

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

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

WEDNESDAY, OCTOBER 19, 2011

9:34 A.M.

JAMES F. PETERS, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
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APPEARANCES

BOARD MEMBERS

Mr. Rob Feckner, President

Dr. George Diehr, Vice President

Mr. Michael Bilbrey

Mr. John Chiang, represented by Mr. Terrence McGuire

Mr. Richard Costigan

Mr. J.J. Jelincic

Mr. Henry Jones

Mr. Bill Lockyer, represented by Mr. Grant Boyken

Ms. Priya Mathur(via teleconference)

Mr. Tony Oliveira

Mr. Ronald Yank, also represented by Mr. Howard Schwartz

STAFF

Ms. Anne Stausboll, Chief Executive Officer

Ms. Ann Boynton, Deputy Executive Officer

Mr. Robert Glazier, Deputy Executive Officer

Mr. Stephen Kessler, Deputy Executive Officer

Ms. Donna Lum, Deputy Executive Officer

Mr. Joe Dear, Chief Investment Officer

Mr. Danny Brown, Chief, Office of Governmental Affairs

Mr. Russ Fong, Acting Chief Financial Officer

Ms. Janine Guillot, Chief Operating Investment Officer

Mr. Dale Jablonsky, Assistant Executive Officer

APPEARANCES CONTINUED

STAFF

Ms. Lee-Anne Karcher, Board Secretary

Mr. Alan Milligan, Chief Actuary

Ms. Patricia Miles, Senior Staff Counsel

Mr. Peter Mixon, General Counsel

Mr. Brad Pacheco, Chief, Office of Public Affairs

Ms. Karen Ruiz, PSR Project Manager

Ms. Marguerite Seabourn, Assistant Chief Counsel

ALSO PRESENT

Ms. Willien Davis

Mr. Thomas Harron

Ms. Willette Jacobs

Mr. Tom Lussier, Lussier, Gregor, Vienna & Associates  
(via teleconference)

Mr. Adam Roy, KPMG

Mr. John Nichols, Accenture

Mr. Chirag Shah, Shah & Associates

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1 BOARD MEMBER MATHUR: Here.

2 BOARD SECRETARY KARCHER: Lou Moret?

3 BOARD MEMBER MORET: Here.

4 BOARD SECRETARY KARCHER: Tony Oliveira?

5 BOARD MEMBER OLIVEIRA: Here.

6 BOARD SECRETARY KARCHER: And Ronald Yank?

7 BOARD MEMBER YANK: Here.

8 PRESIDENT FECKNER: Thank you. And for the  
9 record, I want you to know that Priya is not  
10 ventriloquist. She's actually on the phone. She was  
11 properly noticed to be off site, so she is legally  
12 permitted to participate and vote in these meetings.

13 So that being said, we move to Agenda Item 2,  
14 Pledge of Allegiance. I've asked Mr. Robert Hill to lead  
15 us in the pledge this morning.

16 Please rise.

17 (Thereupon the Pledge of Allegiance was  
18 Recited in unison.)

19 PRESIDENT FECKNER: Item 3, Approval of the  
20 Meeting Minutes. What's the pleasure of the Board?

21 BOARD MEMBER COSTIGAN: Move it.

22 VICE PRESIDENT DIEHR: Second.

23 PRESIDENT FECKNER: It's been moved by Mr.  
24 Costigan, seconded by Mr. Diehr to approve the minutes.

25 Any discussion on the motion?

1           Seeing none, could we please call the roll?

2           BOARD SECRETARY KARCHER: George Diehr?

3           VICE CHAIRPERSON DIEHR: Yes.

4           BOARD SECRETARY KARCHER: Michael Bilbrey?

5           BOARD MEMBER BILBREY: Yes.

6           BOARD SECRETARY KARCHER: Terry McGuire for John  
7 Chiang?

8           ACTING BOARD MEMBER MCGUIRE: Yes.

9           BOARD SECRETARY KARCHER: Dan Dunmoyer?

10          Richard Costigan?

11          BOARD MEMBER COSTIGAN: Yes.

12          BOARD SECRETARY KARCHER: J.J. Jelincic?

13          BOARD MEMBER JELINCIC: Yes.

14          BOARD SECRETARY KARCHER: Henry Jones?

15          BOARD MEMBER JONES: Abstain.

16          I was absent.

17          (Laughter.)

