at whether or not the employer can  
16 afford the plan or not. You could be 100 percent funded  
17 and not afford the plan.

18 The other issue is that when you talk about  
19 actuarial sound, often people are looking at how well is  
20 the plan funded, and that gets into perks. To some,  
21 actuarial sound means you might have enough money to cover  
22 the benefits that are covered up to date. That would be a  
23 very different calculation. You couldn't buy it at seven  
24 and a quarter percent.

25 There are sort of a lot of traps to actuarial  
26 sound, what people might think it means. To the layman,  
27 they want to hear the actuary say the plan is actuarial  
28 sound. To myself and a lot of other actuaries, we try to

1 avoid the use of actuarial sound. We like to define what  
2 it is and what it isn't.

3 MR. PLATTEN: Your Honor, I would like to move  
4 into evidence Sapien Exhibits 228 and 229.

5 MS. ROSS: Your Honor, objection to 228. That's  
6 the exhibit that he said -- at his deposition that he said  
7 he didn't know whether he was going to testify to or not  
8 except for funding. Except for funding, we would object  
9 to that.

10 THE COURT: What's the legal basis for the  
11 objection?

12 MS. ROSS: Hearsay, your Honor, and beyond the  
13 scope of his deposition according to your in limine  
14 ruling.

15 THE COURT: Any objection to 229?

16 MS. ROSS: No.

17 THE COURT: What does 228 add to his testimony?  
18 It seems like it's an outline if he's now said what he's  
19 going to say.

20 MR. PLATTEN: I agree. I think for completeness  
21 on the record, your Honor.

22 THE COURT: The objection is sustained to 228.  
23 229 is received.

24 (Plaintiffs' Exhibit 229, previously marked for  
25 identification, was received in evidence.)

26 MR. PLATTEN: Thank you. No further questions at  
27 this time.

28 THE COURT: Anything for AFSCME?

1 MR. PATERSON: Just a few, your Honor.

2  
3 CROSS-EXAMINATION

4 BY MR. PATERSON:

5 Q. Mr. Lowman, you mentioned GASB rules that would go  
6 into effect in, I believe, you said 2015?

7 A. For plural counties, 2015, correct.

8 Q. Do those rules affect the actuarial determination  
9 in terms of contributing to the plan?

10 A. No, they do not.

11 Q. I want to -- before I do that. Does one of those  
12 changes relate to how the planned assets are valued?

13 A. For purposes of accounting, it does change how  
14 plan assets are valued generally, yes.

15 Q. And what is that change?

16 A. They use the market value of assets for  
17 accounting, starting in 2015, not the smooth or actual  
18 value of assets.

19 Q. And can you describe to us the difference between  
20 those two, please.

21 A. The market value is simply that. You go out and  
22 get a market price for all your securities on, say, June  
23 30, and that's the market value of your assets. You add  
24 them all up.

25 What the actuary does -- let me show you a page in  
26 the report, if I can. There's an illustration on page 13.  
27 This is Exhibit 229. This is the -- actually, the  
28 calculation of the smooth value of assets for the 2012

1 evaluation. So the top right-hand corner you see that the  
2 market value is 2,578,000,000, and the bottom right-hand  
3 corner is the actuarial value of 2,703,000,000. So  
4 there's about \$125 million spread between the market value  
5 and the actuarial value.

6 This table shows the calculation of that.  
7 Basically, you're taking investments, gains and losses,  
8 the returns above or below the assumption for the prior  
9 four years, and you're deferring those over a five-year  
10 period at the time they were created.

11 Q. So the actuarial valuation is a five-year smoothed  
12 evaluation?

13 A. Yes.

14 Q. And the market value for the new GASB rules is  
15 eventually a snapshot. Is that fair to say?

16 A. Yes.

17 Q. I just want to show you an exhibit that the City  
18 has marked as 6037, and it appears -- it purports to  
19 indicate the funded ratios for police and fire. Can you  
20 see that from where you're sitting?

21 A. With my glasses on, yes.

22 Q. Or perhaps I can show it to you.

23 MS. ROSS: Objection, your Honor. I don't believe  
24 this is in evidence.

25 THE COURT: It's not in evidence. Generally, you  
26 don't publish materials that's not in evidence.

27 MR. PATERSON: Okay.

28 THE COURT: If you want the witness to look at it,

1 you can do that.

2 MR. PATERSON: Thank you, your Honor.

3 BY MR. PATERSON:

4 Q. I'm showing the witness what has been marked as  
5 6037, City's exhibit. Have you seen those -- that chart  
6 that sort of -- the high points and the low points and the  
7 years to which they correspond?

8 A. Yes.

9 Q. Does that appear to be a -- reflect a five-year  
10 smoothing or a market asset valuation?

11 MS. ROSS: Objection. Lacks foundation.

12 THE COURT: So this is the City's exhibit. I'm a  
13 little puzzled by your -- are you going to be offering  
14 this exhibit at some point?

15 MS. ROSS: Your Honor, we're going to be offering  
16 it, but in the context of a historical discussion, it is a  
17 exhibit from a report done in 2010.

18 THE COURT: If you will be offering it later, then  
19 I'm puzzled by the foundation objection. Mr. Lowman is  
20 here. He can be questioned about it.

21 I'm going to overrule the objection. Go ahead.

22 BY MR. PATERSON:

23 Q. If you're able to answer, please do.

24 A. The valuation report, Exhibit 229, page 5, it  
25 shows the funded ratios there. If I had a little more  
26 time, I could figure out whether it's all market value or  
27 smooth value. I have to spend some time sort of looking  
28 at it to figure out what the basis is. I could probably

1 figure it out if you give me some time.

2 Q. Unfortunately, I don't think I'm able to do that.  
3 Thank you for making an effort.

4 MR. PATERSON: Withdraw the question, your Honor.

5 No further questions for this witness.

6 THE COURT: Anything for the retired employees?

7 MR. SILVER: Yes, very briefly, to clarify a  
8 couple things since I was having a little trouble hearing.

9  
10 CROSS-EXAMINATION

11 BY MR. SILVER:

12 Q. This claw-back revision where you described where  
13 monies can be removed from the SRBR fund and put back in  
14 the general retirement account, do you know whether such a  
15 provision appears in the Federated plan?

16 A. My understanding, it's only for the police and  
17 fire plan. It's not in the Federated plan.

18 Q. Now, you testified about the source of funds or  
19 monies that were put into the SRBR account in the police  
20 and fire plan coming from excess earnings that were  
21 produced by the investment of monies contributed by both  
22 the employer and the employees. Would the same be true  
23 with respect to the Federated plan?

24 A. Yes.

25 MR. SILVER: I have no further questions, your  
26 Honor.

27 THE COURT: Anything for the POA?

28 MR. ADAM: Nothing, your Honor.

1 THE COURT: The City?

2 MS. ROSS: Yes, your Honor. May we have a minute  
3 to set up?

4 THE COURT: Okay.

5

6

CROSS-EXAMINATION

7

BY MS. ROSS:

8

Q. Good morning, Mr. Lowman. I'm Linda Ross. We met  
9 at your deposition, did we not?

10

A. Yes.

11

Q. I'd like to ask you a few questions to start about  
12 your background. You have worked for and billed City of  
13 San Jose unions, have you not, for over 15 years?

14

A. Yes.

15

Q. And you have done work for the fire fighters'  
16 union?

17

A. Primarily, yes.

18

Q. Also for Local 21?

19

A. Yes.

20

Q. Also for the San Jose police officers?

21

A. Yes.

22

Q. And are there any other San Jose unions that you  
23 have worked for?

24

A. In the Federated plan, I know there's more than  
25 one union there. Maybe Mr. Platten's office. I'm not  
26 sure how they're divided up.

27

Q. Is it fair to say you've never done any work for  
28 the City of San Jose itself?

1 A. That's correct.

2 Q. And in the course of this 15 years, you have  
3 testified at two or more interest arbitrations where the  
4 unions were seeking greater retirement benefits; is that  
5 correct?

6 A. Yes.

7 Q. And was one of them in 1997?

8 A. Yes.

9 Q. And you testified there on behalf of the unions?

10 A. Yes.

11 Q. And your testimony was in favor of them getting a  
12 greater retirement benefit at that time?

13 A. I think that's correct. I think my main job was  
14 to put a cost estimate on sort of the benefit change  
15 proposals to make the plan more competitive.

16 Q. Wasn't the purpose of your testimony to convince  
17 the arbitrator that the City had the ability to pay for  
18 that benefit?

19 A. I think the ability to pay gets at both the cost  
20 of the benefits and the City's financial condition, so I'm  
21 not an expert on the City's financial condition. My  
22 expertise would have been on what the benefit cost would  
23 be.

24 Q. And you testified that nothing in that increase  
25 would change or create any actuarial unsoundness in the  
26 fund?

27 A. I don't remember my exact words from there. If  
28 you want to show me something.

1 Q. Did you testify that the proposal for an increase  
2 to 80 percent, there was nothing that would change or  
3 create actuarial unsoundness in the fund? Do you recall  
4 that?

5 A. I don't recall that, but I may have said that.

6 Q. And then again in 2006, 2008 time period, you  
7 testified at an arbitration where the police officers and  
8 fire fighters were seeking 90 percent of their pay -- up  
9 to 90 percent of their pay as a retirement benefit;  
10 correct?

11 A. Yes. Which I understand which most of the  
12 surrounding jurisdiction had as well.

13 Q. My question is not that. My question is, did you  
14 testify in favor of them getting up to 90 percent of their  
15 pay as a retirement benefit?

16 A. I believe that's reasonable to say it that way.  
17 Again, my main focus is what it would cost to improve the  
18 benefits.

19 Q. But you were not there on behalf of the City. You  
20 were there on behalf of the unions; correct?

21 A. That's correct.

22 Q. And they were paying you for your testimony at  
23 that point?

24 A. Yes.

25 Q. And you've also done quite a bit of work for the  
26 unions in connection with their pensions since 2011;  
27 correct?

28 A. Yes.

1 Q. And Mr. Platten provided us at the deposition with  
2 your bills for that time period, and isn't it accurate  
3 that you have billed three unions a total of over \$300,000  
4 for your advice since mid 2011?

5 MR. ADAM: Objection. Relevance, your Honor.

6 THE COURT: Overruled.

7 THE WITNESS: I haven't added it up, but that  
8 could be.

9 BY MS. ROSS:

10 Q. We've added it up, and I would like to show it to  
11 you to see if it refreshes your recollection.

12 MS. ROSS: Your Honor, I'd like to mark this as  
13 next in order. I think it may be 6064.

14 (Defendants' Exhibit 6064 was marked  
15 for identification.)

16 THE COURT: Hand what you want marked to the  
17 clerk. And it looks like it's one page. Can you give us  
18 an identification.

19 MS. ROSS: Yes, your Honor.

20 THE COURT: 6064.

21 MS. ROSS: 6064 is a compilation of Bolton  
22 Partners' invoices for the period 7/18/11 through 6/13/13.

23 THE COURT: That's adequate identification.

24 MS. ROSS: Your Honor, may I approach the witness?

25 THE COURT: Yes.

26 BY MS. ROSS:

27 Q. So I've shown you what's been marked as 6064,  
28 which is Bolton Partners' invoices, beginning -- it looks

1 like the earliest is 6/20/11, the latest is 6/13/13, for a  
2 total of \$319,551. Does this refresh your recollection as  
3 to the amount that you have billed these three unions  
4 during this time period?

5 A. Again, I wouldn't have added them up myself. They  
6 look similar to the kinds of numbers I remember billing.  
7 It wouldn't surprise me this is indeed accurate.

8 Q. It wouldn't surprise you if this was accurate?

9 A. That's correct.

10 Q. Mr. Lowman, you spent a lot of time going through  
11 Exhibit 229, and I have here some excerpts from it which  
12 are -- have been marked as City exhibits which are, in  
13 fact, pages from Exhibit 229. I'd like to show them to  
14 you, but first I'd like to go to Exhibit 229, and that is  
15 page 6 of 229. If you could go to that page. Actually,  
16 it's the page before that. Page 5. It's page 5, and it's  
17 the graph that shows assets and liabilities, 2001, 2012.  
18 Do you see that?

19 A. Yes.

20 Q. And that graph, along with the bar at the bottom,  
21 tells us what the unfunded liabilities are of the plan,  
22 does it not?

23 A. Yes.

24 Q. And it tells us that in 2001, the plan had a  
25 surplus of \$221,000,000; correct?

26 A. Yes.

27 Q. And it tells us that in 2012, the plan had a -- or  
28 has an unfunded liability of \$726,000,000; correct?

1 A. Yes.

2 Q. And I want to draw your attention back to the 2007  
3 time period. Was that when the arbitration was occurring  
4 over whether the police officers and fire fighters could  
5 get the 90 percent -- up to 90 percent of their pay as  
6 their pension benefit in that time period?

7 MR. PLATTEN: Your Honor, for the record, let me  
8 interject and offer a stipulation. The 2007 arbitration  
9 that Ms. Ross is referring to involved only the fire  
10 fighters, i.e., Local 230, not the San Jose Police  
11 Officers' Association. I offer that as a stipulation.

12 MS. ROSS: Let's talk about the fire fighters.

13 THE COURT: Is that stipulation accepted?

14 MS. ROSS: Yes, your Honor.

15 BY MS. ROSS:

16 Q. Let's talk about the fire fighters' arbitration in  
17 around 2007 over whether they could get 90 percent of  
18 their pay as their pension. According to this chart, in  
19 2007 when that arbitration occurred, the fund was 99.7  
20 percent funded; correct?

21 A. Yes.

22 Q. And do you also recall when the arbitration was  
23 over whether the police officers could get 90 percent of  
24 their pay?

25 MR. ADAM: Objection, your Honor. There's no  
26 arbitration. Mr. Platten just made a stipulation. I  
27 thought the City accepted.

28 MS. ROSS: I accepted about the fire fighters.

1 BY MS. ROSS:

2 Q. Was there a point in time -- let's put aside  
3 whether there was an arbitration or not. Was there a  
4 point in time, to your knowledge, when the police officers  
5 got 90 percent of their pay as their pension benefit when  
6 that happened?

7 A. My recollection, there was a settlement between  
8 the police officers and the City to get them 90 percent  
9 like all the surrounding jurisdictions had.

10 Q. When was the date of that, to your knowledge?

11 A. My recollection was the police officers agreed to  
12 it -- the police officers and the City agreed to it prior  
13 to the time when the settlement was reached with -- the  
14 arbitration was reached with the fire fighters, but it's  
15 in the 2007 time frame.

16 Q. It would be in that 2007 time frame again?

17 A. That's my recollection, yes.

18 Q. That's the 2007 time frame where the fund was 99.7  
19 percent funded; correct?

20 A. Yes.

21 Q. Again, what is the funding today?

22 A. Again, page 5, under 2012, which is now a year  
23 old, it's 78.8 percent.

24 I might add, it's down for a couple reasons. One  
25 is, 2008 investment losses were a big factor. But also  
26 the discount rate. Interest rates have changed every year  
27 for the last several years. That's a big driving factor  
28 as well.

1 MS. ROSS: Your Honor, I move to strike the last  
2 testimony as not responsive.

3 THE COURT: There was no question pending. That  
4 portion of the answer is stricken.

5 BY MS. ROSS:

6 Q. Mr. Lowman, now I would like to -- now I'm going  
7 to go to page 5 -- actually, 6. Sorry -- of this exhibit  
8 that we've been looking at. And I have the same exhibit  
9 in a blowup form, the same page. So this is page 6 of the  
10 same exhibit that we have been looking at.

11 MR. PLATTEN: Objection, your Honor. This is  
12 cumulative. We've got the document in evidence as Exhibit  
13 229.

14 THE COURT: She's not offering -- you're not  
15 offering this into evidence. You want to publish it?

16 MS. ROSS: I'm publishing it. It's a blowup of  
17 the page.

18 THE COURT: It's overruled.

19 BY MS. ROSS:

20 Q. Mr. Lowman, now we're looking at page 6, and this  
21 is the page from the actuary valuation on contribution  
22 rates; is that correct?

23 A. Yes.

24 Q. And this is a historic sort of rendition of the  
25 contribution rates charged both the members and the City  
26 over time?

27 A. Yes.

28 Q. And looking at where we started in 2003, the

1 City's contribution rate there looks to be about 12  
2 percent; correct?

3 A. Yes.

4 Q. And then looking at the contribution rate for  
5 fiscal year ending 2014, the City's contribution rate is  
6 approximately 70 percent; correct?

7 A. Yes.

8 Q. And the member in 2003 is 8.44 percent?

9 A. Yes.

10 Q. And today, the member is 11.7 percent?

11 A. Correct.

12 Q. So the City's contribution rate is about 70  
13 percent and the member's is about 11 percent?

14 A. Correct. You're not asking -- you're asking what  
15 they are?

16 Q. Yeah. Just asking you to interpret these charts  
17 for us.

18 Let's look at the 2007 year, which is the year  
19 that you've identified as the year when around the time  
20 that the police officers and the fire fighters both  
21 achieved 90 percent of pay as their pension.

22 So if you look at that year, 2007, the City's rate  
23 at that time was what? 25 percent of pay?

24 A. Yes.

25 Q. And the union's rate was what? Eight percent of  
26 pay?

27 A. Yes.

28 Q. Now, you testified about actuarial soundness and

1 what actuarial soundness means, but I'd like you to look  
2 at page 27 of this document. Do you see -- are you on  
3 page 27?

4 A. Yes.

5 Q. And on page 27 in table V-4, there is a table that  
6 is entitled Solvency Test. Do you see that?

7 A. Yes.

8 Q. And if you look at the solvency test. And let's  
9 look, again, at the year 2007. If you look at the year  
10 2007 in the far right-hand corner, which is Column C, you  
11 will see there's a 99 percent figure there under the  
12 solvency test; correct?

13 A. I agree that's what the number is. We haven't  
14 defined what Column C represents, of course.

15 Q. Let's look at 2012.

16 A. Yes.

17 Q. And there is a ten percent number there for 2012  
18 under the solvency test?

19 A. Yes. But, again, we haven't defined what Column C  
20 represents yet.

21 Q. Let's see what Columns A, B, and C represent. We  
22 have Columns A, B, and C, and the heading over them is  
23 Portion of Actuarial Liability Covered By Reported Assets.  
24 And Column A relates to active members; right? Active  
25 member compensation?

26 A. Yes. I feel that I'd like to explain what this  
27 table is because it comes from the accounting rules.

28 Q. Let's go ahead and talk about column by column.

1 Column A is active member contributions; correct?

2 A. Yes.

3 Q. Column B is retirees, beneficiaries, and other  
4 inactives; correct?

5 A. Yes.

6 Q. And then Column C is active members; correct?

7 A. It's basically the employer liability for active  
8 members. So you take the active member liability, strike  
9 out the portion that they pay for, which is Column A.  
10 That creates Column C.

11 Q. So when you have the assets, first they're  
12 attributed to Column A, then Column B, then what's left  
13 over ends up in Column C; correct?

14 A. For the purpose of this table, which is set up  
15 this way by the accounting rules, that is correct. It  
16 doesn't mean this is a legal allocation of assets to  
17 priority.

18 Q. It's an accounting rule that tells you something  
19 about what's going on with the actuarial soundness of the  
20 fund; correct?

21 A. It tells you something about the funded ratio of  
22 the plan. As I said before about actuarial soundness,  
23 actuarial soundness may also get to the issue of, yes, the  
24 unfunded liability has increased. Was the employer able  
25 to pay for it? So this is more about one way of looking  
26 at the unfunded liability by prioritizing liabilities into  
27 four different classes of liabilities which may not be the  
28 legal way of classifying liabilities.

1 Q. So if you classify -- if you take your unfunded  
2 liabilities and you classify them first, first in Column A  
3 and then in Column B, then Column C shows you -- is the  
4 determinative column here for this purpose; correct?

5 A. Again, I'm having a problem. If I were a retiree,  
6 I might object to put putting B after A. I might say I  
7 want B to go first and A to go second. If I'm an active  
8 employee, I might want to argue it's uniform. Let's look  
9 at the fund ratios in total. By this formulaic method the  
10 accountants have picked, then the answer to your question  
11 is yes.

12 Q. And the accountants have chosen to call this the  
13 solvency test; correct? That's what it says.

14 A. Yes.

15 Q. I'd like to go back to the contribution rate, the  
16 diagram here, and ask you a couple of questions about it.

17 When it says, for example, under 2014, what the  
18 City rate is, and it says the 70 percent, isn't it the  
19 case that for every \$100,000 of an employee's salary, the  
20 70 percent contribution rate means that the City is going  
21 to be paying \$70,000 towards that employee's pension  
22 retirement?

