

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

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 25, 2013
10	FIRE RETIREMENT PLAN OF CITY OF)	
	SAN JOSE, AND DOES 1-10)	
11	INCLUSIVE,)	
	DEFENDANTS.)	
12)	

REPORTER'S TRANSCRIPT

OF

TESTIMONY AND PROCEEDINGS

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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
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1 SAN JOSE, CA; JULY 25, 2013

2 DEPARTMENT 2 HON. PATRICIA M. LUCAS, JUDGE

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4
5 THE COURT: Good morning. Thank you for the
6 operative pleadings list and the charts.

7 Anything else before we resume with Ms. Figone?

8 MR. ADAM: Your Honor, just to confirm. I think
9 there's the operative pleadings. The chart is still being
10 reviewed, right, by the plaintiffs? We just received it a
11 few minutes ago.

12 MR. HARTINGER: Right. We E-Mailed it this
13 morning. We don't have mutual agreement on everything.
14 This was our shot at it, your Honor. If you have any
15 comments about something you would prefer, we're open to
16 making it more user friendly.

17 THE COURT: So thank you. I understand that this
18 is subject to revision. It's an interim document, but it
19 still may be of some help. So let me know when it's
20 finalized.

21 MR. ADAM: We hope to confirm that by after
22 mid-morning break.

23 THE COURT: What about defenses?

24 MR. HARTINGER: The defenses are listed here under
25 Section 3. We have a list of them. They're not -- I
26 mean, they're summarized.

27 THE COURT: I see. Good. Thank you. Anything
28 else?

1 MR. HARTINGER: One other item, your Honor, that
2 we would raise, that I think we are very, very close to a
3 stipulation concerning authenticity and admission of
4 exhibits. I have not seen -- last night, we sent backhand
5 written revisions after Mr. Paterson and our team met and
6 went through the AFSCME documents. I have not seen the
7 final document yet.

8 We were hoping, in terms of expediting the
9 admission of evidence and so forth, expediting the trial,
10 that that would be resolved, and so we're in this position
11 of -- for example, Mr. Gurza is going to come on. I hope
12 not to have to go through Memorandum of Agreement by
13 Memorandum of Agreement and authenticate it and get it
14 into evidence that way.

15 I think we're almost there, and so I would just
16 flag that for the Court. And I would assume that once he
17 goes on, perhaps after Ms. Figone goes on, they will come
18 off the stand subject to this stipulation for admission of
19 additional exhibits that otherwise would consume more
20 time, would be a waste of time, if that makes sense.

21 THE COURT: Yes.

22 MR. ADAM: The changes, the handwritten changes
23 defendant did last night, enters the documents as being
24 printed at the POA and being shipped over as soon as it
25 comes off the press, so, hopefully, we will have that in
26 the next 40 minutes or so, and the parties will have a
27 chance to look at it again during the mid-morning break.

28 THE COURT: Anything else?

1 MS. ROSS: Plaintiff has graciously permitted me
2 to ask Ms. Figone one or two more questions.

3 THE COURT: Go ahead.

4
5 DIRECT EXAMINATION (CONTINUED)

6 BY MS. ROSS:

7 Q. Good morning, Ms. Figone.

8 A. Good morning.

9 Q. Is there anything about your testimony from
10 yesterday that you would like to clarify for the Court?

11 A. Yes. I'd like to clarify that the decision to
12 implement a new lower price plan was based on municipal
13 code and not Measure B. The development of that new lower
14 price plan was in the planning stages prior to Measure B.
15 And regardless of Measure B, the City would have brought
16 forward a new lower price plan to lower costs.

17 MS. ROSS: Thank you.

18 THE COURT: So this was an instance where a lawyer
19 said one more question; it was one more question. Doesn't
20 happen too often.

21 Mr. Adam?

22 MR. ADAM: I'm caught unprepared here, your Honor.
23 I just need a moment to set up, your Honor.

24
25 CROSS-EXAMINATION

26 BY MR. ADAM:

27 Q. Ms. Figone, at some point, I'm going to direct you
28 to POA 51.

1 MR. ADAM: Your Honor, can I assist the witness in
2 trying to find that?

3 THE COURT: Yes.

4 BY MR. ADAM:

5 Q. Good morning, Ms. Figone.

6 A. Good morning.

7 Q. How are you?

8 A. I'm great.

9 Q. You and I have done this before quite recently,
10 have we not?

11 A. Yes, we have.

12 Q. Let me ask you about the question Ms. Ross just
13 asked you. Yesterday, I thought I heard you say in
14 response to a question from Judge Lucas as to whether the
15 savings from the lowest cost plan were a result of
16 Measure B, I thought you answered pretty clearly yes; is
17 that correct?

18 A. That was my answer. That's what I clarified this
19 morning.

20 Q. But now you wanted to clarify that answer to say
21 that savings that are arising from the lowest cost health
22 plan are based on San Jose Municipal Code. Am I
23 understanding you correctly?

24 A. Correct.

25 Q. What caused you to revisit your answer yesterday?

26 A. Actually, the time I responded, I probably should
27 have been clearer at the time because, as we know, the
28 ability for the City to implement a low price plan, as

1 we've done over the years, is in the municipal code, and
2 those municipal code provisions have also been moved into
3 Measure B. So it's actually the municipal code which is
4 the basis for our decision, regardless of Measure B.

5 Q. For police and fire fighters, you're talking about
6 3361930. Do you remember the number?

7 A. No, I don't know it.

8 Q. But it's the municipal code section that's been in
9 effect since 1997; right?

10 A. I don't know the year.

11 Q. Been in effect for a while?

12 A. It's been in effect for a while.

13 Q. And it's true, is it not, that in your 2008
14 memorandum, which is Exhibit 51 to the POA document, if
15 you take a look at that, in that memorandum, as you
16 testified yesterday, although you were trying to reassure
17 employees and retirees about their health care benefits,
18 you were also flagging that it was an issue that would
19 have to be looked at. Is that accurate?

20 A. Lowering the cost, and how we lower the cost is
21 really where I felt the focus needed to be.

22 Q. That was in 2008; right?

23 A. Correct.

24 Q. So the municipal code was in effect before 2008;
25 right?

26 A. Yes.

27 Q. And in 2008, the City's financial plight was
28 pretty severe, as you testified yesterday; right?

1 A. It was starting down a very severe path.

2 Q. So given that you're now clarifying that the City
3 had the authority to do this all along, why did you wait
4 five years until 2013 to implement this change?

5 A. We have been making changes. We were at zero
6 co-pays; we then moved to co-pays, and so we were
7 progressively implementing new lower price plans as a way
8 to lower costs, is my recollection.

9 Q. You've been here during the entire proceedings,
10 have you not?

11 A. Yes.

12 Q. You saw Mr. Salvi testify, did you not?

13 A. Yes.

14 Q. And Mr. Salvi testified that he had the Kaiser
15 family plan. Do you recall that?

16 A. Yes.

17 Q. You recall that he paid nothing for that until
18 January 1, 2013; correct?

19 A. I remember him, and he made some sort of statement
20 about his cost.

21 Q. Do you remember him testifying that he's now
22 paying \$314?

23 A. Yes.

24 Q. I want to move to -- I want to direct your
25 attention to Defendants' 6106.

26 MR. ADAM: Your Honor, if I might assist the
27 witness again in locating. That was one of the City's
28 documents. I believe it was in Volume 1, Linda? No.

1 Volume 6.

2 MS. ROSS: Volume 6.

3 THE COURT: Did you say 6106?

4 MR. ADAM: Did I write it down wrong? 6016.

5 BY MR. ADAM:

6 Q. Ms. Figone, you testified when you were describing
7 this chart about a decade of budget shortfalls here in San
8 Jose; correct?

9 A. Yes.

10 Q. Nobody likes budget shortfalls, do they?

11 A. No.

12 Q. City doesn't?

13 A. No.

14 Q. Employees don't?

15 A. No.

16 Q. But these weren't all -- these were not all
17 attributable to pension costs, were they?

18 A. No. Over the course of time, there were different
19 things happened.

20 Q. In fact, in 2002-2003, this first year, your
21 pension costs were dramatically lower than they are today;
22 right?

23 A. I don't know the number, but if I remember the
24 curve, they were quite lower than they are today.

25 Q. Less than 100 million; right?

26 A. I don't know the number.

27 Q. You still had almost a \$50 million deficit; right?

28 A. Correct.

1 Q. Do you recall the pension costs rising much in
2 2003-2004?

3 A. Again, just my recollection of the curve, they
4 were not rising as much as they have.

5 Q. But the budget deficit almost doubled, right, in
6 2003-2004?

7 A. Yes.

8 Q. There are a number of things that cause budget
9 deficits, are there not?

10 A. Yes.

11 Q. Including spending?

12 A. Spending, yes.

13 Q. And the problems you described since 2008, that's
14 not all caused by pension either, is it?

15 A. You know, I would have to look at the actual
16 numbers behind these, but there were a variety of factors
17 going on.

18 Q. Your property taxes fell significantly, didn't
19 they?

20 A. That contributed.

21 Q. Your sales taxes fell significantly?

22 A. Again, I don't know the numbers, but I would
23 imagine revenue was a big part of this.

24 Q. You testified about a drop in work force; correct?

25 A. Yes.

26 Q. About 2,000 employees?

27 A. Yes.

28 Q. They weren't all laid off, were they?

1 A. No, they were not.

2 Q. In fact, the City determined to contract out some
3 positions that had formerly been held by City employees,
4 did it not?

5 A. In the later years, yes.

6 Q. Now, Ms. Ross took you through a number of slides
7 that showed library hours --

8 A. Yes.

9 Q. -- and employees working in parks; correct?

10 A. Correct.

11 Q. Now, those slides were somewhat dated, were they
12 not?

13 A. Yes. As I said yesterday, we've used those slides
14 over different presentations to convey our situation.

15 Q. And in my introductory remarks about you and I
16 having done this before, I was referring to an interest
17 arbitration we did in early May of this year, was I not?

18 A. Yes.

19 Q. This was pursuant to the Charter Section 1111?

20 A. Correct.

21 Q. You testified under oath in that proceeding?

22 A. Yes.

23 Q. In that proceeding, you opined that the City was
24 starting to turn the corner; is that right?

25 A. Yes.

26 Q. That was with respect to its budget?

27 A. Yes.

28 Q. And, in fact, in 2011-2012, notwithstanding

1 increased pension costs, the City ended up with an
2 \$11 million surplus, did it not?

3 A. The '11-'12 budget we closed a gap for. So going
4 the following year, we had a slight surplus.

5 Q. So you were able to move -- I'm not sure the
6 technical term the City uses for it -- but you moved some
7 monies that were left over in '11-'12 and moved them into
8 the '12-'13 budget?

9 A. Yes. As a way to bridge that year.

10 Q. That was approximately \$11 million?

11 A. You know, I don't remember. I'm remembering more
12 like nine, but it's close to what -- we're not that far
13 apart in terms of our number.

14 THE COURT: Mr. Adam, I'm a little bit confused by
15 this because 6016 -- are you saying there was not a
16 deficit in '11-'12?

17 MR. ADAM: My belief is that there was not a
18 deficit at the end of the year in '11-'12.

19 THE COURT: Good. Go ahead.

20 MR. ADAM: I thought I confirmed that with the
21 witness.

22 THE COURT: I thought you did too. Go ahead.

23 BY MR. ADAM:

24 Q. In the arbitration, Ms. Figone, you testified the
25 negatives are nowhere near as large as they were in the
26 past; right?

27 A. At this current stage, no.

28 Q. In fact, you testified the City has been able to

1 set money aside for modest pay increases for employees?

2 A. Yes.

3 Q. You are enhancing some services?

4 A. Yes.

5 Q. And in its budget this year, you have \$5 million
6 for new library and community centers?

7 A. I don't remember the number. We are able to open
8 four libraries that were shuttered previously, yes.

9 Q. And you are expanding services beyond core
10 services; correct?

11 A. Not beyond core services.

12 Q. There's been some, what I'll term aesthetic
13 spending, by the City?

14 A. I don't believe we're doing anything that's
15 aesthetic.

16 Q. We talked about a new overhang in the bamboo
17 garden at the arbitration, did we not?

18 A. Yes, we did.

19 Q. You testified the City has a bamboo garden; right?

20 A. It's called that. It's an area where employees
21 and the public can have lunch and gather.

22 Q. It's, I guess, a little -- I guess it has a little
23 bit too much sun exposure for some; correct?

24 A. We have tables and umbrellas.

25 Q. The City is building a new roof to protect that
26 area from the sun?

27 A. Actually, the City is taking the opportunity,
28 based on some design recommendations from employees, to

1 refurbish the area because the bamboo is causing water
2 seepage into the garage and so the bamboo needs to be
3 removed, and we're taking the opportunity to enhance the
4 area for our employees.

5 Q. There's some repairs and some enhancements; right?

6 A. Some repairs and some enhancements.

7 Q. In fact, this year's budget, the City has been
8 able to create some reserves, has it not?

9 A. We have been able to set aside some money to
10 bridge the gap that we envisioned for the next year.

11 Q. It's the City's budget this year -- by this year,
12 I'm meaning for 2013-2014 -- it has an employee pay
13 reserve of \$11 million, does it not?

14 A. Yes, it does.

15 Q. It has a general fund contingency reserve, does it
16 not?

17 A. There's the -- which contingency reserve are you
18 referring to?

19 Q. I guess explain to me how many contingency
20 reserves there are.

21 A. We have the council policy contingency reserve,
22 which has been in effect for many years, of three percent
23 of the general fund. It's about \$29 million. It would
24 cover, in the event of a significant City emergency, about
25 two, two and a half weeks of pay.

26 Q. You have a public emergency reserve of 3.4 million
27 as well, correct?

28 A. That's been in place for many years.

1 Q. You have a future deficit reserve in this year's
2 budget of about 15.7 million?

3 A. Yes. That is to use leftover funds to close the
4 projected budget gap for the following year so we do not
5 have to cut services again or cause instability.

6 MR. ADAM: Your Honor, I'd move to strike the
7 witness' answer after the word "yes." Nonresponsive.

8 THE COURT: Granted.

9 BY MR. ADAM:

10 Q. You have an economic incentive reserve of
11 \$10 million, do you not?

12 A. Economic incentive reserve?

13 Q. Sorry. Strike that.

14 You have an economic uncertainty reserve of \$10
15 million in this year's budget?

16 A. Yes. It's there for a specific reason.

17 MR. ADAM: Your Honor, I move to strike the
18 witness' answer after yes.

19 THE COURT: Granted.

20 BY MR. ADAM:

21 Q. You have a successor agency reserve in this year's
22 budget of \$10 million, do you not?

23 A. Yes.

24 Q. You have a police overtime reserve in this year's
25 budget of \$4 million, do you not?

26 A. Yes.

27 Q. And you have a fiscal reform implementation
28 reserve in this year's budget of \$1.5 million, do you not?

1 A. Yes.

2 Q. Now, there's been testimony in this proceeding
3 that the Police Officers' Association, like many of the
4 employees, made a ten percent total compensation
5 concession in 2011 to 2013; is that correct?

6 A. Correct. I'm sorry. It was 2011-'12. Is that
7 what you meant to say?

8 Q. Two fiscal years. For the duration of two years.

9 A. Understood.

10 Q. That is still the level of pay that police
11 officers have; correct?

12 A. Correct.

13 Q. And in the arbitration, you testified that over
14 those two years, that was worth \$46 million in savings to
15 the City just from police officers; correct?

16 A. I don't remember the number.

17 Q. Approximately that number?

18 A. I really don't remember. If that's what I said,
19 that would be the number.

20 Q. The ten percent was -- the ten percent concession
21 was part of your fiscal reform plan; correct?

22 A. Yes.

23 Q. There was three points to that fiscal reform plan,
24 was there not?

25 A. Yes.

26 Q. And City Council supported your fiscal reform
27 plan, did it not?

28 A. Yes.

1 Q. The second plan was the pension changes; correct?

2 A. There were pension changes in the plan, yes.

3 Q. Notwithstanding the uncertainties of this
4 litigation, is it fair to say the majority of the pension
5 changes have been made by the City?

6 A. I would have to look at the list, quite frankly.

7 Q. Now, the third piece of your fiscal reform plan
8 was revenue increases; correct?

9 A. Yes.

10 Q. And isn't it true that in August of 2012, you
11 recommended that the council -- that it seek a half cent
12 sales tax increase in the November 2012 election; correct?

13 A. Correct.

14 Q. You had a backup plan, right, for a quarter cent
15 increase?

16 A. That was an alternative.

17 Q. Alternative proposal.

18 And you testified at the arbitration that that was
19 an important -- that revenue measure was an important part
20 of the overall strategy; correct?

21 A. Yes.

22 Q. And you also testified in that proceeding you felt
23 it was a good time to go to the voters and seek a sales
24 tax increase; correct?

25 A. Yes.

26 Q. Did the council support your half cent sales tax
27 proposal?

28 A. No.

1 Q. How about your alternative quarter cent sales tax
2 proposal?

3 A. No.

4 Q. What would a half cent sales tax proposal bring in
5 a year?

6 A. Based on our estimation at that point in time, in
7 the \$60 million range.

8 Q. The County of Santa Clara proposed a quarter cent
9 sales tax increase that same election, did it not?

10 A. Yes.

11 Q. How did that fare?

12 A. It passed.

13 Q. Now, counsel for the City played you a video of
14 the meeting in which Mr. Crosby uttered some remarks about
15 pension projections. Do you recall that?

16 A. Yes.

17 Q. And we also had a transcript put into evidence of
18 at least part of those proceedings.

19 THE COURT: Actually, the transcript is not in
20 evidence. The recording -- the CD is in evidence.

21 MR. ADAM: Strike that.

22 BY MR. ADAM:

23 Q. Is it fair to say that in that meeting, Mr. Crosby
24 was giving something of a worst-case scenario estimate?

25 A. Yes.

26 Q. And you testified yesterday that in response --
27 strike that.

28 You testified yesterday that, subsequently, there

1 was an NBC Channel 11 investigative unit report on local
2 TV; correct?

3 A. Yes. About a year later.

4 Q. And subsequent to that report, you put out the
5 memorandum that was also shown to you in testimony
6 yesterday -- I forget who it was disseminated it to you --
7 but you put out a memorandum?

8 A. To the mayor and council, yes.

9 MR. ADAM: I'd like to mark as -- I guess it would
10 be POA 52.

11 THE CLERK: Should be POA 53.

12 THE COURT: 52 might be your slides from the
13 opening.

14 The witness needs the one with the tag on it. If
15 you have an extra for me.

16 Did we get a description of 53 for the record,
17 Counsel?

18 MR. ADAM: 53 is a three-page document, top corner
19 saying NBC Bay Area.com, with the heading San Jose Pension
20 Estimate Question.

21 (Plaintiffs' Exhibit 53 was marked
22 for identification.)

23 BY MR. ADAM:

24 Q. Ms. Figone, could you review this three-page
25 document, please.

26 A. Would you like me to read it?

27 Q. Well, are you familiar with it?

28 A. No.

1 Q. Could you review it, then. Could you read it,
2 please.

3 Have you had a chance to review it?

4 A. Yes.

5 Q. When you testified that you prepared a memorandum
6 to respond to the investigative report, was it the written
7 report as you just reviewed, or was it the video that
8 appeared on television?

9 A. It was the video that appeared on television.

10 Q. The video on television. Did the allegations in
11 the video -- did the allegations in the video that
12 appeared on television, did they match the allegations
13 that are contained in the story as you just read them?

14 A. I don't remember.

15 Q. Do you recall the State of California preparing an
16 audit of the City's finances after these allegations?

17 A. Yes, I do remember. The audit actually was
18 completed after Measure B.

19 Q. Did you review the audit?

20 A. Yes. We responded on two occasions, first when
21 the idea of the audit surfaced at the legislative level.

22 MR. ADAM: Your Honor, can I object and move to
23 strike as nonresponsive? The question was whether the
24 witness reviewed the audit.

25 THE WITNESS: Yes.

26 THE COURT: Motion granted.

27 BY MR. ADAM:

28 Q. Ms. Figone, can I ask you to review what's marked

1 as Exhibit -- I believe it's 28 -- POA 28. Would you take
2 a moment --

3 MR. ADAM: Can I help the witness, your Honor?

4 THE COURT: Okay.

5 BY MR. ADAM:

6 Q. If you could take a moment to familiarize yourself
7 with that document.

8 A. I recognize it.

9 Q. So this is the document to which you stated that
10 you responded?

11 A. I did respond to this document.

12 Q. And in what way did the City respond to this
13 document?

14 MS. ROSS: Your Honor, objection. Relevance and
15 hearsay. This document was issued in August of 2012,
16 which was after Measure B was enacted.

17 THE COURT: Overruled.

18 BY MR. ADAM:

19 Q. How did the City respond to the audit?

20 A. We provided a written response to the state
21 auditor with our response to their findings, their
22 comments, and we provided our response in either where we
23 agreed or where we disagreed.

24 Q. Who prepared that response?

25 A. My staff for my signature.

26 Q. You reviewed it and signed it?

27 A. Yes.

28 MR. ADAM: Your Honor, I'd ask that Plaintiffs'

1 Exhibit 28 be moved into evidence.

2 MS. ROSS: Objection. Hearsay. Relevance. Lack
3 of foundation.

4 THE COURT: Is there a non-hearsay purpose for
5 this?

6 MR. ADAM: Your Honor, I'd argue it's an official
7 business record. It's an audit by the State of California
8 auditor who's in the same position as Ms. Erickson is as
9 to the City. She has signed it.

10 THE COURT: So you want me to receive it for the
11 truth of the matters stated in it?

12 MR. ADAM: Yes.

13 THE COURT: Sustained.

14 BY MR. ADAM:

15 Q. So, Ms. Figone, you testified a moment ago you
16 felt it was fair to say that Mr. Crosby's estimations of
17 400 million plus 250 million were worst-case scenario;
18 right?

19 A. Yes.

20 Q. Now, isn't it true that the mayor used that figure
21 repeatedly during the course of 2011 as he was campaigning
22 for pension reform?

23 A. I could not verify how many times the mayor used
24 the statement.

25 Q. But he used it; right?

26 A. I'm familiar with him using it, yes.

27 Q. He used it more than once; right?

28 A. I really couldn't say.

1 Q. At this point, pension reform in San Jose was a
2 pretty hot topic, was it not?

3 A. Yes, it was.

4 Q. In fact, the mayor was getting coverage statewide,
5 was he not?

6 A. There was a lot of interest in what we were doing.

7 Q. Nationwide?

8 A. Yes.

9 Q. And did you read any articles in the Wall Street
10 Journal about the mayor and San Jose's pension proposals?

11 A. I may have.

12 MS. ROSS: Objection. Hearsay.

13 MR. ADAM: I'm asking if she read it.

14 THE COURT: Overruled.

15 THE WITNESS: I may have.

16 BY MR. ADAM:

17 Q. Vanity Fair?

18 A. I don't remember.

19 Q. But there was a lot of these articles; right?

20 A. I remember that there were articles.

21 Q. In all of these articles where the mayor was
22 quoted, he was using these worst-case scenario fillings,
23 was he not?

24 A. I do not know.

25 Q. Now, you testified about the estimations for FY
26 '15-'16 pension figures being subsequently clarified to be
27 approximately 431 million; correct?

28 A. Yes.

1 Q. That was sometime in the mid-summer of 2011;
2 right?

3 A. I don't remember when.

4 Q. That was subsequently revised in 2012 to 318
5 million, was it not?

6 A. Yes.

7 Q. For the same year, '15-'16?

8 A. I don't remember.

9 Q. Now, you also testified that the City, at one
10 point in 2011, considered declaring a fiscal emergency;
11 right?

12 A. Yes.

13 Q. And at one point, you prepared a document with
14 respect to fiscal emergency; correct?

15 A. Yes.

16 Q. Was that a proposal or recommendation?

17 A. I don't know the difference.

18 Q. So when you drafted this document sometime in
19 2011, it was with a view to it being adopted -- a fiscal
20 emergency being adopted by the City Council?

21 A. Correct.

22 Q. Did you determine to prepare this document
23 yourself, or was this subject to direction by council?

24 A. The council had directed us to be -- to prepare
25 the document.

26 Q. And that potential declaration of fiscal -- that
27 potential declaration of a fiscal emergency got
28 significant media attention in 2011, did it not?

1 A. I don't remember.

2 Q. It was a subject of numerous council meetings, was
3 it not?

4 A. There were council meetings for fiscal emergency
5 discussed, yes.

6 Q. Budget presentations; right?

7 A. I don't remember.

8 Q. But in December of 2011, you withdrew the fiscal
9 emergency; correct?

10 A. I recommended that it not proceed.

11 Q. It's true, is it not, that the reason you withdrew
12 it was because the retirement board actuaries came back
13 with a projection for fiscal year 2012-2013 that was
14 \$55 million less than they previously projected for that
15 same year? True?

16 A. Yes.

17 Q. Now, going back to your fiscal reform plan. One
18 of the elements was pension reform we discussed; correct?

19 A. Yes. Under the cost savings category.

20 Q. And one area that the City was looking to achieve
21 savings was in the benefits received by current employees;
22 correct?

23 A. Yes.

24 Q. And, in fact, those sentiments were also covered
25 in Ms. Erickson's audit report that she discussed at
26 length yesterday; correct?

27 A. Yes.

28 Q. Now, the mayor wanted to challenge the vested

1 rights doctrine, did he not?

2 A. I couldn't answer that. I don't know.

3 Q. He wanted to do it with the backdrop of a fiscal
4 emergency being declared, did he not?

5 MS. ROSS: Objection. Calls for speculation.

6 THE COURT: Overruled.

7 THE WITNESS: I don't know.

8 BY MR. ADAM:

9 Q. Now, the City used the Randy Holtzman law firm to
10 assist in the drafting of Measure B, did it not?

11 A. I'm not aware of.

12 Q. Do you recall if Mr. Holtzman was at the
13 bargaining table with police and fire fighters?

14 MS. ROSS: Objection. Irrelevant. Beyond the
15 scope of direct.

16 THE COURT: Sustained.

17 MR. ADAM: On relevance or beyond the scope, your
18 Honor?

19 THE COURT: Both.

20 BY MR. ADAM:

21 Q. Now, with respect to revisions to health care,
22 it's true, is it not, that in 2008, the City and the POA
23 agreed to start fully prefunding retiree health care;
24 right?

25 A. Yes.

26 Q. And over the course of the subsequent five years,
27 the POA agreed to ramp up contributions to what it is now,
28 which is 9.5 percent; correct?

1 A. Correct.

2 Q. So police officers are currently paying -- as well
3 as approximately 12 percent for their normal cost pension
4 contributions, they're paying another nine and a half
5 percent just for retiree health benefits; correct?

6 A. Yes.

7 Q. You're involved in nationwide city manager
8 organizations, are you not?

9 A. Yes.

10 Q. You've got a sense of what benefits are like in
11 other jurisdictions, have you not?

12 A. I really don't know what they provide in other
13 jurisdictions.

14 Q. Do you know how San Jose police officers' pension
15 contributions -- and I include both to pensions and to the
16 medical benefits -- how they compare with police officers
17 in other jurisdictions?

18 MS. ROSS: Objection. Beyond the scope of the
19 direct. Calls for speculation. Hearsay.

20 THE COURT: It is beyond the scope of direct.
21 Sustained.

22 MR. ADAM: Your Honor, I can always bring
23 Ms. Figone back as a witness on rebuttal. I think we went
24 through this with one of the plaintiffs' witnesses.

25 THE COURT: Okay. So in lieu of calling her back,
26 you want to ask this question now?

27 MR. ADAM: Yeah.

28 THE COURT: Then that's okay.

1 BY MR. ADAM:

2 Q. Relative to other police officers' pension
3 contributions, San Jose is very high, is it not?

4 MS. ROSS: Objection. Speculation. Hearsay.

5 BY MR. ADAM:

6 Q. If you know.

7 THE COURT: Overruled.

8 THE WITNESS: I could not tell you the comparison.

9 BY MR. ADAM:

10 Q. Now, in 2008 when San Jose police officers started
11 to prefund retiree health care, there was a different
12 low-cost plan available that exists now since January 1,
13 2013, is there not? Was there not?

14 A. I can't be specific, Mr. Adam, as to what was in
15 place.

16 Q. Are you familiar with the new low-cost plan that
17 the City implemented in January 1, '13?

18 A. I am aware of it but not familiar with the
19 details.

20 Q. You testified yesterday that in your budget for
21 this year, you attribute about \$20 million in savings from
22 Measure B?

23 A. I clarified this morning that there are 20 million
24 in savings, yes. I said that yesterday. SRBR. And that
25 the low price plan made up those -- the new low-price plan
26 made up those savings.

27 Q. Those are savings that have been -- strike that.

28 You attribute those savings to two things; right,

1 the SRBR and the low-cost plan?

2 A. Correct.

3 Q. And do you recall when the City eliminated the
4 SRBR?

5 A. It has been suspended for a few years.

6 Q. But the savings you're referencing with respect to
7 lowest cost plan began January 1 of this year; correct?

8 A. Yes. The plan was implemented January 1 of this
9 year.

10 Q. That's a less expensive plan for the City, is it
11 not?

12 A. Yes.

13 Q. There's more deductibles; right?

14 A. I am not familiar with the details. I do know
15 that it is a higher -- it's a high-deductible plan.

16 Q. There's less coverage; right?

17 A. I don't know the coverage.

18 Q. And the reason the City is saving money this year
19 on the low-cost plan is because officers -- retirees,
20 rather, like Mr. Salvi, instead of having their retiree
21 medical benefits for free, are now paying \$300 plus, as
22 Mr. Salvi testified; right?

23 MS. ROSS: Objection. Calls for speculation.

24 THE COURT: Overruled.

25 THE WITNESS: The low -- the new low-price plan
26 establishes a cost to the retirees.

27 BY MR. ADAM:

28 Q. I'm asking about the savings to the City, how the

1 City saves money under this new plan. And my question is,
2 isn't it true that, in part, the savings are achieved
3 through people like Mr. Salvi, retirees, paying more than
4 they were last year?

5 MS. ROSS: Objection. Argumentative.

6 THE COURT: Overruled.

7 THE WITNESS: The premiums that the employees
8 pay -- or the retirees pay -- are likely higher than what
9 they paid in the past.

10 BY MR. ADAM:

11 Q. Including people who formerly paid nothing --

12 A. Yes.

13 Q. -- are now paying premiums?

14 A. Yes.

15 Q. That's in part the City is saving money on this
16 new low-cost plan; right?

17 A. Yes.

18 Q. So back to the POA and prefunding. Nine and a
19 half percent of the top step -- strike that.

20 Nine and a half percent of a top step officer,
21 approximately \$10,000 a year; right?

22 A. I don't know the number.

23 Q. It's not far off that; right? What you pay your
24 top step cops, about 100,000; right?

25 MS. ROSS: Asked and answered.

26 THE COURT: Overruled.

27 THE WITNESS: I don't know what the top step is.

28 BY MR. ADAM:

1 Q. Police officers are paid a large amount of money
2 each year for a retiree medical benefit; correct?

3 A. Nine percent of pay.

4 Q. Right. And is it the City's position under the
5 municipal code that it can continually reduce the quality
6 of this low-cost plan?