18          BOARD SECRETARY KARCHER: Grant Boyken for Bill  
19 Lockyer?

20          ACTING BOARD MEMBER BOYKEN: Yes.

21          BOARD SECRETARY KARCHER: Priya Mathur?

22          BOARD MEMBER MATHUR: Yes.

23          BOARD SECRETARY KARCHER: Lou Moret?

24          BOARD MEMBER MORET: Do I have to do the same  
25 too? I abstain.

1 BOARD SECRETARY KARCHER: Tony Oliveira?

2 BOARD MEMBER OLIVEIRA: Yes.

3 BOARD SECRETARY KARCHER: And Ronald Yank?

4 BOARD MEMBER YANK: I have confidence in the  
5 drafter, yes.

6 (Laughter.)

7 PRESIDENT FECKNER: All right. Thank you. That  
8 brings us to Item 4, the President's Report. I want to,  
9 first of all -- good morning to all of you in the  
10 audience. Thanks for joining us today. I'd like to take  
11 a couple of moments of personal privilege.

12 First, I want to welcome to his first Board  
13 meeting Director Yank from DPA. Thanks for joining us,  
14 Ron?

15 BOARD MEMBER YANK: Thank you, Rob.

16 PRESIDENT FECKNER: I also want to take a moment  
17 to talk about an announcement we made yesterday, the  
18 appointment of Mary Ann Burford as my principal advisor.  
19 Mary Ann is a familiar face here at CalPERS. She's been  
20 with our organization for a little over 19 years. She's  
21 held a variety of positions, where she's managed our  
22 CalPERS Board of Administration Elections Department,  
23 served as ombudsman for our Member Services Division,  
24 resolving customer service issues.

25 Mostly recently, she was a top manager of the

1 CalPERS Customer Service Outreach Division. She played a  
2 key leadership role in developing the mission and vision  
3 for our CSOD.

4 Many of you might recognize Mary Ann from our  
5 employer educational forum. She was the person that was  
6 behind the scenes running the event for many years. Mary  
7 Ann has a wealth of experience and knowledge that she's  
8 gained during her time here at CalPERS. And she's going  
9 to be a great asset to this Board and especially to me as  
10 my principal advisor. So please join me in welcoming Mary  
11 Ann.

12 (Applause.)

13 PRESIDENT FECKNER: It was funny. On Monday  
14 without script, the Board members, one after one, came in  
15 and introduced themselves and congratulated her and gave  
16 her condolences at the same time. That was the first time  
17 they were on the same page on everything without talking  
18 about it.

19 (Laughter.)

20 PRESIDENT FECKNER: We'll move on to Agenda Item  
21 5, the Chief Executive Officer's report. Ms. Stausboll.

22 CHIEF EXECUTIVE OFFICER STAUSBOLL: Thank you.  
23 Good morning, Mr. President, and members of the Board.

24 My report today consists of an update on our  
25 priorities over the next few months, and as always some

1 staff recognition.

2           Last month, at this time, I shared with you how  
3 the organization was preparing for the launch of the new  
4 my|CalPERS. So I thought I'd start with that today.  
5 We're proud to report that the new system launched  
6 successfully on Monday, September 19. And this  
7 accomplishment marks the beginning of a new future for  
8 CalPERS, a new and better way for us to conduct business  
9 for our members and employers.

10           In the meantime, and as expected, we've  
11 experienced some customer service delays, and identified  
12 some defects in the system that need fixing. And our PSR  
13 project team will provide a fuller briefing on those  
14 issues later in the agenda.