23 A. Yes.

24 Q. And this does not include retiree health care;  
25 correct?

26 A. That's correct. It's just the pension.

27 Q. And do you know what the amount the City is paying  
28 this year for retiree health care?

1           A.    I don't know the exact amount.  I have a number of  
2    10 percent in mind, but I don't know if it's 10 or 12.  
3    It's a number.

4           Q.    Let's just assume that the City has to pay ten  
5    percent this year towards retiree health care.  That would  
6    be on top of the 70 percent; correct?

7           A.    Yes.

8           Q.    So it would be a total of 80 percent.  The City  
9    would be paying 80 percent or \$80,000 for every \$100,000  
10   of an employee's salary?

11          A.    Yes.  I need to make sure you understand that  
12   we're not talking about the normal cost here.  We're  
13   talking about legacy cost, yet we're contributing to a  
14   percent of payroll for active employees, even though we're  
15   talking about some of this cost really being for former  
16   employees.  But when you express it, usually you're --

17          Q.    I'm just asking you about the numbers and how to  
18   interpret the charts.  Thank you.

19                   And by the way, again, let's look at the member  
20   contribution for 2014, the 11.67 percent.  In this plan,  
21   the police officers and fire fighters and, in fact, none  
22   of the employees are required to pay Social Security;  
23   correct?

24          A.    That's my understanding, yes.

25          Q.    So if someone is required to pay Social Security,  
26   what do they have to pay in terms of a percentage of  
27   payroll?

28          A.    It's 6.2 percent of pay up to the Social Security

1 wage base.

2 Q. So this 11 percent, they don't have to pay 6.2  
3 percent on top of 11 percent; correct?

4 A. That's correct.

5 THE COURT: We're still on page 6 of Exhibit 229?

6 MS. ROSS: Thank you, your Honor.

7 BY MS. ROSS:

8 Q. Mr. Lowman, you testified about retiree health  
9 benefits being an additional cost on top of the pension  
10 benefits. And I'd like to -- actually, I'd like you to  
11 turn to Exhibit 5907, which may be behind you. Do you see  
12 that group behind you? Mr. McBride informs me that 5907  
13 has been stipulated into evidence. So if you could look  
14 at 5907 and look at page 10.

15 MR. ADAM: Ms. Ross, I'm sorry. Which exhibit  
16 volume?

17 MS. ROSS: 5907, which is in --

18 MR. ADAM: Number 5?

19 MS. ROSS: Exhibit number 5. Volume number 5.

20 Since this is in evidence, I would like to put on  
21 the screen page 10 of 5907.

22 THE COURT: Deputy, can I talk to you, please?

23 Go ahead, Ms. Ross.

24 MS. ROSS: Thank you, your Honor.

25 BY MS. ROSS:

26 Q. Mr. Lowman, this page, page 10 of 5907, this is  
27 the accounting valuation for the police and fire  
28 department post-employment health care plan; correct?

1           A.    It's part of the valuation.  It's not the  
2 actuarial valuation report itself.  It's sort of the slide  
3 show that probably came with the report.

4           Q.    And like the pension valuation chart, this shows  
5 along the bottom and in the graph the amount of unfunded  
6 liabilities?

7           A.    Yes.

8           Q.    And so for the police and fire department  
9 post-employment health care, it shows that in 2012, the  
10 unfunded liabilities, looks like \$930 million; correct?

11          A.    At the discount rate shown, 4.4 percent, which is  
12 a key issue here.

13          Q.    We'll get to that in a minute.  So the funded  
14 ratio is 6.7 percent; correct?

15          A.    Yes.

16          Q.    And that's 6.7 percent out of 100 percent?

17          A.    Yes.

18          Q.    So it's only 6.7 percent funded?

19          A.    Correct.  This plan on the pension plan was never  
20 100 percent funded.  It was never particularly well  
21 funded.

22          Q.    You said you want to mention the discount rate.  
23 The discount rate of 4.4 percent is based on the fact that  
24 the City and the employees are not yet fully funding on a  
25 year-to-year basis; correct?

26          A.    They're not fully funding the accounting expense  
27 on a year-by-year basis.  That's how would I phrase it.

28          Q.    Okay.  Thank you.  I was close, though.

1           And if they were -- so the discount rate --  
2 Mr. Platten talked to you about this -- the discount rate  
3 is important because it actually influences what the  
4 unfunded liabilities are; correct?

5           A.   It's important, yes, so far as the lower the  
6 rate -- this is a low rate. The higher the liabilities  
7 are, the higher the unfunded liabilities are, but this is  
8 basically an accounting rule. An accountant, what they've  
9 wanted it done this particular way. I'm not sure the  
10 accountant's way is actually the best way of doing this.  
11 If you were funding it based on liability of a discount  
12 rate, you would probably use a higher discount rate. But  
13 for purposes of accounting at least, this is how they want  
14 us to calculate the liabilities and the unfunded  
15 liabilities.

16          Q.   So if the City and the employees were, on a yearly  
17 basis, paying the full amount required to fund this  
18 benefit, then that 4.4 percent would be higher, would it  
19 not?

20          A.   Yes. You would have an accounting advantage that  
21 way. Whether it's a real advantage or not may be a  
22 different question. You would have an accounting  
23 advantage.

24          Q.   Your accounting advantage with the accountant  
25 anyway would cause the accountant to reduce that amount of  
26 unfunded liability?

27          A.   Yes. Under the current accounting rules. That  
28 may change, the current accounting rules, correct.

1 Q. So if the City managed to get up to -- let's say  
2 it got up to full funding. They might get -- what kind of  
3 discount rate might they get instead of 4.4 percent?

4 A. If you go to the -- it's the slide before in the  
5 book. You may not have that to show. There's a rate  
6 there called the expectant, which is 7.25 percent. That  
7 would be the rate that you would use.

8 THE COURT: Page 9?

9 THE WITNESS: Yes.

10 BY MS. ROSS:

11 Q. In your opinion, is it a good thing to try to pay  
12 what's called the full ARC every year in order to get that  
13 higher discount rate?

14 A. You fund fully the ARC for two purposes, and  
15 accounting is really a different issue. You fund to sort  
16 of get some generational equity between taxpayers. You  
17 fund to improve the -- protecting the benefits to the  
18 members that the money will be there that they can count  
19 on. The accounting is a little artificial. Yes, you will  
20 get an accounting advantage, but I think the real purpose  
21 behind -- it is good to fully fund the expectants, the  
22 actuarially determined contribution of seven and a quarter  
23 percent rate. It is good mostly to make the plan fully  
24 funded to get to 100 percent funding at some point and  
25 creates a better intergenerational equity.

26 Q. It's your understanding, isn't it, that the City  
27 is trying to get to full funding of the ARC?

28 A. I'm not sure it's of this ARC, but of an ARC, yes.

1 Q. When you say an ARC, you mean --

2 MR. PLATTEN: Your Honor, the witness had not  
3 finished answering the question.

4 THE COURT: It's not clear whether he was finished  
5 or not. You can address that on your direct.

6 BY MS. ROSS:

7 Q. When you say a full ARC, there is an ARC connected  
8 with post-employment health care benefits; correct? And  
9 that's the full amount needed per year to fund the  
10 ultimate benefit?

11 A. Yes. What I was referring to, it's tied to the  
12 benefit, and I think the City is trying to change the  
13 benefit to lower the ARC and get to a point where it can  
14 fund the full ARC, but I'm not sure it's the ARC that this  
15 was based on with these benefit levels.

16 Q. But the City is trying to get to full funding of  
17 the ARC?

18 A. That's my understanding.

19 Q. Thank you. If would you look at --

20 THE COURT: Is that a reference to Measure B or  
21 not? I can't tell from your question.

22 MS. ROSS: Yes, your Honor, it is a reference to  
23 Measure B.

24 THE COURT: Okay. Thank you.

25 BY MS. ROSS:

26 Q. So, Mr. Lowman, I want to ask you some questions  
27 about employee contributions towards these retiree health  
28 benefits. Is it your -- it's your understanding that,

1 historically, the employees and the City have participated  
2 towards retiree health benefits on a 50/50 basis?

3 A. Yes. With the exception of the dental.

4 Q. The dental is a different --

5 A. Ratio.

6 Q. -- ratio?

7 But at least for non-dental, retiree health  
8 benefits, the City and employees historically have paid  
9 50/50, on a 50/50 basis?

10 A. Yes.

11 Q. And it's your understanding that the City has  
12 never picked up an additional amount in unfunded  
13 liabilities on the retiree medical; correct?

14 A. I want to say yes. I think there are some  
15 accounting issues where the City has -- because the way  
16 the accountants were doing it have shown more than 50  
17 percent liabilities, but I don't like that accounting  
18 rule. I think the right way of looking at is that the  
19 City is responsible for half and the employee for the  
20 other half.

21 Q. And if you look at, again, Exhibit 5907, which is  
22 the police and fire OPEB report, would you look at page 6.  
23 And if you look at the bottom of it, and it's under capped  
24 Fiscal Year End 2014, contribution rates, there's a member  
25 rate and a City rate, and the member rate and the City  
26 rate for medical are virtually identical there; correct?

27 A. Yes.

28 Q. And that shows that right now, the City and the

1 members are paying virtually identical amounts for retiree  
2 health insurance?

3 A. Yes.

4 Q. I want to ask you just a couple questions about  
5 your testimony on direct examination about the historic  
6 treatment of these retiree health care contributions.  
7 You talked about how they were funded officially sort of  
8 on a ten-year plan, and that was different, you said, than  
9 pay as you go; correct?

10 A. Correct.

11 Q. And pay as you go is just when you pay whatever is  
12 due this year, right, for the benefit?

13 A. Right.

14 Q. When you do it over a ten-year period, you're  
15 trying to pay more than for just one year at a time;  
16 correct?

17 A. Just to make a clarification. When someone says  
18 we're paying it every ten years, I don't want anyone to  
19 think we're amortizing on liability for ten years. We're  
20 nowhere near that. There's some sort of rolling  
21 calculation, as you are suggesting, does accumulate more  
22 assets in the plan where pay as you go would not  
23 accumulate. As you -- it accumulates relatively low  
24 amounts of assets relative to the liabilities of the plan,  
25 but it does accumulate some assets. It's a rolling --  
26 almost like a rolling ten-year go-as-you-pay basis, but  
27 it's really on a real ten-year pay basis just looking at  
28 the benefits for the next ten years.

1 Q. So you were paying for what was due then, and then  
2 putting some in the bank. Is that a good way of putting  
3 it?

4 A. Yes.

5 Q. And both the employees and the City, at that time,  
6 were doing that in equal amounts; right? They were paying  
7 equal amounts towards the current -- whatever the current  
8 costs were and towards putting money in the bank?

9 A. That's correct.

10 Q. I want to ask you a couple questions about normal  
11 cost. You testified that normal cost is based on a series  
12 of assumptions; correct?

13 A. Yes.

14 Q. And normal cost is you're trying to figure out for  
15 the current year of an employee's employment for this  
16 current year what is going to be the cost of the ultimate  
17 benefit for the current year; correct?

18 A. If I could just rephrase it. You would look at an  
19 individual and you would determine what kind of liability  
20 they have for the benefits being promised and you would  
21 determine what cost of -- percent of payroll, say, would I  
22 have to set aside for that time from the time they were  
23 hired to the time they leave to fund that benefit. Say  
24 the answer was ten percent of pay. So if I save ten  
25 percent pay over their working career, then I would  
26 accumulate enough money to fully fund that benefit. No  
27 more, no less.

28 That ten percent of the coming year's payroll is

1 the normal cost for that year. The ten percent of prior  
2 payroll accumulated would be the actuarial liability for  
3 the past. So we have a cost allocation method under entry  
4 age normal. Try to keep the normal cost level percent of  
5 payroll over that person's career. It does change when  
6 you change assumptions like discount rates, but that's the  
7 methodology.

8 Q. And isn't the goal in coming up with the normal  
9 cost to predict as accurately as you can what all those  
10 future costs are going to be?

11 A. One component of cost is doing that accurate  
12 calculation, yes.

13 Q. And that's why you consider future salary. You  
14 try and figure out what the investment returns are, you  
15 have assumptions about how long people are going to be  
16 employed, what their age of retirement is. You build all  
17 that into normal cost; correct?

18 A. All those assumptions and factors are built into  
19 normal cost, yes.

20 Q. And if all of these assumptions held true, then  
21 the normal cost would be sufficient to pay the ultimate  
22 benefit; correct? And then you wouldn't have any unfunded  
23 liabilities?

24 A. Again, the short answer is yes. As I think I said  
25 in my deposition, you got other things coming into play,  
26 like benefit improvements, assumption changes, method  
27 changes, things like that. But the short answer is yes.

28 Q. So the answer is, yes, if we had perfect vision,

1 our normal cost would pay for our ultimate benefit and we  
2 wouldn't have any unfunded liabilities; correct?

3 A. Right. It's not a good assumption to assume that  
4 there will be no variation, but if there were none, that  
5 would be correct.

6 Q. So isn't it accurate to say that an unfunded  
7 liability results when your normal cost calculation has  
8 had some kind of error in it? It hasn't held true for  
9 some reason?

10 A. I wouldn't look at it that way. For example,  
11 let's say you have two consecutive valuations, and the  
12 normal cost is the same in both valuations. Say ten  
13 percent pay, both valuations. You didn't change any of  
14 your assumptions, you didn't change anything, but over the  
15 last 12 months, the investment return was lousy. You lost  
16 a lot of money so you're going to have an unfunded  
17 liability. That is true. But the normal cost is the same  
18 both before and after. I didn't revise even new normal  
19 cost just because I lost money the prior year.

20 So I wouldn't say that the normal cost was wrong.  
21 It experienced variation from the normal cost. I think  
22 that if you're talking about changing a discount rate and  
23 that changed normal cost, should we have known that the  
24 discount rates should have been lowered three years ago  
25 and raised normal cost three years ago, it doesn't work  
26 that way. So I wouldn't say the experienced differences  
27 means that the prior normal cost was wrong or that even  
28 the current cost reflects, simply, prior experience.

1 Q. But the discount rate is supposed to reflect  
2 investment success over time; correct? So if your  
3 discount rate was correct over time, you wouldn't have an  
4 unfunded liability due to the markets going up and down?

5 A. Yes. But, again, there's expectation that these  
6 assumptions will change. They will change from time to  
7 time the discount rate. It will change from time to time  
8 the mortality table. From time to time the normal cost  
9 will change, but it doesn't mean that the overall cost was  
10 wrong.

11 One of the things that we did in the arbitrations  
12 was I'd come up with a number, John Bartel would come up  
13 with a number. We knew we were both wrong. We had to  
14 make a guess, and we actually asked the plan expert to  
15 come in and come up with their number because that's the  
16 one that sort of mattered. We all knew that, you know,  
17 down the road, things will change. You will have gains  
18 and you will have losses.

19 Q. But your objective in normal cost is to get as  
20 close as you can; correct?

21 A. Yes.

22 Q. I'd like to ask you some questions about the parts  
23 of this report. Now we're back to the original exhibit  
24 which was the Sapien exhibit that you were looking at.  
25 229. We're back to 229. So if you would look at page 22  
26 of Exhibit 229. This pertains to your testimony about  
27 whether police officers and fire fighter members of the  
28 plan have paid or do pay for unfunded liabilities. So if

1 you look at page 22, it says UAL amortization payments;  
2 correct?

3 A. Yes.

4 Q. And UAL is unfunded liabilities?

5 A. Yes.

6 Q. And this, in fact, does show in the left-hand  
7 column that members are paying for some UAL; correct?

8 A. Yes. There was a special sort of situation and,  
9 again, where a liability arose because of not paying the  
10 normal cost. Actuarial liability is simply an  
11 accumulation prior normal cost.

12 Q. That's what we were just talking about. That UAL  
13 is because you didn't pay the normal cost that you should  
14 have paid before; correct?

15 A. Well, the benefit improvement hadn't been put in  
16 yet.

17 Q. UAL can result from retroactive benefit  
18 improvements; isn't that right?

19 A. Yes.

20 Q. That's a component of UAL in this plan, isn't it?

21 A. Yes.

22 Q. And so when the retroactive benefit improvement  
23 came in and employees were paying UAL, they were paying  
24 for the fact that they hadn't paid the normal cost for the  
25 past; right?

26 A. I think for a window of time in the past.

27 Q. But that is UAL. Isn't UAL when the normal cost  
28 has not been paid in the past?

1           A.    Yes.  But this was more of an administrative  
2 problem where the effective date has changed, was before  
3 they settled, and you would have liked to have gone to  
4 collect the normal cost for that year or two, whatever the  
5 time period was, and you could have written -- asked the  
6 retiree employees to write a check, but instead they sort  
7 of put it all into one lump and they amortized it.

8           Q.    That's what you said about the City.  You could  
9 ask the City to write a check, but instead you amortized  
10 it; right?  So this is UAL paid by employee earnings,  
11 isn't it?

12          A.    It's a special kind of UAL having to do with  
13 normal cost for a limited period of time because the  
14 change was made retroactive.

15          Q.    It's UAL for a retroactive benefit, isn't it?

16          A.    Yes.  But we're talking about the normal cost for  
17 a limited period of time.

18          Q.    If you look at page 23 -- and it's the list of  
19 contribution rates -- this also has the employees paying  
20 UAL, doesn't it?  It says police member, it's got a normal  
21 cost, and then it's got a UAL, and it's negative here  
22 under retirement, but then under the COLA, there's a  
23 positive number?

24                THE COURT:  So --

25                MS. ROSS:  That is UAL.

26                THE COURT:  We're back on 29?

27                MS. ROSS:  Yes.  It's 23.  I'm sorry.  We are on  
28 page 23.  We're looking at the table on contribution

1 rates, and this table also shows employees paying UAL.

2 THE WITNESS: Yeah. I never quite figured out, by  
3 the way, why one column was negative and one was positive.  
4 I think we probably focused on the total, and the total  
5 for fiscal '14, you're talking about the 0.12 percent  
6 numbers. It's a very small number, but there is a number  
7 there. These relate to the same buckets of payments from  
8 page 22 that were under the member's column.

9 BY MS. ROSS:

10 Q. When you talked about the 1997 arbitration which  
11 resulted in the 80 percent of final compensation, that was  
12 for both police and fire at that point? Who was that for  
13 in 1997?

14 A. Again, I think the arbitration was for fire. I  
15 think police settled, but I think they both had probably  
16 the same issue as far as here. They both got somewhat  
17 different, but they both got -- I'm sorry. 2007 or '6?

18 MR. PLATTEN: Which year is counsel asking about?

19 BY MS. ROSS:

20 Q. I'm talking about 1997. Going back to the 1997  
21 arbitration.

22 MR. PLATTEN: This is Bogue arbitration.

23 BY MS. ROSS:

24 Q. In that arbitration, isn't it true that the  
25 arbitrator is the one who awarded the retroactive  
26 payments?

27 A. I think I'll let the attorneys deal with that.  
28 That may be. My understanding, it was an arbitration

1 decision.

2 Q. It was a decision that was opposed by the  
3 employees, but the arbitrator decided that the employees  
4 would be required to make retroactive payments in the form  
5 of UAAL; correct?

6 A. I think you have to go back and look at the words  
7 in the arbitrator's decision. I don't think that's an  
8 area that I feel comfortable talking about.

9 Q. Isn't this an example of employees being required  
10 to pay UAAL?

11 A. Again, the UAAL unfunded actuarial liability is  
12 the accumulation of past normal cost of sorts. This was a  
13 very special case where, because it was retroactive, that  
14 normal cost, which is a liability, was being paid by the  
15 employees.

16 Q. Do you recall that at some point, the City amended  
17 the municipal code to require that these employees in the  
18 police and fire plan pay towards their unfunded  
19 liabilities?

20 MR. PLATTEN: Objection. Ambiguous. Are you  
21 referring again to the 1996-'97 Bogue award?

22 MS. ROSS: Yes, I am.

23 THE COURT: Thank you.

24 Do you have the question in mind, Mr. Lowman?

25 THE WITNESS: I'm sorry. I'm not sure I remember  
26 the ordinance being passed and what the ordinance says.

27 MR. PLATTEN: If it is helpful, your Honor, we  
28 will offer a stipulation. That in order to effectuate the

1 Bogue award, the municipal code was amended to provide for  
2 the receipt of these special normal cost payments  
3 amortized as has been indicated in the testimony.

4 MS. ROSS: Your Honor, I'm not interested in  
5 stipulations. I'd like to just continue my questioning.

6 THE COURT: Okay. How much longer do you have  
7 with Mr. Lowman?

8 MS. ROSS: Probably about 15 more minutes. Would  
9 this be a good time to break?

10 THE COURT: I think it would be. So after  
11 Mr. Lowman concludes, then we'll have the three AFSCME  
12 witnesses.

13 MR. PATERSON: Yes, your Honor.

14 THE COURT: All right. Anything before we  
15 adjourn? We'll be in recess till 1:30. The courtroom  
16 will be open, Deputy, by 1:15.