7 A. The municipal code doesn't speak to quality.

8 Q. But is the City's position that it can do that and
9 no legal impediment to it continually having a less --
10 I'll use the term rich -- health benefit for retirees?

11 MS. ROSS: Objection. Lacks foundation;
12 argumentative; calls for speculation.

13 THE COURT: Overruled.

14 MS. ROSS: Calls for a legal conclusion.

15 THE WITNESS: Plan design is a way that we can
16 lower costs. So changing the plan design.

17 BY MR. ADAM:

18 Q. Is it fair to say that a police officer starting
19 to pay thousands of dollars in 2008 towards a retiree
20 medical benefit expected to be receiving the same benefit
21 when he/she retired?

22 MS. ROSS: Objection. Calls for speculation.

23 THE COURT: Sustained.

24 MR. ADAM: I want to mark as -- what's next? 54?

25 THE CLERK: 54.

26 (Plaintiffs' Exhibit 54 was marked
27 for identification.)

28 BY MR. ADAM:

1 Q. Ms. Figone, can you skim through this document.

2 THE COURT: Can I get a description, please.

3 MR. ADAM: This is a 35-page document with the
4 City of San Jose stamp. Document is entitled Lease
5 Revenue Refunding Bonds.

6 THE COURT: When you say with the City stamp, what
7 does that mean?

8 MR. ADAM: It means it's got City of San Jose
9 insignia on each page, and I'm going to try to confirm
10 with the witness whether it's an official City document.

11 THE COURT: Go ahead.

12 BY MR. ADAM:

13 Q. Ms. Figone, you are familiar with this document,
14 are you not?

15 A. Yes. I have seen it.

16 Q. In fact, you and I discussed it when you were
17 under oath at the arbitration hearing in May, did we not?

18 A. Yes.

19 Q. And this was prepared by City staff; correct?

20 A. Yes.

21 Q. And it was presented to what I'll term the bonding
22 agencies; is that correct?

23 A. Rating agencies.

24 Q. And this was prepared in the normal course of the
25 duties of people who prepared it; correct?

26 A. Yes.

27 Q. And I just want to run through this quickly. If
28 you go to page 4, there's a arrow with a title Improving

1 Economic and Fiscal Conditions. Do you see that?

2 A. Yes.

3 Q. Do you see the second check mark under it?

4 A. Yes.

5 Q. The City was advising the rating agencies, was it
6 not, that this was the second consecutive budget without
7 service cuts in '13-'14; right?

8 A. Yes.

9 Q. And the next check advised the ratings agencies
10 that economically sensitive revenues are stabilizing and
11 growing; correct?

12 A. Yes.

13 Q. Then under the next arrow, the second check, the
14 City was advising the rating agencies that it had modest
15 manageable gaps in its general fund forecast through
16 fiscal year 2018; right?

17 A. Yes.

18 Q. Now, does that assessment assume any savings for
19 Measure B other than the SRBR and the lowest-cost plan?

20 A. Not at this time.

21 Q. And then the next check, you're confirming that
22 the City has been able to establish reserves as we
23 discussed earlier; right?

24 A. Yes.

25 Q. Moving along to page 6, there's testimony in the
26 arbitration in May that San Jose is a very expensive
27 jurisdiction to live in; correct?

28 A. Yes.

1 Q. You agree with that?

2 A. I do.

3 Q. In fact, there's evidence from the Bureau of Labor
4 Statistics that San Jose is the most expensive county in
5 the United States to live in; right?

6 A. Based on this graph, yes.

7 Q. And --

8 THE COURT: Since San Jose is not a county, I'm
9 not sure what that last question is.

10 BY MR. ADAM:

11 Q. Santa Clara County is the most expensive county to
12 live in; correct?

13 A. If you're looking at this graph, it says San Jose,
14 Sunnyvale, Santa Clara.

15 Q. This graph that the City produced also shows
16 median home sales price continue to rise; right? That's
17 the graph on page 6, the bottom left-hand corner.

18 A. Yes.

19 MS. ROSS: Objection. Lack of foundation as to
20 City creating a graph.

21 THE COURT: Overruled.

22 BY MR. ADAM:

23 Q. In fact, the median home sales price is nearing
24 the peak that it was in 2003; right?

25 MS. ROSS: Objection. Asking her to read from a
26 document that's not in evidence.

27 THE COURT: Sustained.

28 BY MR. ADAM:

1 Q. Over the next page, page 7, you see the chart
2 discussing property tax receipts?

3 A. Yes.

4 Q. The City was showing to the rating agencies that
5 these were increasing; correct?

6 A. Yes.

7 Q. Same with sales tax receipts; right?

8 A. Yes.

9 Q. And transient occupancy tax receipts; right?

10 A. Yes.

11 Q. Turn to page 18, please. The first arrow says --
12 is to deal with the 2010 Measure W. Do you see that?

13 A. Yes.

14 Q. The City was advising the ratings agencies, was it
15 not, that Measure W provided it with the ability to
16 exclude future workers from existing retirement plans;
17 right?

18 A. That's what it says.

19 Q. And the City didn't believe, prior to Measure W,
20 that it could do that; right?

21 MS. ROSS: Objection. Speculation.

22 THE COURT: Overruled.

23 BY MR. ADAM:

24 Q. City didn't think it had the ability to exclude
25 future workers from the existing plans without Measure W
26 passing; right?

27 MS. ROSS: Objection. Calls for a legal
28 conclusion.

1 THE COURT: Sustained.

2 BY MR. ADAM:

3 Q. Can you review your March 4, 2008, memo again,
4 starting -- we started the beginning of cross-examination
5 on that.

6 THE COURT: 51?

7 MR. ADAM: Yeah.

8 MS. ROSS: I can't hear you.

9 MR. ADAM: The March 4, 2008, memo that Ms. Figone
10 prepared. It's in 51.

11 BY MR. ADAM:

12 Q. Was it your intent, by issuing this memorandum, to
13 reassure employees about their medical benefits and
14 retirement?

15 A. It was my intent to communicate about where we
16 were at in the process and some recent information we had
17 received.

18 Q. Did you receive feedback from any employees or
19 retirees about your memo?

20 A. I don't remember receiving specific feedback.

21 Q. And Mr. Skeen, in his memo, commented on your
22 memo; right?

23 A. I don't remember Mr. Skeen's memo.

24 Q. So you knew when you put this memo up that it was
25 a pretty sensitive subject matter you were discussing;
26 right?

27 A. Yes.

28 Q. Is this just your work, or was it reviewed by

1 anybody?

2 A. It was developed internally by staff and for my
3 signature.

4 Q. Reviewed by counsel -- counsel with an S-E-L --
5 lead counsel?

6 A. Yes.

7 Q. Directing your attention to the first paragraph on
8 page 2.

9 A. Page 2 of my memo?

10 Q. Yes.

11 Do you remember during your deposition that I took
12 that you told me that your opinion in this paragraph was
13 as a result of the memoranda prepared by the Jones Day law
14 firm?

15 A. Yes.

16 Q. And yesterday you testified that you wrote the
17 third sentence in that paragraph, the sentence beginning,
18 "Because San Jose retiree health care benefits." You
19 wrote that sentence because what you were trying to say
20 was that retiree health care benefits might be a vested
21 benefit. That was what you were trying to achieve there?

22 A. Yes. It was tentative.

23 Q. But you didn't use tentative language in your
24 memo, did you?

25 MS. ROSS: Objection. Argumentative.

26 THE COURT: Overruled.

27 THE WITNESS: I used "can be considered."

28 BY MR. ADAM:

1 Q. Right. I've got a watch on my wrist. If I handed
2 you that watch and said, "Ms. Figone, this watch can be
3 considered yours," would you think you were entitled to
4 that watch?

5 MS. ROSS: Objection. Argumentative.

6 THE COURT: Sustained.

7 BY MR. ADAM:

8 Q. In that same sentence, you state the following:
9 "Retiree health care benefit can be considered a 'vested'
10 benefit." You put quotations around the word vested. Do
11 you recall why you did that?

12 A. No, I don't.

13 Q. But you say it can be considered a vested benefit.
14 Strike that.

15 I want to try and understand some of your
16 testimony yesterday. I thought I heard you say that
17 whereas an employee should consider they had a right to
18 retiree health care benefits in the future for the City,
19 they didn't have a right to a specific plan. Was that
20 your testimony?

21 MS. ROSS: Objection. Misstates her testimony.

22 THE COURT: Overruled.

23 THE WITNESS: Would you ask the question again.

24 BY MR. ADAM:

25 Q. What did retirees have a right to, in your mind,
26 when you wrote this opinion?

27 A. Based on legal advice and my writing of this memo,
28 I was trying to convey that as we were working on solving

1 this problem, we would not look at alternatives to the
2 benefit which had been 100 percent of the low-price plan.
3 We would look to other ways to contain costs as stated
4 later in the memo, such as plan design.

5 Q. But were you acknowledging in this memo that
6 employees had a right to something by way of medical
7 benefits from the City in retirement?

8 MS. ROSS: Objection. Misstates her testimony;
9 argumentative.

10 THE COURT: Overruled.

11 BY MR. ADAM:

12 Q. Is your memo telling the retirees they have a
13 right to something, they just don't have a right to
14 something specific?

15 A. What I was saying is that the 100 percent of the
16 low-price plan could be a vested right benefit. So as we
17 worked on this work, we were not going to look to altering
18 that at that point in time. We were going to look to
19 other ways to lower costs.

20 Q. Now, you also used the clause at the end of the
21 sentence saying, "Vested benefits similar to pension
22 benefits itself." What was the comparison to the pension
23 benefit supposed to convey?

24 A. I don't recall.

25 Q. Then in the next sentence, you say that you will
26 not be recommending changes at this time. Do you see
27 that?

28 A. Yes.

1 Q. That was after the Jones Day opinion; right?

2 A. Correct.

3 Q. Did the City subsequently get another legal
4 opinion on this issue?

5 MS. ROSS: Objection. Calls for attorney-client
6 privilege.

7 THE COURT: Sustained.

8 MR. ADAM: Your Honor, I'm not asking what was
9 said. I'm asking if they got an opinion. The witness
10 testified that they did get an opinion and there was no
11 objection made in the deposition. I have the transcript
12 here.

13 THE COURT: The fact that an objection was not
14 made at the deposition does not matter. I've ruled on the
15 objection.

16 BY MR. ADAM:

17 Q. In 2008, you weren't changing the lowest cost
18 plan, were you?

19 MS. ROSS: Objection. Misstates her testimony.

20 THE COURT: Overruled.

21 THE WITNESS: What is your question again?

22 BY MR. ADAM:

23 Q. In 2008, you were not changing the lowest cost
24 plan?

25 A. I don't remember what plan design changes were
26 made, if any, that year.

27 Q. Now, the charter supersedes the municipal code,
28 does it not?

1 MS. ROSS: Objection. Calls for a legal
2 conclusion.

3 THE COURT: Sustained.

4 MR. ADAM: I have nothing further, your Honor.

5 THE COURT: For Sapien?
6

7 CROSS-EXAMINATION

8 BY MR. PLATTEN:

9 Q. Good morning, Ms. Figone.

10 A. Good morning.

11 Q. I want to go back to a little bit of your
12 testimony when you talked about your job duties,
13 responsibilities as the City Manager. Okay?

14 A. Sure.

15 Q. You indicated yesterday the City of San Jose is a
16 City Manager form of government?

17 A. I said it was a council manager form of
18 government.

19 Q. Council manager. Thank you for correcting me.

20 That means in San Jose, that when it comes to the
21 annual budget process, you produce at the beginning of the
22 process a proposed budget for adoption by the council;
23 correct?

24 A. That is one of my duties.

25 Q. And then the mayor, under the charter, has the
26 responsibility to provide and mark up your draft and issue
27 his or her, depending upon who's the mayor, budget
28 message; is that correct?

1 A. That's one of the mayor's budget duties.

2 Q. Of course, unlike you, the mayor has ultimately
3 over what budget gets adopted, which may be your proposal;
4 it may be the mayor's proposal or a combination of the two
5 or something altogether different?

6 MS. ROSS: Objection. Compound.

7 THE COURT: Overruled.

8 THE WITNESS: Correct.

9 BY MR. PLATTEN:

10 Q. And that means that the mayor issues a public
11 document known as the mayor's budget message. Am I right?

12 A. Yes.

13 Q. I'd like to just turn your attention for a moment
14 now to your letter to the employees with respect to the
15 \$650 million figure.

16 THE COURT: To what is it you are referring?

17 MR. PLATTEN: Give me a moment, your Honor.

18 BY MR. PLATTEN:

19 Q. Do you know which memo I'm speaking of, ma'am?

20 A. Not one to the employees.

21 THE COURT: I think you need an exhibit
22 designation. You're referring to a marked exhibit.

23 MR. PLATTEN: The one that was introduced
24 yesterday, your Honor. The 5100 series. 5111.

25 THE WITNESS: Is that another binder?

26 MR. PLATTEN: I believe it is. It was introduced
27 yesterday through your testimony. This is your February
28 9, 2012, memorandum.

1 May I assist the witness, your Honor?

2 THE COURT: Yes.

3 BY MR. PLATTEN:

4 Q. Do you now have that in front of you, Ms. Figone?

5 A. Yes.

6 Q. Beginning at the memo, you're telling the mayor
7 and the council that the reason for the memo is because of
8 the story that was reported on NBC News Channel 11;
9 correct?

10 A. Yes.

11 Q. You made a point to say, "We got to focus on the
12 facts"; right?

13 A. Yes.

14 Q. And you then state the City had never used the
15 \$650 million estimate as a basis for council direction in
16 labor negotiations; correct?

17 A. The City administration has never used.

18 Q. And on the second page of the memo, you provided a
19 timeline and further information concerning what figures
20 were, in fact, used by the City; is that right?

21 A. Yes.

22 Q. And the only indication in the timeline of any use
23 of the \$650 million figure was February 14, 2011?

24 A. In this chronology, yes.

25 Q. But, in fact, the mayor had used that figure,
26 \$650 million, in his official June 2011 budget message;
27 isn't that right?

28 A. I do believe he did, yes.

1 Q. And he also used it in a fiscal reform memo signed
2 by other City Council members in May 2011; isn't that
3 correct?

4 A. Actually, that is the memo that I said yes to. I
5 do remember that memo.

6 Q. That would be -- if you'll turn for a moment,
7 ma'am, to Sapien Exhibit 225. So you're going to have to
8 balance two books, unfortunately, in front of you. I'll
9 give you a moment. If you need some help, let me know,
10 and I'll try to help.

11 A. I need some help.

12 Q. Take a look at what we have as Sapien Exhibit 225.
13 Have you had a chance to look at it?

14 A. Yes.

15 Q. Do you recognize the document?

16 A. I do.

17 Q. So this is an official City document signed by the
18 mayor and several members of the City Council that uses
19 and refers to the \$650 million cost projection for pension
20 costs, does it not?

21 A. Yes.

22 Q. That's on page 5 of the document?

23 A. Yes.

24 Q. You did not, in your memorandum to the council of
25 February 2012, indicate either the existence of this memo
26 or the mayor's June budget message memo referring to the
27 \$650 million projection?

28 A. I did not.

1 Q. Nor did you refer to a number --

2 THE COURT: So just so we've got a record here.
3 When you say page 5 of 225, you mean the page that has
4 Bates number 151?

5 MR. PLATTEN: That's correct, your Honor.

6 THE COURT: Thank you. Go ahead.

7 MR. PLATTEN: That, I believe, appears, just so
8 the record is clear, under the section entitled
9 background.

10 THE COURT: Yeah. That's on the previous page,
11 150.

12 BY MR. PLATTEN:

13 Q. Nor in your memo of February 2012, Ms. Figone, did
14 you include any of the press releases that the mayor had
15 issued beginning in April of 2011 through July and June of
16 2011 in which he continued to refer to the \$650 million
17 projection, did he?

18 MS. ROSS: Objection. Lacks foundation; facts not
19 in evidence.

20 THE COURT: Overruled.

21 BY MR. PLATTEN:

22 Q. Do you recall that, ma'am -- I'll re-ask the
23 question. You did not, in your February 2012 memorandum,
24 list the number of occasions in which the mayor or other
25 members of the council issued press releases in the period
26 of April 2011 to June of 2011, referring again to the
27 \$650 million cost projection?

28 A. No.

1 Q. So, in fact, in official memorandum in budget
2 messages and in press releases, the mayor, on several
3 occasions, relied upon the \$650 million cost projection in
4 making statements regarding the cost of pension benefits
5 in the City of San Jose?

6 MS. ROSS: Objection. Lacks foundation.

7 THE COURT: Overruled.

8 THE WITNESS: I can only speak to this memo in
9 front of me, Mr. Platten, in terms of that reference. I
10 don't remember the press releases.

11 BY MR. PLATTEN:

12 Q. Do you disagree with the state auditor's finding
13 that the City and the mayor, on many occasions, including
14 in official City documents, in press releases, and during
15 public presentations, cited to the \$650 million cost
16 projection figure?

17 MS. ROSS: Objection. Hearsay. It's been ruled
18 inadmissible. Move to strike the question. He's reading
19 from the document.

20 THE COURT: The questions are not evidence, so we
21 don't have to move to strike the question. Sustained.

22 BY MR. PLATTEN:

23 Q. Do you know, ma'am, in responding to the state
24 auditor's report, the state auditor had made a finding
25 that in press releases and official documents, the mayor
26 had again and again referred to the \$650 million
27 projection?

28 MS. ROSS: Same objection. Hearsay.

1 THE COURT: Sustained.

2 BY MR. PLATTEN:

3 Q. In preparing your response to the state auditor,
4 did you respond to that claim?

5 MS. ROSS: Same objection. Hearsay.

6 THE COURT: Overruled.

7 THE WITNESS: I would have to look at my response.

8 BY MR. PLATTEN:

9 Q. If you would like to, ma'am, in front of you,
10 Sapien Exhibit 226, the next one over, that's a copy of
11 the state auditor's report, and I believe the City's
12 response is appended on the back of the document.

13 A. I'm not seeing my response, Mr. Platten.

14 Q. Very back of the document, pages 35 through 38 of
15 the document.

16 A. Thank you.

17 THE COURT: Of 226?

18 MR. PLATTEN: Yes, your Honor.

19 MS. ROSS: I don't see it.

20 THE COURT: What Bates number are you referring
21 to?

22 MR. PLATTEN: My exhibit document doesn't have the
23 Bates number on it. I apologize. My copy.

24 THE COURT: It's your Bates number, SAP --

25 MR. PLATTEN: SAP 265, 268, I believe.

26 MS. ROSS: I'm unable to locate it.

27 MR. PLATTEN: It's pages 35 through 38 of the
28 exhibit in the upper right-hand corner.

1 MS. ROSS: Are we on 226?

2 THE COURT: Yes. It's 226, and the section to
3 which you're referring us begins with a page that bears
4 number 35 at the upper right and bears Bates number SAP
5 265 at the lower right?

6 MR. PLATTEN: Correct. Thank you, your Honor.

7 MS. ROSS: My copy does not have that document in
8 it.

9 MR. PLATTEN: I would be glad to loan it to
10 counsel.

11 THE COURT: Okay. Thanks. The pending question,
12 I think, is, does your response address this claim?

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

14 BY MR. PLATTEN:

15 Q. Ms. Figone?

16 A. This is my response to the auditor, I believe, to
17 the full audit.

18 Q. That includes on page 4 specific reference to the
19 \$650 million cost projection?

20 A. My response is on SAP 267, the marginal number
21 three.

22 Q. Ask you to look at the next page, ma'am.

23 A. Yes.

24 Q. You specifically refer to a \$650 million figure;
25 correct?

26 A. Are you referring to the marginal number eight?

27 Q. I don't see a marginal number eight. If that's
28 what you're referencing on the left side of the column, I

1 suppose the answer is yes.

2 THE COURT: On SAP 268, there is a eight in the
3 left-hand margin with a circle around it next to the
4 indented paragraph.

5 MR. PLATTEN: Yes.

6 THE WITNESS: There's a reference to 650 from
7 the -- yes, there's a reference to 650. I believe it's
8 from the grand jury report.

9 BY MR. PLATTEN:

10 Q. Your response to the auditor included the response
11 that articulated the fact that \$650 million cost
12 projection had been used?

13 A. In this context, yes.

14 Q. That's the same thing you said to the council in
15 your memo of February 2012 that had been used?

16 A. Yes.

17 Q. You just didn't detail the number of occasions the
18 specific documents, including the mayor's June 2011 budget
19 message, which included the \$650 million cost projection?

20 A. Correct.

21 Q. Now, you were here present, were you not, ma'am,
22 when Ms. Erickson testified?

23 A. Yes.

24 Q. And you recall she testified there was a chart
25 that showed the benefit enhancements to the pension plan,
26 specifically the police and fire pension plan, beginning
27 in 1996 when the final average salary maximum benefit was
28 increased from 75 to 80 percent? Do you recall that?

1 A. Yes.

2 Q. And the later improvements going to 85 percent
3 final average salary, then ultimately 90 percent of final
4 average salary; correct?

5 A. Yes.

6 Q. And also you recall it reflected an agreement in
7 bargaining between the Police Officers' Association and
8 the City to increase final average salary maximum benefit
9 for police officers from the mid 2000s to 90 percent;
10 correct?

11 A. I don't remember the timeline, but I remember that
12 change happened.

13 Q. Fair enough. These benefit improvements, these
14 enhancements, were all the products of contract agreements
15 for contract terms created out of binding interest
16 arbitration; is that right?

17 MS. ROSS: Objection. Lacks foundation.

18 THE COURT: Overruled.

19 THE WITNESS: I would assume they came out of a
20 bargaining process one way or the other.

21 BY MR. PLATTEN:

22 Q. Now, in your memo -- going back to SPOA Exhibit 51
23 on retiree health care. 51. SPOA. This is the retiree
24 health care memo from March of 2008, I believe. When you
25 have a moment, Ms. Figone, I'm going to direct your
26 attention to page 2 of that memo --

27 MR. PLATTEN: Which I believe is Bates stamped,
28 your Honor, 7294.

1 THE COURT: Yes.

2 BY MR. PLATTEN:

3 Q. You used the term here, as you indicated in answer
4 to one of Mr. Adam's questions, the word in quotation
5 marks in the first paragraph "vested." Do you see that,
6 ma'am?

7 A. Yes.

8 Q. What did you understand the term "vested" to mean?

9 A. I understood it to mean that it may not be -- we
10 may not be able to change.

11 Q. I want to talk a little bit again about the budget
12 process. You had your chart showing the ten years'
13 cumulative budgets. It's true, is it not, ma'am, that
14 each and every year the council adopted a balanced budget?

15 A. Yes.

16 Q. That's a requirement under law?

17 A. Correct.

18 Q. And each and every year, you ended up in a
19 non-deficit? That is to say, you didn't end up in the
20 hole at the end of each and every year of that chart?

21 A. Correct.

22 Q. And when you showed the figures that you
23 referenced as deficits, that doesn't necessarily mean that
24 in each and every year you had less revenue than the year
25 before; correct?

26 A. It references the gap that had to be closed,
27 regardless of the reason.

28 Q. Right. And the gap may be the result of what your

1 initial budget proposal is versus what you finally
2 determine is your expected revenue to work with; correct?

3 A. Yes. That could be one source.

4 Q. That's part of the budget process. You begin with
5 a budget plan, here's what we would like to do, and then
6 you analyze what your resources are going to be, and if
7 there's fewer resources than you can afford to do what you
8 like to do, that's your deficit?

9 A. Yes. In general.

10 Q. But by now, in 2011-2012, you're ending up with
11 significantly increasing general fund balances each and
12 every year?

13 A. What year are you referring to?

14 Q. 2011-2012.

15 A. I don't know that I would say significant. I
16 would have to look at the numbers.

17 Q. You ended up with general fund balances -- rising
18 general fund balances each year?

19 A. I don't know that that's a fair characterization
20 what's ended up.

21 Q. Would you agree that the general fund balance at
22 the end of FY 12 was larger than the general fund balance
23 at the end of FY 11?

24 A. I don't know about the balance. We have less of a
25 gap.

26 Q. Now, at some point in time, the council determined
27 to change the makeup of the board of administration to
28 both retirement plans; is that right?

1 A. Yes.

2 Q. And the council removed previous positions
3 occupied by City Council members and replaced them with
4 outside individuals; correct?

5 A. Correct.

6 Q. These outside individuals are commonly referred to
7 as experts in the area of pensions?

8 A. Yes.

9 Q. And you were present when these applications for
10 those appointments were interviewed by the council?

11 A. I don't know if I was at all the interviews.

12 Q. Did you introduce yourself to all of the
13 applicants?

14 A. Not initially.

15 Q. Did you introduce yourself to all the selected
16 appointees?

17 A. Eventually came to know them.

18 Q. Did any selected appointee who's now sitting as a
19 member of either board of administration for either plan
20 ever tell you that they felt that they did not possess the
21 expertise to determine applications for disability
22 retirements?

23 MS. ROSS: Objection. Hearsay.

24 THE COURT: Sustained.

25 BY MR. PLATTEN:

26 Q. Did you ever understand that any individual who
27 was a member of either board of administration felt that
28 they lacked adequate expertise to make determinations on

1 retirement applications for disability?

2 A. I have not discussed that with them.

3 Q. So you have no knowledge or understanding one way
4 or the other?

5 A. The only knowledge I have is that they have found
6 the proceedings quite difficult.

7 Q. And how has that knowledge come to you?

8 A. Just through conversation.

9 Q. Have you ever indicated that if someone on either
10 board of administration finds their task difficult, that
11 they should recuse or remove themselves from the board?

12 A. I have not.

13 Q. Have you ever indicated or told anyone that if
14 they sit on a board and feel that they cannot conduct or
15 fulfill their fiduciary duty, that they need to resign
16 from the board?

17 A. I have not.

18 Q. Now, Mr. Adam and you spoke a little bit about tax
19 measures, revenue measures. Do you recall that
20 conversation?

21 A. Yes.

22 Q. From the period of 2008 to present, has the City
23 Council placed any tax revenue increase measure on any
24 ballot for voters?

25 A. There have been four measures placed before the
26 voters.

27 Q. Can you describe those for us.

28 A. Yes. In 2008, there were two measures related

1 to -- let's just say telephone-related taxes. And I
2 believe those were both in November of 2008. And then in
3 2010, in June -- let's see if I have this order right --
4 there was the card room tax, and that was a blend of
5 raising fees, so to speak, and expanding the number of
6 tables. And then in November a marijuana business tax.

7 Q. And did those tax measures pass?

8 A. Yes, they did.

9 Q. Did that result in increased revenue to the City?

10 A. The later two resulted in some increases. I
11 cannot say if the telephone tax resulted in increases.
12 The key goal was to stabilize what we had.

13 Q. Was there anybody on the council that you can
14 recall on any of those four measures who opposed placing
15 measures on the ballot?

16 A. I don't remember the vote.

17 Q. Do you recall if any measure had a dissenting
18 vote?

19 MS. ROSS: Objection. Relevance.

20 THE COURT: Sustained.

21 BY MR. PLATTEN:

22 Q. Change topics. Let's talk about your testimony
23 about -- again, going back to some of the pension cost
24 projections. I think you testified yesterday, ma'am, that
25 at some point in time, the Cheiron firm, the actuarial
26 firm to both pension plans, produced a cost projection of
27 \$431 million as opposed to \$650 million projection; is
28 that right?

1 A. Actually, the 431 was in response to our request
2 to validate our 400.

3 Q. And Cheiron issued that sometime in July 2011?

4 A. I don't remember the date.

5 Q. They later clarified it and downgraded their cost
6 estimate in February of 2012; is that correct?

7 A. As they were proceeding based on the new
8 valuations, the rates were revised, the projections were
9 revised.

10 Q. Down to about \$320 million?

11 A. I don't remember the number.

12 Q. Change of subject, ma'am. Talk about the lowest
13 priced plan. Plan design changes, I think, is the
14 terminology you used.

15 A. Yes.

16 Q. Are you aware that the Fire Fighters' Union has
17 filed a grievance over the plan design change implemented
18 by the City in the lowest price plan?

19 MS. ROSS: Objection. Relevance.

20 THE COURT: Sustained.

21 BY MR. PLATTEN:

22 Q. Is it your understanding that certain labor
23 organizations disagree with your view that the municipal
24 code permitted a change in the plan design?

25 MS. ROSS: Objection. Relevance.

26 THE COURT: Sustained.

27 MR. PLATTEN: If I may have just a quick moment,
28 your Honor?

1 THE COURT: Okay.

2 MR. PLATTEN: Thank you, Ms. Figone.

3 THE COURT: AFSCME?

4

5

CROSS-EXAMINATION

6

BY MR. PATERSON:

7

Q. Good morning, Ms. Figone.

8

A. Good morning.

9

10 Q. I'm going to ask you a question about what was
11 marked as Exhibit 6016 by the City. This is the slide
12 referencing \$670 million cumulative general fund
13 shortfalls.

14 THE COURT: This is probably in your six of six.

15 MS. ROSS: Yes.

16

BY MR. PATERSON:

17

Q. Do you have that in front of you?

18

A. I do.

19

20 Q. Thank you. The 2002-2003, it indicates a \$46.3
21 million shortfall. In those years, the pension plans were
22 fully funded, were they not?

23

24 A. I don't recall the years of the funding ratios,
25 quite frankly.

26

Q. You don't know?

27

A. I do not know.

28

Q. There's also a reference to CY positions, and you
can see it's declined over the ten-year period. Are those
references to full-time equivalencies?

29

A. Yes.

1 Q. And does that reflect the number of benefited
2 positions?

3 A. Full-time equivalencies could include benefited --
4 they do include benefited positions, yes.

5 Q. They also include unbenefited positions?

6 A. We have part-time benefited, so those would be
7 factored in.

8 Q. Let me ask a better question. Does it reflect the
9 number of participants in either the Federated or police
10 and fire fighter?

11 A. It is without regard to their -- which plan
12 they're in, but if they're in, they're a part of the
13 full-time equivalency. If they're part of the employees,
14 yes, it's going to include them.

15 Q. So this indicates in 2012-13 there was 5,522
16 active employees enrolled in the Federated or safety
17 pension plans?

18 A. I could not tell you that there's that direct
19 correlation. I would say the great majority of this
20 number are in one of the plans.