15           While there's still a lot of work to do on  
16 my|CalPERS in the coming weeks and months, we took some  
17 time recently to recognize the efforts of our employees,  
18 and to thank them for their commitment to the success of  
19 this project and celebrate the milestones.

20           So on September 29, we had a special recognition  
21 event for all 2,300 employees. The executive staff served  
22 up root beer floats in the commemorative my|CalPERS  
23 tumblers that you see before you. And we had a little  
24 surprise that day. We even had a flash mob dance breakout  
25 in the middle of our courtyard here at CalPERS.

1           So it was a very fun and exciting day. I just  
2 again want to thank our members and employers for their  
3 patience during this time of transition, and, as always,  
4 to the hard working staff, because they've been very open  
5 to change, very committed. This is a tough and  
6 challenging period. And they maintain positive morale and  
7 an upbeat attitude and are working very hard to make  
8 my|CalPERS a reality.

9           So although that project for some time to come is  
10 still going to require our intense focus, the launch  
11 really reflects, I think, a turning of the corner and  
12 we're able to more tangibly envision our future and turn  
13 our attention to some other priorities.

14           In the short term, as you know, we've got the  
15 annual educational forum next week, October 24th through  
16 26th. We'll be at the Long Beach Convention Center.

17           I'm proud to report we have nearly 600 attendees  
18 registered for the three-day event. We have 40 workshops  
19 and 22 exhibits. We have two keynote speakers queued up.  
20 The first is Dennis Snow, who's a customer service expert.  
21 And he's going to share an inspirational story of what he  
22 learned about service excellence during his tenure at  
23 Disney. And then on the second day, we'll be joined by  
24 U.S. Congress Member -- former U.S. Congress Member Earl  
25 Pomeroy, who's going to speak about the current issues

1 facing public pension plans.

2           We're also, given the timing, going to have lots  
3 of opportunities throughout the conference for our  
4 attendees to learn more about the new my|CalPERS system.  
5 We've got workshops, training sessions, a room for  
6 computer based training. Some one-on-one consulting  
7 sessions, and additional information at the PERT booth.  
8 And we're also going to have key staff at the conference  
9 wearing buttons that -- at least those who are able to  
10 help, wearing buttons that say, "Ask Me About my|CalPERS".

11           So we're all looking forward to the conference  
12 and seeing you there. In the coming weeks and months,  
13 we'll be turning our attention to several matters,  
14 including implementation of the Board's Governance  
15 Initiatives, pension policy in California, and health  
16 care.

17           Since the Board finalized its actions on the  
18 governance initiative in September, we've established a  
19 working group, and we've begun to develop an  
20 implementation plan that we presented to the Governance  
21 Committee earlier this week.

22           Given the scope and magnitude of the reforms,  
23 it's going to take several months to implement, and our  
24 approach is incremental. And I want to make sure the  
25 audience knows that in 2012 we'll be moving towards the

1 new committee structure for CalPERS. And we'll be  
2 reaching out to our stakeholders, so that they're fully  
3 informed on what those changes are.

4 In recent weeks, the attention of the public and  
5 the Legislature has turned again to pension reform. And  
6 we're very closely focused on that right now, and will be  
7 over the next couple of months. A joint legislative  
8 conference committee has been established, and we'll be  
9 holding a series of hearings on pension policy. The first  
10 hearing is October 26th in Carson and CalPERS has been  
11 invited to present testimony. And as we've all read, the  
12 Governor has indicated that soon he will be introducing  
13 his plan for pension reform.

14 So as we engage in these discussions, our focus,  
15 as always, is on ensuring that policymakers understand how  
16 the CalPERS system works, emphasizing the core principles  
17 of the defined benefit plan, and the advantages of that,  
18 and protecting the integrity of the trust, for example, by  
19 maintaining vested rights and the fund's qualified tax  
20 status.