17 (At 12:00 p.m., a recess was taken  
18 until 1:30 p.m. of the same day.)

19 THE COURT: Mr. Lowman, you're still under oath.  
20 Ms. Ross.

21 MS. ROSS: Thank you, your Honor.

22  
23 CROSS-EXAMINATION (RESUMED)

24 BY MS. ROSS:

25 Q. Good afternoon, Mr. Lowman. I'd like to change  
26 subjects and ask you some questions about SRBR in both the  
27 Federated and the police and fire funds. When Mr. Platten  
28 was asking you some questions, you used the term

1 "skimming", and that refers to the way that the so-called  
2 excess earnings are taken off the top when there is a  
3 return above the assumed return; correct?

4 A. Yes. You can use the word gain shared and it  
5 sounds like positive or skimming to make it sound  
6 negative, but it's a good description of what it is.

7 Q. You use the term skimming?

8 A. I use skimming and gain sharing.

9 Q. You wrote a article about gain sharing funds and  
10 you used the term skimming?

11 A. Yes.

12 MS. ROSS: Your Honor, may I approach and use this  
13 to draw something on here?

14 THE COURT: Yeah. Sure. Is everybody able to see  
15 what Ms. Ross proposes to draw?

16 Go ahead.

17 BY MS. ROSS:

18 Q. So I'm going to draw a very crude example of what  
19 you call skimming. So in my drawing, these are the  
20 earnings going up and down, this is the assumed rate of  
21 return, and then this is the amount that gets skimmed off.  
22 Is that a fair representation?

23 THE COURT: The record is not going to be very  
24 helpful with this and that. So could you do that again,  
25 describing for the record what you're pointing to.

26 BY MS. ROSS:

27 Q. I have drawn a drawing with some peaks and  
28 valleys, and across the drawing I have drawn a line, sort

1 of a horizon line as the assumed rate of return. And  
2 above that I have drawn another line which represents --  
3 and the amount above that represents the amount that is  
4 skimmed off. Is that a fair representation of how it  
5 works?

6 A. It doesn't show very well how the ten percent is  
7 calculated, but other than that, yes. I mean -- and like  
8 the Federated design, the area in the top peaks above that  
9 top line represents ten percent of the area above the line  
10 on the bottom.

11 Q. So this would be ten percent of the earnings get  
12 skimmed off?

13 A. Ten percent of the earnings above the threshold  
14 point.

15 Q. Above the threshold line gets skimmed off.

16 And so you've written a lot about this in your  
17 gain sharing article, and what you describe as the problem  
18 with these SRBR funds is that the taking money, the  
19 so-called excess earnings off the top, but most of the  
20 time there's nothing going back when you reach the  
21 valleys.

22 A. Right. Most of the time being the exception would  
23 be like the claw back in the police and fire plan, that's  
24 correct.

25 Q. But we don't have that in Federated; correct?

26 A. That's correct.

27 Q. In Federated there's nothing coming back in what  
28 is -- when we're in the valleys, there's nothing coming

1 back?

2 A. That's correct. That's why I used the word  
3 asymmetric. It's an asymmetric program.

4 Q. Even police and fire is slightly asymmetric. I  
5 shouldn't say slightly. Has an asymmetric aspect to it;  
6 correct?

7 A. Yes.

8 Q. And so one of the problems that you have addressed  
9 in your writings and elsewhere is the problem that  
10 retirement funds have not properly accounted for the fact  
11 that you're skimming off the excess earnings but not  
12 having anything go back; right?

13 A. Right. Sometimes they have, but often they have  
14 not. That's the problem.

15 Q. And that's a cost to the fund; correct?

16 A. That creates -- if you don't fund it, creates  
17 losses to the fund. The cost really is cost to the  
18 employer, the one who pays for the liability that's  
19 created by the losses in the plan, yes.

20 Q. So if you already have an unfunded liability, it  
21 makes it worse, does it not?

22 A. If you're not funding for it, that's correct. If  
23 you're funding for this, then you don't have that problem.

24 Q. Now, when Mr. Platten was asking you questions  
25 about this, you went to page 18 of the police and fire  
26 actuarial valuation we have been using, which is --

27 THE COURT: 229.

28 MS. ROSS: Yes. Thank you.

1 BY MS. ROSS:

2 Q. Can you go to that page, please.

3 A. Yes.

4 Q. And he asked you about this item, SRBR, and then  
5 there was a percentage next to it; correct?

6 A. Yes.

7 Q. And this is in the Cheiron year end 2012 report?

8 A. Yes.

9 Q. Now, isn't it true, and didn't you tell me in your  
10 deposition, that this assigning of a cost by Cheiron is a  
11 very recent phenomenon, and that for years, there was no  
12 cost assigned to SRBR by the actuaries?

13 A. That's not exactly what I said. Can I try to tell  
14 you what I think I said?

15 Q. Go ahead.

16 A. What I said was that I believe it was in 2011 and  
17 '12 that Cheiron has done, both those years, an associated  
18 cost with the SRBR; that in the valuation prior to that,  
19 2010, which was the Segal valuation report, that they said  
20 there was not a cost assigned to it. They had not valued  
21 it.

22 I think what I said was, however, there was some  
23 conflicting things that I thought I remembered from prior  
24 reports that perhaps it was indeed funded by lowering the  
25 discount rate or at least the discount rate was low enough  
26 to accommodate something like the 22 basis point numbers  
27 for the SRBR.

28 I later, after the deposition, found that in the

1 Cheiron 2011 report, that they actually said prior to  
2 2011, that they thought that it was implicitly funded for.  
3 My personal belief was that in 2010, it was not being  
4 funded for, and Segal said it was not being funded for.  
5 It's a little murkier before that whether they thought  
6 they had implicitly funded it or not, and even Cheiron  
7 seemed to be saying that perhaps they did. I don't think  
8 at least in 2010 they did. They may have thought prior to  
9 that at some point there was enough room in the discount  
10 rate to accommodate the cost of SRBR.

11 Q. So let's break that down. This 2012 report is the  
12 first report in which an actuary assigns a rate under  
13 normal cost to SRBR; is that correct?

14 A. At this thought, it was 2011 report. It might  
15 have been the first report.

16 Q. Let's go 2011 or 2012 was the first time that an  
17 actuary assigned a normal cost valuation percentage to  
18 SRBR; correct?

19 A. I would say the first time they explicitly  
20 assigned a normal cost to it. It was done under what's  
21 called term cost basis. If indeed it was implicitly  
22 assumed in a discounted rate that some of the rate would  
23 be skimmed off, therefore, the rate was lower than what  
24 they actual -- they actually could earn, then they  
25 effectively would be valuing it which would affect the  
26 actuarial liability --

27 Q. Go ahead.

28 A. -- and the normal cost.

1 Q. That's not my question. What I'd like do is take  
2 it one at a time. Let's just start with the first time  
3 that any actuary expressly has a normal cost percentage  
4 assigned to SRBR, to your knowledge.

5 A. In other words, expressly -- I'll say explicitly,  
6 I would agree with that.

7 Q. You would agree with that. Either in 2011 or  
8 2012. That's the first time?

9 A. Yes.

10 Q. That's true for both Federated and for police and  
11 fire?

12 A. That's my recollection.

13 Q. And Federated has been around since 1986?

14 A. I don't know when Federated started.

15 Q. So I guess you haven't looked back at the early  
16 Federated reports; right?

17 A. Right. I just know that the fire and police came  
18 in around 2001. Federated was there before that.

19 Q. So Federated was there before 2001. Fire and  
20 police came in in 2001. So then what I hear you saying is  
21 before Cheiron expressly put it in as a component of  
22 normal cost in 2011, 2012, it's kind of murky in your mind  
23 whether it was accounted for; is that correct?

24 A. Except for the period immediately prior to 2011.  
25 I think there was a fairly affirmative statement. It  
26 wasn't included, but there's information beforehand where  
27 it's murky. In the 2011 report Cheiron seems to say it  
28 was implicitly valued previously. That's the murkiness.

1 Q. So bottom line is, it's murky as to how it was,  
2 whether it was accounted for prior to that?

3 A. Yes. I think what I wanted and the standards  
4 wanted was a very clear statement. It was or it was not  
5 being funded. That's what we were looking for.

6 Q. That's the point of your published article on gain  
7 sharing; correct? That it needs to be expressly accounted  
8 for?

9 A. It has a couple purposes. That's a key purpose.  
10 Another purpose, though, is that these benefits are very  
11 difficult to value. And as I said in my deposition, when  
12 I was on the Actuarial Standard Support Pension Committee,  
13 we tried to make it a requirement that these things be  
14 valued better.

15 When we wrote our letter to the Conference  
16 Consulting Public Plans Committee, to GASB, required that  
17 this be part of GASB. It's a benefit like any other  
18 benefit having fairly well succeeded to make it a  
19 requirement that you do something different than ignoring  
20 it, saying, then people need to know how to value. It was  
21 very difficult to value. One of the purposes of the paper  
22 was to tell people an idea, model how to value it and all  
23 the considerations to take into account on what you're  
24 valuing.

25 Q. Assuming the Federated plan has had SRBR in it  
26 since 1986, you didn't go back and look at every actuarial  
27 report back to 1986 to see whether SRBR was accounted for  
28 in any way, did you?

1 A. No.

2 Q. How about police and fire? Did you go all the way  
3 back to 2001 to see whether it had been accounted for?

4 A. I did look at 2001 report and some of the earlier  
5 reports to see how it accounted for, yes.

6 Q. That was where it was murky?

7 A. There clearly was a cost assigned to the SRBR in  
8 2001. I'm not sure I know how the cost was derived. I  
9 saw that there were descriptions of what the expected  
10 return on assets were that were higher than the assumption  
11 they made, and applying there was room in it to  
12 accommodate the cost of the SRBR, nothing explicit saying  
13 that this is for the purpose of covering the SRBR.

14 Q. So nothing explicit about the purpose of covering  
15 the cost of SRBR; correct?

16 A. Sorry. Only in terms of the discount rate. There  
17 was an explicit cost for SRB, I believe, in 2001. I'm not  
18 sure how it was derived.

19 Q. Have you followed every actuarial report until the  
20 present?

21 A. I didn't have a great desire to. My main thing,  
22 once I saw they were funding for it, I was happy and  
23 didn't care so much about the history of it previously.

24 Q. So once you found out that Cheiron was currently  
25 funding for it?

26 A. That was the purpose of the changes in the  
27 standards in the accounting rules, and the paper was to  
28 get people explicitly to account for it. That was

1 achieved.

2 Q. Aren't you critical of the way that Cheiron is  
3 currently accounting for the SRBR in terms of it not being  
4 adequate?

5 A. I wouldn't phrase it that way. My surprise was  
6 that they didn't use entry age funding method. Instead  
7 they did a term cost basis. As I said in my paper, it's  
8 perfectly acceptable if anyone used the term cost fund  
9 method because, effectively, it will lower the employee's  
10 cost. So I think that if the SRBR were to remain in the  
11 plan, they may have to use entry age normal for accounting  
12 purposes, but they can probably keep funding using the  
13 term cost basis.

14 I think I have told John Bartel or Bill Hallmark  
15 that I'm comfortable with a term cost basis, but I really  
16 was anticipating that they would use the end normal basis.

17 Q. If it was you, you would change that aspect of  
18 what they're doing?

19 A. It's a funding method. The funding method is  
20 probably a decision of the Retirement Board, not the  
21 actuary. But I certainly would have a preference to  
22 change how it was done. I think I said that in the  
23 objection 2011 City Council meeting.

24 Q. I want to ask you about your article  
25 Considerations in the Evaluation of Gain Sharing Designs,  
26 which you published in March 2012, and one of the things  
27 that you say in this article concerns the term excess  
28 earnings.

1           Now, the term "excess earnings" is a term that's  
2 used in the San Jose SRBR plans; correct?

3           A.    Yes.

4           Q.    Both in police and fire and in Federated?

5           A.    Yes.

6           Q.    So in your article, you say that the term "excess  
7 earnings" is often criticized as misleading since it is  
8 expected that returns above the assumption will be needed  
9 to cover returns below the assumption in different years;  
10 is that correct?

11          A.    That's correct.

12          Q.    And it's misleading because when somebody says  
13 excess earnings, they think of it in terms of the overall  
14 health of the fund; correct?

15          A.    Hopefully, actuaries don't think of it that way.

16          Q.    Your average person would think of it that way?

17          A.    That's correct.  Again, the law may be written  
18 using the word excess earnings.  Certainly, mechanically,  
19 it has a purpose, but we try to avoid using that word if  
20 it implies that it's free.

21          Q.    You think that word implies that it's free, excess  
22 earnings?

23          A.    Yes.  Unless you're talking to another actuary who  
24 should understand the purpose of it, which is sort of a  
25 formulaic calculation of terms above a certain point and  
26 not that it's free.

27                MS. ROSS:  Thank you.  I am finished.

28                THE COURT:  Ms. Ross, for the sake of having a

1 complete record, will you be marking your drawing?

2 MS. ROSS: Yes, your Honor.

3 THE COURT: What number would you suggest?

4 MS. ROSS: I will mark it next in order. The  
5 6,000 series. I know my colleagues will give me the  
6 number.

7 MR. SPELLBERG: 6065.

8 (Defendants' Exhibit 6065 was marked  
9 for identification.)

10 THE COURT: Mr. Platten, anything further?

11 MR. PLATTEN: Yes. Briefly, your Honor.

12  
13 REDIRECT EXAMINATION

14 BY MR. PLATTEN:

15 Q. I may have missed it, Mr. Lowman, so let me ask  
16 you. In your conversation you just finished with  
17 Ms. Ross, is there any actuarial standard violated by an  
18 asymmetrical SRBR where only the gains go to the SRBR  
19 funds and there's no requisite return to the employer in  
20 the event of losses?

21 A. In terms of the benefit design, no.

22 Q. Is there any actuarial standard that you're aware  
23 of that the SRBR benefit in place in the police and fire  
24 plan in San Jose violates?

25 A. In terms of the design, no. The actuarial  
26 standards are not going to get into plan designs.

27 Q. Same question with respect to the Federated plan.  
28 Any violation of the design that the design violates any

1 actuarial standards?

2 A. No.

3 Q. I'd like to go back to a couple questions on  
4 Exhibit 229, the actuarial valuation. I'm going to ask  
5 you first to turn to page 6. This is the chart on  
6 contribution rates. Mr. Lowman, are you with us?

7 A. Yes.

8 Q. Ms. Ross pointed out the contribution rate for the  
9 City has increased significantly from 2003 on the chart to  
10 2012, and then forecasted in 13-14. Do you see that?

11 A. Yes.

12 Q. And she asked you if that was the case, and you  
13 were about to answer the reason why. Is there a reason  
14 why these rates have gone up so exponentially?

15 A. Yes.

16 Q. What are those reasons?

17 A. Below the chart there's a paragraph there. They  
18 talk about the increase is largely due to poor performance  
19 in one of those years, 2008, 2009.

20 Q. Is that a euphemism for stock market crash?

21 A. Yes. I think also you look at it in terms of  
22 percentages of payroll. You have to understand what  
23 happened to the payroll. Because the contribution of the  
24 City in 2012, 2014 are very similar dollar wise, but you  
25 wouldn't gather that from this chart. This chart shows it  
26 going from 50.44 percent to 70.55 percent. But if you go  
27 back to page number 28, page number 28, there's one table  
28 there.

1 Q. That's table V-5?

2 A. Yes. There's a column there called covered  
3 payroll. So you can see in the last three years in 2010,  
4 which would have been the basis for the 2012 fiscal year  
5 contribution, the valuation was done with a payroll of  
6 \$251,000,000. By 2012, it had dropped to \$187,000,000.  
7 So even if the dollar cost is the same, the cost of  
8 percent of payroll is up terribly. The dollar cost goes  
9 up over the years because the market is down. It goes up  
10 because we're talking more conservative assumptions, the  
11 board is, a discount rate in particular, and at the same  
12 time the payroll was going down.

13 Q. In addition to the stock market losses, the  
14 reduced payrolls, is there also an effect on contribution  
15 rates by the change in the discount rate?

16 A. Yes.

17 Q. Again, is that noted on the footnote on page 6?

18 A. Yes. At the end of that paragraph just below the  
19 chart.

20 Q. I'd like to turn to page 27, Mr. Lowman. And take  
21 a look at the chart V-4. You were asked some questions  
22 about this chart. This is the so-called solvency test  
23 chart. Can you just explain what this chart means.

24 A. This is the chart, the current accounting rules,  
25 the GASB rules require be made as part of disclosure.  
26 It's a very formulated chart. They don't ask you to show  
27 simply the ratio of assets to liabilities, ratio to total  
28 plan, but they sort of more or less prioritize them into

1 these categories A, B, and C. Somewhat artificial.

2 So what's happened here is as the fund to ratio  
3 gets worse, it doesn't show the fund to ratio for  
4 contributions dropping below 100 percent because it's  
5 pretending they have a priority claim on assets. Then the  
6 retirees, there's also not enough money to not only cover  
7 employee contributions but retiree liability as well. So  
8 it also shows them at 100 percent.

9 If this were your priority allocation that you  
10 were doing, then what's left of the assets divided into  
11 the liabilities for actives that are not associated  
12 employee contributions, the employer portion of the  
13 liability, you would say, perhaps, then that number gets  
14 greatly downward, 94 percent. The plan was about 100  
15 percent funded down to about ten percent.

16 It's an interesting chart. It's the requirement  
17 that you have to show it this way. It's an accounting  
18 rule. But from a funding perspective, for a cash  
19 contribution calculation, all you really care about is  
20 what's the unfunded liability dollar amount, then how much  
21 was the amortization payment toward that.

22 Q. Turn to a different subject, Mr. Lowman. I want  
23 to go back very briefly if we can, make sure that we're  
24 all clear with respect to your testimony concerning the  
25 effect of the Bonnie Bogue supplemental arbitration award.  
26 Which, by the way, your Honor, is in evidence. It's  
27 Sapien Exhibit 227 so the Court is reminded of that.

28 What I'd like you to do is look at the chart in

1 229, Mr. Lowman, on page 22. This is table Roman IV-2.  
2 If we can try to explicate. Maybe it's not clear so I'll  
3 make sure it's clear before you leave the witness stand  
4 what the difference is between the amount that has been  
5 credited, or I should say assessed or charged to employees  
6 as a result of the Bogue award, and whether that prior  
7 service are actuarially unfunded liability as that term is  
8 normally used. Looking at this chart, is there a way for  
9 you to describe it orally or in a diagram to explain the  
10 difference or the quality of the Bogue employee  
11 contribution versus the other prior service cost that the  
12 City pays?

13 MS. ROSS: Objection. Compound and vague.

14 THE COURT: Overruled.

15 BY MR. PLATTEN:

16 Q. Mr. Lowman?

17 A. I think it would help if I could sort of draw a  
18 picture, but also probably reading the words in the  
19 decision about what this calculation is based on.

20 Q. Let's take the words of the decision first,  
21 Exhibit 227.

22 A. Do you know what tab it's behind?

23 Q. 27. If you can tell us what page you're looking  
24 at.

25 A. It's page number three. It's the paragraph at the  
26 bottom of the page. Is it okay if I read it?

27 Q. Please.

28 A. Fundamental change retroactive to that effective

1 date --

2 THE COURT: People often speed up when they read,  
3 so please don't do that.

4 BY MR. PLATTEN:

5 Q. And close to the microphone if you would.

6 A. I want to go to the beginning of that where it  
7 says one. The three percent, 80 percent formula. The  
8 new --

9 THE COURT: The document is in evidence, so we  
10 don't have to read the whole thing. Maybe there's a  
11 particular portion you want to highlight for us.

12 THE WITNESS: In the middle of the paragraph, it  
13 talks about the City and members are to make contributions  
14 that they would have made had the benefit been implemented  
15 and contribution rates adjusted as of February 1996.

16 BY MR. PLATTEN:

17 Q. Does that mean normal cost contributions?

18 A. That's part of what it means. Maybe, again, I can  
19 draw a picture to describe what this paragraph is telling  
20 me and what I believe amortization payments are about for.

21 Q. Is there anything else in the paragraph that you  
22 want to point out to the Court?

23 A. The next sentence says once we figure out what  
24 those contributions would have been had they been done  
25 back in 1996, that that amount be amortized in the future.  
26 And they're basically trying to put everyone in the same  
27 spot as if this decision, this award, which is in November  
28 of '97, had been made a year earlier and had been

1 implemented a year earlier. They're trying to put  
2 everybody in the same shoes they would have been under the  
3 normal rules, but had it been done in a timely fashion,  
4 not a year later.