21 Q. Are in either one of those plans?

22 A. Are in either one of those plans.

23 Q. In this period -- referring again to the exhibit,
24 in this ten-year period, did the City take on debt?

25 A. The City has issue debt over this period.

26 Q. And that debt includes bonds?

27 A. Yes. General obligation bonds.

28 Q. So in 2002, there was a series of bonds. One

1 series was almost \$300 million issuance?

2 A. You'd have to be clearer on what the series was
3 for.

4 Q. Let me show you, if I may approach.

5 THE COURT: What are you showing the witness?

6 MR. PATERSON: It's a little bit out of order
7 here. Let me show you a different one. Pay document
8 entitled resolution number 72514.

9 THE COURT: Do you want to mark something?

10 MR. PATERSON: I can, your Honor, yes. I believe
11 the next in order for AFSCME is 525.

12 (Plaintiffs' Exhibit 525 was marked
13 for identification.)

14 MR. PATERSON: I don't think I have an extra copy.

15 THE COURT: May we have a description, please, of
16 524.

17 MR. PATERSON: It's entitled Resolution Number
18 72514, Resolution to Council, City of San Jose, et cetera.

19 THE COURT: Okay. Please keep your voice up.
20 Yes, you may approach the witness.

21 MR. PATERSON: Thank you, your Honor.

22 BY MR. PATERSON:

23 Q. Is that an example of a bond offering?

24 A. Sorry. Your question?

25 Q. Yes. Is that an example of a bond offering?

26 A. A bond -- I couldn't -- bond offering?

27 Q. Yes.

28 A. This is a resolution of the City Council, so in

1 itself, it is not a bond offering.

2 Q. I understand. It's authorizing taking on debt; is
3 that correct?

4 MS. ROSS: Objection. Hearsay.

5 THE COURT: Overruled.

6 THE WITNESS: I need to read this because it
7 references a bid process, so I need to understand what
8 this is. This is the authority to award, amend, enter
9 into contracts for the new civic center project and to
10 increase the cumulative amount of the authority from 343
11 million to 345.7 million. So it is not immediately clear
12 to me that this is about bond issuance, but it's about
13 public works authority. I would have to read it more
14 closely.

15 BY MR. PATERSON:

16 Q. It could just be an expenditure?

17 A. Actually, this is about authority to enter into
18 contracts. That's what it appears to be. I'm reading it
19 very quickly.

20 Q. So in this period, you indicated the City did take
21 on debt. Can you quantify that for us today
22 approximately?

23 A. No, I cannot.

24 Q. No idea as City Manager how much debt the City
25 incurred between the decade of 2002 to 2012?

26 A. There were different reasons why the City took on
27 debt. I can speak to some of those reasons by example.

28 MR. PATERSON: Move to strike, your Honor. The

1 question is whether she knows how much debt the City took
2 on.

3 THE COURT: Denied.

4 BY MR. PATERSON:

5 Q. Do you know how much debt the City took on during
6 that period?

7 A. No, I do not.

8 Q. The City currently has a AA plus bond rating; is
9 that correct?

10 A. I'm not remembering the rating.

11 Q. City Manager, you don't know the rating of the
12 city that you manage?

13 MS. ROSS: Objection. Argumentative.

14 THE COURT: Sustained.

15 BY MR. PATERSON:

16 Q. Do you know if the City has attempted to
17 renegotiate any of the service obligation for the debt it
18 currently has?

19 A. Yes.

20 Q. To what extent?

21 A. We just recently refinanced, so to speak, some
22 debt to lower costs.

23 Q. And that was refinanced this year?

24 A. Yes.

25 Q. And that debt was incurred in 2008; is that
26 correct?

27 A. I don't recall the dates.

28 Q. What are the primary sources of the City's

1 revenue?

2 A. There are many sources of revenue. The two
3 primary sources are sales tax and property tax.

4 Q. And you're aware of, between 2011 to the current
5 date, a large number of cities have increased their sales
6 tax rate?

7 MS. ROSS: Objection. Lacks foundation.

8 THE COURT: Overruled.

9 THE WITNESS: I don't know the number of cities
10 who have increased their sales tax.

11 BY MR. PATERSON:

12 Q. Are you aware that in 2011, the City of Santa Rosa
13 increased their sales tax?

14 A. I don't follow Santa Rosa.

15 Q. City of Sonoma in 2012?

16 MS. ROSS: Objection. Relevance.

17 THE COURT: Sustained.

18 BY MR. PATERSON:

19 Q. If you could turn to what was marked as POA
20 Exhibit 54. That's the lease revenue refunding bonds
21 presentation. Do you have that in front of you?

22 A. Yes.

23 Q. If you could turn to page 19, it indicates that --
24 do you see the heading retiree COLA?

25 A. In the left-hand column of the chart?

26 Q. Yes.

27 A. Yes.

28 Q. And this indicates that post Measure B, City

1 Council is authorized to temporarily suspend COLA during
2 the fiscal and service level management emergency. Do you
3 see that?

4 A. Yes.

5 Q. And you see it says effective?

6 A. Yes.

7 Q. So the City, at least, is telling potential
8 creditors that the -- that provision of Measure B is
9 effective and could be utilized by the City; is that
10 correct?

11 A. Yes.

12 Q. And what would be -- in your understanding, what
13 would be required in order to effect that provision?

14 A. The council --

15 MS. ROSS: Calls for legal conclusion.

16 THE COURT: Overruled.

17 THE WITNESS: The council has not made that
18 decision.

19 BY MR. PATERSON:

20 Q. Have there been proposals? Is it on the agenda?

21 A. No, it is not.

22 Q. Measure B -- this indicates Measure B anticipates
23 allowing the suspension of the COLA for retirees; is that
24 correct?

25 A. That's a provision of Measure B.

26 Q. In the event that occurs, are there provisions
27 where, if things improve, those missed COLA payments can
28 be made up?

1 MS. ROSS: Objection. Calls for legal conclusion.

2 THE COURT: Sustained.

3 BY MR. PATERSON:

4 Q. Do you know who was involved in drafting
5 Measure B?

6 MS. ROSS: Objection. Relevance; beyond the
7 scope.

8 THE COURT: Sustained.

9 BY MR. PATERSON:

10 Q. If you look to page 23 of your -- of the report
11 that's been marked as POA Exhibit 54.

12 A. Sorry. 23?

13 Q. Yes. And there's two bullet points. One for
14 police and fire. The top one is Federated plan, and the
15 first check mark under that bullet point applicable to the
16 Federated plan indicates that the decline in the funded
17 ratio is primarily due to investment losses. Do you see
18 that?

19 A. Yes, I do.

20 Q. And so that is information the City is providing
21 to potential creditors? Yes?

22 A. Yes.

23 Q. And they're going to rely on this when they assess
24 whether or not they want to extend credit to the City?

25 MS. ROSS: Objection. Calls for speculation.

26 THE COURT: Sustained.

27 BY MR. PATERSON:

28 Q. Is it the intent they're going to rely on that?

1 MS. ROSS: Same objection.

2 THE COURT: Overruled.

3 THE WITNESS: This is the intent, that they will
4 understand our situation through this presentation.

5 BY MR. PATERSON:

6 Q. Measure B attempts to make up those investment
7 losses in terms of their effect on the funded ratio by
8 requiring employees to pay a portion of those; is that
9 correct?

10 MS. ROSS: Objection. Calls for a legal
11 conclusion; beyond the scope.

12 THE COURT: Sustained.

13 BY MR. PATERSON:

14 Q. Prior to 2013, did the City attempt to renegotiate
15 its debt servicing obligation to its creditors?

16 A. I do not recall exactly which measure debt
17 issuance we might have. I do know we were watching the
18 market to see if it would be good timing, to the City's
19 advantage, to refinance and lower costs.

20 Q. Other than the 2013 example, can you recall any
21 others?

22 A. I cannot.

23 Q. In your direct testimony, you mentioned someone,
24 Russell Crosby, and can you remind me what his position
25 is?

26 A. Yes. He was the former director of retirement
27 services.

28 Q. And when did he become the former director of

1 retirement services?

2 A. I don't recall the date he left.

3 Q. Do you recall approximately when that occurred?

4 A. I would be guessing, but probably be approximately
5 2012 or so. But I am only guessing.

6 Q. Do you recall hearing about or have you heard
7 about a E-Mail that you sent to Sam Licardo where he
8 referred to a portion of the San Jose work force as
9 useless?

10 MS. ROSS: Objection. Hearsay. Irrelevant.

11 MR. PATERSON: If she recalls hearing it.

12 THE COURT: Sustained.

13 MR. PATERSON: I'm not offering it to prove the
14 work force is useless. I'm asking if she heard the
15 statement.

16 THE COURT: Sustained.

17 BY MR. PATERSON:

18 Q. Do you remember hearing anything in the news about
19 that?

20 MS. ROSS: Objection. Hearsay; relevance.

21 THE COURT: Sustained.

22 BY MR. PATERSON:

23 Q. Did you ever see such an E-Mail?

24 MS. ROSS: Same objection.

25 THE COURT: Sustained.

26 BY MR. PATERSON:

27 Q. I would like you to turn to the exhibit that has
28 been marked as 51. You've had some questions about this

1 already. I'll try not to repeat them. I'm not wearing a
2 watch, so you don't have to worry about that. If you can
3 find that, I would appreciate it.

4 Do you have that in front of you?

5 A. I do.

6 Q. This was sent to all City employees and retirees?
7 Yes?

8 A. My memo -- yes.

9 Q. And it was sent on the date it indicates, I
10 assume; is that correct?

11 A. It would have been very close to that date.

12 Q. Is it typical to send -- for your office to send a
13 memo to all employees and retirees?

14 A. Certainly to all employees. Not as typical to
15 employees and retirees.

16 Q. What sort of memos are sent to -- withdrawn. What
17 sort of memos are sent to all employees?

18 A. Many memos designed to communicate with what's
19 happening in the City.

20 Q. I'm sorry. I didn't hear you. There was a cough.

21 A. Memos generally designed to communicate with the
22 work force, what might be happening at any particular time
23 in the City or where we believe they should be aware of
24 events unfolding.

25 Q. Who is authorized to send E-Mails -- withdrawn.

26 Who is authorized to transmit memos to all
27 employees?

28 A. I'm authorized.

1 Q. Is anyone else who works for the City authorized
2 to do that?

3 A. Yes. Whoever I might delegate to be able to do
4 that.

5 Q. What about retirement services? Are they
6 authorized to do that?

7 A. If they requested it of the City Manager.

8 Q. So what about newsletters that would go to all
9 employees from the retirement services? Would you
10 authorize those?

11 A. Yes.

12 Q. And have you?

13 A. I don't know that I've had to. They might be
14 routine right now.

15 Q. To your understanding, retirement services
16 routinely sends newsletters to all employees?

17 MS. ROSS: Objection. Calls for speculation.

18 THE COURT: Overruled.

19 THE WITNESS: When you say employees, I'm an
20 active employee. I do not know if I've ever received a
21 newsletter. I know I receive the annual summary, for
22 example, of benefits.

23 BY MR. PATERSON:

24 Q. You do? Okay. That goes to all employees?

25 A. It's our personal summary.

26 Q. That indicates to you your benefits essentially?

27 A. It's designed to convey the employee's account, so
28 to speak, then what the City has contributed for that

1 particular year.

2 Q. I see. What other documents does retirement
3 services send to all employees?

4 A. I couldn't be specific.

5 Q. Handbooks?

6 A. I do not know that they send them to employees.

7 Q. In any event, going back to your memo, how often
8 would you send a memo to all employees and retirees, if
9 ever, other than this one?

10 A. I couldn't tell you. They would be related to a
11 matter that involved them both.

12 Q. A matter of importance?

13 A. Yes, it would be important.

14 Q. And the point is to communicate to them regarding
15 their benefits? Yes?

16 MS. ROSS: Objection. Argumentative.

17 THE COURT: Overruled.

18 THE WITNESS: It would be to communicate with them
19 on an issue of interest that we believe they should be
20 aware of, regardless of benefits or whatever it might be.

21 BY MR. PATERSON:

22 Q. Because these memos aren't so usual, you would
23 ensure that the information in there is accurate; is that
24 correct?

25 MS. ROSS: Objection. Argumentative.

26 THE COURT: Overruled.

27 THE WITNESS: We would always attempt to ensure
28 our information is accurate.

1 BY MR. PATERSON:

2 Q. You would stridently ensure, if you're going to
3 communicate to all employees and retirees, that it's going
4 to be right; is that correct?

5 MS. ROSS: Objection. Argumentative.

6 THE COURT: Overruled.

7 THE WITNESS: We would try.

8 BY MR. PATERSON:

9 Q. It's true, is it not, that the pension plans are
10 defined benefit plans?

11 A. Yes.

12 Q. So where the retiree health plan is similar to the
13 pension plan, the retiree health plan is defined retiree
14 health plan; is that not correct?

15 MS. ROSS: Objection. Calls for a legal
16 conclusion; beyond the scope.

17 THE COURT: Sustained.

18 MR. PATERSON: This is a standard description.
19 It's a descriptive phrase. It's not a legal conclusion.

20 THE COURT: The objection is sustained.

21 BY MR. PATERSON:

22 Q. The retiree health plan is funded through a trust
23 account that's a component of the pension plan trust
24 account; is that not correct?

25 MS. ROSS: Objection. Beyond the scope of direct.

26 MR. PATERSON: I'm trying to ascertain the meaning
27 of what's been marked as POA 51, your Honor.

28 THE COURT: Maybe you should go right to that,

1 then.

2 BY MR. PATERSON:

3 Q. Okay. Where you say it can be considered a vested
4 benefit similar to the pension benefit itself, you mean
5 that it is a defined benefit similar to the pension plan?

6 A. I did not mean that.

7 Q. Did you mean that the benefit can be reduced as
8 the City chooses to reduce it by implementing lesser and
9 lesser quality of benefits? Is that what you mean?

10 MS. ROSS: Objection. Argumentative. Misstates
11 her testimony.

12 THE COURT: I'm not sure I understand what you're
13 referring to. Could you rephrase the question.

14 MR. PATERSON: Yes, your Honor.

15 BY MR. PATERSON:

16 Q. My understanding of your former testimony is
17 that --

18 THE COURT: Actually, Counsel, just go right to
19 the question, please.

20 MR. PATERSON: Thank you, your Honor.

21 BY MR. PATERSON:

22 Q. The City is able to change the plan by redesigning
23 it. Is that your understanding of the benefit?

24 A. The benefit, as I've stated, is 100 percent of the
25 low-price plan. The plan design determines what that
26 low-price plan is.

27 Q. If you change that plan design, it changes for
28 retirees and future retirees; is that right, the premium

1 they can expect?

2 A. Yes.

3 Q. So you can redesign the plan so that the premium
4 that the City pays is offset by a deductible that the plan
5 participant pays in order to get medical services; is that
6 correct?

7 MS. ROSS: Objection. Vague; compound.

8 THE COURT: Sustained.

9 BY MR. PATERSON:

10 Q. What is a high-deductible health plan?

11 A. A deductible health plan is one where the plan
12 member, based on certain services and the criteria in the
13 plan, must pay some out-of-pocket expenses until they
14 reach that deductible and there's, I'm assuming, different
15 designs.

16 Q. So -- and is there a cost to that?

17 A. A cost to what?

18 Q. You used the term "low-cost plan." Is there a
19 cost associated with increasing the deductible?

20 A. There's a premium for the plan, and then the
21 member pays what is required under that plan design.

22 Q. So if you raise the deductible, you lower the
23 City's premium; is that correct?

24 A. In theory. I'd have to see what the rates are as
25 compared to the plan.

26 Q. But the City's cost savings is associated with the
27 plan participant or retiree, in this case, paying a higher
28 deductible?

1 A. Yes. The City's cost is associated with the plan
2 design.

3 Q. Do you currently know what the deductible is for
4 the lowest cost health plan?

5 A. I do not.

6 MR. PATERSON: I'm going to mark as Exhibit 525 --
7 I believe that's the next in order.

8 (Plaintiffs' Exhibit 525 was marked
9 for identification.)

10 THE COURT: What's Exhibit 525?

11 MR. PATERSON: 525, your Honor, is a document
12 entitled City of San Jose 2013 Health Plan Comparison
13 Deductible and High Co-Pay Health Plans New for 2013.

14 THE COURT: We're in recess for ten minutes.

15 (Recess.)

16 THE COURT: Mr. Paterson, anything further for
17 Ms. Figone?

18 MR. PATERSON: Yes, your Honor. Thank you.

19 MR. HARTINGER: Your Honor, Ms. Ross is in the
20 restroom. May we have just a moment? Sorry.

21 THE COURT: Okay.

22 BY MR. PATERSON:

23 Q. Ms. Figone, I think I just marked as Exhibit 525 a
24 document that I have placed in front of you. Do you see
25 it there?

26 A. Yes, I do.

27 Q. Do you recognize that?

28 A. I'm sorry. I couldn't understand you.

1 Q. Do you recognize that document?

2 A. I do not.

3 Q. Do you see that it references a \$1500 deductible
4 plan by Kaiser Permanente?

5 A. In the column -- the column heading you're
6 referring to?

7 Q. Yes, I am.

8 A. Yes.

9 Q. Is that a plan that the City currently offers?

10 MS. ROSS: Your Honor, lacks foundation.

11 THE COURT: Overruled.

12 MS. ROSS: She doesn't recognize the document.

13 THE COURT: That's not the pending question.

14 Overruled.

15 THE WITNESS: This appears as an official City
16 document, so I would say yes.

17 BY MR. PATERSON:

18 Q. If you turn to the second page, there's a
19 reference to the annual deductible being \$1500 per
20 individual and \$3,000 per family. Does that reflect your
21 understanding of one of the plans that the City offers?

22 A. It was -- it's on the page, so this is what the
23 City offers.

24 Q. And it says new for 2013. Is that referring to
25 new plans adopted for 2013, do you know?

26 A. It would be the new plan design offered to our
27 employees effective the beginning of 2013.

28 Q. And so it also indicates there's a Blue Shield

1 Preferred Provider Organization plan that's called the
2 3500 deductible health plan. Is that a new plan the City
3 now offers?

4 A. I don't know.

5 Q. Do you have any doubt it is a plan the City
6 offers?

7 A. I know that Blue Shield PPO is offered. Whether
8 it's the same 3500 deductible plan or not as before, I
9 don't know.

10 Q. Do you see that on the second page, that is --
11 that plan indicates a \$3500 individual, \$7,000 per-family
12 deductible?

13 A. I'm reading it here, yes.

14 Q. That's the terms of that plan?

15 A. According to this document, yes.

16 Q. If that is the plan that's being offered, would
17 the retiree health premium be predicated on that plan?

18 MS. ROSS: Lack of foundation; calls for
19 speculation.

20 THE COURT: I don't understand this question.
21 Perhaps the witness does. Overruled.

22 THE WITNESS: Could you restate the question.

23 BY MR. PATERSON:

24 Q. Earlier you testified about a high-deductible
25 health plan and that the lowest cost plan was a high
26 deductible health plan. Do you recall that?

27 A. Yes.

28 Q. And according to this chart, the highest

1 deductible health plan is the \$3500 single, \$7,000 family
2 health plan; is that correct?

3 A. That is the PPO plan design shown on this page,
4 yes.

5 Q. So if that is the lowest cost plan, the premium
6 associated with the retiree health care benefit will be
7 the premium for that plan; is that correct?

8 A. That is not correct.

9 Q. Do you know which plan for 2013 the retiree health
10 premium is associated with?

11 A. It is my understanding that the current low-price
12 plan is the Kaiser deductible plan.

13 Q. Is it your understanding that the City -- if the
14 Blue Shield plan -- withdrawn. If the Blue Shield 3500
15 deductible health plan is a lower cost plan than the
16 Kaiser plan, the City did designate that as the basis for
17 its premium payment to retirees?

18 MS. ROSS: Objection. Calls for speculation.

19 THE COURT: Overruled.

20 THE WITNESS: The low-price plan would be
21 determined by the lowest cost in terms of premiums. That
22 would drive what is offered as the low-price plan.

23 BY MR. PATERSON:

24 Q. Are there employees who are not represented by
25 unions for collective bargaining purposes that are
26 employed by the City?

27 MS. ROSS: Objection. Beyond the scope.

28 MR. PATERSON: I'm trying to ascertain the --

1 who -- the scope of this retiree health designation in
2 terms of premiums it applies to.

3 THE COURT: Then you should go directly to that.

4 MR. PATERSON: Thank you, your Honor.

5 BY MR. PATERSON:

6 Q. Can the City unilaterally change the health
7 benefits for employees who are not represented by labor
8 unions?

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

10 THE COURT: Sustained.

11 BY MR. PATERSON:

12 Q. Are you aware of any impediments to changing the
13 health benefits that unrepresented employees receive?

14 MS. ROSS: Same objection.

15 THE COURT: Sustained.

16 BY MR. PATERSON:

17 Q. If the City were to adopt a health plan with a
18 \$20,000 deductible and that was the lowest cost plan,
19 would that be the basis for determining the retiree health
20 benefit?

21 MS. ROSS: Objection. Speculation and calls for
22 legal conclusion; lacks foundation.

23 THE COURT: Sustained.

24 BY MR. PATERSON:

25 Q. I'm going to switch topics. I believe this is my
26 last topic. There have been benefit enhancements to the
27 City's pension plan. Is that a true statement?

28 A. Yes.

1 Q. And those enhancements have been the result or
2 have been -- withdraw the question. Those enhancements
3 have been bargained with unions?

4 MS. ROSS: Objection. Lacks foundation; beyond
5 the scope.

6 THE COURT: Please rephrase the question.

7 BY MR. PATERSON:

8 Q. Are benefit enhancements also the result of
9 collective bargaining with unions who represent City
10 employees?

11 A. Yes.

12 Q. In order to be effective, they need to be adopted
13 by the City Council; is that true?

14 MS. ROSS: Objection. Calls for legal conclusion.

15 THE COURT: Overruled.

16 THE WITNESS: Yes.

17 BY MR. PATERSON:

18 Q. That's done through a resolution?

19 A. Actually, I believe it might be done through
20 ordinance, but it would be a formal legislative act.

21 MR. PATERSON: Thank you. No further questions.
22 I appreciate your time.

23 THE COURT: Retired employees?

24 MR. SILVER: Very briefly.

25
26 CROSS-EXAMINATION

27 BY MR. SILVER:

28 Q. Am I correct when you testified on direct

1 examination that after the passage of Measure B, the City
2 benefited by about \$20 million because of the SRBR and the
3 low cost health plan change?

4 A. Yes.

5 Q. And do you know how much of that \$20 [sic] was
6 attributable to the SRBR?

7 THE COURT: You said \$20.

8 BY MR. SILVER:

9 Q. \$20 million. I'm sorry.

10 A. Yes. In the general fund, that would be
11 approximately \$13 million.

12 Q. Approximately \$13 million?

13 A. Yes.

14 Q. Did that savings result -- or that benefit result
15 from returning money that was in a segregated account in
16 both the Federated and the police and fire pension plans
17 into the general retirement account?

18 MS. ROSS: Objection.

19 THE WITNESS: Technically I do not know how it
20 happened, but it is the result of the elimination of the
21 SRBR.

22 BY MR. SILVER:

23 Q. You don't know the exact process by which that
24 savings was realized?

25 A. No, I do not.

26 MR. SILVER: No further questions.

27 THE COURT: Any redirect?

28 MS. ROSS: Yes, your Honor.

1 MR. ADAM: Your Honor, could I move -- I think I
2 marked as POA 53 -- into evidence, the bond document.

3 MS. ROSS: Your Honor, it's full of hearsay.

4 MR. ADAM: Sorry?

5 THE COURT: You mean 54?

6 MS. ROSS: Lacks foundation. It's full of
7 hearsay.

8 MR. PATERSON: Your Honor, the witness testified
9 to the --

10 THE COURT: Hello. Overruled.

11 (Plaintiffs' Exhibit 54, previously marked for
12 identification, was received in evidence.)

13 THE COURT: 54 is received.

14 Redirect.

15
16 REDIRECT EXAMINATION

17 BY MS. ROSS:

18 Q. Good morning, again.

19 A. Good morning.

20 Q. Ms. Figone, you were asked about the existence of
21 some reserve accounts in the City. What's the purpose of
22 a reserve account?

23 A. A reserve can serve as different purposes, and
24 depending if it's established by policy, which typically
25 ours are, and in a very complex budget and complex City
26 like we have, it's designed to ensure that if something is
27 unexpectedly happened where there's a drop in revenue or
28 unexpected costs, there would be some cushion available to

1 draw upon in the event of an unforeseen event. That's
2 typically the purpose.

3 Q. Is that true for the public emergency reserve that
4 was mentioned?

5 A. Yes.

6 Q. And how about the economic uncertainty reserve?

7 A. Yes.

8 Q. And you also mentioned a reserve for a projected
9 deficit. Is that the deficit that's projected for next
10 year?

11 A. Yes.

12 Q. How much is that deficit?

13 A. At the time it was published, I believe it was
14 projected about \$13 million.

15 Q. And there was also mention of a police overtime
16 reserve. What does that relate to?

17 A. That relates to the fact that we're having to use
18 overtime more than normal in our police department, and so
19 we want to ensure that there's funds available in the
20 event that the budget allocation for overtime is exceeded.

21 THE COURT: May I clarify. When you say next
22 year, what fiscal year are you referring to?

23 THE WITNESS: We are in the '13-'14 budget year.

24 THE COURT: So '14-'15 is next year?

25 THE WITNESS: Next year would be '14-'15.

26 THE COURT: Thanks.

27 BY MS. ROSS:

28 Q. The amount, for example, of the economic

1 uncertainty reserve of 10 million, how does that compare
2 to the total budget?

3 A. Well, if you compare it to the general fund budget
4 of about \$800 million or so, it's just a little over one
5 percent.

6 Q. In your view, is that a large reserve? A small
7 reserve? What is it?

8 A. In my view, it's a small reserve.

9 Q. There was also mention about an \$11 million
10 employee reserve. What's the purpose of that?

11 A. Well, in establishing the proposed budget -- and
12 as I've testified to before, we have programmed some of
13 the \$20 million savings that we've talked about related to
14 SRBR low-price plan, approximately \$11 million of that,
15 again, in the general fund to provide for some raises for
16 our employees at the level of about two percent.

17 Q. How many years have the employees had a ten
18 percent pay cut?

19 A. Well, the ongoing ten percent has been in effect
20 since '11-'12. The year prior to that, employees in
21 different forms, I must say, prior compensation reductions
22 and other ways to get to ten percent, but it was five
23 percent one time and five percent ongoing.

24 Q. Is it fair to say that the City employees have
25 experienced a ten percent wage cut now for the third year
26 in a row?

27 A. I have to count. Yes.

28 Q. And so after three years, they would be getting

1 two percent based on this reserve?

2 A. Yes.

3 Q. Mr. Adam also asked you about the City's ability
4 to open some libraries or other services that had been
5 shut down. How many libraries have been shut and why?

6 A. Just in terms of context, the voters approved
7 general obligation bonds. They were -- taxed themselves
8 to build or renovate libraries, parks, and other City
9 facilities. And as times got worse, some of those
10 facilities have been constructed, but the bond measure did
11 not provide for operating costs to operate them. So one
12 of the difficult decisions that had to be made was to not
13 operate four libraries that had been constructed.

14 Q. How long were the four libraries built but not
15 open?

16 A. My recollection, it was at least two, maybe three
17 years in some cases. They were staged construction, so I
18 can't be completely specific.

19 Q. Is the same true for the police substation?

20 A. The police substation remains closed. It is not
21 yet operational.

22 Q. How long has that been built?

23 MR. ADAM: Objection, your Honor. Relevance.
24 It's beyond the scope of the cross-examination.

25 THE COURT: Overruled.

26 THE WITNESS: I'm going back in terms of the
27 police chiefs who were in place. It's been a while. I
28 would say at least 2009 or so. It's been a while.

1 BY MS. ROSS:

2 Q. I'd like to show you again Exhibit 6016. When
3 Mr. Adam was asking you questions about this exhibit, in
4 particular, he was asking you about the change from
5 2011-'12 to 2012-13, and he asked you about some funds
6 that were left over at the end of the 2011-'12. What
7 happened with that? Why was that and what happened with
8 that money?

9 A. Well, what that shows is that in '12-'13, we were
10 projecting a modest positive budget of about \$10 million.
11 There's detail behind that, but just in its simplest form,
12 when we compared expenses and revenues and other areas
13 that we needed to balance, it all came together as a
14 slight positive of \$10 million.

15 Q. But the question was, what about this \$115
16 million? Was there some money left over there and what
17 happened to it?

18 A. Yeah. It's not really money left over
19 necessarily. It's conditions had changed. We resolved,
20 through pay cuts and position cuts, very significant
21 problems by that point in time, and so the City's finances
22 plus the slight upturn in the economy were in a place
23 where we could go into that next year and plan for that
24 next year with a slight positive of \$10 million.

25 Q. When you look at the size of the deficit here of
26 2013-2014, what's the deficit projected to be for the next
27 year?

28 A. As I recall, it's \$13 million.

1 Q. That's why you have a reserve for that money; is
2 that correct?

3 MR. PATERSON: Objection. Leading.

4 THE COURT: Sustained.

5 BY MS. ROSS:

6 Q. Do you have a reserve that pertains to that?

7 A. Yes, we do have a reserve so that we can close
8 that gap without disrupting services or pay. The idea is
9 to try to bridge between years.

10 Q. What is your view of the level of services offered
11 by San Jose City governments at this time?

12 MR. ADAM: Objection, your Honor. Beyond the
13 scope of the cross-examination.

14 MR. PATERSON: AFSCME joins.

15 THE COURT: Overruled.

16 THE WITNESS: They are inadequate.

17 MS. ROSS: Thank you.

18 THE COURT: Anything else for Ms. Figone?

19
20 RE CROSS EXAMINATION

21 BY MR. ADAM:

22 Q. Ms. Figone, reserve to the City is a bit like a
23 savings account to working families, isn't it?

24 A. Like a --

25 Q. Savings account is to working families putting
26 money away for sometime in the future you might need it?

27 A. Yes. And it depends on the time horizon and
28 vision and the purpose.

1 MR. ADAM: Thank you. Nothing further.

2 MR. PLATTEN: No questions.

3

4

RECROSS EXAMINATION

5

BY MR. PATERSON:

6

Q. I believe you referenced a potential two percent wage increase that you made for the employees?

7

8

A. In reference to the employee compensation reserve.

9

Q. That wasn't with respect to wages of employees?

10

A. Yes.

11

Q. It was not -- thank you.

12

Have management employees been eligible for two percent bonus for last year?

13

14

A. Last year was -- management is on a pay-for-performance system, and last year was the first year that we had programmed some dollars for that pay-for-performance system.