21 On a related note, last month several of us  
22 attended a small conference in Berkeley that was sponsored  
23 by the UC Berkeley Center for Labor, Research, and  
24 Education. And it was titled *The Retirement Security*  
25 *Challenge for California's Private Sector Workers*. And it

1 was an opportunity for about 50 leaders from business,  
2 consumer, and policy groups, labor and State government to  
3 be briefed on research that's taking place across the  
4 country on developing State operated retirement systems  
5 for private sector employees. So we look forward to  
6 continuing to be part of that discussion.

7           And finally, as has been reported on the health  
8 side at the Health Benefits Committee, we're spending  
9 significant time evaluating our long term health benefit  
10 purchasing strategy. We're keenly aware of the pressure  
11 that increased costs are placing on our members and  
12 employers, and we're continuing our analysis of strategies  
13 to reduce costs over the long term.

14           In December, we'll be conducting a workshop here  
15 in Sacramento with the Health Benefits Committee to review  
16 the findings and conclusions from our Health Benefit  
17 Purchasing Review Project. And then at the offsite, we'll  
18 bring specific cost containment and cost reduction  
19 concepts to the Board for review and discussion.

20           So those are our priorities over the coming  
21 months.

22           Now, I'd like to take a moment of personal  
23 privilege to recognize a special group of employees here  
24 at CalPERS.

25           Today, I'd like to recognize our Disability

1 Advisory Committee. We call it DAC of the CalPERS  
2 Diversity Outreach Program. They recently received second  
3 place honors for the best disability advisory council in  
4 State service for 2011.

5           So some of their significant accomplishments  
6 include implementing best practices for closed captioning,  
7 establishing the toll free text telephone service, the  
8 TTY, and adding the number to all our letterhead and  
9 documents, consulting with our operations support folks,  
10 Colliers, and Sodexo to develop a service that's called  
11 the *May I Help You Service* in our Cafe that allows  
12 employees there to better assist hearing-impaired staff  
13 and general public members who need assistance.

14           And they also provide formal training on  
15 delivering programs and services for CalPERS employees  
16 with disabilities who represent over 17 percent of our  
17 workforce.

18           So on this day, which also happens -- this also  
19 happens to be national disability employment awareness  
20 month, I'd like to ask the representatives of our  
21 Disability Advisory Committee to stand and be recognized  
22 for all that they do to promote awareness and fair  
23 treatment of employees with disabilities at CalPERS.

24           (Applause.)

25           CHIEF EXECUTIVE OFFICER STAUSBOLL: Thank you

1 all.

2 Mr. President, that concludes my report for this  
3 morning.

4 PRESIDENT FECKNER: Thank you. And thank you for  
5 all your hard work over there. I do want to make a couple  
6 of comments. First of all, I along with a number of the  
7 Board members are looking forward to the educational forum  
8 coming up next week. There's a number of them signed up  
9 to go and participate as well. So we thank you for all  
10 the hard work behind that.

11 And I know we have a PSR report coming up. I  
12 just want to make a couple of comments, that we knew there  
13 were going to be some hiccups and problems along the way,  
14 I just want to say thank you to you and your staff, Steve  
15 and Dale, because even though I'm sure you're hearing all  
16 the hiccups, we're not hearing them, and that's a good  
17 thing. So I want to thank you. But I especially want to  
18 thank Donna Lum, because I know as things roll uphill and  
19 roll downhill, my assumption is it's all landing in the  
20 middle.

21 (Laughter.)

22 PRESIDENT FECKNER: And so I thank you for taking  
23 on that burden. And any issues that have come up, you've  
24 been very prompt in getting a response back to me and to  
25 our members as well. So thank you.

1 DEPUTY EXECUTIVE OFFICER LUM: Thank you.

2 CHIEF EXECUTIVE OFFICER STAUSBOLL: Thank you  
3 very much.

4 (Applause.)

5 PRESIDENT FECKNER: That brings us to Agenda Item  
6 6, the Chief Investment Officer Report. Mr. Dear.

7 CHIEF INVESTMENT OFFICER DEAR: Thank you, Mr.  
8 President, members of the Board. Joe Dear, Chief  
9 Investment Officer.