5 Q. Can you express this in a diagram?

6 A. Yes.

7 MR. PLATTEN: May I ask that the witness approach  
8 the paper?

9 THE COURT: Yes. He can approach the easel pad.

10 I see, Ms. Ross, that you've written Exhibit 6065  
11 on the chart. What I meant when I requested that it be  
12 marked is that it be removed and the clerk be given an  
13 opportunity to put a tag on it.

14 MS. ROSS: Why don't we rip it off and I'll take  
15 it.

16 THE COURT: Let's do that now.

17 MR. PLATTEN: I'm not going to trust myself to do  
18 the ripping, your Honor.

19 THE COURT: Ms. Ross is willing to do that. It's  
20 her exhibit so she can do the ripping.

21 THE WITNESS: Can I just talk there as I draw?

22 MR. PLATTEN: If you speak slowly and loudly.

23 And I would request, your Honor, that we, for  
24 identification, mark the chart as Sapient Exhibit 230,  
25 which I believe is next in order.

26 (Plaintiffs' Exhibit 230 was marked  
27 for identification.)

28 THE WITNESS: So what I've done is I just created

1 a simple graph. I have three points in time for an  
2 individual: When they were hired, 1997, and when they  
3 retire.

4 And over a person's career, they earn benefits and  
5 they have an actuarial liability that grows. When they're  
6 hired, there is no actuarial liability, and when they  
7 retire, it's sort of maximum peak. I'm just going to  
8 abbreviate it AL for actuarial liability.

9 So what happened in 1997 was there's benefit  
10 improvement. This may not be to scale, but basically at  
11 that point in time, the person's liability jumped up. And  
12 it's this increase in the actuarial liability that needs  
13 to be amortized and paid for. The question is, what does  
14 this increase in the liability represent. Well, it  
15 represents the past normal cost. So let me just draw the  
16 normal cost. So every year there's a little bit of normal  
17 cost.

18 BY MR. PLATTEN:

19 Q. For the record, Mr. Lowman, these are represented  
20 by rectangles at the bottom of the chart?

21 A. Yes.

22 So the year after the award is made, there's a  
23 small normal cost for that year. And the employees pay  
24  $\frac{3}{11}$ ths of that normal cost. That's the scheme. That's  
25 how it works. Employer pays  $\frac{8}{11}$ ths and the employees pay  
26  $\frac{3}{11}$ ths. But the question is what about the increase in  
27 the actuarial liability? What about all the prior normal  
28 cost numbers?

1           So my understanding of the Bogue decision and the  
2 amortization payment was this change was really made  
3 effective in 1996. So part of the increase in the  
4 actuarial liability is associated with this normal cost.  
5 But the employees didn't pay for any of that normal cost  
6 and they didn't because it was retroactive and because the  
7 decision of the arbitrator came later.

8           So what happened was the arbitrator said, we're  
9 going to put you in the same position you would have had I  
10 sort of timely made this decision, and you owe us --  
11 employees owe you 3/11ths of that normal cost. That's a  
12 portion of this increase. It's not all the increase. My  
13 understanding is this part of the actuarial liability is  
14 still the City's, and the number we're seeing in the  
15 valuation report only represents the amortization of this  
16 piece here.

17           Q. For the record, you said "this part." You pointed  
18 to the rectangular boxes to the left on the chart going  
19 back from 1996 to entry age.

20           A. I'm sorry. The amortization is only the piece  
21 between '96 and '97. That's the part -- that part of it  
22 the employees have to pay for.

23           THE COURT: I think counsel correctly described  
24 Mr. Lowman's gesture at the time that he made that  
25 statement.

26           MR. PLATTEN: Thank you.

27           BY MR. PLATTEN:

28           Q. Anything else with respect to the chart?

1 A. I think that's about it.

2 Q. Thank you.

3 MR. PLATTEN: We would move admission of Exhibit  
4 230, your Honor.

5 MS. ROSS: Object to it being admitted, your  
6 Honor.

7 THE COURT: What's the legal basis for the  
8 objection?

9 Mr. Platten, you'll be removing that from the  
10 easel and giving it to the clerk to mark.

11 MR. PLATTEN: Thank you. Nothing further at this  
12 time, your Honor.

13 THE COURT: Anything else?

14 MS. ROSS: Yes, your Honor.

15 MR. SILVER: Excuse me, your Honor. I had a  
16 question to ask.

17 THE COURT: Ms. Ross, I meant for you to tell me  
18 the basis for your objection if you want to pursue it.  
19 You can question in a few minutes.

20 MS. ROSS: Our objection, your Honor, is that it's  
21 hearsay; lacks foundation.

22 THE COURT: Overruled. 230 is received.

23 (Plaintiffs' Exhibit 230, previously marked for  
24 identification, was received in evidence.)

25 THE COURT: So, Mr. Platten, if you would remove  
26 it now, give it to the clerk to mark.

27 Any questions by AFSCME?

28 MR. PATERSON: Your Honor, just a few very brief

1 questions.

2 RE-CROSS-EXAMINATION

3  
4 BY MR. PATERSON:

5 Q. Mr. Lowman, you were referring to a chart earlier  
6 that showed contributions, a percentage of a payroll. Do  
7 you recall that?

8 A. Yes.

9 Q. Did that tell you anything about the actual amount  
10 of money those contributions are?

11 THE COURT: Can we have a record of what you're  
12 referring to?

13 THE WITNESS: Is it page 6 of Exhibit 229?

14 BY MR. PATERSON:

15 Q. Yeah. That is correct.

16 So my question, Mr. Lowman, is, does that  
17 percentage of payroll calculation tell you anything about  
18 what the actual amounts of the contributions are that are  
19 owed or to be paid?

20 A. You're asking does it tell me the dollar amount of  
21 the contributions?

22 Q. Yes. Essentially.

23 A. I would need to know what the payroll is to  
24 multiply these times.

25 Q. As a percentage of payroll, would that also depend  
26 on the relative size of the payroll?

27 A. Yes.

28 Q. The next question I have is, in terms of the

1 concept of benefit payments exceeding contributions, would  
2 you expect benefit payments to exceed contributions in a  
3 normal pension plan?

4 A. In a short plan, I would expect that would be the  
5 case.

6 Q. Is that because you also expect to earn investment  
7 returns on what is contributed over the course of the  
8 period in question?

9 MS. ROSS: Objection. Leading.

10 THE COURT: Sustained.

11 BY MR. PATERSON:

12 Q. Why is that?

13 A. The purpose --

14 MS. ROSS: Objection. Leading.

15 THE COURT: Overruled.

16 THE WITNESS: The purpose of prefunding the plan  
17 is to set aside money for people before they retire. So  
18 if the plan were 100 percent funded, that would imply that  
19 the retiree benefits can be paid from the corpus of the  
20 fund along with the earnings on it, and then your only  
21 contribution is your normal cost for active employees.

22 So your contribution has nothing to do with  
23 benefit payments. They're already funded. Obviously not  
24 100 percent funded here. But in a mature plan that's 80  
25 percent funded, you would normally find that the  
26 contribution coming in is less than the benefits going out  
27 because the balance is taken care of by the fund, the  
28 principal amount set aside, the earnings of those monies.

1 MR. PATERSON: Thank you. No further questions,  
2 your Honor.

3 THE COURT: Retirement Employees' Association?

4 MR. SILVER: Thank you, your Honor.

5  
6 RE CROSS EXAMINATION

7 BY MR. SILVER:

8 Q. I'm not completely sure I recall your testimony,  
9 but with regard to the funding of the SRBR and the  
10 Federated plan, was it your recollection that, unlike the  
11 police and fire plan, you weren't as familiar with whether  
12 actuaries had accounted for the funding of the SRBR on its  
13 inception?

14 A. That's correct.

15 Q. Would it surprise you if I told you that back in  
16 1986 when the SRBR was created for the Federated plan, a  
17 resolution was passed that provided for funding both by  
18 member contributions and by employer contributions?

19 MS. ROSS: Objection. Leading. Calls for  
20 speculation.

21 THE COURT: Overruled.

22 THE WITNESS: Again, I just don't know what  
23 happened back then, that far back. I don't go that far  
24 back, but I would be happy to know that was the case. I  
25 wonder what happened.

26 BY MR. SILVER:

27 Q. If I can direct your attention. I'm going to give  
28 you a copy. It's our -- it's the Exhibit 645. Let me

1 just show it to you. If you can take --

2 MR. SPELLBERG: 645?

3 MR. SILVER: 645. Retirees' Association, which  
4 purports to be a resolution in 1986.

5 BY MR. SILVER:

6 Q. And directing your attention to the second page.  
7 Does that identify a contribution rate to fund the SRB for  
8 both members and the employer?

9 THE COURT: For the record, 645 is what the  
10 witness should be looking at. Is there a binder up here?

11 MR. SILVER: I didn't know where to find it.

12 THE COURT: That way you can have your documents;  
13 the witness has the one that's been marked.

14 MR. PATERSON: May I assist, your Honor?

15 THE COURT: It's been marked.

16 BY MR. SILVER:

17 Q. Here's the witness binder. If you can just find  
18 Exhibit 645, that would be great.

19 THE COURT: Thank you. I just want to have the  
20 witness looking at the exhibit that's been marked.

21 BY MR. SILVER:

22 Q. Again, go to page 2.

23 A. Yes. I'm there.

24 Q. Do you recall the question, or do you want me to  
25 repeat it?

26 A. I recall the question, yes. I see that there is a  
27 member contribution rate of 5.62 percent, and a small part  
28 of that, .06 percent, is for the SRBR, and I see the same

1 thing for the City. There's a total contribution rate of  
2 11.2 percent and .17 percent for the SRBR.

3 Q. Probably the reason it was small is because that  
4 would be the first year that it was put into place?

5 MS. ROSS: Objection. Calls for speculation.

6 MR. SILVER: I'll withdraw the question.

7 THE COURT: Question is withdrawn.

8 MR. SILVER: Thank you. No further questions.

9 THE COURT: POA?

10 MR. ADAM: Nothing, your Honor.

11 THE COURT: City?

12  
13 RECROSS EXAMINATION

14 BY MS. ROSS:

15 Q. Mr. Lowman, I am looking at Exhibit 227 which  
16 everyone is calling the Bonnie Bogue decision, and it  
17 reads: "The City and plan members are to share --

18 THE COURT: What page are you on?

19 MS. ROSS: I am on page 3 in the middle paragraph,  
20 four lines down.

21 THE WITNESS: What tab is that under?

22 MS. ROSS: 227 of Sapien exhibits.

23 MR. HARTINGER: Can we hear the page number again.

24 MS. ROSS: Exhibit 227, page 3, the middle  
25 paragraph.

26 BY MS. ROSS:

27 Q. I'm reading four lines down where it says: "The  
28 City and the plan members are to share the prior service

1 cost associated with the retroactive implementation of the  
2 3 percent/80 percent benefit."

3 And prior service cost is, in fact, unfunded  
4 liability; correct?

5 A. The short answer is yes.

6 Q. And this -- I'm looking at Plaintiffs' Exhibit  
7 230, and there's a circled area here. This is, in fact,  
8 unfunded liability, is it not, the circled area?

9 A. I'm trying to make the point it's a special type  
10 of unfunded liability, yes.

11 Q. I understand you're trying to make the point, but  
12 it is unfunded liability; correct?

13 A. That would not have existed had it been  
14 implemented the year earlier, had been funded.

15 Q. But it is a retroactive increase that gave rise to  
16 unfunded liability?

17 A. It was a retroactive decision, and because of  
18 that, a portion of unfunded liability associated with it  
19 being a retroactive decision.

20 Q. And, in fact, it was imposed by the arbitrator,  
21 was it not?

22 A. Again, it's a legal term. The answer is probably  
23 yes, but I think the lawyers can figure that part out.

24 MS. ROSS: Thank you. I have no further  
25 questions, your Honor. I'll take the exhibit down.

26 THE COURT: Thank you. Anything else for this  
27 gentleman?

28

## 1 FURTHER REDIRECT EXAMINATION

2 BY MR. PLATTEN:

3 Q. With Ms. Ross, you answered Ms. Ross' questions by  
4 saying, short answer, yes. What's the long answer?5 A. Again, the sentence here in the decision that I  
6 was reading where it talks about making contributions they  
7 would have made had it been implemented, the contribution  
8 rates adjusted as of February 4, '96. That had this gone  
9 into effect in '96, we wouldn't be calling this a natural  
10 liability or unfunded liability. It would have simply  
11 been a normal cost for that year between '96 and '97 if it  
12 would have been funded. So it's solely due to the delay  
13 in time of a year that we have this amount that needs to  
14 be dealt with.15 It's a little different than the rest of the  
16 unfunded liabilities. Yes, in '97, it's part of the  
17 unfunded liability, and, yes, the employees get paid for  
18 it, but had it been done timely in '96, it's already paid  
19 for in a timely fashion, it would not have been part of  
20 the unfunded liability. It would have been funded through  
21 employer/employee normal cost contributions between '96  
22 and '97.

23 MR. PLATTEN: Thank you, Mr. Lowman.

24 Thank you, your Honor.

25 THE COURT: May Mr. Lowman be excused?

26 Thank you, Mr. Lowman. You're excused.

27 The Sapien plaintiffs are offering 224. We now  
28 have the information about the portion that those

1 plaintiffs believe is important.

2 Anything further from the City on this?

3 MR. HARTINGER: Your Honor, we would renew our  
4 objections based upon motions in limine. Essentially a  
5 legal opinion. And it was covered by motion in limine  
6 number two. We don't think there's been appropriate  
7 foundation made to admit it.

8 THE COURT: So I see the foundation issue on this  
9 exhibit to be different from the exhibit involving  
10 Mr. Rios, 213 and 216. Those, I understand, reflect  
11 proceedings in which Mr. Rios was acting as counsel for  
12 the City. And 1222 requires not just an employee or  
13 agency status, but proof of authorization to speak. So I  
14 have that concern. I also have a relevance concern, but  
15 let's address first the foundation issue.

16 MR. MCBRIDE: Well, your Honor, you start off with  
17 the fact that she is, in fact, an employee of the City,  
18 not an employee of the board. She's a Deputy City  
19 Attorney. She is assigned to the board, but she's the  
20 Deputy City Attorney. And our position is that limited  
21 statements that we have identified clearly fall within an  
22 admission, and the admission is exception to hearsay. I'm  
23 not sure that we can come up with any more unless we were  
24 going to call Ms. Devencenzi and find out if she cleared  
25 her memo with her senior attorney.

26 THE COURT: Okay. So I hear you saying that you  
27 think if she were called, that she would say she was  
28 authorized to make this statement?

1 MR. MCBRIDE: I would assume that to be the case.

2 MR. HARTINGER: We do not accept the proffer, your  
3 Honor. We don't think there's been a foundation that's  
4 been laid that's in evidence, and we renew our objections.

5 THE COURT: Okay. So I think that 1222(a), it is  
6 one of those areas of evidence where our state law is a  
7 little different, and I think the employee status is not  
8 enough of its foundation.

9 MR. MCBRIDE: Your Honor, she's addressing the  
10 City's pension laws. I guess that's all I can say.

11 THE COURT: Okay. And so let's just address the  
12 relevance. What's your position on this? So if this were  
13 an authorized statement, then I suppose it would be proof  
14 of what the City thought the law was at the time. Am I --

15 MR. MCBRIDE: I think that's --

16 THE COURT: If I have to decide what the law is,  
17 how would that be helpful to me? How would it be  
18 relevant?

19 MR. MCBRIDE: Because the City in this case is  
20 taking a position -- two positions that are diametrically  
21 opposed of what she said the law was back when she gave  
22 this report.

23 THE COURT: And to what issue would that have  
24 relevance? If that were true and it were admissible, to  
25 what issue would that be relevant?

26 MR. MCBRIDE: It goes to the question of the  
27 liability for the unfunded liabilities, which we've had a  
28 lot of evidence about, and to the vesting issue.

1 MR. HARTINGER: These are legal issues that are  
2 for the Court to decide.

3 MR. MCBRIDE: Can you speak up a little bit?

4 MR. HARTINGER: Those are legal issues reserved  
5 for Judge Lucas.

6 THE COURT: I understand your position.  
7 Submitted?

8 MR. HARTINGER: Yes, your Honor.

9 MR. MCBRIDE: Yes.

10 THE COURT: I do have a concern about the  
11 foundation for this document. I think it is different for  
12 the reasons stated from the others, and I don't believe  
13 that the state of the reasons why this document would be  
14 relevant, I don't think that is evidence that's relevant.

15 I think that I do have to decide what the law is  
16 and whether it's sitting at a different time at a  
17 different position than they do now. I don't think that's  
18 relevant to the issues that have been identified. So 224  
19 is not received.

20 Anything else for the Sapien plaintiffs?

21 MR. MCBRIDE: Your Honor, yes. We have -- I have  
22 the stipulation now with reference to Exhibits 219, 221,  
23 and 222 as to the authentication.

24 THE COURT: Okay. So I'll ask the clerk to file  
25 this. This has been signed by Mr. Platten and  
26 Mr. Spellberg. So pursuant to this stipulation, I'll  
27 receive 219, 221, and 222.

28 (Plaintiffs' Exhibits 219, 221, and 222,

1           previously marked for identification,  
2           were received in evidence.)

3           MR. SPELLBERG: Your Honor, just as to  
4           authenticity. I believe 221 is already in as a POA  
5           number. That's the same as 51 that's already in. So it  
6           would be 219 and 222.

7           THE COURT: Are you offering these exhibits?  
8           Mr. McBride, are you offering these exhibits?

9           MR. MCBRIDE: Yes, we are, your Honor.

10          THE COURT: Are you objecting?

11          MR. SPELLBERG: One minute, your Honor.

12          THE COURT: Madam Clerk, is 219 --

13          THE CLERK: 219 is not in.

14          MR. MCBRIDE: Your Honor, with reference to 221,  
15          I've just been informed that, in fact, that's a duplicate  
16          so we can withdraw that.

17          THE COURT: Okay. You're withdrawing 221?

18          MR. MCBRIDE: Yes.

19          MR. SPELLBERG: 222, your Honor, we don't have an  
20          objection to. I believe that's just a job posting. 219  
21          we do object. 219, there's not sufficient foundation that  
22          the two documents are consistent, and we object on  
23          relevance as well. I'm not exactly sure that the last  
24          pages are City documents.

25          THE COURT: 222 is received. As to 219, you just  
26          stipulated.

27          MR. SPELLBERG: To authenticity, your Honor, yes.

28          THE COURT: Which is that the documents are what

1 they purport to be. So now you're telling me they're not  
2 City documents?

3 MR. SPELLBERG: I apologize, your Honor. I agree  
4 they're City documents. I object on relevance. There's  
5 not a Bates number on them. I object on relevance. It's  
6 from 1990. It's very old.

7 THE COURT: Mr. McBride, the objection is  
8 relevance. Do you want to address that?

9 MR. MCBRIDE: I will, your Honor. Les White at  
10 the time was the City Manager, and I draw your attention  
11 specifically to the first paragraph under the second -- on  
12 the second page under the heading retirement benefits  
13 issued.

14 THE COURT: The third page of the exhibit?

15 MR. MCBRIDE: Second page of the exhibit. Second  
16 page of the written portion of the exhibit.

17 THE COURT: It's the third page of the exhibit.

18 MR. MCBRIDE: That's true. Second -- first  
19 paragraph on the second -- third page and the second  
20 sentence. I'll read it to your Honor. I realize our copy  
21 wasn't the finest. "When the cost of providing benefits  
22 goes up and the benefits must be paid for, the City pays  
23 100 percent of the unfunded liability," and then in  
24 parenthesis, "the amounts not covered by contributions,"  
25 end parenthesis.

26 THE COURT: Submitted?

27 MR. SPELLBERG: Yes, your Honor.

28 MR. MCBRIDE: Yes.

1 THE COURT: The relevance objection is overruled.  
2 219 is received.

3 MR. MCBRIDE: One other matter, your Honor. On  
4 Exhibit 216, which has already been admitted, I identified  
5 at the time they moved their admission or prior thereto  
6 specific paragraphs. That's Mr. Rios' closing brief, the  
7 subsequent brief. And I don't know if your Honor admitted  
8 just the portions I identified or the entire document.

9 MR. SPELLBERG: Sorry. What exhibit number?

10 MR. MCBRIDE: 216.

11 THE COURT: Well --

12 MR. HARTINGER: We have it as just the excerpt at  
13 this point. I think the Court left it to us to complete  
14 it.

15 THE COURT: I don't think there was any offer of a  
16 partial document or a request to redact it. I think --

17 THE CLERK: I do agree. There wasn't any.

18 THE COURT: So 216 is in evidence. I could be  
19 wrong, but I have a recollection that there may have been  
20 a limited purpose.