15

16

17

18

Q. So that had been frozen for some time?

19

A. It had not been funded for a few years.

20

Q. When was the last time other than last year that it had been funded?

21

22

A. I can't recall specifically. My estimate is probably 9-10 or so.

23

24

Q. 2009 or 2010, or that many years ago?

25

A. The fiscal year.

26

Q. So in any event, in 2012, management employees got a two percent improvement?

27

28

A. They were eligible through performance as an

1 alternative to step increases which are available to the
2 unionized work force.

3 MR. ADAM: Thank you.

4 MR. SILVER: No questions, your Honor.

5 THE COURT: Anything else?

6 MS. ROSS: No, your Honor.

7 THE COURT: Thank you, Ms. Figone. You can step
8 down.

9 Who will be the next witness?

10 MR. HARTINGER: City calls Alex Gurza, your Honor.

11 THE COURT: Mr. Gurza, would you come forward,
12 please. Pause right there, face the clerk.

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

17 THE WITNESS: I do.

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

19 Please state and spell your name for the record.

20 THE WITNESS: Alex Gurza; G-U-R-Z-A.

21 THE COURT: If you move that about a foot toward
22 the witness stand, I can see --

23 MR. HARTINGER: I have a different plan in mind
24 here. Does that work for you?

25 THE COURT: That's much better.

26
27 ALEX GURZA,
28 called as a witness by counsel for the Defendant, being

1 first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. HARTINGER:

4 Q. Good morning, Mr. Gurza.

5 A. Good morning.

6 Q. Where are you employed?

7 A. The City of San Jose.

8 Q. And can you tell us your current job position.

9 A. I'm a Deputy City Manager.

10 Q. What does a Deputy City Manager do?

11 A. Deputy City Manager works in the City Manager's
12 office. My particular primary responsibilities are in
13 what we call the strategic support areas, which primarily
14 are human resources, finance, information technology,
15 those areas.

16 I also have additional responsibilities, however.
17 I continue to be the director of employee relations, which
18 handles the labor relations for the City. In addition,
19 for the last two years, I have been also serving as the
20 City's director of human resources.

21 Q. And how long have you been Deputy City Manager?

22 A. For two years.

23 Q. And can you give us a bit of your background or
24 just tell us your background in City of San Jose in terms
25 of progression in job responsibilities and positions.

26 A. Sure. I became a employee of the City of San Jose
27 in October of 1994, starting at the department of human
28 resources, and I worked in the retirement division of the

1 human resources department. Subsequently, human -- the
2 retirement department formed back when I started; however,
3 it was a division of HR, so that's where I started my
4 career in the retirement department.

5 In December of 1995, I moved to the City Manager's
6 office of employee relations and progressed through
7 various roles and titles in that office until 1999, when I
8 became the acting director of employer relations. Then in
9 April of the year 2000, I was appointed as the director of
10 employee relations, and to this day continue in that
11 position in addition to my Deputy City Manager role.

12 Q. So there is some unit of government in San Jose
13 called the office of employee relations, something like
14 that?

15 A. Yeah. It is an office of the City Manager in San
16 Jose. The labor relations function and the traditional
17 employee relations functions are part of the City
18 Manager's office, and the primary responsibilities of that
19 office are to represent the City of San Jose on all labor
20 relations matters.

21 Q. When you say "all labor relation matters," what
22 are we talking about?

23 A. Primarily, we are the ones who negotiate on behalf
24 of the City with our 11 bargaining units. We also handle
25 everything that comes out of labor relations, including
26 representing the City in grievances and all other labor
27 relations related matters.

28 Q. And so I take it you have some experience in

1 bargaining labor contracts?

2 A. I have significant experience in bargaining labor
3 contracts.

4 Q. When you say bargain, a dozen or two dozen?

5 A. I would say --

6 MR. PATERSON: Objection. Leading.

7 THE COURT: Overruled.

8 THE WITNESS: I would say I bargained dozens of
9 contracts. Earlier in my career, I was a team member for
10 the City in negotiations. I then progressed to being a
11 lead negotiator. I had been a lead negotiator for many,
12 many contracts. In my role now, I'm not at the table for
13 all negotiations; however, I am responsible for the entire
14 labor relations function.

15 BY MR. HARTINGER:

16 Q. In the course of your responsibilities, have you
17 gained any experience in working with the legal framework
18 under which you operate in labor relations?

19 A. Yes, I have.

20 Q. Is that known as the Myers-Milias-Brown Act?

21 A. Yes.

22 Q. Without asking you any legal questions about the
23 Myers-Milias-Brown Act, can you briefly describe sort of
24 the process that you followed in negotiating labor
25 contracts.

26 A. Myers-Milias-Brown Act is the state law that
27 governs collective bargaining in cities and counties and
28 special districts. It is what allows bargaining units to

1 form and what requires bargaining with the recognized
2 bargaining units. So we operate under that framework in
3 addition to the framework of our City Charter and our
4 particular form of government, and so our direction in
5 labor relations is given by the City Council to the City
6 Manager and then to the bargaining team.

7 Q. So what do you do when you receive direction?
8 When you say you receive direction, what are we talking
9 about? What kind of direction?

10 A. It's direction on our goals and objectives in the
11 particular round of bargaining. The City Council provides
12 us with what is sometimes known as parameters or
13 authorization to bargain. We enter into bargaining with
14 that authorization and direction, and then we form a
15 bargaining team which then negotiates with the union's
16 bargaining team.

17 Q. And briefly, very briefly, describe how that
18 process works in terms of either coming to an agreement or
19 not coming to an agreement. What happens?

20 A. So the goal is to reach an agreement with the
21 bargaining unit. If that -- when that occurs, then that
22 still needs to be ratified by the union membership and
23 then brought to the City Council for approval.

24 In the event an agreement is not reached, there is
25 a possibility of either side declaring impasse, and we
26 have a variety of procedures governed by state law and
27 also our charter that I can go into if you'd like.

28 Q. What is an impasse?

1 A. An impasse --

2 Q. In the labor relations?

3 A. In the labor relations context, it's when one or
4 the other party feels they have not been able to reach
5 agreement and further discussion may not be fruitful. So
6 an impasse can be declared as a result of not reaching an
7 agreement.

8 Q. And then what happens if there's an impasse
9 declared, briefly? Very briefly.

10 A. Briefly, it varies in different agencies. Every
11 agency has what they call local rules or employer/employee
12 relations resolution. In our case in the City, an
13 impasse -- when an impasse is declared, either party can
14 request mediation, where a mediator comes in and tries to
15 help the parties reach an agreement.

16 Q. And let's say the mediator can't forge an
17 agreement?

18 A. If an agreement is not reached -- and, again, I'll
19 have to differentiate here because it varies with our
20 bargaining units. The City Council may decide to impose
21 terms and conditions. There's been a recent change in
22 state law, that I can go into if necessary, the steps that
23 may need to be required.

24 Q. You're talking about fact finding?

25 A. Yes.

26 Q. Let's leave that aside.

27 A. Leaving that aside, the City Council could impose
28 terms and conditions of employment with the exception of

1 our public safety unions because, based on our City
2 Charter Section 1111, certain items may be able to be
3 presented to a arbitrator for binding interest
4 arbitration. Not all items but certain items. We've had
5 a recent revision by a ballot measure to that section.

6 Q. And can you talk about the -- in terms of the sort
7 of things that you have negotiated over at the table, so
8 to speak, what do you negotiate over?

9 A. We negotiate on what are called mandatory subjects
10 of bargaining which are referred to wages, hours, and
11 working conditions. That clearly can include many things.
12 Primarily economic items such as wages, benefits, premium
13 pays; can be many different sections of contracts that can
14 be negotiated. I have also, over my career, negotiated
15 many times on our retirement benefits.

16 Q. Can you be -- can you describe sort of
17 negotiations of retirement benefits, generally. We'll
18 come back to something more specific, but just talking
19 about generally what you negotiated over.

20 A. Yes. The very first bargaining team I was on --
21 when I joined the office of employer relations in December
22 of 1995, I joined a bargaining team with our police and
23 fire unions, which has been referred to earlier as
24 tripartite retirement negotiations, where the sole subject
25 is retirement benefits. And over my career, again, many
26 instances of those types of bargaining.

27 Q. As a preliminary matter -- let me shift gears
28 here. Can you look at Volume 1 of the defendants'

1 exhibit. I ask you to look at what has been identified as
2 Exhibit 5000.

3 MR. HARTINGER: For the record, your Honor, 5000
4 is a copy of Measure B, Public Employee Pension Plan
5 Amendment to Ensure Fair and Sustainable Retirement
6 Benefits While Reserving Essential Services. It's come to
7 my attention that this is not in evidence.

8 BY MR. HARTINGER:

9 Q. Do you recognize the document?

10 A. If I can review it briefly.

11 THE COURT: Is anybody objecting to the offering
12 of Exhibit 5000?

13 MR. PLATTEN: No objection. There is no exhibit.
14 We now do not object to its proffer. Thank you, your
15 Honor.

16 THE COURT: 5000 is received.

17 MR. HARTINGER: Thank you, your Honor.

18 (Defendants' Exhibit 5000, previously marked for
19 identification, was received in evidence.)

20 BY MR. HARTINGER:

21 Q. We'll come back to Measure B, I believe, during
22 your testimony.

23 I want to stay with, I believe -- I'm not sure if
24 it's in the same volume. Give me a moment. It is. If
25 you could go to 5118, please. I'll ask you, Mr. Gurza, if
26 you recognize this document.

27 A. I do.

28 Q. Can you briefly describe what it is for the

1 record.

2 A. It is the mayor's March budget message for fiscal
3 year '10-'11.

4 MR. HARTINGER: I'm going to see if I can do it
5 this way. I'm going to move Exhibit 5118 into evidence.

6 THE COURT: 5118 is received.

7 (Defendants' Exhibit 5118, previously marked for
8 identification, was received in evidence.)

9 BY MR. HARTINGER:

10 Q. Are there any particular budget challenges facing
11 the City in the fiscal year 2010-2011?

12 A. Yes. This was -- as the City Manager testified,
13 was one of the years that we had -- were facing
14 significant budget shortfall.

15 Q. And was part of the mayor's message going into
16 2010-2011 that the reality of the City's present situation
17 were grave?

18 A. Yes.

19 Q. Did you share in that assessment?

20 A. Yes.

21 Q. Why?

22 THE COURT: You have a portion of 5118 on the
23 screen?

24 MR. HARTINGER: Yes, your Honor. It is Bates
25 stamp SJ 003776.

26 THE COURT: First page. Thank you.

27 THE WITNESS: We had been through years of budget
28 shortfalls and had to make significant cuts and every year

1 continued more shortfalls, and the options were becoming
2 more and more limited as to how to balance the City's
3 budget without having to look at very, very difficult
4 options.

5 BY MR. HARTINGER:

6 Q. And I'd like to take you to what's page -- what is
7 marked as -- it's page 6 of the same exhibit, Bates
8 stamped SJ 003781. Did you receive any direction, going
9 into the bargaining for fiscal year 2010-2011, relative to
10 your negotiations with the City labor unions?

11 MR. ADAM: For the record, your Honor, counsel has
12 put up a -- the page counsel put up on the overhead
13 appears to be marked, which is not the case with the
14 exhibit before the Court.

15 THE COURT: That was true with respect to the
16 projection of page 1. It had highlighting on the first
17 sentence of the third paragraph. Is that what you're
18 referring to?

19 MR. ADAM: Yes.

20 THE COURT: You want to describe it?

21 MR. ADAM: It's highlighted underneath the chart
22 in the middle of the page. The second subset sentence of
23 that chart appears to be highlighted.

24 THE COURT: Thank you. Go ahead.

25 BY MR. HARTINGER:

26 Q. I'll repeat the question, I guess. Did the
27 mayor's March budget message, as reflected in the March
28 12 -- did the mayor's budget message, as reflected in the

1 March 2010 memoranda, make any particular recommendations
2 that led to direction to your group as to how to approach
3 bargaining for the 2010-2011 year?

4 A. Yes.

5 Q. Can you describe that.

6 A. Yes. In the memo, the mayor introduced his
7 recommendation that we begin discussions with our
8 bargaining units to achieve concessions equaling ten
9 percent with ongoing reduction in total compensation
10 costs. Just to be clear, procedurally, the memo by itself
11 did not provide that direction. We subsequently received
12 that direction from the City Council.

13 Q. And very briefly, how does the mayor's budget
14 message, then, translate into direction from City Council
15 that goes to you which is the -- which is what you will
16 operate pursuant to when you carry out your
17 responsibilities?

18 A. It can happen in two ways. One, the mayor's
19 budget message is acted upon by the entire council at a
20 public meeting. There can be modifications to the mayor's
21 budget message; however, within that message, there could
22 be direction to the bargaining teams as was reflected
23 here.

24 The other avenue for us as labor negotiators to
25 receive direction is from the City Council in closed
26 session. This, however, was a very public discussion,
27 which is not typical for labor negotiations where the
28 direction is clearly discussed publicly. This is one of

1 those instances in which our direction was discussed
2 publicly.

3 Q. Did this -- again, speaking about 2010-2011
4 negotiations, did the ten percent objective become refined
5 in any way as you approached the bargaining?

6 A. It did. It became refined in that our goal
7 changed to achieve a ten percent, but to be able to
8 achieve it in a combination of ongoing and one time. So
9 if I could explain that. Five percent --

10 Q. Let me stop you. Can you explain what the
11 difference is between an ongoing compensation reduction
12 versus a one-time compensation reduction?

13 A. A one-time savings is generally something that
14 ends. The savings end at the end of the period of time.
15 So, for example, if you enter into a one-year labor
16 contract and there's specific language that says that --
17 I'll give you an example -- that employees are going to
18 take X number of unpaid furlough days and it states that
19 it will only be X days for that particular year, that can
20 be considered a one-time savings. They don't continue.
21 Conversely, an ongoing either savings or cost is something
22 that becomes what we call the status quo. That continues
23 until you bargain a change.

24 Q. And so how did you approach the negotiations?
25 What happened?

26 A. So we bargained with all of our bargaining units.
27 We were very successful, although we did not reach the ten
28 percent with everyone. But we bargained with all our

1 bargaining units in how to achieve it. One of the things
2 was is that we and the City Council were open in how that
3 goal was -- could be achieved. So we certainly were very
4 clear that we wanted to achieve ten percent reduction in
5 total compensation, but very open to negotiating how that
6 would be done, meaning what concessions would be given to
7 meet that goal.

8 Q. And you've -- there have been others using the
9 phrase "total compensation." Can you describe what that
10 means.

11 A. Yes.

12 Q. Total compensation.

13 A. Yes. For the City, when we say total
14 compensation, we simply mean the total cost of an
15 employee, and the main components of the cost of an
16 employee to any employer is pay and the cost of benefits.
17 So when you add those up, the total cost of an employee is
18 what we consider total compensation.

19 Q. Could I ask you to turn to a different volume and
20 exhibit, Volume 3 of 6, Exhibit 5434, entitled Memorandum
21 of Agreement on Retirement Benefits.

22 A. Mr. Hartinger, can you read the number again.

23 Q. Yes. 5434. You recognize this document?

24 A. I do.

25 Q. What is it?

26 A. This is what I referred to earlier as a tripartite
27 agreement, which is a Memorandum of Agreement between the
28 City of San Jose, the Fire Fighters' Union, and the Police

1 Officers' Association. As I referenced earlier in my
2 testimony, this was an agreement on retirement -- MOA on
3 retirement benefits.

4 MR. HARTINGER: Your Honor, we would move the
5 admission of 5434.

6 MR. ADAM: No objection, your Honor.

7 THE COURT: 5434 is received.

8 (Defendants' Exhibit 5434, previously marked for
9 identification, was received in evidence.)

10 BY MR. HARTINGER:

11 Q. If I could take you to page -- what is Bates
12 stamped number SJ 003841. It's three pages into the
13 exhibit. Is there anything on this page that relates to
14 the concept of total compensation?

15 A. Yes, there is.

16 Q. Can you point it out, please.

17 A. Yes. It's Article 7, which is called Cost of
18 Benefit Modifications. Its provisions were something that
19 was important to the City, which if I can give a little
20 background here. These negotiations were only over
21 retirement benefits. They were separate from negotiations
22 over everything else, for example, wages. So to the City,
23 it was important to make sure that if we ended up in
24 binding arbitration, that everything would be considered
25 together as part of total compensation. You might even
26 see, in that section that's on the screen now, we even
27 specifically relate specify total compensation. This was
28 back in the '96-2000 time frame.

1 MR. HARTINGER: For the record, on the screen is
2 the page we're talking about with some highlighting and
3 underlining under Article 7, your Honor.

4 BY MR. HARTINGER:

5 Q. So going forward, in terms of dealing with
6 negotiations, did the City, in talking about compensation
7 and bargaining over compensation -- were you talking about
8 total compensation or something else?

9 MR. ADAM: Objection, your Honor. On account of
10 relevance. Here's why. I believe -- I anticipate the
11 witness is about to begin testifying that the parties --
12 this is consistent with his declarations in support of the
13 MSA. I anticipate the line of questioning and answers
14 about negotiations, particularly in 2010, where the City
15 contends that the associations made concessions to pay
16 more retirement benefits, and I believe the line of
17 questioning is irrelevant. Here's why. The City admits
18 in its trial brief at page 18, footnote 14, that a vested
19 right cannot be negotiated -- a reduction to a vested
20 right cannot be negotiated by a labor union.

21 So this is all with respect to the UAAL question,
22 your Honor. The Court is, of course, determining whether,
23 in fact, the right to have the City pick up the UAAL is a
24 vested right. So if it is a vested right, the Court
25 actually makes that conclusion, and it's a vested right.
26 Then what the unions did in bargaining has no bearing on
27 that question, pursuant to the City's own recognition in
28 footnote 14. Alternatively, if the Court concludes that

1 there was no vested right, then the City's free to make
2 the changes it's making in number with respect to UAAL,
3 which is a long way of saying that it matters -- it's
4 completely irrelevant what, if anything, the unions did in
5 2010, in 1996, or otherwise on the question of vested
6 rights.

7 MR. SILVER: It's certainly irrelevant to our
8 case, just for the record.

9 THE COURT: Mr. Hartinger, do you want to respond?

10 MR. HARTINGER: Yes, your Honor. I don't have
11 that footnote in front of me. But the fact that the
12 plaintiffs --

13 THE COURT: Footnote 14 says, "Case law recognizes
14 that unions cannot negotiate away the vested rights of
15 members." Then it goes on to cite a few cases.

16 MR. HARTINGER: Right. I remember the concept,
17 your Honor. The evidence will show -- and proffer in this
18 case is -- that all parties recognize that contributions
19 were negotiable subject to the 3/8ths charter ratio, and
20 this is evidence of course of conduct, it's evidence of
21 the parties' understanding, and it's an admission.

22 So it bears, in terms of a contractual analysis,
23 which the Court has to delve into here, the parties'
24 conduct pursuant to -- conduct relating to this issue is
25 directly at issue.

26 THE COURT: Okay. Submitted?

27 MR. ADAM: Your Honor, as counsel well knows,
28 because counsel has cited the REOC case as much as

1 plaintiffs have, but the parties' course of conduct 30
2 years after a municipal ordinance was enacted in 1979 is
3 not one of the factors that REOC recognizes as creating a
4 vested right.

5 THE COURT: Submitted?

6 MR. ADAM: Submitted.

7 MR. HARTINGER: Yes, your Honor.

8 THE COURT: I think the arguments begs the
9 question, so I have to overrule this objection.

10 Go ahead.

11 MR. HARTINGER: Could I have the last question
12 reread, please.

13 (Requested portion of record read.)

14 THE WITNESS: Total compensation. One of the
15 things that we do in bargaining, even prior to that
16 language in this agreement, is we very typically provide
17 the bargaining units, early on in negotiations, the total
18 cost of the employees in their bargaining unit, what we
19 sometimes refer to as, in shorthand, the one percent
20 numbers. It is a document that we get from our budget
21 office that includes the -- let's say if we're negotiating
22 with the Police Officer Association, it will have the
23 total cost of base pay, it will have the total cost of
24 premium pay, it will have what the City pays in retirement
25 benefits, health benefits. It totals them at the bottom,
26 gives the number of employees. So that, essentially, is
27 total compensation.

28 The City has a very long history of looking only

1 at the -- not looking only -- looking at the total cost of
2 an employee, and clearly in bargaining we focus more
3 sometimes into certain areas, whether we're talking about
4 wage increases or health benefits. But we always are very
5 mindful of what the total cost to the City of an employee
6 is.

7 BY MR. HARTINGER:

8 Q. And have you communicated the total compensation
9 concept to the labor unions in the course of your
10 responsibilities?

11 A. Yes. In the last few years, there's been a lot
12 more focus on it. Clearly when we're now in a concession
13 environment, unfortunately, that we've had to be in, then
14 we've talked about it a lot more, about what does total
15 compensation mean, at least what does the City view that
16 to mean, especially when our goal was to reduce total
17 compensation by ten percent. Then we had to have
18 discussions about what that means and what dollar amount
19 that would be. Because if you take ten percent of an
20 employee's base pay, that's going to be very different
21 than ten percent of the total compensation. So we had
22 conversations about that at our bargaining tables.

23 Q. Let's reset to the negotiations going into the
24 2010-2011 fiscal year. I'd like you to turn to the
25 exhibit that has been marked for identification as 5409.

26 MR. ADAM: Your Honor, could I ask for a standing
27 objection to this line of questioning, just for the
28 record?

1 THE COURT: Generally I don't like standing
2 objections because they create a record that's not as
3 clear as it might otherwise be. Tell me what you mean.

4 MR. ADAM: Again, it's following up from the last
5 objection that was overruled. That's the relevance that
6 these questions about bargaining concessions in 2010 and
7 how they pertain allegedly to the vested rights issue
8 before the Court.

9 THE COURT: So what you're asking is for a
10 standing objection of relevance with respect to questions
11 about bargaining concessions in 2010?

12 MR. ADAM: 2010-11 fiscal year, yes.

13 THE COURT: Any objection to that request?

14 MR. HARTINGER: It sounds overbroad, your Honor.
15 So, yes. I have no objection to -- because I intend to
16 proffer evidence relating to union concessions, and the
17 union's making offers of increased contributions that
18 would, in effect, defray unfunded liabilities, and that's
19 related to our issue that, of course, they thought that
20 was not a vested right.

21 THE COURT: I'm not sure what you mean by
22 overbroad. My concern is that there be clarity as for the
23 scope of the standing objection, and I think this is clear
24 enough. So, yes, Mr. Adam.

25 MR. ADAM: Thank you.

26 BY MR. HARTINGER:

27 Q. So do you have 5409 before you?

28 A. I do.

1 Q. Do you recognize the document?

2 A. I do.

3 Q. Do you recognize this document?

4 A. I do.

5 Q. And what is it?

6 A. It is a letter from one of our unions, the
7 International Brotherhood of Electrical Workers, to a
8 member of my staff that summarizes a contract proposal
9 that they were making to the City.

10 MR. HARTINGER: Your Honor, we would move 5409
11 into evidence.

12 MR. PLATTEN: Objection, your Honor, on the
13 grounds of relevance.

14 MR. SILVER: Same objection.

15 MR. PATERSON: AFSCME joins.

16 THE COURT: Help me understand what this -- where
17 this is going.

18 MR. HARTINGER: Your Honor, there are a series of
19 exhibits that relate to the City's position that the
20 unions were offering on behalf of their membership to make
21 increased retirement contributions in light of the City's
22 unfunded liabilities related to pension. And for the
23 reasons we've previously described with respect to
24 Mr. Adam's prior objection, we believe these are directly
25 relevant to the issue of all parties' understanding of the
26 nature of the ability to bargain over this issue.

27 THE COURT: Submitted?

28 MR. HARTINGER: Yes, your Honor.

1 MR. PLATTEN: Your Honor, I want to point out
2 there's nothing in this document that suggests the
3 proposal was made in light of the City's unfunded
4 liabilities.

5 THE COURT: Anything else? Submitted?

6 MR. HARTINGER: Yes, your Honor.

7 THE COURT: Overruled.

8 BY MR. HARTINGER:

9 Q. I'm going to display --

10 THE COURT: 5409 is in.

11 (Defendants' Exhibit 5409, previously marked for
12 identification, was received in evidence.)

13 BY MR. HARTINGER:

14 Q. Displaying on the Elmo on the first page, again,
15 highlighting item one. Did you understand -- did this
16 proposal reach your desk, Mr. Gurza?

17 A. Yes, it did.

18 Q. And what did you understand the proposal to be?

19 A. This was in direct response to our bargaining to
20 get to ten percent reduction in total compensation. It's
21 actually referenced in the first paragraph. And this was
22 their proposed method to achieve that goal, and as you'll
23 see in the highlighted section, it was proposing that an
24 additional 7.5 percent of their members' base pay will be
25 deducted from their paychecks and go into the retirement
26 fund. It's clarified in the second paragraph that that
27 would be a direct offset to what the City would otherwise
28 have paid for retirement benefits.

1 Q. Did you have knowledge of the circumstances of
2 what was being discussed at this table?

3 A. Yes.

4 Q. Do you know whether the 7.5 percent had anything
5 to do with unfunded liabilities?

6 A. Well, it did because there was -- we were
7 discussing with this bargaining unit and others about how
8 we could accept that proposal. Again, we were very open
9 and appreciative that employees and the bargaining units
10 were willing to make the concession. Since they wanted to
11 propose it in this particular fashion, we were working
12 hard to see how can we structure it so that it can work.
13 And so that the way that we ultimately ended up doing it
14 is that it defrayed the portion of -- the amortized
15 portion of the unfunded liability that the City would have
16 otherwise paid.

17 Q. I'd like you to turn to what's been marked as
18 Exhibit 5411. 5411 is identified as a letter to Alex
19 Gurza from George Batey, president of San Jose Police
20 Officers' Association, dated May 17, 2010. Do you have
21 that document before you?

22 A. I do.

23 Q. Do you recognize the document?

24 A. I do.

25 Q. Did you receive it in the course of the 2010-2011
26 negotiation?

27 A. Yes. This was a particular bargaining that I was
28 the lead negotiator at the bargaining table, so, yes, I'm

1 very familiar with it.

2 MR. HARTINGER: Your Honor, we would move Exhibit
3 5411 into evidence.

4 THE COURT: 5411 is received.

5 (Defendants' Exhibit 5411, previously marked for
6 identification, was received in evidence.)

7 BY MR. HARTINGER:

8 Q. Backing up. You had some direct personal
9 involvement in these negotiations, Mr. Gurza; is that
10 correct?

11 A. Yes. At the bargaining table.

12 Q. At the bargaining table?

13 A. It means as opposed to supervising our bargaining
14 team, which I do in some cases. There are other cases
15 where I'm actually the lead negotiator on behalf of the
16 City. In this particular one, I was the lead negotiator
17 on behalf of the City with the Police Officers'
18 Association.

19 Q. This is a May 17, 2010, letter. I want to take
20 you to the second page. I'm not going to read this. It's
21 in evidence. But it references a five percent proposal by
22 the SJ POA to make a five percent contribution to prior
23 service. Do you recall that discussion occurring at the
24 table?

25 A. Yes.

26 Q. And can you explain what happened.

27 MR. ADAM: Objection, your Honor, to the extent it
28 calls for hearsay.

1 THE COURT: Overruled.

2 THE WITNESS: At the time we were discussing this
3 option with the POA, as you saw in the letter, we were
4 discussing similar options with the other bargaining
5 units. And the reason that it specifically says prior
6 service costs, which are also referred to as unfunded
7 liability, is because I had explained at the bargaining
8 table that we had some limitations in accepting additional
9 retirement contributions unless they were for unfunded
10 liabilities because we wanted to ensure that we were
11 consistent with the City Charter.

12 BY MR. HARTINGER:

13 Q. So you referenced prior service retirement costs,
14 and you mentioned that is an unfunded liability. Can you
15 explain.

16 A. Yes. As we earlier testified by, I think,
17 Mr. Lowman, there is normal cost, and then there's prior
18 service cost, which some people call unfunded liability.
19 And the reason we were talking about this in this level of
20 detail as opposed to simply saying we'll pay seven and a
21 half percent or five percent is because the City Charter
22 says that normal costs are to be split on the
23 3/11ths-8/11ths ratio that we've heard about earlier. And
24 so what we were talking about here is we could accept
25 these additional retirement contributions, but they would
26 be for the unfunded liability or prior service cost, not
27 normal costs.

28 Q. So you had some concern about the 3/11ths

1 contribution provision in the charter?

2 A. Yes. After internal discussion, we needed to
3 ensure that the agreements with the bargaining units did
4 not impinge upon the eight to three ratio or the 3/11ths
5 that employees would pay; that they would still be paying
6 the 3/11ths, but there was no such limitation on what
7 employees would pay -- could pay towards the unfunded
8 liability. And that is why we spent a significant amount
9 of time with our bargaining units structuring what
10 ultimately lead to agreements in this fashion.

11 Q. I'd like you to turn to what's been marked for
12 identification as Exhibit 5410. 5410, the first page is
13 marked for identification as OE 3 Initial Proposal to the
14 City of San Jose, dated May 17, 2010. Mr. Gurza, do you
15 recognize this document?

16 A. I do.

17 Q. Can you describe what it is.

18 A. One of our operating engineers, Local 3, this is
19 their proposal to the City during that round of
20 bargaining.

21 MR. HARTINGER: Your Honor, we would move Exhibit
22 5410 into evidence.

23 THE COURT: 5410 is received.

24 (Defendants' Exhibit 5410, previously marked for
25 identification, was received in evidence.)

26 BY MR. HARTINGER:

27 Q. I'm going to display the first page with some
28 highlighting here relative to year one, referencing -- I'm

1 not going to read it -- five percent contribution to
2 offset City contributions. Do you have knowledge about
3 what this was about, Mr. Gurza?

4 A. Yes. It is a similar proposal. You'll notice
5 that some of the language used is somewhat different. I
6 can go into that if necessary, why there's reference to
7 Internal Revenue Code, et cetera. But, again, it's along
8 the same lines. Another one of our bargaining units
9 wanted to reach the concession by additional retirement
10 contributions that would offset what the City would
11 otherwise have paid.

12 Q. I'd like you to turn to Exhibit 5414.

13 THE COURT: Will this be a good time to take our
14 noon break?

15 MR. ADAM: Yes.

16 THE COURT: We're in recess until 1:15.

17 (At 12:00 p.m., a recess was taken
18 until 1:15 p.m. of the same day.)

19 THE COURT: Mr. Gurza, you're still under oath.
20 Mr. Hartinger.

21 MR. HARTINGER: Thank you, your Honor.

22 BY MR. HARTINGER:

23 Q. Mr. Gurza, we broke when we were looking at
24 Exhibit 5414. Do you have that document in front of you?

25 A. I do.

26 Q. And do you recognize it?

27 A. I do.

28 Q. Can you briefly describe what it is.

1 A. It starts out with an E-Mail from Randy Sekany,
2 who is the past president of the San Jose Fire Fighters'
3 Union, and it is attaching a proposal that actually comes
4 from a group of unions that came together for a period of
5 time that year that include several of our bargaining
6 units.