10 The main drivers of the investment environment  
11 remain the same since the mid-summer, faltering growth in  
12 developed markets, Euro zone sovereign and banking debt  
13 crisis, and lack of confidence in political leaders and  
14 systems to make the necessary hard choices that confront  
15 them.

16 The interaction of these three conditions create  
17 a negative feedback loop resulting in, among other things,  
18 high volatility. I think this condition will persist  
19 until the political uncertainty is removed. That's not  
20 likely to occur in the near term, because of the  
21 difficulty of choices and because in a number of countries  
22 elections are ahead next year.

23 With respect to Europe and the decisions there,  
24 hard choices have to be made to ensure investors that  
25 sufficient capacity exists to prevent a default in Greece

1 from cascading into a run on other countries and other  
2 banks.

3           Now since we've last talked about this, there's  
4 significantly increased evidence that the Europeans  
5 understand the magnitude of the concern and the problem,  
6 but the choices have yet to be made. In short, this is a  
7 low return environment with a lot of downside risk.

8           The difficulty in the market is reflected in the  
9 results for the total fund in the third quarter. The  
10 total fund lost seven percent in the quarter that ended on  
11 September 30, and finished with \$219 billion in assets.  
12 That's the largest quarterly decline since 2009.

13           The portfolio slightly outperformed the policy  
14 benchmark coming in 16 basis points over. The one-year  
15 return was four percent, 61 percent -- 61 basis points  
16 below the policy benchmark.

17           The portfolio demonstrated the benefits of  
18 diversification in the choices you made as a result of the  
19 2010 asset liability management study. Equities declined  
20 sharply in the quarter, as you all know. The global  
21 equity benchmark was down 18.1 percent. But Sticky  
22 Valuations in private equity, real estate and  
23 infrastructure helped to stave off the decline.

24           But importantly the liquidity allocation and the  
25 absolute return strategies, the hedge fund portfolio, did

1 their job offsetting the equity declines. The ARS  
2 portfolio dropped a bit over two percent. Remember,  
3 again, seven percent for the whole portfolio and 18  
4 percent against the equity benchmark. So it showed that  
5 it does, indeed, have a low beta, a low risk and limited  
6 correlation with the equity portfolio.

7           The liquidity bucket returned 3.1 percent, helped  
8 by treasuries, which comprise 75 percent of that  
9 allocation. And the liquidity bucket is four percent of  
10 the whole portfolio.

11           Asset class performance was mixed in the quarter.  
12 Global equity beat its benchmark slightly. Fixed income  
13 did not, falling victim to an overweight in financials in  
14 the credit portfolio and the widening spreads in the high  
15 yield portfolio.

16           Private equity and real assets did beat their  
17 benchmark. However, within the real assets, real estate  
18 was off slightly, five basis points off. And for real  
19 estate, I think that's pretty good. And there's not the  
20 same precision against the benchmarks in the illiquid  
21 asset classes as there is in the publicly traded asset  
22 classes.

23           I learned the hazards of forecasting again, when  
24 I stated the obvious in an interview I gave recently that  
25 it's going to be tough to hit our return target for the

1 year. I guess I should remember the advice of the movie  
2 producer Sam Goldwyn who said, "Never make predictions,  
3 especially about the future".

4 (Laughter.)

5 CHIEF INVESTMENT OFFICER DEAR: But leaving aside  
6 whether public realism is desirable or not, a down market  
7 begs the question of the feasibility of our seven and  
8 three-quarter percent return target over the long term.

9 Now, it's natural for people experiencing  
10 sustained economic turmoil to make pessimistic projections  
11 of the future for all time periods. Sustained low return  
12 erode confidence in the long-term resilience of capital  
13 markets. But that long run should provide a lot of  
14 comfort.

15 We can't predict precisely what technological  
16 breakthroughs will occur or exactly where the economic  
17 growth will develop, but we can, with a high degree of  
18 confidence, expect it to occur. Market economies are  
19 tremendously resilient, and investors who have staying  
20 power can be rewarded for intelligent risk taking.