21 MR. MCBRIDE: Not on that one, your Honor. That  
22 was the PERB complaint.

23 THE COURT: Okay.

24 MR. MCBRIDE: The only reason I mention that, your  
25 Honor, that ties directly with this discussion with  
26 Mr. Lowman about the --

27 THE COURT: You'll tie that all together in your  
28 written closing argument.

1           Any other evidence on behalf of the Sapien  
2 plaintiffs?

3           MR. MCBRIDE: Yes, your Honor. Exhibits 1 through  
4 12 have been stipulated to, both as to authenticity and  
5 admission, and I would move their admission.

6           THE COURT: Are you referring to 201 --

7           MR. MCBRIDE: Pardon me. 201 through 212.

8           THE COURT: That's the offer. Any objection?

9           MR. SPELLBERG: No, your Honor. I believe I did  
10 stipulate -- I don't have 211 and 212. I'm assuming  
11 they're resolutions.

12          MR. HARTINGER: May I see your 211?

13          MR. MCBRIDE: 211 and 212 are ordinances.

14          THE COURT: Yes, they are. So 201 through 212 are  
15 received.

16          (Plaintiffs' Exhibits 201-212, previously marked  
17 for identification, were received in evidence.)

18          MR. SPELLBERG: Your Honor, they show 211 as a  
19 recruiting flier and 212 as a MOA, at least on the version  
20 I have.

21          THE COURT: 201 is ordinance 28752 and a cover  
22 sheet which appears to be signed by Lee Price. 212 is  
23 ordinance 28753, with a similar cover sheet.

24          MR. HARTINGER: 28 or 29?

25          THE COURT: 212 is ordinance 28753.

26          MR. HARTINGER: My exhibit list says 29.

27          MR. PLATTEN: I gave 212 to Mr. Hartinger. It's  
28 28753.

1 THE COURT: I'm receiving 201 through 212.

2 Anything else for the Sapien plaintiffs?

3 MR. MCBRIDE: I do not think so. Let me check my  
4 notes, your Honor.

5 No, your Honor.

6 THE COURT: So before we hear from the AFSCME  
7 witnesses, I wanted to inquire generally concerning the  
8 assertions that Mr. Hartinger made in his opening  
9 yesterday that the various provisions at issue are  
10 severable. Does anybody disagree with that?

11 MR. ADAM: Your Honor, I thought we had addressed  
12 that in our brief in terms of, I believe, the City's  
13 position is the severability is at the discretion of the  
14 City Council. Our argument is that's a judicial function,  
15 not for delegation to the City Council.

16 THE COURT: So if that's true, is anybody taking  
17 the position that the law does not allow the Court to  
18 sever any of these provisions?

19 MR. ADAM: Your Honor, we have a belief that when  
20 this was enacted by the voters -- let's take, for example,  
21 the additional UAL contribution. There is a contemplated  
22 up to 16 percent increase in contribution by employees,  
23 but it was expressly passed as a package for -- the  
24 employees would have an alternative to if they did not  
25 want to pay the 16 percent additional contribution, they  
26 could elect to move into this -- what's called this  
27 voluntary election on the VEP.

28 THE COURT: The question is whether it's anybody's

1 position that the law precludes the Court from severing,  
2 and are you saying --

3 MR. ADAM: Maybe it's a different argument I'm  
4 raising. We have no objection with that. We don't have a  
5 problem with that.

6 THE COURT: Anybody else have anything to say on  
7 that issue?

8 MR. HARTINGER: The only point that we would make,  
9 your Honor --

10 THE COURT: I hear no one disagreeing with you.  
11 Do you want to change their minds?

12 MR. HARTINGER: Very good point, your Honor. I'll  
13 be quiet.

14 THE COURT: Who will be AFSCME's first witness?

15 MR. SOROUSHIAN: Your Honor, Margaret Martinez  
16 will.

17 THE COURT: Good afternoon, Ms. Martinez. Please  
18 come forward. Stand right here, face the clerk, and raise  
19 your right hand.

20 THE CLERK: You do solemnly state, under penalty  
21 of perjury, that the evidence you shall give in this issue  
22 or matter shall be the truth, the whole truth, and nothing  
23 but the truth?

24 THE WITNESS: I do.

25 THE CLERK: Thank you. Have a seat, please.  
26 Please state and spell your name for the record.

27 THE WITNESS: Margaret Martinez; M-A-R-G-A-R-E-T,  
28 M-A-R-T-I-N-E-Z.

1 THE CLERK: Thank you.

2

3

MARGARET MARTINEZ

4 called as a witness by counsel for the Plaintiffs, being

5 first duly sworn, testified as follows:

6

DIRECT EXAMINATION

7

MR. SOROUSHIAN:

8

Q. Good afternoon, Ms. Martinez.

9

A. Good afternoon.

10

Q. Thank you for giving your time to help us today.

11

Now, are you currently employed?

12

A. No.

13

Q. Were you at one time employed with the City of San

14

Jose?

15

A. Yes.

16

Q. And when did you retire from your employment with

17

the City?

18

A. March of this year, 2013.

19

Q. When you worked for the City, what positions did

20

you primarily hold?

21

A. I was a supervising public safety dispatcher.

22

Q. And in what department did you work with?

23

A. The police department.

24

Q. Were you part of the union, a City union when you

25

worked?

26

A. Yes, I was.

27

Q. Which was that?

28

A. AFSCME MEF.

1 Q. Now, can you just briefly describe what you did in  
2 your capacity as a supervising public safety dispatcher.

3 A. I was second level supervisor, and our main job  
4 was operations of the control room, which handles all the  
5 911 calls coming from the City of San Jose. We process  
6 emergency calls, non emergency calls, as well as take  
7 police reports over the phone.

8 Q. And while you worked in your capacity as a public  
9 safety dispatcher, did you receive any awards for your  
10 work?

11 MR. SPELLBERG: Objection. Irrelevant.

12 MR. SOROUSHIAN: This is background, your Honor.

13 THE COURT: The objection is sustained.

14 MR. SOROUSHIAN: I'll move on.

15 BY MR. SOROUSHIAN:

16 Q. Were you employed with the City in 2008?

17 A. Yes.

18 Q. And do you know who Debra Figone is?

19 A. Yes.

20 Q. And what is her position?

21 A. City Manager.

22 Q. Was she City Manager in 2008?

23 A. Yes.

24 Q. Now, did you ever receive memos or E-Mails from  
25 her?

26 A. Yes.

27 Q. And do you remember around that time, 2008, seeing  
28 a memo or an E-Mail from her on the subject of retiree

1 health care?

2 A. Yes.

3 MR. SOROUSHIAN: I would like to direct the  
4 witness' attention to what has been previously marked and  
5 introduced into exhibit as POA Exhibit 51. Does the  
6 witness have a binder?

7 THE COURT: Counsel, perhaps you can assist  
8 Ms. Martinez by providing her with a witness binder.

9 MR. SOROUSHIAN: Absolutely, your Honor. Your  
10 Honor, is it okay if I approach the witness?

11 THE COURT: Yes, please do. Help her locate that  
12 binder.

13 MR. SOROUSHIAN: I'm going to give this witness  
14 this copy. Is that okay?

15 THE COURT: The witness should have the marked  
16 exhibit.

17 MR. SOROUSHIAN: I'm going to direct the witness'  
18 attention to this exhibit, starting on the second and  
19 third page of the exhibit.

20 BY MR. SOROUSHIAN:

21 Q. Ms. Martinez, can I ask you to read the dates from  
22 this memo on the second page.

23 A. March 4, 2008.

24 Q. Do you see who the memo is addressed to?

25 A. All City employees and retirees.

26 Q. Now, I'm going to direct your attention to the  
27 next page, starting at the top. Can you read the  
28 underlined highlighted title.

1 A. Vested benefit.

2 Q. Now, I want to direct your attention under that to  
3 the first paragraph starting from the second sentence.  
4 Can you please read the remainder of that paragraph for  
5 me.

6 A. "In San Jose, retiree health care benefits" --  
7 MR. SPELLBERG: Your Honor, we object. It's  
8 already in evidence.

9 THE COURT: It is. So maybe you can just go right  
10 to the next question.

11 MR. SOROUSHIAN: Okay, sure.

12 BY MR. SOROUSHIAN:

13 Q. So you already testified that you saw this memo.  
14 Did you form an opinion as to how the City viewed the  
15 retiree health benefits based on this memo?

16 A. Yes.

17 Q. What was that opinion?

18 MR. SPELLBERG: Objection. Irrelevant. Calls for  
19 speculation.

20 MR. SOROUSHIAN: Your Honor, it goes to reliance.  
21 It goes to --

22 THE COURT: Maybe you'll be rephrasing that  
23 question.

24 BY MR. SOROUSHIAN:

25 Q. What did you understand this memo to be saying,  
26 that portion that I directed your attention to?

27 MR. SPELLBERG: Objection. Irrelevant.

28 THE COURT: Overruled.

1 THE WITNESS: I can answer?

2 BY MR. SOROUSHIAN:

3 Q. Yeah.

4 A. Can you repeat your question.

5 Q. What was -- so I directed your attention to the  
6 first paragraph of the second page of that memo. Starting  
7 from the second sentence downwards, I'll give you a second  
8 to review that. Once you do, please explain to me in your  
9 own words what you understood that to mean.

10 A. Retiree health care benefits were vested and they  
11 weren't planning on changing them.

12 Q. Now, did you have health care coverage while you  
13 worked for the City?

14 A. Yes.

15 Q. And was it only for yourself?

16 A. No. It was family.

17 Q. And do you recall what plan you were in at the  
18 time as an active?

19 A. Kaiser co-pay plan.

20 Q. Do you recall what your co-pay was?

21 A. \$25 co-pay.

22 Q. At the time, did you know whether or not you could  
23 receive health care as a retiree?

24 A. I understood if you worked 15 years for the City  
25 and you retired with the City that you would receive  
26 health care and you would not have to pay in retirement.

27 Q. Now, does the City provide you with retired health  
28 benefits?

1 A. Yes.

2 Q. What plan are you in now?

3 A. I continued with the Kaiser co-pay plan.

4 Q. Are you receiving free -- do you have to pay for  
5 that plan?

6 A. Yes, I do.

7 Q. How much do you pay?

8 A. \$318.

9 Q. Do you know if -- are you familiar with the phrase  
10 low-cost plan?

11 A. Yes.

12 Q. And do you know if -- do you know what the current  
13 low-cost plan is?

14 A. I believe it's a high deductible Kaiser plan.

15 Q. Was that option available to you when you elected  
16 your coverage for retired health?

17 A. Yes.

18 Q. And why did you not enroll in that plan?

19 A. I worked in the 911 business for over 29 years,  
20 and I do not feel it was a good gamble to -- that I would  
21 be in the same good health that I was previously in, and  
22 it was a very costly plan. I know of a lot of bad things  
23 happen to people that are unexpected, especially in the  
24 business that I was in, and not a good option.

25 Q. Do you know what the cost of the plan is?

26 A. \$1500 deductible, but you also have to pay 30  
27 percent of your in-hospital and \$40 office visits that are  
28 not part of the deductible, and many other services that I

1 get for free are not covered under this plan.

2 Q. Before you retired, did you attend classes at  
3 retirement services?

4 A. Yes, I did.

5 Q. Did they discuss the retired health benefits you  
6 would receive when you retired?

7 A. Yes, they did.

8 Q. Did they talk to you -- did they identify what the  
9 lowest cost plan was at that point?

10 A. Yes.

11 Q. Which plan was that?

12 A. Kaiser co-pay plan that I was enrolled in.

13 Q. And how long before -- approximately how long  
14 before you retired did you attend these classes?

15 A. I'd say within the last year maybe.

16 Q. And when you elected your coverage, what was  
17 presented to you as the lowest cost plan as a retiree?

18 A. As the last meeting that we had previous to my  
19 retirement, they had the high deductible plan, and that's  
20 when I found out I would be paying \$318 for the same plan  
21 I received as an employee in which I paid \$200 for.

22 Q. Do you know when Measure B passed?

23 A. June of 2012, I believe.

24 Q. When did you enroll in your retiree health plan?

25 A. When I enrolled it was probably February. I  
26 retired in March.

27 Q. February of?

28 A. This year.

1 MR. SOROUSHIAN: Thank you. No further questions.

2 THE COURT: Anything for the Retired Employees'  
3 Association?

4 MR. SILVER: No questions, your Honor.

5 THE COURT: POA?

6 MR. ADAM: Nothing, your Honor.

7 THE COURT: Sapien plaintiffs?

8 MR. PLATTEN: Nothing.

9 THE COURT: City?

10 MR. SPELLBERG: Thank you, your Honor. Yes.

11

12

CROSS-EXAMINATION

13

BY MR. SPELLBERG:

14

Q. Hello, Ms. Martinez. How are you?

15

A. Fine. How are you?

16

Q. Good. I met you a week or so ago; correct?

17

A. Yes.

18

Q. Ms. Martinez, you've talked about your health care  
19 benefits as a retiree for your testimony; correct?

20

A. Correct.

21

Q. And you are receiving health care benefits from  
22 the City right now, are you not?

23

A. Yes.

24

Q. And what happened is in November or December of  
25 2012, you received information that there were going to be  
26 a new plan that you could select; isn't that right?

27

A. As a current employee or as retiree?

28

Q. No. As retiree.

1 I'm sorry. You retired in 2013?

2 A. I retired March so I would not receive information  
3 on retirees.

4 Q. When you were an employee, you received the  
5 notification that there were different plans available at  
6 the end of 2012; right?

7 A. Yes.

8 Q. And you selected a plan through Kaiser where you  
9 made some payment for your family members; right?

10 A. Are you talking about the co-pay plan?

11 Q. Yes.

12 A. Yes. I was enrolled in a \$25 co-pay plan.

13 Q. Then when you retired, you have the choice of  
14 staying in that plan; correct?

15 A. Correct.

16 Q. But the price was going to go up if you stayed in  
17 that plan; right?

18 A. As far as the premium?

19 Q. Exactly.

20 A. I understood it was going to be zero and it was  
21 \$300. So --

22 Q. When you were at the City, you were paying about  
23 \$200 a month in premium for your health care; right?

24 A. Correct.

25 Q. And then when you retired, it went up to about  
26 314; right?

27 A. 318.

28 Q. And you had a choice, did you not, when you

1 retired, to select a plan where there was no cost to you,  
2 there was no premium; isn't that right?

3 A. Right. The high deductible plan.

4 Q. But you elected not to select the plan with the  
5 zero premium. You selected a different plan; correct?

6 A. Correct.

7 Q. Ms. Martinez, you're aware, are you not, that the  
8 provisions of Measure B have not been implemented; right?

9 A. Right.

10 Q. And you agree, do you not, that the fact that your  
11 premium that you're paying for your health care went up  
12 from \$200 to 318 when you retired, that's not related to  
13 Measure B, is it?

14 MR. SOROUSHIAN: Objection. Argumentative.

15 THE COURT: Overruled.

16 THE WITNESS: I'm sorry. Am I supposed to answer  
17 that?

18 THE COURT: Yes.

19 THE WITNESS: Can you repeat it again.

20 MR. SPELLBERG: Sure.

21 BY MR. SPELLBERG:

22 Q. You are aware that the terms of Measure B have not  
23 been implemented; right?

24 A. Right.

25 Q. So you agree with me, do you not, that the fact  
26 when you retired, the premiums you were paying on your  
27 health care rose from \$200 to 318, that is not related to  
28 Measure B, is it?

1 MR. SOROUSHIAN: Objection. Compound.

2 THE COURT: Overruled.

3 THE WITNESS: I don't think that the higher cost  
4 plan was in Measure B, but I think it's related.

5 BY MR. SPELLBERG:

6 Q. Measure B didn't cause that increase in your  
7 premium, did it, Ms. Martinez?

8 A. No.

9 Q. In fact, the reason the plans have gone up is  
10 because health care costs have continued to rise; isn't  
11 that accurate?

12 MR. SOROUSHIAN: Objection. Calls for  
13 speculation.

14 THE COURT: Overruled.

15 THE WITNESS: What specific prices have gone up?  
16 Because we were imposed -- on the 15 percent that I pay  
17 now wasn't negotiated. So as far as the imposition of the  
18 premium cost, it was never negotiated, and we have always,  
19 over the years, paid for higher health care, and this year  
20 was the only difference that it was is we didn't negotiate  
21 these changes and we were imposed on and the retirees had  
22 to go from nothing to paying \$300. So to me, that has  
23 nothing to do with the rising health care costs. It has  
24 to do with the imposition that was unfair.

25 BY MR. SPELLBERG:

26 Q. I think you said over the years, you have seen  
27 health care costs rise as far as employees having to pay  
28 premiums; right?

1 A. Right. Yes.

2 Q. This is just one more example of that, is it not?  
3 This change after you retired, this is just rising health  
4 care costs; correct?

5 A. It's a change because we did not negotiate these  
6 prices. Our contracts in the past, we agree to the rising  
7 cost of health care. We agreed to the co-pays. We agreed  
8 to the lowest cost plan. This was different because we  
9 didn't agree with it. We weren't negotiated with it, and  
10 it was imposed on us. So it differs from all of the other  
11 rising costs in health care in that it was never  
12 negotiated. So I wouldn't say it's a normal course of  
13 action for the City to take.

14 Q. So you're saying the difference is that it was  
15 imposed upon the bargaining unit as opposed to a bargained  
16 for change? Is that the difference?

17 A. You're talking about two different things. One is  
18 the vested right. I was supposed to pay nothing for the  
19 same health care I received for 20 years. The other one  
20 is we accepted the changes in health care and we made the  
21 changes for the \$25, even the \$25 co-pay plan and we  
22 agreed to, like, a ten percent increase. The 15 percent  
23 that we pay was imposed on us. The change for retirees  
24 was totally imposed on us, and we never had a high  
25 deductible plan until it was imposed on us in January of  
26 this year.

27 Q. You agree that you still have the right to have a  
28 retiree health care plan where you pay nothing; right?

1 A. Right.

2 Q. And you have that option, you just didn't select  
3 that option; isn't that right?

4 A. Absolutely.

5 MR. SPELLBERG: That's all I have, your Honor.  
6 Thank you.

7 THE COURT: Anything else for Ms. Martinez?

8 MR. SOROUSHIAN: A few questions.

9

10 REDIRECT EXAMINATION

11 BY MR. SOROUSHIAN:

12 Q. Ms. Martinez, you were just asked whether --  
13 Mr. Spellberg just asked if you could still opt into a  
14 plan where you pay nothing for the premiums. If you were  
15 to do so, would you still have to pay towards the  
16 deductible?

17 A. There's a \$1500 deductible and higher office fees  
18 and procedures, so it's a lot more costly.

19 Q. So would you consider that free retired health  
20 plan?

21 MR. SPELLBERG: Objection. Leading.

22 THE COURT: Overruled.

23 THE WITNESS: No.

24 By MR. SOROUSHIAN:

25 Q. What is your opinion of that plan?

26 MR. SPELLBERG: Objection. Irrelevant.

27 THE COURT: What are you asking her? Maybe you'll  
28 rephrase that.

1 BY MR. SOROUSHIAN:

2 Q. Why did you not choose that plan?

3 A. Like I said before, is because it's costly. I was  
4 afraid to go into a plan where no one is guaranteed their  
5 future, their health, and the plan, as it is written and  
6 what I understand it to be, is that, especially in your  
7 older ages -- I don't admit to that -- but you have a lot  
8 of health care problems. That's what happens when you get  
9 older and you can't afford that kind of plan. You can't  
10 afford to look at one trip to the hospital causing you  
11 bankruptcy. That was actually an example that one of the  
12 City Council people used in their statement in a City  
13 Council meeting, and that's what really made me think, how  
14 could anybody even go into some kind of plan like that.

15 MR. SOROUSHIAN: I have nothing further, your  
16 Honor.

17 THE COURT: Anything else for Ms. Martinez?

18 MR. SPELLBERG: No, your Honor. Thank you.

19 THE COURT: Ms. Martinez, thank you. You're  
20 excused. You can stay or go.

21 Who will be the next witness for AFSCME?

22 MR. SOROUSHIAN: I will go --

23 THE COURT: Counsel, if you would tell me who it  
24 is.

25 MR. SOROUSHIAN: I believe it's Dan Doonan.

26 THE COURT: We'll be taking a ten-minute break.

27 (Recess.)

28 THE COURT: Does AFSCME wish to call another

1 witness?

2 MR. PATERSON: Yes, your Honor. AFSCME calls  
3 Daniel Doonan.

4 THE COURT: Please stand and be sworn.

5 THE CLERK: You do solemnly state, under penalty  
6 of perjury, that the evidence you shall give in this issue  
7 or matter shall be the truth, the whole truth, and nothing  
8 but the truth?