7 Q. You received a copy of this document?

8 A. I did.

9 MR. HARTINGER: Your Honor, we would move 5414
10 into evidence.

11 THE COURT: 5414 is received.

12 (Defendants' Exhibit 5414, previously marked for
13 identification, was received in evidence.)

14 BY MR. HARTINGER:

15 Q. I'm going to go to the second page of 5414 just to
16 highlight the fact that you've got a lot of different
17 union insignia, it looks like, on the left side of the
18 document. Can you tell us which unions were participating
19 in this particular coalition?

20 A. Yes. It starts from the top, San Jose Fire
21 Fighters' Local 230, then the San Jose Police Officers'
22 Association, and then IFPTE, which at that time was
23 representing two of our bargaining units. AEA stands for
24 the Association of Engineers and Architects, and CAMP
25 refers to the City Association of Management Personnel.
26 That's two bargaining units right there in that insignia.
27 ABMEI is our building inspector union. Stands for the
28 Association of Building Mechanical Electrical Inspectors.

1 The next one is AMSP, the Association of Maintenance
2 Supervisory Personnel, which is subsequently now
3 affiliated with IFPTE. Lastly -- it's a little fuzzy --
4 IBEW, International Electrical Workers.

5 Q. For everyone's sake, particularly the court
6 reporter, I'll ask you to slow down a little bit.

7 I'm going to move to the next page of the
8 documents with the highlighted portion concerning
9 additional retirement contributions. Can you explain
10 that.

11 A. Yes. Similar to the proposals we reviewed this
12 morning, this includes, among other things, a proposal for
13 bargaining units to make additional contributions. So for
14 the POA, the Police Officer Association, and the fire
15 fighters, they were proposing additional contribution of
16 five percent, and for the rest of the bargaining units it
17 was a higher amount. They were proposing additional
18 pension contributions of 7.5 percent.

19 Q. During the negotiations, did you have an
20 understanding as to where the additional pension
21 contribution would be applied?

22 A. Again, the idea was that it was going to be
23 applied to the City's payment of unfunded liability. In
24 the sentence that follows that's not highlighted, you see
25 it says the City would reduce its contribution to
26 respective retirement systems by a commensurate amount.

27 Q. I'd like to take you now to Exhibit 540. Do you
28 recognize this document, Mr. Gurza?

1 A. Yes, I do.

2 Q. And how would you characterize it? What is it?

3 A. It's a letter from the various bargaining units.
4 However, what varies from the one we just reviewed is,
5 it's not all of the bargaining units that we reviewed in
6 the prior letter. These ones are what we refer to as our
7 non-sworn bargaining units. Not all of them. It did not,
8 in this particular one, have the police unit and the fire
9 unit.

10 Q. Did you receive a copy of this in the course of
11 your responsibilities as director of employer relations?

12 A. Yes, I did. As a matter of fact, I remember this.
13 When you see the date stamp of 12:53 p.m., it was, as I
14 recall, right before a City Council meeting.

15 MR. HARTINGER: Your Honor, we would move 5420
16 into evidence.

17 THE COURT: 5420 is received.

18 (Defendants' Exhibit 5420, previously marked for
19 identification, was received in evidence.)

20 BY MR. HARTINGER:

21 Q. I want to show you the first page here. There's
22 an individual whose -- it says John Mukhar. Is that a
23 plaintiff in this action?

24 A. Yes. John Mukhar is the president of the
25 Association of Engineers and Architects affiliated with
26 IFPTE Local 21.

27 Q. I'm going to take you to the second page, which is
28 titled -- references additional retirement contribution.

1 Can you explain how you understood that.

2 A. This proposal, similar to the others, which was
3 the unions proposing to meet our concession objective
4 through additional retirement contributions. You can see,
5 however, the amount in their proposal increased from the
6 prior since they were now proposing an amount equivalent
7 to ten percent of total compensation be made to additional
8 retirement contributions.

9 Again, it goes on to say that the amounts will be
10 applied to reduce the contributions that the City would
11 otherwise be required to make.

12 Q. Did you have any understanding whether this
13 contribution would be over and above the 3/8ths -- the
14 3/11ths contribution or otherwise?

15 A. Yes. We, again, were very glad to get the
16 proposal. Very appreciative of the concessions that our
17 bargaining units were willing to make. But we were
18 concerned that accepting this offer might impinge upon the
19 8/11th-3/11th ratio of normal cost specified in the City
20 Charter.

21 Q. I want to take you to Exhibit 5421.

22 THE COURT: Can I ask on this last. So you asked
23 him if he had an understanding. He said yes. But I don't
24 think there's a clear record of what that understanding
25 was.

26 MR. HARTINGER: Thank you, your Honor.

27 BY MR. HARTINGER:

28 Q. Could you expound upon your answer in terms of

1 explaining what your understanding was in terms of the
2 nature of the proposal.

3 THE COURT: The question was, did you have an
4 understanding whether this contribution would be over and
5 above the 3/11ths?

6 MR. HARTINGER: I thought he did answer that.

7 BY MR. HARTINGER:

8 Q. Could you expand, Mr. Gurza.

9 A. The answer is yes.

10 Q. Please explain.

11 A. That if we had accepted all ten percent of total
12 compensation as additional retirement contributions, that
13 it would have impinged upon the 8/11th-3/11th ratio in the
14 City Charter.

15 MR. HARTINGER: I am going to come back to that
16 point, your Honor, in just a moment and expand upon it.
17 With your indulgence, I would ask the witness move to
18 5421.

19 THE COURT: Okay.

20 BY MR. HARTINGER:

21 Q. Are you with me at 5421?

22 A. Yes.

23 Q. This prior document was dated June 17, 2010.
24 This, for the record, is labor union proposal June 18,
25 2010. Have you seen this before?

26 A. I have.

27 Q. What is it?

28 A. It's a subsequent proposal that the unions had

1 made to us the following day.

2 MR. HARTINGER: Your Honor, I would move 5421 into
3 evidence.

4 THE COURT: 5421 is received.

5 (Defendants' Exhibit 5421, previously marked for
6 identification, was received in evidence.)

7 MR. ADAM: Counsel, can I, to the extent the
8 witness appears to be authenticating numerous documents --
9 I believe the stipulations are near signed, just as a way
10 to try to speed this up.

11 MR. HARTINGER: I appreciate that. We're cutting
12 this down substantially, so I think the stipulation will
13 streamline things immensely.

14 BY MR. HARTINGER:

15 Q. 5421 is another proposal. And, again, what was
16 your understanding of this proposal?

17 A. Again --

18 MR. ADAM: Objection to relevance for a different
19 reason, your Honor. These are bilateral agreements that
20 speak for themselves, and I think one party's
21 interpretation of what the understanding was is
22 irrelevant.

23 MR. PATERSON: AFSCME would join in that
24 objection.

25 THE COURT: Overruled.

26 BY MR. HARTINGER:

27 Q. You can answer.

28 A. It's another proposal of the union to meet the

1 concession request by additional retirement contributions.
2 You'll see, if you compare the documents, there's an
3 additional language in the proposals, very different
4 language that varied from the previous proposal.

5 Q. So we've gone through a series of proposals where
6 the unions are proposing additional retirement
7 contributions, and we have Measure B litigation. Let me
8 ask you a question. In any of these negotiations, did the
9 unions or anyone else raise the issue that additional
10 contributions as were being proposed would somehow violate
11 a vested right of some kind?

12 A. No.

13 Q. Did the issue ever come up?

14 A. No.

15 Q. Did the unions do anything that led you, as
16 director of employee relations, to conclude that they
17 understood that contributions were negotiable, just like
18 wages?

19 A. Yes.

20 Q. What?

21 A. Well, they felt very strongly that -- not only
22 that it's not illegal. They were working with us to try
23 to see how this could be accomplished.

24 MR. HARTINGER: Let me see if I can do it this way
25 because I believe there's a stipulation. The charter has
26 been marked for identification as Exhibit 5216, your
27 Honor.

28 MR. ADAM: Binder, Mr. Hartinger?

1 MR. HARTINGER: This is Volume 2. We would simply
2 move its admission, 5216.

3 THE COURT: 5216 is received.

4 (Defendants' Exhibit 5216, previously marked for
5 identification, was received in evidence.)

6 THE COURT: So this reflects all amendments
7 through 2012?

8 MR. HARTINGER: Correct, your Honor.

9 BY MR. HARTINGER:

10 Q. So if I can, Mr. Gurza, move you to page 61, which
11 is Bates SJ RJN 000064.

12 MR. ADAM: Counsel, could I pause for a moment
13 until we find volume 2?

14 MR. HARTINGER: Yes.

15 MR. ADAM: Thank you.

16 Thank you. Just reminder of which exhibit.
17 Mr. Hartinger, you referenced a page number?

18 MR. HARTINGER: Page 61, Bates SJ RJN 000064.

19 BY MR. HARTINGER:

20 Q. Looking at that page, there's a section in the
21 provision that's entitled Section 1504 of the charter
22 referencing minimum benefits for certain members of police
23 and fire department. And I want to move you to
24 contributions because you had been speaking of a three to
25 eight ratio referencing the charters. Is that what you're
26 talking about?

27 A. Yes.

28 Q. And can you look at the language that speaks to --

1 I'm not going to read it -- but contributions shall not
2 exceed the ratio of three for such officers/employees to
3 eight, excluding the prior service or prior service
4 benefits. How did you, as an employee relations director,
5 apply that language?

6 MR. ADAM: Objection, your Honor, to the extent it
7 calls for a legal conclusion. We've had the City object
8 at every point when we've tried to put evidence in of
9 prior interpretations by City employees. I don't
10 understand why the rule should be different for Mr. Gurza.

11 MR. PATERSON: AFSCME joins.

12 MR. PLATTEN: Sapien plaintiffs join.

13 THE COURT: Could you clarify your question. How
14 did he apply the language? What do you mean by that?

15 MR. HARTINGER: Can I lay an additional
16 foundation?

17 THE COURT: Okay.

18 BY MR. HARTINGER:

19 Q. Mr. Gurza, when you were speaking earlier about
20 assessing the labor union's proposals to make additional
21 contributions, did you have this 3/8ths ratio as
22 referenced in the charter in mind when you were discussing
23 and considering and analyzing the issue?

24 A. Yes.

25 Q. So in terms of those discussions and analysis
26 internally, what, if anything, in this language about the
27 ratio of three to eight for the City was part of the
28 analysis in terms of how you carry out your

1 responsibility?

2 MR. ADAM: Same objection, your Honor. The
3 question appears to ask the witness to give a legal
4 interpretation.

5 THE COURT: Overruled.

6 THE WITNESS: So we needed to know whether we
7 could accept the union's proposals, their preferred method
8 to achieve the concession, and so what we needed to do is
9 look at if they were to have given ten percent of total
10 compensation as was proposed in the proposal said recently
11 reviewed in the last exhibit, we needed to determine
12 whether or not -- if we accepted all of it, would it be --
13 would it have affected normal cost or could they have
14 achieved the concession by paying what the City would have
15 paid towards the unfunded liability.

16 The reason we needed to look at that is because we
17 didn't believe that we could change what was in the
18 charter as it related to normal costs. So even if they
19 wanted to, we needed to look at maintaining the eight to
20 three ratio that was specified in the charter.

21 BY MR. HARTINGER:

22 Q. And did the unions ever say or do anything that
23 indicated to you that they agreed?

24 MR. PATERSON: Objection. Vague as to the term
25 "union."

26 BY MR. HARTINGER:

27 Q. Any union.

28 A. Yes. In addition to the discussions at the

1 bargaining table, there was the specific discussion of
2 this issue at a public City Council meeting.

3 Q. And can you explain that further.

4 A. Yes. At a City Council meeting, the bargaining
5 units were asking the City Council to accept their
6 proposal and were actually stating that they believe that
7 they could even pay more than the 3/11th ratio as
8 specified in the charter.

9 Q. Even if the contributions caused employees to pay
10 more than 3/11ths of normal cost?

11 A. Yes. Again, that was -- it was specified -- not
12 all of the bargaining units -- but that was a coalition
13 that spoke at the council meeting.

14 MR. HARTINGER: Your Honor, Exhibit 5435 has been
15 marked for identification as a -- it's been marked for
16 identification. It's the videotape of that council
17 session which I played during opening statement. In the
18 interest of time, I propose not to play it again since the
19 Court has already seen it, but I would like to offer its
20 admission.

21 THE COURT: Is there a transcript that goes with
22 it?

23 MR. HARTINGER: Yes, there is, your Honor. The
24 transcript has been marked for identification as Exhibit
25 5419. And there's one glitch which I would point out to
26 the Court. That is, Mr. Gurza reviewed it and made one
27 change to the transcript, and so I would propose a
28 substitution of what he reviewed with a handwritten change

1 as Exhibit 5419.

2 THE COURT: Okay. Do counsel know what the change
3 is?

4 MR. ADAM: No.

5 THE COURT: You have a new document that you
6 propose to substitute as 5419?

7 MR. HARTINGER: That's correct, your Honor.

8 THE COURT: Any objection to that?

9 MR. ADAM: To the -- no, not to the substitution.

10 THE COURT: So does the clerk have the new 5419?

11 MR. HARTINGER: She does not, your Honor. May I
12 ask that a blue tag be applied?

13 THE COURT: Okay. We can do that marking now;
14 then Madam Clerk, whenever it's convenient, can remove the
15 other one, replace it with this one.

16 Are you moving 5435 now, or do you want to show
17 5419 to the witness first?

18 MR. HARTINGER: I think I should show 5419 to the
19 witness first, your Honor. May I approach?

20 THE COURT: Yes.

21 BY MR. HARTINGER:

22 Q. Mr. Gurza, showing you what's the new 5419. I'd
23 refer you to the second page. There's a handwritten
24 strikeout that appears to replace the word "right" with
25 "rate." How did that come about, to your knowledge, if
26 you know?

27 A. That came about -- it was a typo. In listening to
28 the videotape, instead of saying contribution right, that

1 was a typo. Actually, the right word is rate, R-A-T-E.

2 MR. HARTINGER: Your Honor, at this point we would
3 move 5419 --

4 BY MR. HARTINGER:

5 Q. Let me ask you another question. With respect to
6 the videotape that's been marked as 5435, were you present
7 at that council session?

8 A. Yes, I was.

9 Q. Did you observe the persons who are speaking as
10 reflected in Exhibit 5435?

11 A. Yes. I was at the staff council with the council
12 in chambers.

13 Q. Does the video accurately depict what was said and
14 heard by you on that occasion?

15 A. It does.

16 MR. HARTINGER: Your Honor, we would offer 5435
17 into evidence.

18 MR. ADAM: Objection. Hearsay, your Honor.

19 MR. SILVER: Objection, your Honor. It's
20 completely irrelevant to our case, again.

21 THE COURT: The hearsay objection is based on
22 comments by the City offered for the truth of the matter?

23 MR. ADAM: The video, yeah.

24 THE COURT: I don't see any comments that would be
25 of that nature. Do you have something in mind?

26 MR. ADAM: Withdraw the objection, your Honor.

27 MR. SILVER: Ours is still pending, your Honor.
28 Again, it's irrelevant to our case.

1 THE COURT: Overruled. So 5435 is received.
2 (Defendants' Exhibit 5435, previously marked for
3 identification, was received in evidence.)

4 MR. HARTINGER: Your Honor, I would also offer
5 5419.

6 THE COURT: Actually, I think the rules of court
7 say we don't receive transcripts.

8 MR. HARTINGER: I was wondering about that.

9 THE COURT: For some reason, I don't know, but I
10 think that's what the rules provide. For that reason, I
11 am receiving the recording but not the transcript. If
12 somebody thinks I'm mistaken, then please let me know.

13 MR. HARTINGER: Thank you, your Honor. I'm not
14 sure. I'm lodging 5435 with the clerk.

15 BY MR. HARTINGER:

16 Q. Now, Mr. Gurza, in your capacity as director of
17 employee relations and in connection with the 2010-2011
18 negotiations, did you ever come to understand whether the
19 unions preferred a retirement contribution versus a
20 straight wage reduction?

21 A. Yes.

22 MR. PATERSON: Objection. Vague as to the term
23 "unions."

24 THE COURT: Overruled.

25 THE WITNESS: Yes.

26 BY MR. HARTINGER:

27 Q. Can you explain.

28 A. Again, not all bargaining units were proposing

1 this method, but the ones that we reviewed in the
2 proposals had a very strong preference for their
3 concessions to be in the form of additional retirement
4 contributions versus a straightaway reduction.

5 Q. And did they explain why?

6 A. Yes.

7 Q. Please explain.

8 A. Our understanding, by discussion with the
9 bargaining table -- there were several -- one is, by
10 additional retirement contributions, their base pay is not
11 reduced. That's an advantage to an employee, particularly
12 hourly employees, because your overtime, your premium
13 pays, are all built around your base pay. So, therefore,
14 if you can maintain your base pay at a higher rate, it's
15 advantageous to an employee.

16 Another reason that was mentioned is that it
17 doesn't reduce final average salary, salary by which
18 retirement is based upon. That gets a little more
19 complex. We can talk about that. We had a lot of
20 discussions about that.

21 The other very important reason they communicated
22 to us was that this was pre-tax contributions. So it
23 would be taken out as -- depending on how we structured
24 it, their intent was to be structured so it was pre-tax.
25 That was another reason.

26 Additional reason is that because of the way that
27 we discussed structuring it, it would be considered
28 employee contributions as any other employee

1 contributions, even though they were paying what the City
2 would have otherwise paid.

3 Why is that important? Is because the retirement
4 system tracks City contributions and employee
5 contributions, and that comes into play if an employee
6 leaves City service by either resignation, termination,
7 layoff, can seek a return of contributions. So if they
8 put additional money into their pension system, they could
9 potentially get it all back as a return.

10 So those are all the primary reasons that the
11 bargaining units who had proposed this method as mentioned
12 to us, why they preferred this over a straight base pay
13 cut.

14 MR. ADAM: Your Honor, move to strike after the
15 phrase "why is that important" on the basis there was no
16 question pending. Witness appears to be asking him a
17 question there.

18 THE COURT: Denied.

19 BY MR. HARTINGER:

20 Q. Were there layoffs occurring at this time?

21 A. Very unfortunately, yes.

22 Q. And was there any discussion at all about the
23 issue of refund if somebody left City service in
24 connection with the climate at the time?

25 A. Yes. It was actually something that, on the City
26 side, that we considered, that even though we really would
27 like to have avoided layoffs, the reality is that we were
28 in that situation, and that the savings we were hoping to

1 achieve could be lost to the extent that the -- than an
2 employee could be laid off and get that savings, get that
3 money that we had hoped to save, back. In essence, we
4 would not have saved that amount of money.

5 Q. There's been some -- strike that. There was some
6 testimony about AFSCME not negotiating during the
7 2010-2011 period. Do you have any knowledge of that?

8 A. Yes.

9 Q. What was the status of negotiations between the
10 City of San Jose and AFSCME in 2010-2011 period?

11 A. AFSCME had what we refer to as a closed contract.
12 In other words, their contract was in the middle of a term
13 or more than the middle. So they didn't have an expired
14 contract where we were negotiating new terms. We did --

15 Q. Did the City, given its financial situation, make
16 any effort to have AFSCME help contribute at the time?

17 MR. PATERSON: Objection. Relevance, your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: Yes.

20 BY MR. HARTINGER:

21 Q. What happened?

22 A. AFSCME had a three-year contract, and we had, for
23 that year and the year before, gone to AFSCME and asked
24 them to reopen their contract to seek concessions from
25 them, as well as the rest of the bargaining units.

26 Q. I want to move you to an exhibit that has been
27 identified as 6023. It's a chart of concessions.

28 MR. ADAM: Binder, Counsel?

1 MR. HARTINGER: It's Volume 6.

2 THE WITNESS: Mr. Hartinger, what was the number
3 again?

4 MR. HARTINGER: 6023.

5 BY MR. HARTINGER:

6 Q. Do you recognize this document, Mr. Gurza?

7 A. I do.

8 Q. Can you briefly explain its contents.

9 A. This is the summary of total compensation
10 concessions that we had achieved with not only our
11 bargaining units but our unrepresented employees.

12 Q. And did you have any hand in preparing this
13 document?

14 MR. PATERSON: I didn't hear the question.

15 BY MR. HARTINGER:

16 Q. Let me rephrase. Did you do anything to verify
17 the accuracy of this document?

18 A. Yes.

19 Q. Can you explain how you came to the understanding
20 that it's accurate, if it is.

21 A. Yes. I reviewed this document. My staff
22 maintains records of the concessions we had achieved. We
23 update this from time to time to document the concessions
24 over this period.

25 Q. Have you verified these are -- this is true and
26 accurate?

27 A. Yes.

28 Q. The depiction of what deals were struck and what

1 happened in the 2010-2011 --

2 THE COURT: You need to keep your voice up,
3 please.

4 BY MR. HARTINGER:

5 Q. Let me start over. Can you verify that the
6 numbers on this chart accurately represent the percentage
7 concessions reached in the 2010-2011 and 2011-2012 years?

8 A. Yes.

9 MR. HARTINGER: Your Honor, I would move 6023 into
10 evidence.

11 THE COURT: 6023 is received.

12 (Defendants' Exhibit 6023, previously marked for
13 identification, was received in evidence.)

14 BY MR. HARTINGER:

15 Q. Now that 6023 is published, can you explain in
16 greater detail for us, helping the Court understand what
17 it depicts.

18 A. Yes. So on the left side are the acronyms for our
19 bargaining units. The first one where it says Unit 99,
20 Unit 82, those are unrepresented employees. And then
21 under the '10-'11 chart, it reflects the percentage of
22 total compensation concessions that were achieved with
23 those bargaining units.

24 So if you look at the first one and you see
25 negative ten, that means we achieved a ten percent
26 reduction in total compensation with unit 99. Those that
27 had the P, for example, the second one, the Association of
28 Engineers and Architects, reflects that that agreement

1 included -- was not completely inclusive of additional
2 retirement contribution. So a component of reaching the
3 ten percent when it has the P is additional retirement
4 contributions.

5 Q. Did any of these deals make 2010-2011 impinge upon
6 the 3/8ths ratio, to your knowledge?

7 A. No, they did not.

8 Q. The 2011-2012 range, those are all just straight
9 ten percent, no Ps or pension. Can you briefly describe
10 for the Court what happened.

11 A. We reengaged in negotiations again in '11-'12, and
12 none of those included additional retirement
13 contributions. And so the entire ten percent was achieved
14 in a different manner, primarily in base pay cuts.

15 Q. If you look again at the 2011-2012 column, were
16 these all agreements?

17 A. No. Unfortunately, there were some where we did
18 not reach agreement.

19 Q. What happens when you don't reach an agreement?

20 A. As I discussed earlier this morning with the
21 non-public safety bargaining units, the City Council may
22 choose to implement terms and conditions, and that's what
23 occurred with four bargaining units.

24 MR. HARTINGER: Your Honor, as Mr. Adam mentioned,
25 there are a series of documents that contain the formal
26 action here with respect to these deals, and we would, I
27 think, jointly propose that rather than me go through
28 this, it would be subject to the stipulation we discussed

1 earlier.

2 THE COURT: So are you offering exhibits pursuant
3 to stipulation?

4 MR. HARTINGER: Well, I don't know that the
5 stipulation is completely finalized. I think I'm
6 reserving until it is finalized with the understanding
7 that if we -- I don't want to waste the Court's time and
8 go exhibit by exhibit. Once that's finalized, we can move
9 them in in a chunk.

10 MR. PATERSON: Your Honor, I think it is
11 finalized. I think -- I've approved the last draft. No
12 one has presented it to me to sign it because we don't
13 know where it is.

14 MR. HARTINGER: We haven't proofed it, your Honor.
15 We're very close.

16 THE COURT: If everyone agrees, then you can say
17 at least the relevant portion and we can move on.

18 MR. ADAM: Your Honor, I'm just not clear what
19 Mr. Hartinger verbally is asking us to stipulate to.
20 There's a lengthy -- there's a large number of these
21 documents that the parties have stipulated to and have
22 seen in writing versus Mr. Hartinger's statements he's got
23 a number of these that he'd like to put in. I'm not sure
24 which -- how that corresponds with the written
25 stipulation.

26 MR. HARTINGER: I guess I'm flagging it, your
27 Honor, because I don't want to spend an hour
28 authenticating these documents for which there's no

1 dispute, and we'll come back as we discussed yesterday.

2 THE COURT: How close are you?

3 MR. ADAM: I think real close. Might I suggest a
4 five-minute break?

5 MR. PATERSON: My understanding is the time
6 draft --

7 MR. HARTINGER: It's not going to work in five
8 minutes. I have to proof it.

9 THE COURT: Please go on.

10 MR. HARTINGER: Thank you, your Honor.

11 BY MR. HARTINGER:

12 Q. I'm going to move to a slightly different topic
13 but stay with Volume 6. If you can look at Exhibit 6000,
14 please. Mr. Gurza, if you can let me know when you have
15 6000 before you.

16 A. I do.

17 Q. And focusing on the first page of 6000, which is
18 Bates SJ 003871. Do you recognize this document?

19 A. I do.

20 Q. And what is it?

21 A. This is a brief summary of the tier one retirement
22 benefits for police and fire.

23 Q. When we say tier one, there's been some reference
24 to it at trial. What are we talking about? Is there
25 another tier?

26 A. For police, we're soon to have, effective August
27 4, a tier two. But everyone -- all fire fighters, current
28 fire fighters, are in tier one; all current police

1 officers are all in tier one.

2 Q. And, again, focusing on the first page of
3 Exhibit 6000, can you explain what it's intend -- what's
4 contained here?

5 A. It's essentially a description of the service
6 retirement formula, the factors that determine the
7 retirement benefit.

8 Q. And have you personally reviewed this to ensure
9 its accuracy?

10 A. I have.

11 Q. What amount -- what level of experience do you
12 have in terms of working with these formulas and
13 retirement system?

14 A. I have significant experience in reviewing the
15 retirement benefit, as I discussed this morning, and
16 negotiating retirement funds.

17 MR. HARTINGER: Your Honor, we would move 6000
18 into evidence.

19 MR. ADAM: Objection, your Honor. This is --

20 MR. HARTINGER: Actually, can I withdraw my
21 proffer, your Honor? There's a second page to 6000 which
22 I'm not offering. I'm only offering page 1.

23 THE COURT: You're only offering page 1?

24 MR. HARTINGER: Yes.

25 THE COURT: Any objection?

26 MR. ADAM: No objection to page 1.

27 THE COURT: 6000, the first page, is received.

28 (Defendants' Exhibit 6000, previously marked for

1 identification, was received in evidence.)

2 BY MR. HARTINGER:

3 Q. Very briefly, Mr. Gurza, can you explain how this
4 formula works.

5 A. Yes. The first row describes the eligibility for
6 a service retirement. In police and fire plan tier one,
7 you can retire at age 50 if you have at least 25 years of
8 service, 55 with 20 years of service, or if you have 30
9 years of service, you can retire at any age.

10 There is a possibility for reduced benefit that's
11 not reflected here, but this is for a full-service
12 retirement. The next describes the formula. So how much
13 do you get per year of service. So they are different for
14 police and fire in tier one. Police receives two and a
15 half percent of what we refer to as final compensation for
16 the first 20 years of service, and then four percent per
17 year after that. So in a 30-year career, if you do the
18 math, that would be 90 percent if someone reached 30
19 years. Fire is a different formula. It's two and a half
20 percent of final compensation for the first 20, but if
21 someone reaches the 20-year mark, all the years of
22 service, even one through 20, are recalculated at three
23 percent per year.

24 Then the next line shows the maximum benefit, 90
25 percent, in both of those formulas are reached at 30 years
26 of service. And the last one is the adjustment. There's
27 been some discussion of that. It's three percent fixed
28 per year, three percent compounded increase.

1 Q. Now, I want to take you to this slide looking at
2 eligible, benefit formula, the maximum allowable benefit.

3 Did Measure B -- let me back up. Are you familiar
4 with Measure B?

5 A. I am.

6 Q. I take it you've read it?

7 A. I have.

8 Q. Is it your understanding, as Deputy City Manager
9 and director of employee relations, that Measure B has any
10 impact on any of this eligibility, benefit formula, or the
11 maximum allowable benefit?

12 MR. ADAM: Objection. Irrelevant. Different to
13 my earlier objection. I think Measure B speaks for
14 itself, your Honor.

15 MR. PATERSON: I would add it calls for a legal
16 conclusion, and the witness has no actuarial expertise.
17 How is he going to divine the effects on accrued benefits?

18 THE COURT: Sustained.

19 BY MR. HARTINGER:

20 Q. I'm going to move you, then, to Exhibit 6004. Are
21 you there?

22 A. I am.

23 Q. Do you recognize this document?

24 A. I do.

25 Q. Can you briefly explain what it depicts.

26 A. This is a very similar chart to the previous one,
27 except this covers our Federated retirement system.

28 Q. Have you done anything to verify the accuracy of

1 this document?

2 A. I have.

3 I should clarify tier one, and I have reviewed the
4 document to ensure its accuracy.

5 Q. If you turn to the second page of Exhibit 6004,
6 which has an overlay with an example of an individual
7 named James Atkins. Do you know what that is?

8 A. Yes. This is simply an example of how the formula
9 works using a actual retiree.

10 Q. Have you verified the accuracy of this
11 information?

12 A. Yes.

13 MR. HARTINGER: Your Honor, we would move 6004
14 into evidence.

15 MR. PATERSON: Is there a motion?

16 MR. ADAM: Both parts of it, including page 2?

17 MR. HARTINGER: Yes.

18 MR. PATERSON: I would object to that on the same
19 basis as the prior exhibit, your Honor.

20 MR. SILVER: Same objection, your Honor.

21 THE COURT: I don't understand "on the same basis
22 as the prior exhibit."

23 MR. PATERSON: The same basis as the exhibit that
24 is similar to the fire.

25 THE COURT: Why don't you state the legal basis
26 for your objection so I'm sure I understand.

27 MR. PATERSON: The relevance of the second page of
28 the computation of the formula and also lack of

1 foundation. And it's hearsay, your Honor.

2 THE COURT: Overruled. 6064 is received.

3 (Defendants' Exhibit 6064, previously marked for
4 identification, was received in evidence.)

5 BY MR. HARTINGER:

6 Q. Is there any significant difference you would
7 point out for the Court between the way the Federated
8 formula operates versus the police and fire formula?