21 It's also important to understand that our seven  
22 and three-quarter percent return target doesn't mean we  
23 expect to hit that every year. In fact, we expect a large  
24 amount of variation around that target, roughly between  
25 minus six percent and plus 21 percent, in any given year.

1           So what are the portfolio strategy implications  
2 for a low return environment with lots of downside risk.  
3 I think there are two. One, we should be defensive, but  
4 at the same time we should look for opportunity in the  
5 dislocation.

6           With respect to defensive positions, we have a  
7 neutral weight in our fixed income allocation against the  
8 benchmark, and we've maintained an underweight to equities  
9 for months now.

10           We have rebalanced back to the target twice, but  
11 we still remain underweight in the global equity  
12 portfolio. We've been letting the Absolute Return  
13 Strategies, the hedge funds, carry part of that  
14 underweight. And as noted earlier, that portfolio is  
15 doing the job we expect of it.

16           The final step in a defensive posture is to  
17 maintain liquidity. And that four percent allocation to  
18 the liquidity bucket does exactly that.

19           As for opportunity, we're looking at selected  
20 expansion of our emerging market exposure. As you know,  
21 emerging markets and the international markets declined  
22 more than the U.S. in the third quarter. And we're also  
23 looking at the possibility of credit revision in sectors  
24 where banks and hedge funds have scaled back or withdrawn.

25           Our standing portfolio strategy of moving towards

1 income generating inflation protected investments like  
2 core real estate, and defensive infrastructure are also  
3 consistent with a defensive oriented search for  
4 opportunity.

5 Well, what are the risks to a defensive strategy  
6 that's also looking for opportunity?

7 If the uncertainty in Europe resolves itself  
8 around a solution, a large equity rally could be expected.  
9 And that would hurt a portfolio with an underweight like  
10 ours. Or conversely, if the situation in Europe gets a  
11 lot worse, with uncontrolled sovereign debt and bank  
12 failures, that would produce, in all likelihood, a global  
13 recession that a mild equity underweight would do little  
14 to protect or cushion on the downside.

15 Another big risk lies -- also lies in the policy  
16 arena, and that's the possibility of policy mistakes.  
17 These are deliberate choices made that are wrong. The one  
18 that worries me the most already has strong support. It's  
19 artfully termed expansionary austerity.

20 The idea behind this is that large budget cuts  
21 will remove investor fears of runaway government deficits  
22 and produce new growth inducing investment inspired by  
23 renewed confidence.

24 The Bank Credit Analyst, which is a  
25 well-respected publication that I try to read, observed

1 that quote, "As theories go, it was a nice one.  
2 Unfortunately, there's no evidence to support it".

3 And despite this evidence, the absence of  
4 theoretical support, the political support for this  
5 approach is very strong in the United Kingdom and the  
6 United States. I think it's like shooting the wounded.  
7 It's a drag on growth and it will retard economic  
8 recovery.

9 We face fierce headwinds in this environment.  
10 After the events of August and September, I think we can  
11 take some encouragement that the U.S. has not fallen into  
12 a recession. True growth is anemic and insufficient to  
13 dent the painfully high unemployment rate, but there is  
14 growth, despite all of these shocks.

15 And as an organization, CalPERS has increasing  
16 capability, demonstrated staying power, and the ability to  
17 take advantage of opportunity. It's not getting easier,  
18 but it's not impossible either.

19 And, Mr. President, that's my report.

20 PRESIDENT FECKNER: Thank you, Mr. Diehr. Any  
21 questions or comments on the Chief Investment Officer's  
22 report?

23 Seeing none, Item 7, the Investment Committee  
24 Report. For that I call on the chair, Mr. Diehr.

25 VICE PRESIDENT DIEHR: Thank you, Mr. President.

1 The Investment Committee met on Monday, October 17, 2011.

2           Agenda Item 3, Global Equity Annual Program  
3 Review. The Committee approved one-year extensions for 19  
4 global equity external managers as presented in Attachment  
5 2 of the agenda item.