9 THE WITNESS: Yes, I do.

10 THE CLERK: Thank you. Please have a seat. Once  
11 you're seated, please state and spell your name for the  
12 record.

13 THE WITNESS: My name is Daniel Doonan;  
14 D-A-N-I-E-L, D-O-O-N-A-N.

15

16 DANIEL DOONAN

17 called as a witness by counsel for the Plaintiffs, being  
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. PATERSON:

21 Q. Mr. Doonan, what's your current position or job  
22 title?

23 A. I'm a Labor Economist III, the American Federation  
24 of State County and Municipal Employees, or AFSCME.

25 Q. Is that distinct from Local 101, the plaintiff  
26 here?

27 A. Yes. Local 101 is an affiliate of the  
28 international union, which is where I work.

1 Q. How long have you worked for the AFSCME  
2 international?

3 A. About five and a half years.

4 Q. You started --

5 A. In February 2008.

6 Q. What are your general -- what are your duties as a  
7 labor economist?

8 A. I review the finances of employers, typically upon  
9 request of our affiliates. Sort of analyze the financial  
10 situation of employers. I also serve as a pension  
11 specialist in research department. Reviewing, analyzing  
12 pension plans in various different ways.

13 Q. Does that occasionally involve testifying in  
14 proceedings?

15 A. Sometimes, yes, it does.

16 Q. And what about costing of pension and retirement  
17 changes? Does it include that?

18 A. Yes. I do that for affiliates.

19 Q. What sort of materials do you review in doing  
20 this?

21 A. Typically, the actuarial valuation reports, plan  
22 Comprehensive Annual Financial Reports, or CAFRs, sort of  
23 the audited documents, as well as any other specific  
24 materials that the City might have produced around the  
25 subject.

26 Q. Are you an enrolled actuary?

27 A. No, I'm not.

28 Q. Do you have actuarial experience?

1           A.    I worked with Bolton Consultants for seven, eight  
2 years, but I do not have actuarial credentials.

3           Q.    Before we get into your professional background,  
4 what are your educational attainments?

5           A.    I have a bachelor of science in mathematics from  
6 Elizabethtown College and a minor in business  
7 administration.

8           Q.    Have you done any postgraduate education?

9           A.    Yes.  I passed the site of actuarial exams one  
10 through four and the enrolled actuary exam.  The first  
11 one, BA 1, as well I took a statistical sampling course at  
12 George Washington University.  I received an AA.

13          Q.    Have you done policy work for AFSCME related to  
14 pension?

15          A.    Yes.  Recently GASB, the Governmental Accounting  
16 Standards Board, was looking at changing pension  
17 accounting rules, and I reviewed their proposal and  
18 drafted the comments on behalf of AFSCME.  In addition,  
19 similarly, Moody's was looking at changing how they view  
20 pensions in bond rating process.  I drafted and signed the  
21 comments on behalf of AFSCME to Moody's.

22          Q.    Just so we all know, who is Moody's?

23          A.    Moody's is one of the larger bond rating agencies.  
24 So they look at debt or bond issues that governmental, as  
25 well as well as private companies, might issue debt.  
26 Moody's looks at the finances to sort of evaluate the  
27 risk -- the repayment risk on behalf of bond buyers.

28          Q.    And I assume from your testimony, from time to

1 time they change their methodology?

2 A. They do, yes.

3 Q. And you provided a comment on that?

4 A. That's right. As pensions become a bigger topic  
5 recently, they accepted comments on the changes in their  
6 ratings methodology.

7 Q. Any other examples of pension related work for  
8 AFSCME? Do you do trainings or presentations or anything  
9 like that?

10 A. Yes. I do trainings at our convention and various  
11 other AFSCME events.

12 Q. Have you attended any panels?

13 A. Oh, yes. I participated on a panel at Stanford  
14 University that was arranged by determination.

15 Q. How many members, approximately, does AFSCME have?

16 A. About 1.6 million members.

17 Q. Has your experience in terms of pensions with  
18 AFSCME been primarily public or private?

19 A. Primarily public with AFSCME. Before that, I  
20 worked for the National Association of Letter Carriers,  
21 which is also private. Before that, with Buck  
22 Consultants, we did work with private and public  
23 employers.

24 Q. Before getting into your prior experience with  
25 other employers, can you tell us some of the venues in  
26 which you've provided testimony.

27 A. Sure.

28 Q. Do you have something that you can consult to help

1 you remember?

2 A. Yes. I wrote some notes.

3 MR. PATERSON: Would you like to see his notes?

4 MS. ROSS: Yes, I would.

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

6 THE COURT: Yes.

7 What's the next AFSCME exhibit number?

8 MR. PATERSON: It is 523.

9 THE COURT: The notes will be marked as 523.

10 (Plaintiffs' Exhibit 523 was marked  
11 for identification.)

12 MR. PATERSON: Shall I present these to Madam  
13 Clerk?

14 THE COURT: Yes, please.

15 The witness is looking at 523.

16 BY MR. PATERSON:

17 Q. Can you tell us, then, some of the venues which  
18 you've provided testimony or comments.

19 A. Sure. I provided testimony in the City of Atlanta  
20 to the City Council regarding their pension plan and  
21 proposals down there. I provided testimony in the state  
22 of Kentucky to the Kentucky Pension Task Force. Again,  
23 related to pensions. I provided testimony in Dania Beach,  
24 Florida, regarding pensions and the overall finances of  
25 the City. And I was sworn in as an expert in Dania Beach.  
26 I provided testimony in Governor Jindal's streamlining  
27 commission in Louisiana, Medina Housing Authority in Ohio,  
28 and that had to do with the finances of the employer. The

1 City of Waterbury, Connecticut, again, the finances of the  
2 employer. And I provided comments to Baltimore City  
3 Council about pensions in Baltimore, Maryland.

4 Q. Prior to working for AFSCME, what was your  
5 position?

6 A. Before AFSCME, I worked with the National  
7 Association of Letter Carriers as the assistant director  
8 of research.

9 Q. What were your responsibilities?

10 A. Provided economic research, served as the lead  
11 analyst through the collective bargaining process, pricing  
12 out changes and compensation costs, things like that, for  
13 various proposals. I also tracked and reported on postal  
14 services finances, talking to US Postal Service. I also  
15 tracked sort of different events, changes, trends in  
16 postal services in other countries, and also updated wage  
17 and COLA charts for members which were posted on the  
18 website.

19 Q. Prior to working for the Letter Carriers Union,  
20 where did you work?

21 A. I was a consultant actuary at Buck Consultants.

22 Q. What's a consultant actuary?

23 A. A consultant actuary is a job title. It did not  
24 infer or imply a formal designation, but essentially  
25 allowed them to bill you out for a couple hundred dollars  
26 an hour.

27 Q. Tell me about your duties at Buck Consultants.

28 A. Managing the preparation of valuation reports,

1 doing benefit calculations, sometimes benefit statements,  
2 preparing government forms that are done for pension  
3 plans, such as PBGC, Pension Benefit Guarantee  
4 Corporation, as well as sort of consulting on plan design  
5 issues and costing out potential changes. It was  
6 actuarial consulting, primarily with pensions.

7 Q. What is Buck Consultants exactly?

8 A. It's a human resources consulting firm. It has a  
9 large retirement practice which is essentially competitor  
10 with Cheiron Company, Tower Span, firms like that.

11 Q. There was a time when you worked or were leased to  
12 Ford?

13 A. Yes. During my time at Buck Consultants, I was  
14 leased to Ford Motor Company. I'd essentially turn up to  
15 work at Ford Motor Company every day as though I was one  
16 of their employees, but I was a monthly, essentially, fee  
17 they paid. I was still employed at Buck. When I was  
18 there, I would do pension and accounting projections for  
19 major Ford pension plans and as well as sort of study plan  
20 design issues between the defined benefit, defined  
21 contribution, cash balance plans. I also served as the  
22 lead analyst in pricing out potential changes for Ford  
23 Motor Company plan during bargaining with the UAW in 2003.

24 Q. Were you also responsible at all for administering  
25 any pension plans?

26 A. Yes. I was contact person for two small pension  
27 plans that Ford had, so I was responsible for the  
28 administrative side of those.

1 Q. And you also built models, pricing?

2 A. Yeah. For collective bargaining, we built  
3 essentially models to price out potential changes  
4 throughout the bargaining process with the goal of when a  
5 proposal is made or when management wanted to look at  
6 something, we could have the models ready so we could  
7 prepare the costs quickly.

8 Q. Before working for Buck, what was your job?

9 A. Before Buck, I worked for the Bureau of Labor  
10 Statistics, which is part of the Department of Labor, and  
11 I was a mathematician statistician there.

12 Q. What did your job entail there?

13 A. I worked on an actual compensation survey. The  
14 statisticians drew survey samples, and then once the data  
15 was collected, we calculated means, variances, adjusted  
16 for non responds, so it was essentially survey work.

17 Q. Did you write any papers?

18 A. I did study the effects of using replication, to  
19 draw samples and calculate means and variances as opposed  
20 to what the tabler series which was used by BLS at the  
21 time. We're looking at what would the effects be of using  
22 a different method.

23 Q. Now, you described some formal hearings or  
24 tribunals in your testimony relating to work with AFSCME.  
25 With AFSCME, have you consulted or provided advice in  
26 other less formal settings?

27 A. Yes. I've worked with a lot of our locals in less  
28 formal settings. Typically, we get deals and we don't end

1 up testifying, but that includes University of California,  
2 our Local 3299, AC Transit, and both of those cases, I was  
3 sort of analyzing the pension plan, both the benefit side  
4 and the finances, as well as consulted on what different  
5 changes meant for employees and cost wise.

6 In addition, I've worked with East Windsor,  
7 Connecticut, again, similar work, analyzing the current  
8 pension plan and looking at alternatives. New Canaan,  
9 Connecticut, similar work there. Analyzing proposals and  
10 the current pension plan, benefits, trends, weaknesses, as  
11 well as the finances. West Hartford, Connecticut, again,  
12 similar analysis. Wayne County. In addition to pension,  
13 I looked at retiree health care for Wayne County,  
14 Michigan, which includes Detroit and Duke. North Miami  
15 Beach, Florida, Benton Harbor, Michigan, similar work  
16 there, analyzing pension plans, analyzing proposals.  
17 LACERS, the LA City Employer Retirement System, Pensacola,  
18 Florida, and, again, very similar work there. Commerce  
19 City, California, and Memphis, Tennessee. In Memphis, we  
20 actually were looking at trying to create a supplemental  
21 retirement benefit. So the work there was a bit different  
22 in that it required drafting essentially a plan that would  
23 be offered to the sanitation workers there.

24 Q. Thank you.

25 As a result of your training and experience, what  
26 areas of expertise do you have?

27 A. I'm qualified to review financial statements,  
28 actuarial valuations, review pension plans, finances, the

1 benefits, to analyze the cost of changes and the impact to  
2 employees of changes.

3 Q. Now, do you have personal experience with  
4 Measure B or the events leading up to it?

5 A. Yes. I was working with AFSCME's Local 101 here  
6 so I reviewed Measure B, advised them on the sort of  
7 implications, the various iterations of Measure B along  
8 the way.

9 Q. And did you review various proposals?

10 A. Yes. I reviewed different proposals throughout  
11 bargaining. I attended some of the bargaining sessions  
12 based out of DC. I didn't go to all of them, but I did  
13 attend a number of them in trying to craft a deal.

14 Q. Are you familiar with the San Jose Federated plan?

15 A. Yes. I have reviewed the actuarial valuation  
16 reports, the plan CAFRs, or Comprehensive Annual Financial  
17 Reports, as well as a number of materials the City has put  
18 out. The auditor's report, sustainability, and numerous  
19 other City memos.

20 Q. City CAFRs?

21 A. The City CAFRs as well, yes. It's related to the  
22 City, not the plan, yes.

23 Q. Are those financial and actuarial statements  
24 typically relied on in your field?

25 A. Yes, they are.

26 Q. So are you familiar with the provisions of  
27 Measure B related to employees that do not opt into what's  
28 called the VEP?

1           A.    Yes.  Basically, those current workers who elect  
2           not to opt in the VEP would face paying half of the funded  
3           liabilities which would be capped at 16 percent of pay and  
4           it would incrementally be implemented at 4 percent per  
5           year.

6           Q.    Is it your view that at 16 percent, cap will be  
7           reached?

8           A.    Yes, it is.

9           Q.    Why is that?

10          A.    Well, the way --

11          MS. ROSS:  Your Honor, I need to object at this  
12          point.  There was a stipulation --

13          THE COURT:  What are you objecting to?

14          MS. ROSS:  I'm objecting to the testimony because  
15          there was a stipulation during the deposition that this  
16          witness was not an actuary and would not be offered as an  
17          actuary.  So to the extent that he is going to testify  
18          about any actuarial matter, it should be excluded.  
19          Mr. Paterson was very clear at the deposition.  He said  
20          Dan is not an actuary and his testimony is not as an  
21          actuary.

22          THE COURT:  Are you objecting to testimony that's  
23          already been given?

24          MS. ROSS:  Yes, your Honor.

25          THE COURT:  Which testimony?

26          MS. ROSS:  Where he's beginning to talk about  
27          whether or not, in his opinion, the 16 percent cap is  
28          going to be reached.  These are actuarial matters.  How

1 much is one half of the unfunded liability? Is it going  
2 to be 16 percent?

3 THE COURT: I understand.

4 May I have a response?

5 MR. PATERSON: My recollection was the questions  
6 related to whether Mr. Doonan was an enrolled actuary.  
7 What we said was he was testifying consistent with his  
8 declaration, which certainly involves interpreting  
9 actuarial principals, but I said he's a labor economist,  
10 focuses on pension.

11 THE COURT: Maybe somebody can provide me with the  
12 record so I can see what was actually said.

13 MS. ROSS: I have it, your Honor.

14 MR. PATERSON: Which page?

15 MS. ROSS: The deposition, it's page 8, and it is  
16 lines 22 through 25.

17 MR. PATERSON: Page 8?

18 MS. ROSS: I'm sorry. My eyesight is not very  
19 good. It's page 9, lines 22 through 25.

20 MR. PATERSON: He's an economist, your Honor.

21 THE COURT: Right. We don't offer his testimony  
22 as an actuary.

23 MR. PATERSON: We did enter a stipulation that he  
24 would be testifying consistent to the topics covered in  
25 his declaration. This is certainly covered in his  
26 declaration to quite significant degree.

27 THE COURT: So how is the testimony last offered  
28 in violation of the stipulation?

1 MS. ROSS: Your Honor, the calculation of what is  
2 the amount of the unfunded liability, what is half of the  
3 amount of unfunded liability, what will the employee be  
4 required to pay in terms of a percentage of that and when  
5 will you reach 16 percent of pay, these are all actuarial  
6 matters. We went over them with Mr. Lowman, who is an  
7 expert actuary, and it's not -- labor economist is  
8 something different. He analyzes City finances and pay,  
9 whatever is in connection with this material, but he is  
10 not an actuary that can give an opinion on the size of the  
11 liability and what is half of it and how does that relate  
12 to pay.

13 MR. PATERSON: Nor do we ask him to do that, your  
14 Honor. If I may respond.

15 THE COURT: You just asked him is it your view  
16 that at 16 percent, cap will be reached? Yes. Why?

17 MR. PATERSON: That's not -- let me explain it,  
18 your Honor. He is not presenting any actuarial valuations  
19 or any actuarial computations. The question of the  
20 unfunded liabilities, the data related to the unfunded  
21 liabilities that he's relying on come from the plan  
22 actuarial reports. He's not independently making those  
23 computations.

24 MS. ROSS: Your Honor, he's interpreting the  
25 report and applying it and making and creating an opinion  
26 that goes beyond the report, if that is an opinion.

27 MR. PATERSON: I disagree, your Honor. He's  
28 looking at labor economics in terms of things like payroll

1 and the number of employees on the payroll and its effects  
2 on the funded liabilities.

3 THE COURT: That's not the last thing you just  
4 asked him. So if there are other topics that you believe  
5 are not in violation of the stipulation, you should go to  
6 those now.

7 MR. PATERSON: Your Honor, there's a stipulation  
8 that says that he is testifying consistent with his  
9 declaration, and this is all consistent with his opinions  
10 expressed in the declaration.

11 THE COURT: Right. But you said that he is not an  
12 actuary, won't be testifying about actuarial matters.

13 MR. PATERSON: He won't be doing actuarial  
14 computations.

15 THE COURT: I read what you said in the deposition  
16 transcript. Are there any other areas in which you want  
17 to question Mr. Doonan?

18 MR. PATERSON: Yes, there are, your Honor.

19 BY MR. PATERSON:

20 Q. Does your experience as a labor economist allow  
21 you to opine as to whether a 16 percent cap on payroll  
22 contributions will be required under Measure B?

23 A. Yes.

24 Q. How is that?

25 MS. ROSS: Your Honor, same objection. That's the  
26 same issue. It's just not saying half of the unfunded  
27 liabilities, which is what Measure B says. He's just left  
28 that out of his question. It's the same question. All

1 right. Measure B says half of unfunded liabilities capped  
2 at 16 percent. It's the same question.

3 MR. PATERSON: It's a percentage of payroll  
4 question, your Honor. The unfunded liabilities are set  
5 forth in the actuarial reports. It doesn't require  
6 actuarial analysis.

7 THE COURT: This is just the same topic that I  
8 just ruled on, so I invited you to ask questions on other  
9 topics, if you wish to.

10 MR. PATERSON: To me the objection is a little  
11 vague so I'm trying to understand. Is your ruling that I  
12 cannot ask him anything about how the City's -- the extent  
13 of payroll and the number of employees covered on that  
14 payroll and the impact that might have on the amount of  
15 contributions towards pension plan? That doesn't seem to  
16 be an actuarial question. That seems to be an economic  
17 question, your Honor.

18 THE COURT: I've ruled on the last series of  
19 questions and answers about his view of when the 16  
20 percent cap will be reached. That appears to be an  
21 actuarial matter, and I think it's a fair reading of your  
22 statement at the deposition that that testimony would not  
23 be offered.

24 MR. PATERSON: Okay, your Honor. That's not how I  
25 understood my stipulation.

26 BY MR. PATERSON:

27 Q. Do you have an opinion, Mr. Doonan, as to the  
28 ability of the City to increase its pension contributions

1 if its payroll is diminishing?

2 A. Can you repeat that.

3 Q. Does a diminishing payroll affect the City's  
4 ability to make its pension contributions?

5 A. When you have a diminishing in payroll, you face  
6 two parts to the contribution: Normal cost, which is  
7 accrued year over year, as well as the payment towards the  
8 unfunded liabilities. So when payroll is reduced, you  
9 save on the normal cost, but the unfunded liability part  
10 of the contribution remains.

11 Q. Do you know if, in fact, the City's payroll has  
12 diminished over the last few years?

13 A. Yes. The City's payroll was cut by \$83 million in  
14 recent years. And based on the normal cost that the  
15 actuary calculated between 2012 and 2014, that would  
16 reduce pension costs by 11, 13 million. You simply  
17 multiply the numbers together, the normal cost times  
18 reduction in payroll.

19 Q. Can you tell me if any of the benefit improvements  
20 that have been afforded under the Federated plan.

21 A. Yes. There's two major benefit increases. In the  
22 mid-'80s, they added medical and dental for retirees, and  
23 in 1975, the multiplier was increased to two and a half  
24 percent from two, which was almost 40 years in the past at  
25 this point.

26 Q. Have there been more modest benefit improvements  
27 in Federated?

28 A. Yes. The final average pay was increased from

1 final three years to the highest one year or highest three  
2 years to highest one year in 2001, which, essentially,  
3 according to the actuary's reference -- I'm going to  
4 reference Exhibit 492, which is a table I put together.  
5 The numbers in here are not calculated by me but were from  
6 the comprehensive annual financial reports for the plan  
7 itself, and you can see the change in benefit provision in  
8 2001 equated to one and a half percent of payroll. So  
9 when they increased the final average pay to highest year,  
10 it equated to one and a half percent, 1.15 percent of pay  
11 change in contribution levels.

12 Q. And COLA?

13 A. Yeah. The cost of living increase was changed in  
14 2006 from CPI up to three percent with a banked feature to  
15 a flat three percent. The change essentially set the  
16 policy equal to the assumption that had been in place,  
17 thus the normal cost, and since they were already assuming  
18 three percent, the plan was being funded assuming that it  
19 would be paid three percent every year.

20 Q. So if I understand you, prior to the guaranteed  
21 three percent COLA, the employees were already  
22 contributing based on a three percent assumption?