9 A. Yes. There are a few significant differences that
10 I can summarize.

11 Q. Briefly.

12 A. One thing I do want to point out, however, there
13 is a typographical error on that document.

14 Q. Let's fix it, then. Which page?

15 A. The first -- the first one.

16 THE COURT: That document being 6064?

17 THE WITNESS: Yeah.

18 BY MR. HARTINGER:

19 Q. 6004?

20 A. 6004. It says age 55. The typographical error --

21 THE COURT: We're dealing with 6004?

22 THE WITNESS: Correct.

23 THE COURT: Which is what I just received?

24 THE WITNESS: Yes.

25 MR. HARTINGER: So with the Court's permission,
26 may I have the witness simply strike 50 and write 55 on
27 the official exhibit?

28 THE COURT: Well, we usually don't do that when

1 the thing has been received. What are we talking about
2 here?

3 MR. HARTINGER: We're talking about the
4 eligibility line age 50 after five years of service. It
5 should say age 55.

6 THE COURT: That's the first page of 6004?

7 MR. HARTINGER: Correct.

8 THE COURT: And what do we want to change?

9 MR. HARTINGER: Age 50, we would change that from
10 50 to 55.

11 THE COURT: Okay. Any objection?

12 MR. ADAM: No.

13 THE COURT: Okay. Then we can do that.

14 BY MR. HARTINGER:

15 Q. I think you were starting to describe very briefly
16 any differences the way it is this formula operated versus
17 police and fire.

18 A. Yes. I started to say --

19 MR. PATERSON: I didn't hear the question, your
20 Honor. I'm sorry.

21 MR. HARTINGER: I can reask it, your Honor.

22 BY MR. HARTINGER:

23 Q. You were starting to describe the differences
24 between the way that the Federated tier one formula
25 operates versus the tier one police and fire formula.
26 Please continue.

27 A. As I was saying, the first difference is in the
28 age eligibility. The Federated is age 55 with five years

1 of service. It still has the provision that someone can
2 retire at any age with 30 years of service. So that's one
3 difference.

4 The benefit formula is also different. It's two
5 and a half percent of final compensation for each year of
6 service. It doesn't increase as the police and fire
7 formula do. The other major difference is in the maximum
8 benefit in police and fire tier one, they're both 90
9 percent of final compensation. In the Federated system,
10 it's 75 percent. The COLA, however, is the same in both.
11 The increase is three percent fixed compounded per year.

12 Q. I want to move you to another slide. If I can
13 take you to 6002. Are you familiar with this document,
14 Mr. Gurza?

15 A. Yes.

16 Q. What is it?

17 A. This includes the pension benefits received by the
18 police and fire retirees. They're the nine highest annual
19 pensions including the pension and the COLA as of December
20 31st, 2012.

21 Q. Did you verify the accuracy of this information?

22 A. Yes.

23 Q. Did you base your check on official information
24 from the retirement system?

25 A. Yes.

26 Q. Did your staff also help you verify it?

27 A. Yes.

28 MR. HARTINGER: Your Honor, we would move 6002

1 into evidence.

2 MR. ADAM: Objection, your Honor. Object on
3 account of relevance. Object on account of unduly
4 prejudicial on account of completeness. This appears to
5 be the nine highest members. If we're going to show what
6 pension levels employees have, we should be showing them
7 all.

8 THE COURT: Why is this relevant?

9 MR. HARTINGER: I think in terms of a complete
10 record of this case, the amounts of compensation that are
11 paid into the system, the amounts that are paid out of the
12 system are relevant for a complete record. And one of our
13 arguments in this case and elsewhere is going to be that
14 in terms of whether there is a substantial impairment, you
15 have to look at the overall benefits that have been
16 generated. And in terms of background to the system and a
17 complete record elsewhere, it's important that this kind
18 of information, which is public in any event, be part of
19 the record.

20 MR. PLATTEN: Your Honor --

21 THE COURT: Just a second. Are you saying that
22 whether there's a substantial impairment depends on how
23 much money people are being paid?

24 MR. HARTINGER: I think that is -- that could be
25 an argument.

26 THE COURT: Is there any case that supports that
27 argument?

28 MR. HARTINGER: I think there are -- in terms of

1 the issue of impairment, the courts look to the level of
2 impairment, and the degree of impairment is relevant.
3 It's not just that, your Honor, because I understand -- I
4 think the case law -- I'll concede the case law is not
5 particularly supportive on that issue. This is more about
6 having a complete record of the level of pensions that the
7 City of San Jose has been paying out and how the system is
8 working. There's been a lot of conversation about
9 compensation and interchangeability of contribution rates.

10 THE COURT: I understand. Submitted for the City?

11 MR. HARTINGER: Yes, your Honor.

12 THE COURT: I'm inclined to sustain the objection.
13 Sustained.

14 MR. HARTINGER: I'm going to move to Exhibit 6005.

15 Your Honor, in order to save time, this is the
16 same type of exhibit. Obviously it shows -- if your Honor
17 would permit me, rather than examining the witness, just
18 to save time --

19 THE COURT: You would offer it? The same
20 objection would be made?

21 MR. PLATTEN: Correct.

22 THE COURT: The same ruling.

23 MR. HARTINGER: Then I would offer 6006, which
24 shows the annual pensions from Federated.

25 THE COURT: I think the record doesn't reflect I
26 said the same objection would be made so could we --

27 MR. PLATTEN: I believe I said correct, your
28 Honor, on grounds of relevancy.

1 MR. PATERSON: You inferred correctly.

2 THE COURT: Thank you. Go ahead.

3 MR. HARTINGER: To elaborate, your Honor, the
4 City, depending on where this case goes and tends to be
5 arguing on the contours of existing case law, we think
6 everything in Measure B is completely consistent with case
7 law, but we want a complete record when we go forward.

8 THE COURT: You'll have a complete record because
9 the exhibit has been marked, it just hasn't been received.
10 So you have a record.

11 MR. HARTINGER: Thank you, your Honor.

12 6006, then, showing pensions in the Federated
13 system, we would offer on the same basis.

14 MR. ADAM: Same objections.

15 MR. PLATTEN: Same objections.

16 MR. PATERSON: AFSCME joins in that.

17 THE COURT: Sustained.

18 BY MR. HARTINGER:

19 Q. Mr. Gurza, if you can move to 6018, please. Do
20 you recognize 6018?

21 A. I do.

22 Q. Can you explain what this is.

23 A. This related to active police employees
24 represented by the POA and provides the average total
25 compensation.

26 Q. When we were checking this document, you found a
27 mistake, if you recall?

28 A. Yes.

1 Q. In the fringe benefit area?

2 A. Yeah. There was a mistake in that number.

3 MR. HARTINGER: So, your Honor, I would ask to
4 substitute the corrected number as we did before, 6018,
5 with the existing 6018.

6 THE COURT: Okay. Do counsel have copies of the
7 new 6018? What's the new fringe number?

8 MR. HARTINGER: The new fringe number is \$2,846.
9 I believe it was 26.

10 THE COURT: Unless there's an objection, I will
11 allow you to substitute the corrected 6018. Madam Clerk,
12 when it's convenient, can replace the old one with the new
13 one. Thank you.

14 MR. HARTINGER: May I approach the witness?

15 THE COURT: Yes.

16 BY MR. HARTINGER:

17 Q. Mr. Gurza, showing you what's been marked as 6018.
18 Do you recognize that document?

19 A. Yes, I do.

20 Q. Can you explain what it represents.

21 A. As I indicated, it is the average total
22 compensation for sworn employees represented by the Police
23 Officers' Association. It is a composite number for all
24 ranks and provides the average salary retirement cost,
25 health fringe benefits, then totals those.

26 Q. Did you verify the accuracy of this information?

27 A. I did with the assistance of my staff.

28 MR. HARTINGER: I would move this into evidence.

1 MR. ADAM: Objection. Relevance.

2 MR. PLATTEN: Plaintiffs Sapien join.

3 MR. PATERSON: I'd join. Also hearsay and lack of
4 foundation as to how these amounts were computed.

5 MR. HARTINGER: My only response --

6 THE COURT: Overruled.

7 MR. HARTINGER: Thank you.

8 THE COURT: 6018 is received.

9 (Defendants' Exhibit 6018, previously marked for
10 identification, was received in evidence.)

11 BY MR. HARTINGER:

12 Q. How, if any, Mr. Gurza -- I guess the document
13 speaks for itself. Can you very, very briefly explain
14 what it depicts.

15 A. I want to point out. If you notice, there is a
16 footnote that says "source." The source is the '13-'14
17 base budget numbers, so these are budgeted numbers. They
18 don't reflect, for example, an employee who may earn
19 overtime or additional premium pay services. So they are
20 budgeted costs. And so the average on the salary side is
21 a little under 106,000. What the City pays -- and these
22 are City costs for retirement benefits, pension, and
23 retiree health care -- is included in the second column.
24 Then health insurance, again, that's active health
25 insurance. Fringe benefits was other things, like the
26 employee assistance program, other benefits that don't fit
27 into the other categories. And then it totals those for
28 approximately 196,000 per FTE police officers.

1 THE COURT: If we're changing fringe, we're going
2 to change the total?

3 MR. HARTINGER: I don't have clarity, but I
4 suspect you're right.

5 THE COURT: It's \$200. So I think what you're
6 going to ask me to do is change the total comp to 196,649.

7 MR. SPELLBERG: Your Honor, apparently it's just a
8 typo. The total is correct.

9 THE COURT: Very good.

10 BY MR. HARTINGER:

11 Q. So could I ask you to move to Exhibit 6019.

12 MR. PATERSON: Your Honor, maybe those numbers
13 don't add up.

14 MR. SILVER: The numbers don't add up.

15 THE COURT: I think we can address the exhibit at
16 the break, and you can update me.

17 BY MR. HARTINGER:

18 Q. Are you with me on 6019?

19 A. Yes.

20 Q. Are you familiar with this document?

21 A. Yes.

22 Q. What does it depict?

23 A. This is the total annual compensation for three
24 specific fire employees.

25 Q. Have you verified the accuracy of this
26 information?

27 A. Yes.

28 MR. HARTINGEN: Your Honor, we would move 6019

1 into evidence.

2 MR. PLATTEN: Objection. Relevance.

3 MR. PATERSON: Same objection.

4 MR. ADAM: Joined by the POA.

5 THE COURT: Sustained.

6 MR. HARTINGER: My offer on this one, your Honor,
7 would be that there has been a variety of testimony that
8 has been elicited by the plaintiffs about compensation,
9 compensation levels, base pay, and so forth with witnesses
10 on the stand. So that's number one. So they kind of
11 opened the door on this.

12 Number two, compensation has a direct impact on
13 retirement benefits. Mr. Salvi as a plaintiff, for
14 example. We think it's relevant.

15 THE COURT: No. I'm going to stick with the
16 ruling.

17 BY MR. HARTINGER:

18 Q. I'll move you to 6020.

19 MR. HARTINGER: Your Honor, this is another --
20 these are non-sworn employees. Again, the non-sworn
21 employees put their salaries directly at issue. There was
22 specific testimony by some non-sworn witnesses about what
23 their pay was. So I don't want to slow things down if
24 you're going to sustain the same objection.

25 THE COURT: Correct me if I'm wrong. I think only
26 Mr. Rhoads testified.

27 MR. HARTINGER: I believe that's correct, your
28 Honor.

1 THE COURT: How would this information about him
2 be relevant?

3 MR. HARTINGER: He testified what his compensation
4 was, and I think this sets the record straight because
5 it's been verified from human resources.

6 THE COURT: So are you representing it was
7 different from what he said?

8 MR. HARTINGER: His testimony didn't include total
9 compensation, and he wasn't sure on the benefit total.

10 MR. PATERSON: Your Honor, we will withdraw our
11 objection with respect to Mr. Rhoads only.

12 THE COURT: Mr. Platten, do you have an objection?

13 MR. PLATTEN: Yes, your Honor. None of the
14 plaintiffs we represent in this chart would include
15 Mr. Mukhar, Mr. Dapp, and Ms. Harris.

16 THE COURT: I understood there was a revised offer
17 of the information to Mr. Rhoads, or did I misunderstand
18 that?

19 MR. HARTINGER: I don't want to waste the Court's
20 time if you're going to make the same ruling, but if --

21 THE COURT: Right. I am considering admitting
22 this only as to Mr. Rhoads. I'm admitting this only as to
23 Mr. Rhoads.

24 MR. HARTINGER: So I won't publish.

25 THE COURT: 6020. You can do that the
26 old-fashioned way. The low-tech way.

27 (Defendants' Exhibit 6020, previously marked for
28 identification, was received in evidence.)

1 BY MR. HARTINGER:

2 Q. I won't do that.

3 Looking at Exhibit 6020, with respect to
4 Mr. Rhoads, who we heard testify, Mr. Gurza, can you
5 explain his base salary and compensation as you verified
6 it.

7 A. Yes. So what we did is verify Mr. Rhoads' base
8 salary, and it is 67,017.60 in base salary. He then
9 receives other compensation. I think he testified to its
10 primarily being health in lieu benefits. That's a little
11 less than 5800. The chart shows exactly 5757.84. The
12 City's payment for other benefits is \$40,768, for a total
13 compensation figure of 113,553.44.

14 MR. HARTINGER: Your Honor, I'm turning to a
15 different section. I can keep going, depending on what
16 your break schedule is.

17 THE COURT: Yes. We'll break a little later.

18 BY MR. HARTINGER:

19 Q. Mr. Gurza, turning to a different subject.
20 There's been testimony at trial concerning what's been
21 referred to as supplemental retiree benefit reserve. Are
22 you familiar with the supplemental benefit retiree
23 reserve?

24 A. Yes.

25 Q. And how are you familiar with that?

26 A. Well, I've been familiar with it in my career at
27 the City, starting when I worked at retirement. It wasn't
28 in place for police and fire, but it was in place for

1 Federated. And then I was employed when it was extended
2 to the police and fire plan.

3 Q. And do you have an understanding, given your
4 position and experience in how the program works, that is
5 the SRBR program?

6 A. Yes.

7 Q. Can you explain that for the Court.

8 A. Very briefly, it is a program that may result in
9 payments, cash payments -- it doesn't have to be cash --
10 payments for a retiree beyond their monthly payments. In
11 some places, it's called a 13th check. They call it that
12 because it's in addition to the 12 monthly pension
13 payments. There's a particular mechanism that results in
14 money being set aside from the main pension plan into this
15 reserve.

16 Q. I want to take you to Exhibit 5707. Are you at
17 5707?

18 A. I am.

19 Q. Do you recognize this document?

20 A. I do.

21 MR. HARTINGER: I believe there's a stipulation on
22 this, your Honor. I'll simply move 5707 into evidence.

23 MR. ADAM: No objection, your Honor.

24 THE COURT: 5707 is received.

25 (Defendants' Exhibit 5707, previously marked for
26 identification, was received in evidence.)

27 BY MR. HARTINGER:

28 Q. So 5707, did you have any hand, if you will, in

1 preparing this document?

2 A. Yes, I did work on the drafting of this document.

3 Q. And if you look at the recommendation, it directs
4 the City Attorney to draft an ordinance amending the
5 municipal code to provide that no distribution from the
6 plan's SRBR would occur during fiscal year 2010-2011. Do
7 you recall that?

8 A. I do.

9 Q. What were the circumstances?

10 A. Well, this was, as we heard this week, during a
11 very, very difficult time where we had significant budget
12 deficits in addition to seeing dramatic increases in our
13 retirement costs in the unfunded liabilities of the
14 retirement plans.

15 Q. And take you to the second page, highlighted
16 portion. This references, "Due to the plan's significant
17 unfunded liabilities, it's recommended that the
18 distributions be suspended while retirement reform
19 discussions continue." Can you elaborate on that
20 statement.

21 A. Yes. Essentially, because of the particular
22 design of this SRBR, it could result in what is referred
23 to as, quote, unquote, "excess earnings," even though the
24 plan has significant unfunded liabilities. And so this
25 was the City Manager's recommendation of the City Council,
26 that given that reality, that the council suspend any
27 payments out of this reserve.

28 Q. Are you aware of any union or employee or retiree

1 filing any sort of claim this was a violation of some
2 kind?

3 MR. PATERSON: Objection. Relevance.

4 THE COURT: Overruled.

5 THE WITNESS: No. Not during this period of time,
6 no.

7 BY MR. HARTINGER:

8 Q. Did the council take action based upon this
9 recommendation?

10 A. They did. They approved the City Manager's
11 recommendation.

12 Q. And so SRBR was suspended?

13 A. It was.

14 Q. And for what period of time was it suspended?

15 A. This particular recommendation was for one year.
16 However, we returned to the City Council in subsequent
17 years, recommending that it continue to be suspended and
18 that no payments be made out of the SRBR in either police
19 or fire or the Federated plans.

20 Q. I take you to Exhibit 5709.

21 MR. HARTINGER: I believe there is a stipulation
22 on this. I would move 5709 into evidence.

23 MR. ADAM: There is a stipulation, correct.

24 THE COURT: I don't think we said out loud that
25 5707 is an October 22, 2010, memorandum from Debra Figone
26 to the mayor and City Council. 5709 is a May 13, 2011,
27 memo from Debra Figone to the mayor and City Council. And
28 I'm receiving this in with a stipulation?

1 MR. ADAM: Yes.

2 MR. PATERSON: Yes, your Honor.

3 THE COURT: It's received.

4 (Defendants' Exhibit 5709, previously marked for
5 identification, was received in evidence.)

6 BY MR. HARTINGER:

7 Q. Briefly, does this document have anything to do
8 with the continued suspension of SRBR as you've described
9 it?

10 A. Yes, it does.

11 Q. How so?

12 A. It is the following year that I mentioned
13 previously. So we returned to the City Council the
14 following year recommending that it continue to be
15 suspended for the next fiscal year.

16 Q. Can I take you to Exhibit 5710. Are you with me?

17 A. I am.

18 Q. Do you recognize this document?

19 A. I do.

20 Q. What is it?

21 A. This is a tentative agreement with our building
22 inspector union on the issue of elimination of the SRBR.

23 Q. Was this kept and maintained in the regular course
24 of business?

25 A. Yes.

26 MR. PATERSON: I object. The City has already
27 moved to exclude the bargaining leading up to the
28 collateral administrative action, mainly the PERB charge,

1 and this is what -- as this is a retirement bargaining
2 that resulted in the PERB charge, and the City already
3 asked the Court to exclude it.

4 MR. SILVER: I'll also object that this union
5 cannot bargain away monies that have been earmarked for
6 people who have already retired.

7 THE COURT: What's the legal basis for your
8 objection?

9 MR. SILVER: It's irrelevant to our case.

10 MR. ADAM: I'll object on relevance grounds. This
11 is not a party to the litigation, your Honor.

12 MR. PLATTEN: We join the objections raised by the
13 Retiree Association and by the POA.

14 THE COURT: Would you address Mr. Paterson's
15 objection, please.

16 MR. HARTINGER: Yes, your Honor. It's inaccurate
17 that this is covered by either an argument or an in limine
18 ruling. The collateral proceedings are the collateral
19 proceedings. This is targeted specifically at an argument
20 that the City is making with respect to the discretionary
21 nature of the SRBR account and the fact that everyone
22 understood that it could be eliminated and there was
23 nothing vested about it because it was discretionary.
24 This tentative agreement shows that.

25 THE COURT: Submitted?

26 MR. PLATTEN: Submitted.

27 MR. PATERSON: Yes, your Honor.

28 THE COURT: Overruled. 5710 is received.

1 (Defendants' Exhibit 5710, previously marked for
2 identification, was received in evidence.)

3 BY MR. HARTINGER:

4 Q. So this says "tentative agreement." What is that?

5 A. A tentative agreement can be various things in
6 labor relations, but generally when you're in bargaining,
7 you may reach a tentative agreement on one individual item
8 while you're trying to head towards an overall agreement.
9 So that's what this is. This is a tentative, which means
10 that it resolves this particular issue, again, as part of
11 an effort to reach an agreement on the overall
12 negotiations.

13 Q. And do you recognize this down here, Richard Hicks
14 for the union?

15 A. Yes. He's a representative of ABMI, the building
16 inspectors' union.

17 Q. Looks like Gina Donnelly.

18 A. She's a former employee of mine, the former deputy
19 director of employee relations, who was the lead
20 negotiator for the City in those negotiations.

21 Q. So given that the union here proposed to
22 eliminate -- let me ask you this. Do you understand that
23 Measure B eliminates SRBR, puts the funds back into the
24 retirement system?

25 A. Yes.

26 Q. Are you able to explain why, given the fact that
27 the unions proposed and tentatively agreed to do that,
28 that they would have a basis for contending that it's

1 somehow unlawful to do that through a chart measure?

2 MR. PATERSON: Objection. Calls for legal
3 conclusion.

4 THE COURT: Sustained. Are you saying where it
5 says tentative, that really means partial?

6 THE WITNESS: Your Honor, you could refer to it as
7 a partial agreement because when you're negotiating, let's
8 say, a full contract, you try to reach -- get progress.
9 And so you reach an agreement, you can say, partially on
10 one item while you continue to work on reaching an
11 agreement on other items. So this SRBR, it was considered
12 resolved in these negotiations because there was a
13 tentative agreement, and it allows the parties to focus on
14 the unresolved items. It's a way to make progress in
15 labor negotiations.

16 THE COURT: Okay. So it's partial as opposed to
17 tentative and partial. By that I mean, do tentative
18 agreements go away if you don't reach agreement on
19 everything?

20 THE WITNESS: It depends on the agreement of the
21 parties, what the understanding is. But, generally,
22 during contract negotiations, they are most typically
23 contingent upon an overall agreement, ratification by the
24 bargaining unit and approval by the City Council.

25 THE COURT: Go ahead.

26 MR. HARTINGER: Thank you, your Honor.

27 BY MR. HARTINGER:

28 Q. Could I move you, Mr. Gurza, please, to

1 Exhibit 5713. Do you recognize 5713?

2 A. I do.

3 Q. What is it?

4 A. This is a similar tentative agreement to eliminate
5 the Supplemental Retiree Benefit Reserve with AFSCME CEO,
6 Confidential Employees Organizations.

7 Q. And is this a true and correct copy of the
8 tentative agreement maintained by the City in the normal
9 course of business?

10 A. Yes.

11 MR. HARTINGER: Your Honor, I would move 5713 into
12 evidence.

13 MR. SILVER: Same objection. This cannot possibly
14 relate to -- union can't bargain away any rights.

15 MR. PLATTEN: Objection, your Honor. It's
16 entirely irrelevant to any of the plaintiffs represented
17 by our firm, Sapien, Mukhar, Harris.

18 MR. ADAM: Your Honor, I believe -- I'm hoping
19 it's covered by POA's standing objection. It's unrelated
20 to police and fire retirement plan.

21 THE COURT: Do you have a standing objection that
22 anything related to the police and fire retirement plan
23 should be excluded as irrelevant?

24 MR. ADAM: Your Honor, I thought it covered the
25 bargaining in 2010-'11, which this appears to be part of
26 the --

27 THE COURT: It's just the standing objection you
28 made before?

1 MR. ADAM: I think -- I'm just confirming that
2 standing objection would cover this document.

3 THE COURT: Okay. I'm just confirming that you
4 don't have some different standing objection.

5 MR. ADAM: Right.

6 THE COURT: Overruled. 5713 is received.

7 (Defendants' Exhibit 5713, previously marked for
8 identification, was received in evidence.)

9 BY MR. HARTINGER:

10 Q. Publishing 5713, which is 2011 City of San Jose
11 CEO tentative agreement. This particular document is
12 similar to the 5710, but this is with AFSCME, a party to
13 this action; is that correct?

14 A. Correct.

15 Q. And, again, do you know this individual, Laverne
16 Washington?

17 A. I do. Laverne continues to be the current -- is
18 the current president of AFSCME CEO and was involved in
19 those negotiations at that time.

20 Q. So he's an officer of AFSCME?

21 A. She.

22 Q. Sorry. She's an officer who is a -- of an
23 organization, AFSCME, who's a plaintiff in this action?

24 A. Yes.

25 Q. Did Ms. Washington ever inform you why AFSCME
26 would be suing the City over elimination of SRBR, given
27 that she tentatively agreed to that?

28 MR. PATERSON: Objection. Hearsay.

1 THE WITNESS: No.

2 THE COURT: Overruled.

3 THE WITNESS: No.

4 BY MR. HARTINGER:

5 Q. During these discussions when AFSCME was agreeing
6 to the elimination of SRBR, did you become aware of any
7 concerns that AFSCME had that this would somehow be
8 violating a vested right of some kind?

9 MR. PATERSON: Objection. Misstates the
10 testimony. This is not an agreement. It's a tentative
11 agreement. It's been clear from his testimony --

12 THE COURT: Hello. Legal basis is all I need.
13 Are you rephrasing the question, Mr. Hartinger?

14 MR. HARTINGER: Yes.

15 BY MR. HARTINGER:

16 Q. At any time, Mr. Gurza, did you become aware that
17 Ms. Washington, on behalf of AFSCME, a party in this
18 action, was raising any concerns about vested rights and
19 the elimination of SRBR?

20 A. Not as it relates to the elimination, no. We had
21 reached a tentative agreement on that.

22 Q. Mr. Gurza, in the interest of time, I will simply
23 ask you to look at Exhibits 5712 and 5714, if the Court
24 will permit me to do that at one time, and ask you if you
25 recognize those documents.

26 A. I do.

27 Q. Can you characterize them.

28 A. Yes. They are similar tentative agreements to

1 eliminate the SRBR. 5712 is a tentative agreement with
2 Operating Engineers Local 3. The signature I do recognize
3 is William Pope, who is the -- was then and still remains
4 the business agent for OE 3. 5714, again, is a tentative
5 agreement to eliminate the SRBR. This agreement is with
6 AFSCME MEF, signed on behalf of the union by president
7 Yolanda Cruz.

8 MR. HARTINGER: Your Honor, I would move 5712 and
9 5714 into evidence.

10 MR. PLATTEN: Objection. Relevancy.

11 MR. SILVER: Same objection. It's completely
12 irrelevant to our case.

13 MR. PATERSON: Same objection, and also objection
14 to the characterization as an agreement.

15 THE COURT: 5712 is with whom?

16 THE WITNESS: 5712 is with Operating Engineers,
17 OE 3.

18 THE COURT: Overruled. 5712 and 5713 are
19 received.

20 (Defendants' Exhibits 5712 and 5713, previously
21 marked for identification, were received in
22 evidence.)

23 BY MR. HARTINGER:

24 Q. Mr. Mukhar, who is a plaintiff in this action, do
25 you know what union he is represented by?

26 A. Yes. He is -- Mr. Mukhar is the president of AEA,
27 the Association of Engineers and Architects, affiliated
28 with IFPTE Local 21.

1 Q. Now, in your capacity as deputy manager of the
2 City of San Jose, director of employee relations, have you
3 experienced what you would believe to be problems with the
4 way that SRBR works?

5 A. Yes.

6 Q. Can you describe those.

7 A. Well, it was really the recent years where we were
8 seeing significant increases in retirement costs, the
9 contributions the City was making as well as the
10 significant unfunded liabilities that were accumulating.
11 However, the design of the SRBR would contemplate a
12 potential of paying out what is referred to as excess
13 earnings to retirees at a time that there are huge
14 unfunded liabilities, in the billions. That was something
15 we simply had to confront. How could we be making a 13th
16 check when these massive unfunded liabilities existed in
17 the plan?

18 Q. And do you know the regularity, if you will, of
19 checks that were issued pursuant to SRBR?

20 A. Yes. They were irregular and undetermined.

21 Q. What do you mean?

22 A. It wasn't always -- one could not know when a
23 payment, if any, would be made out of the SRBR.

24 Q. And you're a member of the retirement plan?

25 A. I'm a member of the Federated retirement plan.

26 Q. As a member, in your personal capacity and also as
27 a Deputy City Manager and head of the employee relations
28 group, could anyone reasonably rely on receiving one of

1 these checks?

2 MR. PLATTEN: Objection.

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

4 MR. SILVER: Competence.

5 MR. PATERSON: Join.

6 MR. ADAM: Also calls for speculation.

7 THE COURT: Sustained.

8 BY MR. HARTINGER:

9 Q. Do you know how anyone could expect to get a check
10 every year, given the way that the program works?

11 MR. ADAM: Same objection.

12 MR. SILVER: Same objection.

13 MR. PATERSON: AFSCME joins.

14 THE COURT: Relevance. Anything else?

15 MR. ADAM: Speculation.

16 MR. SILVER: Competent.

17 MR. ADAM: "Could anyone reasonably expect."

18 THE COURT: Sustained.

19 BY MR. HARTINGER:

20 Q. Your testimony is that the checks were not issued
21 every year; correct?

22 A. That's correct.

23 Q. They've been suspended for the last several years?

24 A. Correct.

25 Q. Without objection?

26 A. Again, we had reached tentative agreements with
27 several bargains, as you pointed out, to eliminate.

28 Q. I'm going to turn to another topic.

1 THE COURT: Then let's take our ten-minute break.
2 We'll be in recess for ten minutes.

3 (Recess.)

4 THE COURT: Mr. Gurza, you're still under oath.
5 Mr. Hartinger.

6 MR. HARTINGER: Thank you, your Honor.

7 BY MR. HARTINGER:

8 Q. Mr. Gurza, I'd like to take you to Exhibit 5452.

9 MR. ADAM: Volume, Counsel?

10 MR. HARTINGER: 3.

11 BY MR. HARTINGER:

12 Q. Are you there?

13 A. I am.

14 Q. Briefly, briefly close the loop on the additional
15 retirement contributions. Do you recognize Exhibit 5452?

16 A. I do.

17 MR. HARTINGER: And I think there's a stipulation,
18 your Honor. I'll just move this into evidence, Exhibit
19 5452.

20 THE COURT: 5452 is resolution 75451. It's
21 received.

22 (Defendants' Exhibit 5452, previously marked for
23 identification, was received in evidence.)

24 BY MR. HARTINGER:

25 Q. Do you recognize -- briefly describe what this
26 document is, Mr. Gurza.

27 A. The cover sheet is a City Council resolution
28 approving an agreement that we had reached with the

1 Association of Engineers and Architects, affiliated with
2 IFPTE Local 21.

3 Q. These are active employees who are members of the
4 Federated plan; is that correct?

5 A. Correct.

6 Q. If I can take you to what's been -- it's page --
7 let's use Bates Gurza 000150 where it speaks to ongoing
8 additional retirement contributions.

9 A. Yes.

10 Q. This is the actual formula agreement, is it not?

11 A. Yes. This is the actual agreement. The exhibit
12 has the council memo, and this particular page is the
13 portion of the agreement that has the additional
14 retirement contributions.

15 Q. And is there anything on this page that would
16 confirm in writing that the pensionable -- that the
17 increased pension contributions were going to be applied
18 towards unfunded liability?

19 MR. PLATTEN: Objection. Misstates the document.

20 THE COURT: Overruled.

21 THE WITNESS: Yes. This now is the actual
22 agreement we had reached. Previously we had looked at
23 proposals. So we continued to work together with the
24 bargaining units that were interested in reaching the
25 concession in this way. So this now documents how we
26 arrived at meeting their goal of paying additional
27 retirement contributions for the concession.

28 And so as you can see, there are two paragraphs

1 here. The first one is related to the ongoing additional
2 retirement contributions, which, as I testified earlier,
3 means that it continues and becomes the status quo until
4 negotiated differently. It has a very precise amount, as
5 you will see, in that paragraph, 7.29 percent of
6 pensionable compensation that employees would make in
7 additional retirement contribution, and it specifically
8 says that the amounts so contributed will be applied to
9 reduce the contributions that the City would otherwise be
10 required to make for the pension unfunded liability.

11 BY MR. HARTINGER:

12 Q. What does this chart tell us?

13 A. We don't always do charts --

14 Q. For the record, just to be clear on the record,
15 I'm referring to the box towards the middle of the page on
16 the page.

17 A. We don't always do charts in labor contracts, but
18 at times we do to make sure that the intent and the impact
19 of the agreement is clear. So what this chart shows is
20 sort of the before and after of the rate that we knew at
21 that time. That's an important caveat because rates
22 change every year.

23 The first row says current contribution rates,
24 what the City contributes, what the employee contributes,
25 and then the total, and then what the rates would be with
26 the additional employee contributions, so that you see the
27 current contribution rate the City would pay is 29.59.
28 That's sort of the before, and the after is 22.3. So the

1 City's rates would go down because the employee rates in
2 the next column over are going up.

3 So what's important to show at the very end at the
4 total is -- you see the total is the same. Either the
5 before and after. What switched is the employees are now
6 paying more and the City is paying less. And the 7.29 is
7 specifically targeted to the unfunded liability payment
8 the City would have otherwise made.

9 Q. Did the City reach similar agreements with other
10 unions?

11 A. Yes, we did. And we had, again, similar language
12 with some of the bargaining units. The amounts are
13 different. And you'll notice also that there's a lot of
14 language about how the contributions would be treated. We
15 also even had a contingency provision in here that if for
16 any reason we couldn't do this, there's language about
17 what would occur in that eventuality.

18 Q. Where is that? Where does that exist?

19 A. You will see it in the agreement if you go to --

20 Q. That's a very long question, I guess. What does
21 the language -- where would you point us to to show what
22 would happen if for some reason you couldn't do this?

23 A. If you go to the next page, which is Bates stamp
24 Gurza 000151, there is a provision called the contingency
25 provision.

26 Q. Can you explain your understanding of what the
27 intent of that provision is.

28 A. As part of our discussion, we had wanted to ensure

1 that we were going to be able to achieve the savings that
2 we had intended through this agreement, and so it was in
3 the City's interest to have some contingency provision
4 just in case something went wrong, that for whatever
5 reason the employees were not able to make the additional
6 contributions.

7 What this says is that the equivalent amount of
8 total compensation shall be taken as a base pay reduction.
9 So that was our fallback position, that if we couldn't
10 achieve it by additional employee contributions, that it
11 would be taken as a base pay reduction.

12 Q. Were these contributions pre-taxed?

13 A. Yes, they were.

14 Q. Was that an issue in terms of getting approval for
15 that?

16 A. Well, again, it was an interest of the bargaining
17 units who we were negotiating with on this that they be
18 considered pre-tax, and we were able to accomplish that by
19 treating them as employee contributions as any other
20 employee contributions are made, and they are considered
21 pre-tax.

22 Q. I'm going to take you to Exhibit -- a new exhibit,
23 5470. Sorry I'm putting you to work here. Are you with
24 me?

25 A. I am.

26 Q. Do you recognize this document?

27 A. I do.

28 Q. Can you briefly -- for the record, 5470 is

1 identified as a memorandum from Alex Gurza, Jennifer
2 McGuire, to the Honorable Mayor and City Council, subject,
3 approval of the terms of agreement with San Francisco
4 police officers' negotiation dated July 19, 2010. You're
5 familiar with this document?

6 A. I am.

7 Q. This is a true and correct copy of the document
8 that, in fact, was approved by the council?

9 A. It is.

10 MR. HARTINGER: Your Honor, we would move 5470
11 into evidence.

12 MR. ADAM: No objection.

13 THE COURT: 5470 is received.

14 (Defendants' Exhibit 5470, previously marked for
15 identification, was received in evidence.)

16 BY MR. HARTINGER:

17 Q. I'm going to take you to -- this is an agreement
18 now with the union, the Police Officers' Association, that
19 has members in the San Jose police and fire retirement
20 plan as opposed to the other one?

21 A. Correct.

22 Q. I'll take you to page Gurza 000551. And this
23 language in Article 5, paragraph 5.1, speaks to one-time
24 additional retirement contributions. Can you explain the
25 effect of this language, based on your understanding as
26 Deputy City Manager?

27 A. Yes. This is a contract that I negotiated on
28 behalf of the City with the POA. It is similar to the

1 other agreement we made for additional retirement
2 contributions. You will note the amount is different.
3 Here the amount is 5.25 percent of pensionable
4 contributions that employees would make, similar to the
5 other agreement. It states that the amount so contributed
6 will be applied to reduce the contribution that the City
7 would otherwise be required to make with a pension
8 unfunded liability.

9 Q. Can I take you to what I believe is the next page.
10 It's Gurza 000552.

11 A. Yes.

12 Q. Is there anything on this page which would confirm
13 to you that is on behalf -- let me start over. Is there
14 anything on this page that would inform you of the City's
15 intent relative to the treatment of these contributions?

16 A. Yes. I think the language read in its entirety is
17 very, very specific and detailed. The chart, again,
18 demonstrates the impact of having the employees pay the
19 additional 5.25 percent.

20 Again, without going through it like I did on the
21 last exhibit, you'll see that the City contribution rate
22 before and after, it goes down, employee goes up, but the
23 total is the same at the right. So the employees are
24 making payments that the City would otherwise have paid,
25 and those were all unfunded liability contributions, not
26 normal cost. We also point out they had the same
27 contingency provision in that agreement as well.

28 Q. If I can take you to Gurza 000553. Is that the

1 contingency or provision you're referring to?

2 A. Yes. That is the provision. Again, it is very
3 similar to the other one. What we wrote here is that if
4 for any reason, that the employees would not be able to
5 make those additional contributions, that the equivalent
6 amount of total compensation would be taken as a base pay
7 reduction.

8 Q. Was the provision successfully implemented?

9 A. We didn't have to use the contingency provision in
10 any of the agreements, I should note. We were able to
11 implement the core of the agreement, which was to have the
12 employees make the additional retirement contributions,
13 and it did serve to lower the City's contribution rate by
14 the commensurate amounts, so we were able to implement the
15 language.

16 Q. And so no -- the provision that made it such that
17 you could take the savings through straight wage
18 reductions doesn't become effective?

19 A. Yes. We never needed the contingency provision.

20 Q. I'm going to move on to another topic, retiree
21 health care, if I could. I want to display page 14,
22 Section 1512-A of Measure B which has been admitted into
23 evidence as Exhibit 5000.

24 MR. PATERSON: Which section of the Measure B?

25 THE WITNESS: What page number in 5000?

26 MR. HARTINGER: I believe it's page 14, Section
27 1512.

28 MR. ADAM: Bates stamp 108.

1 MR. HARTINGER: And, your Honor, the municipal
2 code section, which I'm going to compare side by side,
3 Exhibit 5303, is police and fire section that is in
4 evidence. I don't believe the Federated section is, which
5 I understand will come in by stipulation. It's 5302. So
6 we would move Exhibit 5302 into evidence at this time.

7 THE COURT: 5302 is received.

8 (Defendants' Exhibit 5302, previously marked for
9 identification, was received in evidence.)

10 THE COURT: You're suggesting we have 5000 open to
11 Bates page 108, and 5302 open to some other page?

12 MR. HARTINGER: One moment and I'll make it clear
13 for the record.

14 Your Honor, what I propose to display is simply
15 the blowup, now that muni code is in evidence, Exhibit
16 6063, which was marked for identification, which I
17 displayed during opening. That's what I would propose to
18 display, which was a subset of the municipal code 5303 and
19 5302.

20 Maybe I can show you, your Honor, before I
21 display, publish.

22 THE COURT: Okay. So are you offering an exhibit?
23 6063?

24 MR. HARTINGER: Maybe that's the easiest way to do
25 it.

26 THE COURT: You're offering that?

27 MR. HARTINGER: Yes, your Honor.

28 THE COURT: It's not in the binder. It's the

1 municipal code?

2 MR. HARTINGER: I provided you -- it's the
3 municipal code. There are excerpts, and I provided you
4 with the 8-and-a-half-by-11 blowups earlier, so you should
5 have a copy.

6 THE COURT: This is 6063. I have 6063.

7 MR. PATERSON: We don't have a copy, your Honor.

8 MR. HARTINGER: I previously distributed it.

9 MR. ADAM: When? Where?

10 THE COURT: It's the blowups. So if you can
11 display them in a way that counsel who don't have their
12 copies handy can look at it.

13 MR. HARTINGER: For the record, it would be for
14 Federated, Municipal Code Section 3.28.385C, and for
15 police and fire, the Municipal Code Section 3.36.575D,
16 both of which are in evidence.

17 THE COURT: Go ahead.

18 Counsel who don't have their copies of 6063 can
19 either look at the blowup, which is in the jury box, or at
20 5302.

21 We're ready.

22 MR. HARTINGER: Thank you, your Honor.

23 BY MR. HARTINGER:

24 Q. Mr. Gurza, have you had any involvement with
25 negotiating retiree health care issues in the City of San
26 Jose?

27 A. Yes. Extensively.

28 Q. Can you briefly describe your experience.

1 A. We started to discuss and explore the retiree
2 health care issue probably dating back to 2007, and since
3 then and continuing until the present time.

4 Q. And the section that we're focusing on now are, as
5 the municipal code provides, contributions for other
6 medical benefits. These are retiree medical benefits; is
7 that correct?

8 A. Correct.

9 Q. And how has that worked over the years?

10 A. Essentially, the contributions made to pay for
11 retiree health care have been shared with employees
12 between the City and active employees on a ratio of one to
13 one or 50/50.

14 Q. And to your knowledge, when did that begin?

15 A. It began, to my knowledge, since the inception of
16 the benefit, which was in the mid-1980s.

17 Q. When you say the benefit, I asked you when did it
18 begin. Can you be specific in terms of what benefit.

19 A. The retiree health care benefit was first put into
20 place in the mid-'80s. I don't recall the specific year.
21 But since then, it has been on this one-to-one ratio as
22 specified in the municipal code.

23 Q. And the charter speaks to 50 percent; the
24 municipal code speaks to one to one. Is there a
25 difference?

26 A. No.

27 Q. So has anything changed, to your knowledge, since
28 the inception of the benefit, that is the one-to-one

1 contribution, in terms of funding?

2 MR. ADAM: Objection to the extent it calls for a
3 legal conclusion. Question is also vague. Has anything
4 changed?

5 MR. PLATTEN: Sapien, Mukhar, Harris join in the
6 objection.

7 MR. PATERSON: As does AFSCME.

8 MR. SILVER: As do the retired employees.

9 THE COURT: Overruled.

10 THE WITNESS: Has anything changed? No, not
11 related to the ratio by which the City and employee
12 contributions towards retiree health care are made.

13 BY MR. HARTINGER:

14 Q. And when you say there's been extensive
15 negotiation over the years, can you describe that.

16 A. Really the focus on retiree health care is more
17 recent, as I mentioned, since 2007. Because as per
18 testimony earlier in the week, the Government Accounting
19 Standards Board promulgates regulations of how things are
20 supposed to be accounted for and looked at. That actually
21 revealed to us the actual state and status of the funding
22 of the retiree health care benefit that we did a lot of
23 work at the City with bringing people in to analyze the
24 issue. We had subcommittees and work groups to study the
25 issue when we became aware of how underfunded that plan
26 was. That led to a round of bargaining, that we can get
27 into if you'd like, that culminated in agreement beginning
28 in 2009.

1 Q. Can I take you to Exhibit 5505.

2 MR. ADAM: Give us a moment.

3 MR. HARTINGER: For the record, Exhibit 5505 is a
4 memorandum proposing the adoption of a resolution to
5 provide for funding retiree health care from Alex Gurza to
6 the Honorable Mayor and City Council dated April 7, 2009.

7 BY MR. HARTINGER:

8 Q. Are you with me?

9 A. I am.

10 Q. Do you recognize this document?

11 A. I do.

12 Q. It says it's from Alex Gurza. That's you?

13 A. That's me.

14 Q. Are you the author of the document?

15 A. Yes. With assistance of my staff.

16 Q. Is this a true and correct copy of the
17 recommendation that was taken to council for action on or
18 about April 7, 2009?

19 A. Yes, it is.

20 MR. HARTINGER: We would move 5505 into evidence,
21 your Honor.

22 THE WITNESS: Just to clarify, the date is April
23 7. It came to council on April 1st.

24 THE COURT: 5505 is received.

25 (Defendants' Exhibit 5505, previously marked for
26 identification, was received in evidence.)

27 BY MR. HARTINGER:

28 Q. April 21st, 2009, that's depicted in the upper

1 right hand, it says council agenda, April 21.

2 A. Yes. I sometimes point that out because the date
3 of the memo may vary from the date that it was actually
4 presented to council. Memos are usually produced in
5 advance. My memo is dated April 7, and at the upper right
6 when it says council agenda, that means what council
7 meeting was it heard by the City Council.

8 MR. HARTINGER: For the record, I'm displaying the
9 first page of 5505.

10 BY MR. HARTINGER:

11 Q. Can you explain the nature of the recommendation.

12 A. Yes. This was seeking the council to approve
13 agreements that we had reached with the seven bargaining
14 units that are listed there as well as extend the same
15 terms to our unrepresented employees related to funding of
16 retiree health care.

17 The discussions that I mentioned started in 2007
18 culminated in these agreements.

19 Q. And were the agreements adopted by the council?

20 A. Yes, they were.

21 Q. And does the first page here depict the unions who
22 signed on to the agreements?

23 A. This particular -- these particular agreements,
24 yes.

25 Q. Were there agreements with other unions?

26 A. Yes. There was an agreement with the Police
27 Officers' Association around the same time frame that also
28 reached an agreement on retiree health care funding.

1 Q. I want to take you to a page that's marked Gurza
2 000652. Article 25.1 speaks to a transition from current
3 partial prefunding of medical and dental health care to
4 prefunding of the full Annual Retired Contribution, known
5 as the ARC. Are you familiar with the ARC?

6 A. Yes.

7 Q. Can you explain to us what the ARC is.

8 A. The ARC is, as it states, the Annual Required
9 Contribution that is calculated by an actuary about how
10 much funds are needed to set aside every year to fund a
11 benefit. As Mr. Lowman testified earlier in the week, it
12 is comprised of two main components: Normal cost and an
13 amortization payment towards the unfunded liability. The
14 combined -- in very simple terms, it's how much should you
15 be setting aside every year to fund a benefit.

16 Q. And does the ARC encompass unfunded liability?

17 A. Yes. And I can get into more detail. That was a
18 significant part of the discussion with the bargaining
19 units, was the amount of unfunded liabilities that existed
20 in the plan for retiree health care.

21 Q. Has this program changed in any way, that is, the
22 program of employees and the City contributing on a 50
23 percent basis to fund retiree health care?

24 MR. PLATTEN: Objection. Question is vague and
25 ambiguous. This program?

26 MR. HARTINGER: I'll rephrase, your Honor.

27 THE COURT: Okay.

28 BY MR. HARTINGER:

1 Q. The program that's indicated here by this exhibit,
2 has this remained in place in the City?

3 A. Yes. Again, without looking into tremendous
4 detail, these were very complex negotiations getting into
5 a lot of actuarial issues. The ratio of the payments
6 between the City and employees hasn't changed. It's
7 50/50. It was 50/50 before, one-to-one ratio now. What
8 we were discussing in these negotiations is 50/50.

9 As Mr. Lowman testified, the plan -- money had
10 been being set aside by the City and employees on this
11 one-to-one ratio since its inception. Mr. Lowman
12 testified, I think, about a ten-year funding method.
13 That's actually what was in place in the police and fire
14 plan.

15 Federated had a similar but different funding
16 methodology. They were looking at 15 years out. It was a
17 ten-year method and 15-year method. That was one to one.
18 When we sat down and looked at the funding status of the
19 plan, we realized that not enough money was being set
20 aside, and there was consensus that if we didn't start
21 funding it, there may not be enough money in the plan to
22 pay the benefits.

23 When you look -- we looked at funding ratios the
24 other day for pensions. The retiree health care funding
25 ratios were absolutely alarming. We were in one of the
26 plans in single-digit funding ratios. We were talking the
27 other day about 80 or 60 percent funding ratios. One of
28 the plans were nine percent funded ratios. What we did in

1 this agreement is we looked at, what does the actuary say
2 we should be setting aside? What is the annual
3 contribution and where are we?

4 So we didn't affect the one-to-one ratio, but what
5 we decided in this agreement to move towards -- move
6 towards paying the ARC so we didn't affect the one-to-one
7 ratio. We simply decided we needed to pay one to one of
8 the ARC versus one to one of the old funding methodology.

9 Q. Did the old funding methodology pick up any
10 unfunded liability, to your knowledge?

11 A. Well, again, it wasn't the same system as a
12 pension is funded, but it is not pay as you go as
13 Mr. Lowman testified, whereas pay as you go is, you're
14 looking at the number of retirees, how much premiums are
15 being paid out, and cutting a check. There was a little
16 bit -- modest amounts, what we refer to as partial
17 prefunding. This is different. This is moving to a
18 prefunding -- similar dollar pension is prefunding.

19 Q. And to your knowledge, since the one-to-one ratio
20 came into play in the municipal code, was there ever an
21 agreement about whether any part of the one-to-one
22 included unfunded liability or not in any way?

23 A. Well, yes. Exemplified by these agreements. This
24 is an example of where City and employees had equal risk
25 here, equal sharing of the liabilities. And so what
26 this -- clearly there was a plan. If you keep reading the
27 document, it talks about amortization periods, that it
28 would be 30 years. So in essence, this was a plan to pay

1 off the liabilities that existed at that time. And,
2 again, the language is relatively detailed in terms of its
3 actuarial references to one funded liability and paying it
4 off and amortization, et cetera.

5 Q. Did anyone at any time -- did anyone in this 2009
6 time frame inform you or suggest to you that this was
7 somehow unlawful, that employees and the City would be
8 contributing on a one-to-one basis in this manner?

9 A. No. We had a mutual understanding of the
10 challenge that our retiree health care benefit posed to
11 the City and employees, and, ultimately our retirees.
12 When you have a benefit that is ten percent funded, that
13 is alarming. So I think there was a recognition of that,
14 and we had very important agreements on moving towards
15 having that benefit be funded.

16 Q. So I'd like to take you to a new exhibit, 5508.
17 Do you recognize 5508?

18 A. Yes.

19 Q. For the record, it's a memorandum from Alex Gurza
20 to the mayor and City Council dated June 11, 2013,
21 subject, implementation changes to retiree health care and
22 so forth. You're familiar with this document?

23 A. Yes.

24 Q. Is this a true and correct copy of the memorandum
25 that went to the City Council for action on or around June
26 11, 2013?

27 A. Yes. It's similar to the other memo dated June
28 11. Went to the City Council, I believe, June 18.

1 MR. HARTINGER: Your Honor, we would move 5508
2 into evidence.

3 THE COURT: 5508 is received.

4 (Defendants' Exhibit 5508, previously marked for
5 identification, was received in evidence.)

6 BY MR. HARTINGER:

7 Q. So this is a thick document, and I'm not going to
8 go through it line by line with you, but let me place on
9 the Elmo the first page just to identify the groups that
10 participated in the agreement. Does that page, which is
11 page 1, identify the agreements that were reached in the
12 bargaining units?

13 A. It does. I would like to -- however, there was
14 another bargaining unit that we, very shortly after,
15 reached an agreement with as well, so there was a
16 supplemental council memo. There's the eight bargains
17 listed there. In addition, the Association of Legal
18 Professionals, which represents the attorneys in the City
19 Attorney's office, also ended up signing on to this
20 agreement.

21 Q. And can you describe briefly what the effect of
22 this agreement was. What was the intent?

23 A. Actually, what it does, in summary, is modify the
24 retiree health care funding agreement that we had just
25 gone over that we had reached back in 2009.

26 Q. How so?

27 A. Back in 2009, we agreed to phase in to pay the
28 Annual Required Contribution. As I talked about before,

1 we were continuing on the one-to-one ratio, trying to move
2 from the partial prepayment method to payments of the ARC,
3 and we decided to do it in five years. And in the
4 agreement with the Federated bargaining units, in the
5 fifth year, it was going to adjust to pay the ARC. So it
6 was sort of -- think about it as an adjustment mortgage.
7 In the fifth year, it was going to move to wherever we
8 were in the fourth year to the ARC. We had made the
9 agreements anticipating that each year would be similar
10 increments, so by the fifth year, we would be there.

11 As we know, in the actuarial world, things don't
12 turn out the way you think they do, and in that fifth
13 year, that adjustment was going to be very large. Moving
14 from where we were to the ARC was quite significant, which
15 would have meant from one year to the next a very big
16 increase for the City and employees. Remember the
17 one-to-one ratio from one year to the next.

18 And so we actually reached out to the bargaining
19 units last year to ask them to sit down and discuss that
20 with us. We ended up reaching an agreement to modify the
21 funding, in other words, extend the ramp-up, which we
22 called the ramp-up. Think of the ramp-up as a
23 step-by-step phase-in till you get to pay the ARC. This
24 agreement essentially extends that ramp-up up. We're
25 continuing to pay on a one-to-one ratio but just extending
26 it out to when we get to pay the full Annual Required
27 Contribution.

28 Q. When you say the ramp-up, you mean increased

1 amount required in order to fully fund the plan?

2 A. Yes. If you analogize the ARC to the mortgage
3 payment, we have not been making mortgage payments for
4 retiree health care. Essentially, the ramp-up is the
5 steps to start managing that payment, and we simply have
6 agreed to push it out so the increase in one year to the
7 next is not as dramatic for the City and employees.

8 Q. Giving the employees a little bit more time to
9 adjust?

10 A. Correct.

11 Q. I'm going to move to another topic of some
12 interest known as low-cost plan. For the record, I'm
13 displaying, again, a portion of Measure B, Section
14 512-A(c), which is entitled low-cost plan.

15 MR. HARTINGER: Your Honor, I wish to display the
16 other pieces of the municipal code that were previously up
17 in opening, Section 3.28.1980 for Federated and Section
18 3.36.1930D for the police and fire plan.

19 THE COURT: So you're referring to the second page
20 of the 6063?

21 MR. HARTINGER: Yes, your Honor.

22 BY MR. HARTINGER:

23 Q. We've had some testimony at trial about the
24 low-cost plan issue. So let me just ask you your
25 familiarity in general with the concept of paying the
26 premium tied to the lowest cost plan.

27 A. Very familiar with it.

28 Q. When did you become familiar with that concept?

1 A. I would say since I started with the City working
2 in the retirement division in 1994, I became familiar with
3 all the retirement benefits and retiree health care
4 benefits, and that topic has come up ever since then, so
5 I've been familiar with it since my entire employment.

6 Q. And how long, to your knowledge, has the program
7 been in place? That is, the program that the City would
8 pay the retiree premium tied to the lowest cost plan for
9 the employee?

10 A. The concept of low-cost plan has been in place
11 since the inception of the retiree health care benefits in
12 the '80s. However, at one time, what percentage of the
13 low-price plan changed for police and fire, but always
14 tied to the low-price plan.

15 Q. And can you describe how this comes about in terms
16 of there being a low-cost plan. How many plans are
17 offered at any point in time?

18 A. They vary. The amount of plans the City provides
19 does -- to active employees and subsequently to retirees
20 does vary over time.

21 Q. How does that happen? Why do they vary?

22 A. It varies because we decide to offer more choices
23 to our employees. I would say traditionally, we offer
24 three main plans, but that is not always the case. There
25 are times when there are more plans offered.

26 Q. Do you have any knowledge as to what drives the
27 cost of the plan?

28 A. Drives the cost of health care?

1 Q. Any particular plan that is offered for the City
2 of San Jose, yes, health care plans.

3 A. Many factors that drive the cost of health care,
4 including planned experience, the population you're
5 covering. For example, in our plan, we have blended rate
6 with our actives and our retirees, so that's going to
7 yield you different premiums than it would if you were
8 pricing those plans separately. For example, if you went
9 to the market and said, I want to get rates on only
10 retirees, that's going to get you a different and most
11 likely higher premium than if you said you were covering
12 active employees.

13 Again, once you have a plan, then plan experiences
14 how much claims are you having. That's another major
15 factor and very important factor, is the benefits that are
16 covered, what we've referred to as the plan design. What
17 is the plan.

18 Q. When you say plan design, what do you mean by
19 that?

20 A. What I mean by that is the coverage. Is it an HMO
21 plan? Is it a deductible plan? How much are co-pays?
22 Even if you had a co-pay plan, is the co-pay \$25? Is it
23 \$40? How much do I have to pay if I go to the emergency
24 room? What if I'm hospitalized?

25 Insurance companies, as you know, have voluminous
26 documents about what they cover, what they don't, and what
27 the patient pays, the covered person pays. All of those
28 things factor into what the premium that is charged.

1 Q. And has the employee relations negotiated plan
2 design changes over the years?

3 A. We have negotiated plan design changes with our
4 bargaining units, yes.

5 Q. Can you describe how that comes about. What's
6 been the history of that?

7 A. The issue of looking at our health care costs is
8 not unique. As everybody knows, health care plans
9 escalated dramatically over the last decade, where we have
10 continued to face double-digit increases year over year in
11 health care costs. And that affects not only our active
12 health care but our retiree health care.

13 I would say more recently -- when I say recently,
14 in the last five years -- we have been negotiating changes
15 to plan design with the intent of -- I wouldn't say
16 lowering the cost of health care. I would say mitigating
17 the increases of health care. So we have negotiated those
18 changes.

19 Q. To your -- based upon your knowledge as Deputy
20 City Manager and your experience in employee relations,
21 has the City ever made any kind of commitment to tie
22 lowest cost plan to any particular category of employee?
23 For example, a retired police officer gets a police plan
24 and a miscellaneous employee gets a different plan,
25 anything like that?

26 A. Again, in my employment with the City, which dates
27 back to 1994, it has always been the lowest price plan
28 available to active employees, and that is actually very

1 simple to look at. When we get the premiums for a given
2 year, you look at which is the lowest number. You look at
3 the lowest number for single coverage. That's the lowest
4 price plan available to an active employee. You look at
5 the lowest price plan for employees that have dependents.
6 That's the lowest price plan. That's how it's worked in
7 my 17, 18 years.

8 Q. I'm going to take you back to -- I can display on
9 the Elmo -- it's Exhibit 5434, which has been admitted
10 into evidence. It's a Memorandum of Agreement on
11 retirement benefits for the period February 4, 1996,
12 through February 3rd, 2000, third page.

13 A. 5434?

14 Q. Yes. If you can read the screen. I don't need
15 you to do more exercise.

16 So this would be Bates SJ 003841 that is displayed
17 on the screen. Specifically, I'm turning your attention
18 to an arbitration award section and paragraph 6.2, retiree
19 medical benefits. Are you familiar with that section?

20 A. Yes.

21 Q. Is there anything in this -- let me ask you. It
22 says it's a Memorandum of Agreement on retirement benefits
23 pursuant to an award. Can you explain what that is.

24 A. That's the same document we looked at this
25 morning. That was the '96 to 2000 tripartite retirement
26 Memorandum of Agreement between the City, the POA, fire.
27 We ended up going to arbitration on this matter. It did
28 have a retired medical component of it, which is in that

1 6.2, the relevant section you see there, it says the
2 retirement plan will pay. It's not the City who pays.
3 It's the retirement plan pays.

4 Q. Based on the one-to-one contribution?

5 A. Yes. The premium for the lowest priced medical
6 insurance available to active employees.

7 Q. And is there anything in there that would suggest
8 to you or anyone else that active employees meant anything
9 other than what it says, that is, some category of
10 employees?

11 MR. PLATTEN: Objection. That calls for
12 speculation.

13 THE COURT: Sustained.

14 BY MR. HARTINGER:

15 Q. How did you understand this section to operate?

16 A. I understood it to operate the way it has operated
17 since then, which is, it's the lowest price plan available
18 to active City employees.

19 Now, it's important to point out, however, for
20 many years the plans were the same for all employees.

21 Q. Why is that important to point out?

22 A. It's important because if I were a police officer
23 that -- I think retired Officer Salvi testified. If the
24 active police officer plan is the same as the active plan
25 available to AFSCME, I may not know -- I may think of it
26 as the same as actives. But the plans for many years were
27 all the same. So whether you were a police officer, a
28 fire fighter, or librarian, for many years the plans were

1 exactly the same all at the same time.

2 It was more recently, in the last five years, when
3 we started to grapple with medical care, that we
4 negotiated changes at different times with different
5 bargaining units.

6 MR. HARTINGER: For the record, I'm redisplaying
7 on the Elmo Section 1512-A from the Measure B.

8 BY MR. HARTINGER:

9 Q. Mr. Gurza, as Deputy City Manager and involved
10 directly in employee relations, did you understand that
11 Section 1512-A(c), low-cost plan, made any changes to the
12 existing provision of the municipal code?

13 MR. ADAM: Objection.

14 MR. PLATTEN: Leading.

15 MR. PATERSON: Join.

16 MR. ADAM: Calls for a legal conclusion.

17 THE COURT: Overruled.

18 THE WITNESS: No, it does not. And that's the way
19 the plan design changes in the last five years have been
20 made. That section makes no change to the way the
21 low-price plan is currently determined, which as I
22 testified, when you look at all plans, which is the lowest
23 cost.

24 BY MR. HARTINGER:

25 Q. I want to take you to an exhibit that was marked
26 for identification and not admitted into evidence. It's
27 Defendants' Exhibit 5511, entitled City of San Jose
28 Department of Retirement Services 2013 non-medical monthly

1 retiree rates. It's not in your book. I have to hand it
2 to you. I think copies were distributed by counsel
3 earlier.

4 MR. ADAM: When was that?

5 MR. SPELLBERG: When Officer Salvi was testifying.

6 MR. HARTINGER: May I approach, your Honor?

7 THE COURT: Yes.

8 MR. HARTINGER: May I approach again, your Honor,
9 and show counsel?

10 BY MR. HARTINGER:

11 Q. Mr. Gurza, showing you what's been marked for
12 identification as Exhibit 5511. Do you recognize that
13 document?