23 A. Based on an assumption that it would be three  
24 percent, yes.

25 MS. ROSS: Your Honor, I have to object again.  
26 Exhibit 492 basically looks like a series of actuarial  
27 calculations.

28 THE COURT: 492 has not been offered.

1 MS. ROSS: Then I object to the question -- the  
2 answer. He's calculating benefits based on sort of  
3 actuarial assumptions.

4 THE COURT: There's no pending question. Are you  
5 asking me --

6 MS. ROSS: Move to strike, your Honor.

7 THE COURT: Move to strike what?

8 MS. ROSS: His last answer.

9 THE COURT: The last answer. That's denied.

10 MR. PATERSON: May I proceed?

11 THE COURT: Yes.

12 BY MR. PATERSON:

13 Q. Can you tell me what it means by the policy  
14 equaling assumption?

15 A. Yes. That the COLA policy, after 2006, was the  
16 plan would pay three percent every year. And the  
17 assumption has been that the plan would pay three percent  
18 a year. So what I'm saying is that the COLA policy that  
19 was adopted at that point is simply the same as what was  
20 being assumed by the actuaries.

21 Q. Thank you. You also mention the SRBR.

22 A. Yes. The SRBR, supplemental 13th check program.

23 Q. Continue.

24 MS. ROSS: Your Honor, there's no question. What  
25 about SRBR? I can't --

26 THE COURT: Hello. Objection is sustained. Let's  
27 get the question.

28 MR. PATERSON: I apologize, your Honor.

1 BY MR. PATERSON:

2 Q. Was the SRBR another of these improvements?

3 A. Yes. The SRBR was another improvement. I believe  
4 that came in 1986, and it's essentially the 13th check  
5 benefit. It was never refunded. It essentially swept off  
6 excess earnings in years with high investment returns into  
7 a 13th check benefit.

8 Q. And do you know if the GASB accounting rules  
9 required reporting that sort of a benefit?

10 MS. ROSS: Objection, your Honor.

11 MR. PATERSON: GASB is accounting standard, not  
12 actuarial accounting.

13 THE COURT: I don't know the legal basis.

14 MS. ROSS: Objection. It's beyond -- no  
15 foundation. It's beyond his expertise. He's not here as  
16 an actuary. GASB is an actuarial accounting concept that  
17 was implemented by actuaries.

18 THE COURT: That's my understanding from  
19 Mr. Lowman's testimony. I'm not sure how this pending  
20 question would add to what Mr. Lowman has already said.

21 MR. PATERSON: Your Honor, if I may respond to  
22 that. The GASB rules accounting measures for reporting  
23 City finances. Mr. Doonan is a labor economist who reads  
24 these reports and analyzes them and has experience in them  
25 and has experience under the GASB rules as a result. GASB  
26 is not an actuarial -- it does not apply to actuarial  
27 procedure. It's an accounting standard.

28 THE COURT: Okay. The objection to the pending

1 question is overruled.

2 MR. PATERSON: Sorry. The question is overruled  
3 or the objection?

4 THE COURT: The objection is overruled.

5 THE WITNESS: GASB did not -- does not require  
6 essentially reporting an accrued liability for irregular  
7 benefits that are not essentially fixed and predictable.

8 BY MR. PATERSON:

9 Q. Have you looked at the number of retirements that  
10 the Federated plan has experienced in recent years?

11 A. Yes, I did.

12 Q. How did you ascertain that?

13 A. At the back of the plan Compressive Annual  
14 Financial Report, there's a list of names, and I simply  
15 copied them and counted the names of people who published  
16 as new retirees during the year.

17 Q. What were the results of that?

18 A. In 2009, there was 112 people that retired. In  
19 2011, there was 307, which was a significant increase.  
20 And in 2012, there was 176, which is still far above the  
21 2009 number, despite a high number of retirements the  
22 prior year.

23 Q. Is that a unusual trend?

24 MS. ROSS: Objection. Lacks foundation.

25 THE COURT: Is it an unusual trend with respect to  
26 the City or --

27 MR. PATERSON: The number of retirements that he's  
28 just described.

1 THE COURT: Would you rephrase the question,  
2 please.

3 MR. PATERSON: I'll do my best, your Honor.

4 BY MR. PATERSON:

5 Q. Did those results stand out to you?

6 A. Did those results -- excuse me?

7 Q. Results stand out to you?

8 MS. ROSS: Objection. Lacks foundation.

9 THE COURT: Overruled.

10 THE WITNESS: Yeah. You don't typically see the  
11 number of retirees, new retirees essentially almost triple  
12 in two years. But I think it was tied to everything that  
13 was going on in the pay cuts, all the other cuts that were  
14 happening in San Jose at the time.

15 BY MR. PATERSON:

16 Q. Can you explain that to me, please.

17 A. Essentially, in the past, someone could retire at  
18 age 55, but there was not a history of everybody running  
19 out the door at age 55. It was very common for people to  
20 stick around. They like their job, they enjoyed it. For  
21 whatever reason, they didn't go out early. But in 2011,  
22 there was a lot more frustration, I think, with the City  
23 workers with everything that was going on and a lot more  
24 people took the opportunity to retire earlier than assumed  
25 by the plan and also earlier than past practice because  
26 that's what planned assumptions are based on.

27 MS. ROSS: Your Honor, I move to strike this whole  
28 last answer.

1 THE COURT: What's the legal basis?

2 MS. ROSS: It's speculation and lacks foundation  
3 as to what he's comparing it to. He's speculating about  
4 why people left City employment. There's no foundation as  
5 to what periods are being compared to what periods, and  
6 where is the expert opinion?

7 THE COURT: Motion is granted.

8 BY MR. PATERSON:

9 Q. In your experience, do significant wage cuts  
10 result in elevated retirements?

11 A. Yes, they certainly can.

12 Q. Do you have an understanding of the Voluntary  
13 Election Plan, VEP, provisions related to COLA?

14 A. Yes.

15 Q. What is COLA?

16 A. The cost of living increase that's granted after  
17 you retire.

18 Q. And how is it -- withdrawn.

19 How does 1.5 percent compare to the historical  
20 inflationary rate?

21 A. 1.5 percent is less than the inflation has been  
22 historically. I provided an exhibit with inflation going  
23 back to 1975, and that average is nearly four percent.

24 Q. How do you measure inflation?

25 A. The Bureau of Labor Statistics published an  
26 inflation measure, multiple inflation measures. The CPIU  
27 for all urban workers, the CPIW for wage earners and  
28 clerical workers, and they are generally the gold standard

1 for inflation in the US.

2 Q. Did you acquire those figures from the BLS?

3 A. Yes. I got them from the website. You can pull  
4 down past data from their website.

5 Q. Can you tell us which exhibits those are.

6 MS. ROSS: Objection, your Honor. Hearsay.

7 THE COURT: Can you tell us which exhibit those  
8 are? Overruled.

9 BY MR. PATERSON:

10 Q. Maybe I can direct you attention, perhaps number  
11 487. 503, 504 and 505. Do you recognize those documents?

12 A. Yes, I recognize those.

13 Q. How did you come by them?

14 MS. ROSS: There's a pending objection as hearsay.

15 THE COURT: He mentioned three documents. Which  
16 one are we talking about now?

17 MR. PATERSON: Let's start with 503.

18 THE COURT: The documents have not yet been  
19 offered, but if they are offered or referred to, I will  
20 entertain your objection.

21 MS. ROSS: Offered or referred to?

22 THE COURT: As in reading from them, yes.

23 BY MR. PATERSON:

24 Q. Can you describe to us -- do you have Exhibit 503  
25 in front of you?

26 A. 503, yes.

27 Q. What is it?

28 A. It is the Consumer Price Index for San Francisco,

1 Oakland, San Jose area.

2 Q. Did you get this from the Bureau of Labor  
3 Statistics website?

4 A. Yes. As indicated on top.

5 Q. The Bureau of Labor Statistics CPI data is relied  
6 on within your field?

7 A. Yes, it is.

8 Q. You, in fact, worked for the Labor of Bureau  
9 Statistics?

10 A. I did not on the CPI, but I did.

11 Q. It's an arm of the federal government?

12 A. It is part of the Department of Labor.

13 MR. PATERSON: I'd move this into evidence, your  
14 Honor.

15 MS. ROSS: Objection. Hearsay.

16 THE COURT: I'm receiving 503 only for the purpose  
17 of explaining an opinion that might be based on 503 and  
18 for that limited purpose only.

19 (Plaintiffs' Exhibit 503, previously marked for  
20 identification, was received in evidence.)

21 BY MR. PATERSON:

22 Q. Is there also a CPI for national average?

23 A. Yes.

24 Q. Did you ascertain the historical national CPI?

25 A. Am I able to refer to 487?

26 Q. Yes, sir. I was looking at 504.

27 A. 504 as well is the national. And 487 is the  
28 background where I actually calculated the annual change

1 and the cumulative change over those years.

2 Q. Let's stick with 504. Where did you come by that?

3 A. Also the Bureau of Labor Statistics.

4 Q. What about Exhibit 505?

5 MS. ROSS: Objection.

6 THE COURT: What about -- I don't know what that  
7 question is. Can you rephrase it, please.

8 BY MR. PATERSON:

9 Q. What is AFSCME Exhibit 505?

10 A. From the Bureau of Labor Statistics, the Consumer  
11 Price Index for all urban consumers, the 12-month percent  
12 change. It is the San Francisco, Oakland, San Jose,  
13 California area.

14 Q. Where did you get that from?

15 A. From the Bureau of Labor Statistics as well.

16 MR. PATERSON: Similarly, I would move 504 and 505  
17 into evidence.

18 MS. ROSS: Same objection. Hearsay.

19 THE COURT: So it is hearsay. I'll receive it  
20 only for the purpose of explaining an opinion that's based  
21 on it. 504 and 505 for a limited purpose.

22 (Plaintiffs' Exhibits 504 and 505, previously  
23 marked for identification, were received in  
24 evidence.)

25 BY MR. PATERSON:

26 Q. Now, you referenced a computation you made  
27 respecting the historical rate of inflation, and I believe  
28 you said it was marked already as Exhibit 487?

1 A. That's right.

2 Q. Can you explain -- did you create this exhibit?

3 A. I did.

4 Q. How did you get that?

5 A. I got the data, the Consumer Price Index, for all  
6 urban consumers and for urban wage earners and clerical  
7 workers from the Bureau of Labor Statistics, and I  
8 calculated the annual change by dividing 1981 by 1980 and  
9 finding the percentage change. And the cumulative change,  
10 similarly, the devisor would be the 1975 number. So it's  
11 sort of cumulative change since 1975.

12 Q. What was the result of your calculation?

13 A. That the average Consumer Price Index for all  
14 urban consumers was 4.03 percent, and for urban wage  
15 earners and clerical workers was 3.97 percent. So of the  
16 two measures which are slightly different, but both  
17 commonly relied upon, they're both just above and below  
18 four percent over this time period.

19 Q. You said the CPIU and CPIW were slightly  
20 different. How so?

21 A. The all urban consumers covers a larger group of  
22 people. I believe 80, 90 percent of the country is  
23 actually covered by all urban consumers, whereas wage  
24 earners and clerical workers are a subset of that group,  
25 it's still urban data, but it's limited to wage earners  
26 that fit the definition of that series. I believe that  
27 covers closer to 40 percent of the country.

28 MR. PATERSON: I would move Exhibit 487 into

1 evidence.

2 MS. ROSS: Objection. Hearsay.

3 MR. PATERSON: He created it himself.

4 THE COURT: This is his work product based on the  
5 other hearsay information he compiled; is that correct?

6 MR. PATERSON: Yes.

7 THE COURT: So I'm receiving it for the purpose of  
8 illustrating his opinion. It is in turn based on hearsay  
9 so it's received for that limited purpose.

10 (Plaintiffs' Exhibit 487, previously marked for  
11 identification, was received in evidence.)

12 BY MR. PATERSON:

13 Q. As a labor economist, have you heard of commonly  
14 amortizing constant pension plans unfunded liability as an  
15 element of employee total compensation?

16 A. It's often expressed both ways. Whether or not  
17 there's sort of liabilities and the payments towards the  
18 liabilities for those currently retired or not working,  
19 there is included in total compensation. For instance, if  
20 you're working on a budget, you're developing a budget for  
21 a City, you obviously have to pay those costs and you  
22 would include them. For pay setting purposes, it doesn't  
23 make much sense to include essentially legacy costs as a  
24 benefit to a worker.

25 So if you're setting pay, if you were paying 10  
26 percent of payroll or 50 for the retiree benefits, it's  
27 not really going to benefit the next person you hire. So  
28 I think it makes sense to understand both numbers and the

1 difference between them.

2 Q. In your review of the City's finances, did the  
3 City achieve a savings with respect to its pension plan  
4 payments by its reduction in payroll?

5 A. Yes. Payroll was reduced by \$83 million, and  
6 based on the normal cost that was calculated by the plan  
7 actuary, there would be a reduction in contributions from  
8 11 to 13 percent. That's based on the actuary highest  
9 normal cost over the last couple years.

10 Q. What period are you referring to that \$83 million?

11 A. I believe 2012 to 2014. And it's from the  
12 actuarial valuation report. The normal cost.

13 Q. What is your view of the City's contention that  
14 increases in pension contributions are interchangeable  
15 with pay cuts?

16 A. Well, essentially, the City wants it both ways in  
17 this case. The pay cuts were already implemented to pay  
18 for the increased cost of retirement benefits, and at this  
19 point, the City is coming back asking for higher  
20 contributions as well. So if the pay cuts that were  
21 implemented were actually counted as a contribution  
22 towards the plan, that might be seen as more  
23 interchangeable, but it's pretty clear they aren't because  
24 they're essentially coming back for a second time.  
25 Apparently, the first 12 percent pay cut didn't count.

26 Q. Were you involved in bargaining over pension on  
27 behalf of AFSCME prior to Measure B passage?

28 A. Was I involved in pensions --

1 Q. In bargaining -- in AFSCME's bargaining with the  
2 City involving pension?

3 A. Yes. Before Measure B passed, yes.

4 Q. And what was your -- what was the extent of your  
5 involvement?

6 A. I reviewed the actuarial valuation reports, the  
7 plan CAFRs, the City CAFR. I reviewed the information the  
8 City was putting out, which is the sustainability report  
9 along with numerous different projections of costs which  
10 came in various City memos. So I was reviewing all the  
11 information that was coming out. I was working with our  
12 folks to explain to them what different things meant, what  
13 I thought it meant for them as well as for costs. And  
14 eventually I also helped to draft the offer that we ended  
15 up making before we went to impasse. So when we were  
16 attempting to get a deal with the City, I was involved  
17 with crafting the offer.

18 Q. Briefly, what was the outline of the offer?

19 MS. ROSS: Your Honor, objection. This question  
20 is in violation of your in limine order which precluded  
21 the bargaining back and forth pre Measure B because it is  
22 the subject of AFSCME's unfair labor practice charge. I  
23 have it right here. I can read it. And one of the  
24 subjects of the charge --

25 THE COURT: You're referring to the order?

26 MS. ROSS: Yes. And I have their unfair labor  
27 practice charge. The order is -- the motion to exclude  
28 evidence of collateral proceedings is granted in part and

1 denied in part. AFSCME will introduce evidence only in  
2 fact that they file certain charges before Measure B was  
3 proposed, limited to two PERB charges in connection with  
4 the 2011 wage negotiations and elimination of a sick leave  
5 pay out. And if so, the City is entitled to rebut any  
6 inference that Measure B was motivated by such charges.  
7 The collateral proceedings that we moved to exclude were  
8 the subject matter of the public employment relations  
9 board, PERB charges, and the POA's quo warranto, the  
10 AFSCME's proposal, the grant bargain, and the City's  
11 rejection of that is a subject matter of their unfair  
12 labor practice charge, which is still pending. I have the  
13 charge here. I can read to you from it. So this is a  
14 subject matter that is involved in the PERB proceeding as  
15 part of their unfair labor practice charge and was  
16 excluded by you.

17 THE COURT: So the pending question is, what was  
18 the outline of the offer. I suppose you wanted to  
19 summarize an offer that the City made?

20 MR. PATERSON: Not quite. I wanted him to  
21 summarize the union's proposal. I do not intend to elicit  
22 any testimony related to the PERB charge. I am merely  
23 eliciting testimony about the union's proposal prior to  
24 Measure B. The City has essentially claimed that it had  
25 no alternative but to cut pensions or eliminate City  
26 services, and his testimony is intended to show that there  
27 were alternative, more reasonable means to accomplish its  
28 goals than to reduce vested pension rights as the

1 plaintiffs here contend. It has nothing to with the PERB  
2 charge. I'm not going to ask about the PERB charge.

3 MS. ROSS: It is the subject matter of the PERB  
4 charge. The City then --

5 THE COURT: Comments should be addressed to the  
6 Court, not to each other.

7 How is this question consistent with the in limine  
8 order? I know that you believe it's inconsistent so that  
9 question is to Mr. Paterson. How is it consistent with  
10 the in limine order?

11 MR. PATERSON: How is the -- I'm not  
12 understanding, your Honor.

13 THE COURT: How is your proposed line of  
14 questioning consistent with the in limine order?

15 MR. PATERSON: It's consistent because I am laying  
16 a foundation for an opinion that there were other methods  
17 of addressing the City's claimed fiscal crisis or the  
18 necessity to reduce pension benefits. I'm not talking  
19 about the PERB charge. I'm not making any contention  
20 about good or bad faith bargaining. This testimony will  
21 not involve that.

22 THE COURT: Would you help me understand this with  
23 an offer of proof?

24 MR. PATERSON: Yes, your Honor. The offer of  
25 proof is that Mr. Doonan helped to devise a proposal that  
26 included reducing benefits for new hires and a proposal to  
27 increase City revenues which was consistent with the  
28 City's fiscal performed proposal that included

1 contemplation of increasing City revenues. That's really  
2 all I'm -- that other cities in this time period increased  
3 their revenues through sales taxes which was included in  
4 the union's proposal as well as the fiscal reform plan  
5 that the City itself produced.

6 THE COURT: I understand what you're saying is  
7 that the union made an offer, the City rejected it, and if  
8 accepted, it would have addressed some aspect of the  
9 City's financial concerns. Is that what you're saying?

10 MR. PATERSON: More or less, yes, your Honor.

11 THE COURT: That relates to what issue that I have  
12 to decide?

13 MR. PATERSON: The issue is that under the -- my  
14 understanding of the City's position, one of its positions  
15 is that notwithstanding the vested rights doctrine, the  
16 fiscal straits of the City justified modifying pension  
17 benefits. That's my understanding.

18 THE COURT: So what you're saying is that even  
19 assuming that vested rights exist, Measure B was justified  
20 by the City's financial condition? That's what you're  
21 saying the City is arguing and that's what makes this  
22 relevant?

23 MR. PATERSON: That's certainly what I understand  
24 them to be arguing, your Honor. Maybe if they can confirm  
25 that they're not arguing that, then that will obviate the  
26 need to elicit this testimony.

27 THE COURT: So the issue is -- assuming for the  
28 sake of this argument -- vested rights. Is there an

1 argument on the part of the City that the City's financial  
2 condition justified the impairment of vested rights?

3 MS. ROSS: Your Honor, we have already  
4 communicated with the POA about this. That is not the  
5 City's argument. The reason the City is here with its  
6 economic evidence is because there are two claims in this  
7 case brought by AFSCME and brought by the POA. AFSCME has  
8 got the bill of attainder claim and the right to petition  
9 claim which depends on whether or not there was a  
10 legitimate public purpose here. POA has got the right to  
11 petition claim which depends in part on whether it was a  
12 legitimate public purpose. That's why the City is being  
13 forced to put on this evidence about what were the  
14 problems and why did the City do what it did.

15 The problem with what AFSCME is trying to do is,  
16 one, it is the topic of their quo warranto action. I can  
17 read it to you. It's exactly what's going on in the Quo  
18 Warranto action. This case is not about was there a  
19 better idea, you know, than Measure B. The case is about  
20 whether Measure B is legal or illegal.

21 THE COURT: I think the statement of the question  
22 is is the City arguing that the City's financial condition  
23 justified impairment of vested rights, assuming only for  
24 the sake of this discussion that there are vested rights.

25 MS. ROSS: No, your Honor. We've never argued  
26 that in this case, and we've talked to the POA about that,  
27 and we have a letter with the POA.

28 THE COURT: So is there a reason why,

1 Mr. Paterson, you believe that this issue is in the case?

2 MR. PATERSON: Your Honor, I suppose it's because  
3 the opening statement was replete with examples of  
4 essentially I pensions and inability to sustain pension on  
5 a going forward basis.

6 But also, your Honor, if I may address the bill of  
7 attainder issue the City has just raised with respect to  
8 that area or subject area under the bill of attainder  
9 doctrine, the theory, the motive of a punitive intent is  
10 supported by a rejection of lesser alternatives.

11 THE COURT: So then you need to give me a more  
12 refined offer of proof because I don't know what the  
13 timing is on any of the things that you said so far.  
14 Presumably, you want me to draw an inference of intent on  
15 timing. So your offer of proof hasn't addressed that.

16 MR. PATERSON: I suppose the offer of proof, then,  
17 is that the proposal that we are discussing in terms of  
18 the alternatives was bargaining that occurred, by my  
19 recollection, in the latter -- late -- my understanding is  
20 late summer to November. I may have these dates a little  
21 off, 2011. I believe Measure B was put to the City  
22 Council in the first part of 2012. I'm sure I'm going to  
23 be corrected if I'm wrong on that.

24 THE COURT: Anything else?

25 MS. ROSS: Yes, your Honor. What we have here  
26 now, even with all our objections, is a serious 352  
27 problem because it's not just AFSCME that had proposals.  
28 There were proposals by many bargaining units. POA had a

1 proposal. In fact, Mr. Lowman was involved in the POA  
2 proposal, and you excluded any testimony by Mr. Lowman  
3 about that proposal because of this problem. Trial within  
4 a trial. We're going to hear from AFSCME, here are our  
5 ideas. Okay, that opens everybody else talking about what  
6 their ideas are. Then we're going to have the City come  
7 up, here's why we didn't like their ideas. Trial within a  
8 trial.

9 That is why you not only excluded Mr. Lowman from  
10 testifying about this, but you originally excluded the  
11 subject matter of these unfair labor practices because we  
12 weren't going to litigate in this case all the details of  
13 who did what when and who said what when.

14 That's a different case than the case that we've  
15 been litigating so far. Twice now you've excluded it, and  
16 it should be excluded this time as well. It is covered by  
17 your order. I can read from -- the City appeared to  
18 determine that they rejected our grand bargain without  
19 adequately explaining their opposition. The City rejected  
20 the coalition grand bargain, a proposal to realize  
21 additional cost savings. In rejecting the coalition's  
22 proposal, the City again failed to provide feedback on  
23 what was not agreeable about the plan. And it goes on and  
24 on, and the POA has the same complaints.

25 THE COURT: Submitted?

26 MS. ROSS: Submitted.

27 MR. PATERSON: I don't know if the POA wants to  
28 address the --

1 THE COURT: Is there anything else for AFSCME?

2 MR. PATERSON: No, your Honor. There's not.

3 THE COURT: Yes, Mr. Adam.

4 MR. ADAM: Your Honor, let me address, if it's  
5 appropriate at this time, the City's remarks about a trial  
6 within a trial here. I don't think anybody on the union  
7 side wants to get into the proposals that occurred leading  
8 up to Measure B before it went on the ballot. But the  
9 concern is that if Ms. Ross' comments are going to come  
10 into play when the City tries to move into evidence lots  
11 and lots of documents that are listed on their exhibit  
12 chart about City documents that were part of that process.

13 So, again, with respect to the POA's right to  
14 petition argument, POA is prepared to stipulate the City  
15 had a belief that it wanted to go -- that needed to reduce  
16 pension costs. I don't think it has anything to do with  
17 the right to petition claim. We're prepared to make that  
18 stipulation if it saves us a whole bunch of time with the  
19 City trying to justify why it needed to do things in  
20 Measure B.

21 THE COURT: Okay. Anything else?

22 MS. ROSS: Submitted, your Honor.

23 THE COURT: We won't be litigating the charge in  
24 this case. However, that's different from offering of  
25 proof of intent by inference, and intent is relevant in  
26 the bill of attainder claim. So I am mindful of the 352  
27 problem, and we are not getting into the details of  
28 proposals. However, it's relevant evidence of this bill

1 of attainder claim, the facts and terms of the offers, the  
2 City's rejection, and an explanation of how the City's  
3 rejection gives rise to an inference of intent.

4 Go ahead, Mr. Paterson.

5 MR. PATERSON: Thank you, your Honor. I'm going  
6 to withdraw the question because I understand after  
7 hearing this colloquy and your concerns about trial within  
8 a trial, and I'm certainly not trying to put anybody  
9 through their passes. I see your point, and I see your  
10 concern about a trial within a trial. I will withdraw the  
11 question with respect to bargaining.

12 THE COURT: Any other questions for Mr. Doonan?

13 MR. PATERSON: No, your Honor. No questions at  
14 this time.

15 THE COURT: Retired Employees?

16 MR. SILVER: No questions, your Honor.

17 THE COURT: POA?

18 MR. ADAM: Nothing, your Honor.

19 THE COURT: Sapien?

20 MR. MCBRIDE: Nothing.

21 THE COURT: City?

22 MS. ROSS: Nothing, your Honor.

23 THE COURT: May Mr. Doonan be excused?

24 MS. ROSS: Yes.

25 THE COURT: Mr. Doonan, you're excused. You are  
26 free to stay or to go.

27 Who's the next witness?

28 MR. PATERSON: Your Honor, the next witness is

1 Charles Allen.

2 In light of the colloquy regarding the motion in  
3 limine, I wonder if I may have a few minutes to review the  
4 anticipated testimony to determine whether I need to call  
5 him. Is that possible, your Honor?

6 THE COURT: So are you saying that you might not  
7 be questioning Mr. Allen?

8 MR. PATERSON: Yes, your Honor.

9 THE COURT: Okay. Is there anybody else who's  
10 ready to testify?

11 MR. PATERSON: Actually, your Honor, in these few  
12 short minutes, I have been able to determine I will call  
13 Mr. Allen. So I'll do that. Sorry. That should be  
14 Dr. Allen.

15 THE COURT: Good afternoon, sir. Would you pause  
16 there and face the clerk and raise your right hand.

17 THE CLERK: You do solemnly state, under penalty  
18 of perjury, that the evidence you shall give in this issue  
19 or matter shall be the truth, the whole truth, and nothing  
20 but the truth?

21 THE WITNESS: Yes, I do.

22 THE CLERK: Thank you. Have a seat, please.  
23 Please state and spell your name for the record.

24 THE WITNESS: My name is Charles Allen;  
25 C-H-A-R-L-E-S, A-L-L-E-N.

26

27 CHARLES ALLEN

28 called as a witness by counsel for the Plaintiffs, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. PATERSON:

4 Q. Dr. Allen, what is your current position?

5 A. I'm currently serving as a business agent for  
6 AFSCME District Council 57.

7 Q. What is the District Council 57?

8 A. District Council 57 is the organization that a  
9 number of AFSCME locals are affiliated with. AFSCME is a  
10 member-run union which means that the locals are run by  
11 members, officers, stewards, and the likes of the  
12 respective locals. And in my role as business agent, I  
13 serve as representative to support them, handle things  
14 that pertain to terms and conditions of employment, things  
15 such as collective bargaining, handling grievances,  
16 communication with the membership, member training and  
17 education, that kind of thing.

18 Q. Which local are you assigned with?

19 A. I'm assigned with Local 101, which is a local here  
20 in Santa Clara County.

21 Q. That's the plaintiff here?

22 A. Could you say again.

23 Q. That's the plaintiff in this case?

24 A. That is correct, yes.

25 Q. Are there different bargaining units or chapters  
26 within Local 101 that involve City employees?

27 A. Yes. My primary assignment is the two bargaining  
28 units here at the City of San Jose, MEF, municipal

1 employees, and CEO, Confidential Employees Organization.

2 Q. What's the makeup of the membership of each of  
3 those bargaining units?

4 A. MEF is the largest union of the city and comprised  
5 of things like public safety dispatchers, librarians,  
6 library clerks, crossing guards, people who work in the  
7 community centers, the folks who work at the water  
8 pollution control plant, transportation, so on and so  
9 forth.

10 Q. You mentioned a MOU earlier. What's an MOU?

11 A. Yes. I did say that I do collective bargaining  
12 and so I deal with MOUs, which are Memoranda of  
13 Understanding, also known as agreements or contracts.

14 Q. And is there currently a MOU in place between  
15 either of those bargaining units and the City?

16 A. There is not.

17 Q. Has there been?

18 A. In the past, yes, but there has not been one since  
19 2011.

20 Q. Do you know approximately -- do you know how far  
21 back they go according to your knowledge?

22 A. To my knowledge, which is looking at past MOUs,  
23 they go back a significant amount of time. A good 30  
24 years or so.

25 Q. How many members of Local 101 work for the City?

26 A. We have something in the region of 3,000 people in  
27 the respective bargaining units. Again, with the MEF unit  
28 being the bulk of that bargaining unit. CEO is much

1 smaller group. Around about 200 people.

2 Q. Have those numbers decreased in recent years?

3 A. Yes. It's been my experience those numbers have  
4 decreased. I don't know the exact number. A few hundred.  
5 Certainly I've seen in my work, my regular work with the  
6 membership, I've seen layoffs, I've seen positions that  
7 have not been filled, I've heard people take other jobs,  
8 people who have retired, so it has diminished.

9 Q. Do you interact with your membership regularly?

10 A. Yes. That's the primary role that I serve, which  
11 is dealing with members on a day-to-day basis.

12 Q. Do you know what the average pay of AFSCME members  
13 are?

14 MR. HARTINGER: Objection. Lacks foundation.

15 MR. PATERSON: I said do you.

16 BY MR. PATERSON:

17 Q. Have you had an opportunity to ascertain the  
18 average pay of members recently?

19 A. Only through information requests which are  
20 something that we do once we commence good faith  
21 bargaining. Largely two sides sit down at the table and  
22 we ask for information from the employer to determine  
23 things such as wages, job titles, number of people in the  
24 bargaining unit, date of hire, all those sorts of pieces  
25 of information.

26 Q. Did you submit such a request recently to the  
27 City?

28 A. We actually did, yes, in January of this year, and

1 the City responded in a timely fashion in February of this  
2 year.

3 Q. And in what fashion did they respond?

4 A. Usually when we submit an information request, we  
5 tend to do that in writing, and the City responds in kind  
6 if they are provided us in written format, or if it's a  
7 sizeable document, electronic format.

8 Q. Can you turn to Exhibit 472.

9 A. I'm looking at Exhibit 472.

10 Q. Is that the response you received from the City?

11 A. Yes. This is a response from Alex Gurza to  
12 information request that was dated January 28, 2013. And  
13 we received this, as I said, in February. February 14,  
14 2013.

15 Q. Does that indicate -- is that on what you base  
16 your knowledge of the average pay of AFSCME members?

17 A. Yes. On page 2, there's a couple items. Number  
18 two and number three that we're trying to ascertain the  
19 salary, and so we were able to tabulate that using the  
20 average hourly rates, the number of people who were  
21 actually serving in those categories, and calculating what  
22 the average would be, and I believe we came up with 66 --  
23 just over 66,000, and that's gross.

24 Q. Thank you. And do you know if these amounts have  
25 changed recently or since then?

26 A. Recently, since it was early this year, probably  
27 not by much.

28 Q. Other than pay, what other benefits are provided

1 to bargaining employees?

2 A. Bargaining unit employees also would receive  
3 benefits pertaining to retirement pension, retiree health,  
4 days off, whether they be vacation, things of that nature.  
5 Sick leave pay out.

6 Q. What pension plan do AFSCME members participate  
7 in?

8 A. Well, the AFSCME members that participate in the  
9 pension plan participate in the Federated plan.

10 Q. So you have no members in the safety plan?

11 A. No. It's purely Federated.

12 Q. And are the bargaining unit members enrolled in  
13 Social Security?

14 A. No. Bargaining units do not participate in Social  
15 Security.

16 Q. To your knowledge, has AFSCME ever agreed to  
17 increase pension contributions for employees?

18 A. Not to my knowledge, no.

19 Q. What is that knowledge based on?

20 A. My knowledge would just be a review of past MOUs,  
21 the previous MOU where terms and conditions were imposed.  
22 That would be what I base my knowledge on.

23 Q. Has AFSCME considered pension contributions  
24 interchangeable with wages?

25 A. Not to my knowledge, no.

26 Q. Do you have an understanding as to why?

27 A. I don't believe we've really explored that, but we  
28 certainly in the past have never engaged in that practice,

1 no. Certainly if I would have to look at our parent  
2 membership. We have a pretty broad, diverse group. The  
3 pension is listed as part of the municipal code, and so  
4 that's pretty clear in past MOUs, and when representing  
5 the membership, we have to take into account the whole  
6 membership when we are pushing to try and get new  
7 Memoranda of Understanding.

8 MR. PATERSON: Your Honor, I would make a proffer  
9 which is to -- essentially, keeping with your motion in  
10 limine regarding PERB charges, that the witness would  
11 identify and authenticate AFSCME Exhibits 506, 508, 507,  
12 which are the various PERB charges.

13 THE COURT: I haven't made a motion in limine. So  
14 you're offering these documents into evidence?

15 MR. PATERSON: I understood that with respect to  
16 the motion in limine related to collateral proceedings,  
17 that you were accepting charges but no other evidence.

18 THE COURT: What are you doing now? Are you  
19 offering exhibits?

20 MR. PATERSON: Well, I propose that -- I don't  
21 want to have an objection to a question related to these  
22 exhibits because it involves the collateral charges, but I  
23 think --

24 THE COURT: What are you doing now? Are you  
25 offering these exhibits into evidence?

26 MR. PATERSON: I can authenticate them and offer  
27 them, see if the City is willing to stipulate.

28 MR. HARTINGER: I think we should take them one by

1 one with the witness.

2 MR. PATERSON: That's fine.

3 BY MR. PATERSON:

4 Q. If you can find Exhibit 506, please.

5 A. Okay. I have 506 in front of me.

6 Q. Did there come a time when AFSCME filed PERB  
7 charges against the City prior to the adoption of  
8 Measure B?

9 A. Yes. AFSCME filed, at least to my knowledge, a  
10 couple of PERB charges prior to Measure B.

11 Q. Can you look at 508, tell me if that's one of the  
12 charges.

13 A. 508 does look like one of our PERB charges, yes.

14 Q. Is that, in fact, a PERB charge?

15 A. Yes, that is the PERB charge that was filed  
16 following imposition of terms and conditions in the spring  
17 of 2011.

18 MR. PATERSON: I would offer Exhibit 508 into  
19 evidence.

20 MR. HARTINGER: We renew our previous objections  
21 with respect to this exhibit, your Honor. I know you've  
22 ruled on it in a motion in limine, but I want to reserve  
23 the objection. I don't believe that there's --

24 THE COURT: I'm not sure what you're saying. Are  
25 you saying that this offer is precluded by the in limine  
26 ruling or that you have another objection?

27 MR. HARTINGER: My objection is premised on the  
28 prior basis that you made in the prior motion in limine,

1 number one. And I would also object on grounds of  
2 hearsay, reserving the objection with respect to the in  
3 limine ruling. I understand the Court has previously  
4 ruled that it would come in for the purpose of showing  
5 City intent and so forth.

6 THE COURT: So I understand, the purpose of this  
7 exhibit is to show that the charge was filed and when?

8 MR. PATERSON: Essentially, your Honor, yes.

9 THE COURT: I'm receiving 506 for that purpose  
10 only.

11 (Plaintiffs' Exhibit 508, previously marked for  
12 identification, was received in evidence.)

13 MR. PATERSON: Your Honor, I believe we were  
14 referring to 508.

15 THE COURT: Yes. You're right. I'm receiving 508  
16 for that purpose only.

17 BY MR. PATERSON:

18 Q. Can you refer to Exhibit 507.

19 A. Yes, I'm looking at Exhibit 507. This is another  
20 unfair practice charge.

21 Q. Were you involved in developing that charge?

22 A. Yes, I would have been.

23 Q. This is a PERB charge filed by AFSCME against the  
24 City?

25 A. Yes, this is a PERB charge by AFSCME against the  
26 City.

27 MR. PATERSON: Move Exhibit 507 for the same  
28 limited purpose, your Honor.

1 MR. HARTINGER: Same objections, your Honor.

2 THE COURT: So page 2 of Exhibit 507 appears to  
3 have a signature date of June 1st, 2011. Then it appears  
4 that there's some sort of a stamp on the first page that  
5 says June 1st, 2011. Am I reading that correctly?

6 MR. HARTINGER: I read it that way, your Honor.

7 MR. PATERSON: Yes, your Honor.

8 THE COURT: So I am receiving 507 only for the  
9 limited purpose of showing that the charge was filed and  
10 the date.

11 (Plaintiffs' Exhibit 507, previously marked for  
12 identification, was received in evidence.)

13 THE COURT: Anything else for Mr. Allen?

14 MR. PATERSON: Yes, your Honor.

15 BY MR. PATERSON:

16 Q. Did the -- was there a time when the City  
17 eliminated a sick leave pay off on retirement benefit?

18 MR. HARTINGER: Objection. Irrelevant.

19 MR. PATERSON: I'm just laying foundation.

20 THE COURT: What's the legal basis for the  
21 objection?

22 MR. HARTINGER: Relevance.

23 THE COURT: Mr. Paterson?

24 MR. PATERSON: Same argument as the PERB charges.  
25 That invited a lawsuit. AFSCME filed a lawsuit.

26 THE COURT: When are you going to show that this  
27 happened?

28 MR. PATERSON: I believe the PERB charge was

1 related to sick leave pay out was March 15, 2012. I don't  
2 recall exactly the cut-off date for your motion in limine.

3 THE COURT: That's the date of 506. Is this  
4 something different from 506?

5 MR. PATERSON: I'll withdraw the question, your  
6 Honor.

7 THE COURT: Anything else for Mr. Allen?

8 MR. PATERSON: No, your Honor.

9 THE COURT: The Retired Employees?

10 MR. SILVER: No questions, your Honor.

11 THE COURT: POA?

12 MR. ADAM: Nothing, your Honor.

13 THE COURT: Sapien?

14 MR. PLATTEN: Nothing.

15 THE COURT: Will the City cross-examine Mr. Allen?

16 MR. HARTINGER: Briefly, your Honor. But it's  
17 probably 35 minutes.

18 THE COURT: We'll do that in the morning.  
19 Mr. Allen, we'll see you at 8:45 tomorrow morning. You're  
20 free to go at this time. Please be back here at that time  
21 tomorrow.

22 So who are the witnesses for tomorrow?

23 MR. SPELLBERG: It's our understanding that AFSCME  
24 is resting after this witness, in which case I can tell  
25 the City's order.

26 THE COURT: On that point, if I may, is that  
27 correct? That I guess subject to your productive meet and  
28 confer this evening, are there any other witnesses for the

1 plaintiffs?

2 MR. ADAM: Only an authentication. Again,  
3 hopefully we can resolve this.

4 THE COURT: So does anybody disagree with that,  
5 that except for authentication and admissibility issues  
6 which are going to be resolved, no other witnesses for  
7 plaintiffs? Very good.

8 Mr. Spellberg, who will be called for the City  
9 tomorrow?

10 MR. SPELLBERG: We're starting with Sharon Harris.  
11 That would be followed by Ms. Debra Figone, followed by  
12 Mr. Alex Gurza, then Mr. Bartel is not available till  
13 Friday. And then Ms. Murphy is our last witness. We're  
14 making a decision on her whether we would take her out of  
15 order if we finished early.

16 THE COURT: So thank you for that. Tell me if I'm  
17 misunderstanding. I think there were no requests for  
18 judicial notice that are submitted to me at this time.

19 MR. ADAM: Correct. Pending -- at least from the  
20 POA, pending our discussion.

21 MR. KALINSKI: For the Retired Employees'  
22 Association, we would like to defer our request as we're  
23 moving in the rest of these exhibits that there's no  
24 stipulation to admissibility to.

25 THE COURT: So I just want to try to keep up with  
26 you so nobody is going to ask me for a ruling first thing  
27 tomorrow. Anything else for today? Okay. Very good.  
28 See you tomorrow.

(Whereupon, the proceedings were adjourned.)

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1 STATE OF CALIFORNIA )

2 ) ss:

3 COUNTY OF SANTA CLARA )

4  
5 I, Rose M. Ruemmler, hereby certify that I, as Official  
6 Reporter, Santa Clara County Superior Court, was present  
7 and took down correctly in stenotype, to the best of my  
8 ability, all the testimony and proceedings in the  
9 foregoing-entitled matter on July 23, 2013; and I further  
10 certify that the annexed and foregoing is a full, true and  
11 correct statement of such testimony.

12 I further certify that I have complied with CCP  
13 237(a)(2) in that all personal juror identifying  
14 information has been redacted if applicable.

15 Dated at San Jose, California, on August 9, 2013.

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18 { \_\_\_\_\_ }

19 ROSE M. RUEMMLER

20 Official Reporter, CSR No. 9053

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