14 A. I do.

15 Q. Is that a true and correct copy of a rate sheet
16 put out by the retirement system?

17 A. It's put out by the City's department of
18 retirement services, yes.

19 MR. HARTINGER: Your Honor, we would move 5511
20 into evidence.

21 MR. ADAM: No objection.

22 THE COURT: 5511 is received.

23 (Defendants' Exhibit 5511, previously marked for
24 identification, was received in evidence.)

25 BY MR. HARTINGER:

26 Q. Because that's my only copy, I'm going to put it
27 on the Elmo, if that's okay, Mr. Gurza.

28 MR. ADAM: I have extra copies.

1 BY MR. HARTINGER:

2 Q. You were here during Mr. Salvi's testimony?

3 A. I was.

4 Q. He was complaining -- I won't say complain. He
5 was testifying about the premium that he now had to pay
6 because of the rates that were available to him. Do you
7 recall that testimony?

8 A. I do.

9 Q. So I'm going to display 5511. I don't know if
10 that helps anybody. Can you explain your understanding of
11 what plans were available to Mr. Salvi and how the options
12 worked pursuant to the low-cost plan feature in the San
13 Jose plan.

14 MR. ADAM: Objection on vagueness as to the time
15 frame, your Honor.

16 THE COURT: Would you clarify, please.

17 MR. HARTINGER: The question would be with respect
18 to calendar year 2013.

19 THE COURT: Go ahead.

20 THE WITNESS: So it might serve a little important
21 to provide background. First, the City, who -- not the
22 retirement system who contracts for health care. And so
23 the retiree rates are -- this sheet is produced after --
24 through our HR department. We receive rate renewals from
25 our providers and set the rates.

26 I think what would be important to walk through
27 how our retiree health care works, to move the slide down
28 a little bit to see the top. Not the very top. There's a

1 line that says "lowest cost plan." There you go.

2 So the first step before you can put this chart
3 together is to determine what the lowest cost plan is
4 available to active employees.

5 And you'll see here it has numbers in it. But
6 it's not -- it's Kaiser family, 1,139.70, and Kaiser
7 single, 457.70. Those for 2013 are the lowest priced
8 plans.

9 BY MR. HARTINGER:

10 Q. You're looking at this?

11 A. I'm looking up at the top. See that?

12 Q. Yes.

13 A. So you first look at what is --

14 Q. So the record is clear, you're pointing at the top
15 of the page. Across the box, it says lowest cost plan
16 available to active employees, Kaiser family, \$1,139.70?

17 A. Yeah. Retiree health care perspective, think of
18 that as step one, which is what is the lowest plan price
19 available to active employees. That's any active
20 employee. That then drives everything else.

21 So if you think about the retiree health care
22 benefit the City provides, that set, the stipend, or
23 whatever word you'd like to use, to what a retiree can
24 apply toward his or her choice to retiree health care,
25 they don't have to choose those plans. It just sets the
26 dollar amount. So in this case, there's \$1,139.70 for
27 somebody that has dependents to spend on retiree health
28 care, and for a single, 457.70.

1 So you then move down to the Kaiser deductible HMO
2 plan, which happens to be the low-price plan that year.
3 So you'll see the retiree pays zero because that sets the
4 foundation for the retiree health care plan contribution
5 towards health care, and then everything flows from that.
6 So if a retiree chooses something else -- which they have
7 many choices. Retirees actually have more choices,
8 especially if you get into Medicare. You can choose
9 anything else. You simply pay the difference.

10 Think of it as that stipend amount. It drives the
11 contribution of the plan. Then the retiree pays the
12 balance or the difference. Some retirees like Kaiser;
13 some do not. Some pay the difference; some live out of
14 the area. Retirees have many reasons to choose other
15 plans or not be able to choose plans depending on the
16 coverage area. Then they simply pay the difference
17 between the low-price plan and the actual cost of the
18 premium.

19 Q. So as you understood Mr. Salvi's complaint -- I'm
20 sorry. Not complaint -- testimony, he had chosen a
21 different plan than Kaiser?

22 A. Yeah. His cost for the plan that he had the year
23 before did go up. There's no question about that. So I
24 think to put it in a way of concern, his concern was that
25 to stay in the same coverage plan that he had the previous
26 year, he now had to pay more than he did before, and that
27 happened because there was a lower price plan put in place
28 that caused the premium for the particular plan he wanted

1 to stay in to be higher than it was the previous year.

2 MR. HARTINGER: One moment, your Honor.

3 THE COURT: In other words, even if the cost of a
4 particular plan does not change, if the stipend, as you
5 explained it, goes down, the price of that plan
6 effectively goes up?

7 THE WITNESS: Yes.

8 The other thing, your Honor, to keep in mind is
9 that the health care plans don't all go up at the same
10 rates. So let's say you had a retiree who liked Blue
11 Shield. Well, since the stipend is driven off the
12 low-price plan, Blue Shield may go up not as much as,
13 let's say, the Kaiser did. So that also, from year to
14 year, can change how much you pay.

15 And there are times that our health care rates go
16 up the same. Blue Shield may increase by nine percent and
17 so does Kaiser, but other times Kaiser maybe by a smaller
18 amount and the other may go up a higher amount. That can
19 also change for -- a retiree might have to pay for the
20 same thing they had been in the year before.

21 THE COURT: Any other questions for Mr. Gurza?

22 MR. HARTINGER: Yes, your Honor.

23 BY MR. HARTINGER:

24 Q. Again, I'm going to display --

25 THE COURT: Can I ask one more? Do you get a new
26 chart every year?

27 THE WITNESS: Absolutely. We do a new chart for
28 active every year and new chart for retirees every year in

1 anticipation of open enrollment, which is done in the fall
2 of every year.

3 BY MR. HARTINGER:

4 Q. For the record, again, I'm displaying a copy of
5 the charter Section 1512-A(c), low-cost plan, with the
6 municipal code. My question is, in terms of how you have
7 applied low-cost plan, did anything in Measure B that is
8 Section 1512-A(c) change what was already in the municipal
9 code?

10 MR. ADAM: Objection. Calls for a legal
11 conclusion; calls for speculation.

12 MR. PLATTEN: Same, your Honor.

13 MR. PATERSON: AFSCME joins.

14 MR. SILVER: Same here for retirees.

15 THE COURT: Overruled.

16 THE WITNESS: No, it did not. This last plan
17 we've been talking about, the high-deductible plan, this
18 was only one of the changes that we made in the same
19 manner, which is moving plan design changes. So we've
20 done it several times, and not with all bargains at the
21 same time.

22 If I can clarify. Our low-price plan for many
23 years was a Kaiser plan that had zero co-pay. We got to
24 the point where we have one of the few Kaiser plans, not
25 even a payment for emergency visit. So we started
26 negotiating plan design changes from zero co-pay plan to
27 \$10, from \$10 to 25, then for this one. And we did not
28 reach agreements to change those plans with all bargaining

1 units at the same time, despite that it was the low-price
2 plan.

3 MR. HARTINGER: Your Honor, we have, as I say, a
4 stipulation in the works about the admission of additional
5 exhibits that I would otherwise have to authenticate
6 through and move into evidence through Mr. Gurza. So with
7 that reservation, I have no further questions.

8 THE COURT: Okay. POA?

9 MR. ADAM: Can I ask for two minutes, your Honor,
10 to organize my notes and take a quick break?

11 THE COURT: Okay.

12
13 CROSS-EXAMINATION

14 BY MR. ADAM:

15 Q. Good afternoon, Mr. Gurza.

16 A. Good afternoon, Mr. Adam.

17 Q. We are previously acquainted, are we not?

18 A. Yes, we are acquainted.

19 Q. Let me direct your attention to what was marked as
20 City Exhibit 6018. You see that document?

21 A. I do.

22 Q. And Mr. Hartinger asked you about that document on
23 direct exam; right?

24 A. He did.

25 Q. And you testified that this is a true
26 representation of the total compensation of employees
27 represented by San Jose POA, did you not?

28 A. Yes. With the caveat of the source footnote at

1 the bottom.

2 Q. Okay. So isn't it true that this also includes
3 the cost of -- strike that.

4 Isn't it true that this also includes costs for --
5 strike that.

6 Isn't it true that this also includes costs for
7 individuals who are not represented by San Jose POA?

8 A. I'm not aware that it includes people not
9 represented by the POA.

10 Q. How about column number two on retirement costs.
11 That includes costs associated with former employees of
12 the City who are not represented by San Jose POA and
13 collective bargaining; isn't that true?

14 A. That includes the contribution rates established
15 by the retirement board that is the City employee, and
16 that's the City's portion of the contributions set by the
17 retirement board.

18 Q. Including for people who are retired; correct?

19 A. I think if you're referring to the actuarial
20 calculations of the contribution rate -- I'm not quite
21 sure what you're asking me.

22 Q. Is this \$76,000 figure, which is -- strike that.

23 Is this an average figure for each employee
24 currently in the bargaining unit represented by San Jose
25 POA?

26 A. It's the total compensation -- budgeted
27 compensation costs that the City pays for employees
28 represented by the POA.

1 Q. This includes amounts -- the retirement components
2 of this chart includes costs associated with unfunded
3 liability, does it not?

4 A. Yes. My understanding of the contribution rate as
5 determined by the retirement board as to primary
6 components, normal cost, and amortization of the unfunded
7 liability, it includes retiree health care.

8 Q. And that unfunded liability component includes not
9 only active employees, it includes retirees, does it not?

10 A. The retirement system does not provide us with
11 different contribution rates for individuals. They
12 provide us with a composite rate.

13 Q. You're paying off the cost for people who have
14 already retired as well; right?

15 A. My understanding is the unfunded liability as a
16 composite includes unfunded liabilities that can be
17 created for many reasons.

18 THE COURT: Are you through with 6018?

19 MR. ADAM: Yeah.

20 THE COURT: Is there any further typographical or
21 arithmetic issue with this exhibit?

22 MR. SILVER: There's none, your Honor.

23 THE COURT: Go on.

24 BY MR. ADAM:

25 Q. Mr. Gurza, you testified about your familiarity
26 with the MMBA legal framework for collective bargaining;
27 right?

28 A. Yes.

1 Q. And you testified about its interaction with the
2 San Jose charter on collective bargaining; right?

3 A. Yes.

4 Q. So when a labor association and a City enters into
5 a Memorandum of Understanding -- or Memorandum of
6 Agreement it's called down here; right?

7 A. Yes.

8 Q. That's a legally binding document once it's
9 approved by the City and approved by the membership;
10 right?

11 MR. HARTINGER: Calls for legal conclusion, your
12 Honor.

13 THE COURT: Sustained.

14 MR. ADAM: Your Honor, the witness testified to
15 knowing the framework of how it works. We've been seeing
16 collective bargaining agreements for the last three hours.
17 I'm asking him if he -- collective bargaining agreement,
18 in his professional experience, constitutes a binding
19 document.

20 THE COURT: Why don't you ask him that question.

21 BY MR. ADAM:

22 Q. Did you understand that question?

23 A. I think I did. You enter into a contract, the
24 parties -- the intent of the parties is to abide by the
25 particular terms specified in that agreement.

26 Q. Legally binding once the City Council ratifies it;
27 correct?

28 MR. HARTINGER: Same objection, your Honor.

1 THE COURT: Overruled.

2 THE WITNESS: So an agreement on a new contract,
3 we are not -- we, as the City representatives, are not
4 authorized to enter into a final binding agreement. It
5 must be presented to the City Council, the governing body,
6 in open session for their approval.

7 BY MR. ADAM:

8 Q. It's tentative in two respects; right? Before
9 ratification it's tentative because the membership of the
10 particular union needs to ratify it; right?

11 A. Subject to the particular bargaining unit's
12 internal rules and procedures, but typically, yes, a
13 bargaining unit must ratify a tentative agreement.

14 Q. Then as you pointed out, so does the council need
15 to ratify in open session; right?

16 A. If you're talking about a tentative agreement on a
17 full contract, yes. There are times when we enter into
18 agreements that we can execute, but a contract that is for
19 a Memorandum of Agreement is subject to the council
20 approval.

21 Q. Usually it requires sums of monies for the council
22 to approve; is that fair?

23 A. Generally, yes.

24 Q. And once ratification happens, both on the union
25 side and the City side, that's a binding contract; right?

26 A. When you enter into a contract, again, the intent
27 is to honor the particular terms of the contract.

28 Q. That's been San Jose's intent during your time as

1 a high-level labor relations manager; right?

2 MR. HARTINGER: Objection. Overbroad in terms of
3 San Jose's intent.

4 MR. ADAM: Your Honor, the witness has been
5 testifying about --

6 THE COURT: In the context of his duties. Is that
7 your question?

8 BY MR. ADAM:

9 Q. In the context of your duties.

10 A. In the context of my duties negotiating labor
11 contracts, Memoranda of Agreements with bargaining units
12 that are under my purview, clearly I can say the intent is
13 for both parties, the City and the bargaining unit, to
14 abide by the particular terms of the agreements that we
15 reached at the bargaining table.

16 Q. Let me ask you about the mechanism through which
17 the City ratifies these collective bargaining agreements.
18 As we've seen from some of the exhibits that Mr. Hartinger
19 put in, that's done by a resolution; right?

20 A. Yes. It's brought to the City Council, and by
21 their action, they are adopting a resolution approving the
22 terms of that particular agreement.

23 Q. And in the resolution, typically there's an
24 overview of the agreement written by yourself or someone
25 else with a similar scope of duties as you; correct?

26 A. No. Actually not. The actual resolution is
27 written by the City Attorney's office, and what they use
28 to write that document is our council memo, and we attach

1 the entire agreement. So they are the ones that summarize
2 it in a resolution, not me or my staff.

3 Q. So as we've seen in some of the documents
4 Mr. Hartinger has put in, there's typically a resolution
5 and what you describe was a council memo, and then either
6 the entire agreement itself or at least the tentative
7 agreements reached at the bargaining table; is that fair?

8 A. Actually, in the last few years, I don't recall
9 exact year, we attach the entire agreement now so that
10 people can review it. In the past, we only provided a
11 summary. Now the entire agreement is available to the
12 City Council and the public to review before the council
13 takes action.

14 Q. So, again, let me restate the question. Typically
15 there's three elements. There's the resolution drafted by
16 the City attorney, there's typically a council memo
17 drafted by someone in your office, and then there's the
18 entire MOA itself; right?

19 A. Typically, yes. Again, the MOA is usually the
20 tentative agreement that was reached. So similar to the
21 exhibit Mr. Hartinger showed, it would be all the
22 documents that have the signature of a negotiator on the
23 tentative agreements that were reached during those
24 negotiations.

25 Q. And let me take the second of those three
26 documents, the City Council memo. Is it fair to describe
27 that as basically the City's summary of what's contained
28 in the tentative agreement or the agreement as a whole?

1 A. Yes. I want to highlight the word "summary"
2 because there are agreements that we reach that are very
3 extensive, and so it is an attempt to simply summarize the
4 highlights of the agreements that were reached.

5 Q. In terms of what is the binding agreement between
6 the parties, it's only the MOA; right? It's not the City
7 Council memo. That's not the agreement between the
8 parties?

9 MR. HARTINGER: Calls for a legal conclusion.

10 BY MR. ADAM:

11 Q. If you know, within the scope of your duties.

12 THE COURT: Okay. Overruled.

13 THE WITNESS: Yeah. I'm not sure. I think the
14 council memo is important because it is the notice to the
15 public, which is the most important element of a council
16 memo, to provide notice to the public of what's being
17 negotiated. And so we think it's very important that
18 documents -- City Council thinks it's very important so
19 the public knows what is being negotiated between the City
20 and our bargaining unit. I don't know the legal import of
21 the council memo, but I know the public aspect of it is a
22 very important component because we strive to make sure
23 that we disclose all the elements to the public of what's
24 being negotiated.

25 BY MR. ADAM:

26 Q. Let me ask you this. The resolution is drafted
27 solely by the City Council; right? City attorney?

28 A. Yeah. I don't know if the City attorney ever uses

1 anybody else outside the city attorney office, but I can
2 tell you I've never drafted one of those resolutions.

3 Q. Union doesn't help write that; right? In your
4 experience within the scope of your duties.

5 A. Not that I am aware of.

6 Q. Similarly, with respect to the council memo, the
7 union doesn't help write that. That's coming out of your
8 office?

9 A. We don't typically provide a copy of the City
10 Council memo to the bargaining unit, but they'll generally
11 help us write it.

12 Q. But it's the MOA itself that's the bilateral
13 agreement between the parties, the union, and the City;
14 right?

15 MR. HARTINGER: Calls for a legal conclusion.

16 THE COURT: Would you rephrase the question,
17 please.

18 BY MR. ADAM:

19 Q. In your experience, within the scope of your
20 duties, it is the MOA itself as opposed to the resolution
21 or the City Council memo that constitutes the agreement
22 between the parties?

23 MR. HARTINGER: Same objection, and asked and
24 answered.

25 THE COURT: Overruled.

26 THE WITNESS: Again, I can't really comment on the
27 legal aspects of it. Again, the council memo is intended
28 to summarize what we've agreed to, but what is signed by

1 both parties is the Memorandum of Agreement or the
2 tentative agreements that were reached.

3 BY MR. ADAM:

4 Q. So we've heard some testimony this week about
5 situations where a collective bargaining agreement also
6 triggers an ordinance. Are you aware, in your experience
7 of circumstances, where that's happened?

8 A. Yes.

9 Q. That's not always true; right? Not every MOA
10 requires an ordinance?

11 A. That's correct.

12 MR. HARTINGER: Calls for legal conclusion.

13 THE COURT: The witness has answered.

14 BY MR. ADAM:

15 Q. So isn't it true that a typical circumstance in
16 which an ordinance would be required is with respect to
17 when retirement benefits are negotiated?

18 MR. HARTINGER: Same objection.

19 THE COURT: Overruled.

20 THE WITNESS: That's one example. And not always
21 in that case, but that's one example that may be an
22 ordinance.

23 BY MR. ADAM:

24 Q. That's because the retirement plan is contained in
25 the municipal code; right?

26 A. The retirement benefits, yes, are contained in the
27 municipal code. So if we had reached an agreement that
28 required modification of the municipal code, then that

1 would lead to the meet of an ordinance which then amends
2 to a municipal code.

3 Q. Let me give you an example. Let's take a contract
4 in which -- strike that.

5 You heard testimony earlier in this proceeding
6 about the POA negotiating increases in the pension cap;
7 right? From 75 percent to 80 percent, 80 percent to 85
8 percent, finally 85 percent to 90 percent?

9 A. Yes. That was all during my employment.

10 Q. So it's true, is it not, that when each of those
11 agreements were reached, they necessitated a change in the
12 municipal code by demanding an ordinance?

13 MR. HARTINGER: Calls for legal conclusion.

14 BY MR. ADAM:

15 Q. Right? In your experience.

16 THE COURT: Overruled.

17 THE WITNESS: You indicated agreements. Not all
18 those changes were in agreements. Some were imposed by
19 arbitrators.

20 BY MR. ADAM:

21 Q. The first one for the cops was; right? The 75 to
22 80 percent was the -- was that Bogue?

23 A. That was police and fire. And that was imposed on
24 the City by Arbitrator Bogue.

25 Q. And that required an ordinance to implement that;
26 correct?

27 MR. HARTINGER: Calls for a legal conclusion.

28 THE COURT: Please rephrase the question.

1 BY MR. ADAM:

2 Q. In your experience, based on your knowledge,
3 having been the City's chief negotiator, when the
4 arbitrator issued that award, did the City create an
5 ordinance to change the municipal code?

6 A. I recall that -- it's been a long time now. I
7 recall that a municipal code amendment was made subsequent
8 to the board -- the Bogue award.

9 Q. Now, was that also true when there was a
10 negotiated agreement by the POA to go from 80 percent to
11 85 percent?

12 A. My recollection, yes. That also was put into the
13 municipal code.

14 Q. And same with the move from 85 percent to 90
15 percent; correct?

16 A. Yes. One was by agreement and one was
17 arbitrated -- imposed by Arbitrator Cossack, and I do
18 believe -- my recollection was that those did get inserted
19 into the municipal code.

20 Q. There's been other years where POA has negotiated
21 salary improvement without increasing -- without improving
22 retirement benefits; right?

23 A. Can you repeat the question again.

24 Q. Not every collective bargaining agreement the POA
25 has negotiated in your tenure has had pay increases and
26 retirement increases. Some have only had pay increases;
27 right?

28 A. I see. Yes. We've negotiated some contracts --

1 you limited to Police Officers' Association?

2 Q. Yeah.

3 A. -- where we negotiated contracts that were -- that
4 did not contain retirement benefit enhancements. That
5 would be true.

6 Q. And if it's -- if there's no retirement benefit
7 enhancement, if it's just a salary increase, in your
8 experience, the City hasn't created an ordinance to
9 implement that; right? You just go ratify it by the
10 council? You don't need an ordinance; right?

11 A. Again --

12 MR. HARTINGER: Calls for legal conclusion.

13 THE COURT: Are you asking whether, in fact, there
14 was an ordinance?

15 MR. ADAM: I'm asking whether, in his experience,
16 when the City agrees to a pay increase with the POA in a
17 collective bargaining agreement that does not also include
18 a pension increase, whether that has been implemented
19 through an ordinance or can it be implemented without an
20 ordinance.

21 MR. HARTINGER: My problem is with "can."

22 THE COURT: You were fine right up to the very
23 end. Is your question whether, in his experience, when
24 the City agrees to a pay increase with the POA in a
25 collective bargaining agreement, that does not also
26 include a pension increase, whether that has been
27 implemented through an ordinance?

28 MR. ADAM: Yes.

1 THE WITNESS: I guess I'm not quite clear if
2 you're saying --

3 BY MR. ADAM:

4 Q. Let me restate. Do you need an ordinance, under
5 those circumstances, to implement the increase in pay?

6 MR. HARTINGER: Calls for a legal conclusion.

7 MR. ADAM: That's the only circumstance.

8 THE COURT: Sustained.

9 BY MR. ADAM:

10 Q. You testified about the 2010-2011 POA agreement
11 with the City. Do you recall that?

12 A. I do.

13 Q. And that's the agreement where the 5.25 percent
14 concession was made by the POA; right?

15 A. Yes. It was 5.25 percent in additional retirement
16 contributions.

17 Q. In the following contract, 2011 to 2013, the POA
18 made a ten percent concession; right?

19 A. The agreement, yes. And that contract included a
20 ten percent concession, correct.

21 Q. Total compensation; right?

22 A. Total compensation, correct.

23 Q. Isn't it true that it was the City that did not
24 want to extend the type of concession that the POA and
25 City had negotiated in 2010 to 2011?

26 A. The agreement -- first of all, the '10-'11 did not
27 reach ten percent of total compensation. It was only one
28 time. The subsequent contract reached ten percent ongoing

1 total compensation, and the result of those negotiations
2 were, it was almost all as a straight base pay cut.

3 Q. A number of employees left the service of the San
4 Jose Police Department during the year in which the 2010
5 contract was in effect; correct?

6 A. Well, yes. When you say left, are you referring
7 to the layoffs that occurred?

8 Q. For any reason.

9 A. Yes.

10 Q. When those employees left, many of them were
11 entitled to receive pension contributions returned to
12 them; right?

13 A. Well, my understanding of the rules of the
14 retirement system is any employee who separates from City
15 service may choose what they refer to as an ROC, return of
16 contributions.

17 Q. That included getting the 5.25 percent extra
18 contribution back; right?

19 A. Yes. Which is one of the challenges with it.

20 Q. That's why you didn't want to continue that
21 framework of the agreement in the following year?

22 A. That was one of the City's concerns; that we may
23 not achieve the savings we had otherwise intended to
24 achieve.

25 Q. Could you take a look at Exhibit 6000.

26 A. I have it.

27 Q. So you described the manner in which the benefit
28 for police officers operates. Do you recall that

1 testimony?

2 A. I do.

3 Q. And isn't it true that the 90 percent benefit for
4 San Jose police officers is different than the typical 90
5 percent benefit that police officers in other
6 jurisdictions enjoy?

7 MR. HARTINGER: Objection. Vague; lacks
8 foundation.

9 THE COURT: Overruled.

10 THE WITNESS: If you're referring to the three
11 percent at 50 formula, that's a CalPERS formula. If
12 that's your question, then the answer is yes, this is
13 different than the three percent at 50 formula.

14 BY MR. ADAM:

15 Q. Under that three percent at 50 formula, an
16 employee gets three percent for every year beginning year
17 one; right?

18 A. That's my understanding of the CalPERS three
19 percent at 50 formula.

20 Q. The San Jose plan is a bit different; right? You
21 only get two and a half percent for the first 20 years?

22 A. Yes. Our formulas have always been different from
23 CalPERS formulas, even before these changes.

24 Q. In order to get the four percent per year after 20
25 years of service, that 20 years has to be with San Jose
26 Police Department; correct?

27 A. I'd have to refresh my recollection of that
28 particular provision.

1 Q. Would you turn to Measure B, Exhibit 5000.

2 A. I'm sorry. Which one?

3 Q. Measure B. It's 5000. You testified about your
4 familiarity with Measure B on direct; right?

5 A. Yes.

6 Q. Could you refer to what's Bates stamped as page
7 103, Section 1508. That's a plan with respect to new
8 employees at the City; correct?

9 A. Are you referring to 1508-A?

10 Q. Yeah.

11 A. Yes. That indicates future employees, yes.

12 Q. And this section of Measure B has been
13 implemented; correct?

14 A. Well, not for all employees. It has been
15 implemented in the Federated system for all employees
16 hired on or after September 30 of 2012.

17 Q. Has it been implemented for police officers?

18 A. It is in the process of being implemented. The
19 ordinance effective date is August 4 of 2013, so we don't
20 have anybody in that plan yet. Soon to be implemented.
21 It has not been implemented for employees represented by
22 the San Jose Fire Fighters' Union.

23 MR. ADAM: Move to strike to the extent the answer
24 went beyond the employees represented by San Jose police
25 officers. I think that was my question, has it been
26 implemented for San Jose police officers.

27 THE COURT: What are you asking to strike?

28 MR. ADAM: I believe my question was has this been

1 implemented for San Jose police officers.

2 THE COURT: What are you asking to strike?

3 MR. ADAM: Where Mr. Gurza testifies about its
4 application to employees not represented by San Jose
5 police officers.

6 THE COURT: The last sentence is stricken.

7 Let's break here for the day. I have a few
8 questions. Will we be taking Mr. Bartel out of order
9 tomorrow morning?

10 MR. SPELLBERG: No, your Honor.

11 THE COURT: We're going to conclude Mr. Gurza's
12 testimony first. Will there be any other witnesses?

13 MR. SPELLBERG: We have Clare Murphy on our list.
14 Perhaps we'll withdraw her. Seems likely, but we haven't
15 made that decision yet.

16 THE COURT: Previously, all the plaintiffs had
17 rested except for documents issues. Are we going to be
18 resolving all those documents issues by this stipulation,
19 or will there be additional evidence from any plaintiff in
20 their case in chief?

21 MR. ADAM: Possibly for the POA one witness to
22 authenticate one document, although I'm still working on
23 the City.

24 MR. PATERSON: Your Honor, for AFSCME, we do not
25 anticipate any other witnesses. However, we have two
26 requests for judicial notice pending. The first one
27 involves documents not covered by the stipulation. The
28 second one does so. Assuming we reach the tentative, we

1 make the tentative agreement final on the stip, we would
2 withdraw the second request for judicial notice. I
3 believe the first one filed on July 16 has been fully
4 briefed.

5 THE COURT: When am I going to know whether I need
6 to rule on any of that?

7 MR. PATERSON: I think the July 16 request for
8 judicial notice, you would need to rule regardless. The
9 second one --

10 THE COURT: The whole thing?

11 MR. PATERSON: I beg your pardon?

12 THE COURT: The whole thing?

13 MR. PATERSON: Yes, your Honor.

14 THE COURT: And the second one?

15 MR. PATERSON: I expect to withdraw tomorrow once
16 we finalize or execute the stipulation. What I mean is I
17 will withdraw it once we execute the stipulation.

18 MR. HARTINGER: There will be put before you, your
19 Honor, I think, a series of documents that have been
20 stipulated as to authenticity, and there are objections as
21 to admission. And I think that can go relatively quickly
22 because they're categories.

23 MR. PATERSON: I agree with that, your Honor.

24 MR. ADAM: That's true for both sides.

25 THE COURT: Okay. Does any plaintiff anticipate
26 presenting evidence?

27 MR. PATERSON: AFSCME would expect to call one
28 witness for rebuttal.

1 THE COURT: Who's that?

2 MR. PATERSON: That's Charles Allen.

3 THE COURT: Anyone else?

4 MR. ADAM: The POA may need to recall John Robb on
5 one minor point. But perhaps Mr. Gurza can refresh his
6 recollection on the 20 year in order to get the four
7 percent overnight.

8 MR. PLATTEN: At this point, your Honor,
9 anticipating no surprise tomorrow from Mr. Bartel's
10 testimony, Sapien plaintiffs do not anticipate a rebuttal
11 witness.

12 THE COURT: Retired Employees?

13 MR. SILVER: We do not anticipate.

14 MR. HARTINGER: We suggest that perhaps sounds
15 like there could be proffers made in terms of rebuttal
16 testimony, and perhaps an agreement can be reached, or
17 maybe it's not rebuttal evidence. I don't know.

18 THE COURT: It might be useful to discuss that to
19 see if that's necessary. Otherwise it doesn't sound like
20 there's lengthy rebuttal evidence, in any event.

21 So tomorrow we will be discussing dates. I would
22 appreciate if you would meet and confer and come prepared
23 to make proposals that will work with everyone's calendar.
24 I had three dates in mind. We may not need the first of
25 them, which is, if we had any substantial rebuttal
26 evidence, we'd need a date for further evidence. The
27 second date is the day for your submission of your written
28 closing arguments and your proposed statements of

1 decision. And then the third date is a date on which, if
2 the Court needs it, we would convene for questions
3 concerning your written closings.

4 I think a rule of thumb might be that there should
5 be as much time between the close of evidence and your
6 written closing and proposed statements of decision as
7 there would be between that date and the date we're saving
8 for the Court's questions, the theory being that it'll
9 take me as long to read it as it took you to write it.

10 So anything else before we adjourn?

11 MR. PATERSON: Your Honor, with respect to
12 potential rebuttal evidence, are there dates that are not
13 available for the Court that we should have in mind?

14 THE COURT: Good question. Let's do it this way.
15 If there's going to be a need for rebuttal, then why don't
16 you suggest maybe three or four different dates that work
17 for everybody in case I have limitations on my schedule.
18 Good question. Thank you. Anything else?

19 MR. PATERSON: Thank you, your Honor.

20 THE COURT: Thank you. 8:45.

21 (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 25, 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 11, 2013.

16
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18 { _____ }

19 ROSE M. RUEMMLER

20 Official Reporter, CSR No. 9053
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