6           Agenda Item 4, Delegation Resolutions Relevant to  
7 the Absolute Return Strategies Program. The Committee  
8 approved revision of the Global Equity Professional Staff  
9 Delegation Resolution and adoption of the Absolute Return  
10 Strategies Professional Staff Delegation Resolution.

11           The Committee received information reports on the  
12 following:

13           Agenda Item 5, Consultant Annual Review of the  
14 Internal Absolute Return Strategies Program Review.

15           Agenda Item 6, Discussion on Real Assets  
16 Professional Staff Delegation Resolution Relevant to  
17 Infrastructure.

18           Agenda Item 7, Infrastructure Investment in  
19 California - State and Local Government Outreach Plan.

20           Agenda Item 8, Program Updates. Corporate  
21 Governance Program - Proxy Access; Special Review  
22 Implementation Plan - Investment Office.

23           Agenda Item 9, Activity Reports. Total Fund  
24 Monthly Update, and Investment Office Assignment Matrix.

25           Comments were received from the following:

1 Christopher Vink, Great Pacific Securities  
2 related his positive experience as a U.S. active broker  
3 for CalPERS.

4 The following interested parties commented  
5 regarding proposed revision of the Global Principles of  
6 Accountable Corporate Governance relevant to the  
7 disclosure of charitable and political contributions.

8 Andrew Pincus from Mayer Brown LLP, representing  
9 the U.S. Chamber of Commerce opposed the revision.

10 Jennifer Barrera from the California Chamber of  
11 Commerce opposed the revision.

12 And Dennak Murphy from SEIU supported the  
13 revision.

14 Tim Boyd, AIDS Healthcare Foundation commented on  
15 AIDS drug pricing issues. The Chair directed staff to  
16 follow up with Mr. Boyd regarding possible CalPERS  
17 engagement.

18 The next Investment Committee meeting is  
19 scheduled for November 14, 2011 in Sacramento, California

20 Mr. President, that concludes my report.

21 PRESIDENT FECKNER: Thank you. Agenda Item 8,  
22 Risk Management Committee. There was no meeting, hence no  
23 report.

24 Item 9, Benefits and Program Administration  
25 Committee. For that I call on the chair, Mr. Diehr.

1           VICE PRESIDENT DIEHR: Thank you, Mr. President.  
2 The Benefits and Program Administration Committee met  
3 Tuesday, October 18, 2011.

4           The Committee recommends and I move the Board  
5 approve the following:

6           Agenda Item 3a, Proposed Amendments to Board  
7 Election Regulation Section 554, Candidate Statement --  
8 excuse me, that's Section 554.4, Candidate Statement.  
9 Accept and approve the proposed amendment changes to Board  
10 election regulation 554.4, candidate statement.

11          PRESIDENT FECKNER: On motion by Committee. Any  
12 discussion on the motion?

13          Seeing none, let's please call the roll.

14          BOARD SECRETARY KARCHER: George Diehr?

15          VICE PRESIDENT DIEHR: Yes.

16          BOARD SECRETARY KARCHER: Michael Bilbrey?

17          BOARD MEMBER BILBREY: Yes.

18          BOARD SECRETARY KARCHER: Terry McGuire for John  
19 Chiang?

20          ACTING BOARD MEMBER MCGUIRE: Yes.

21          BOARD SECRETARY KARCHER: Richard Costigan?

22          BOARD MEMBER COSTIGAN: Yes.

23          BOARD SECRETARY KARCHER: J.J. Jelincic?

24          BOARD MEMBER JELINCIC: Yes.

25          BOARD SECRETARY KARCHER: Henry Jones?

1 BOARD MEMBER JONES: Yes.

2 BOARD SECRETARY KARCHER: Grant Boyken for Bill  
3 Lockyer?

4 ACTING BOARD MEMBER BOYKEN: Yes.

5 BOARD SECRETARY KARCHER: Priya Mathur?

6 BOARD MEMBER MATHUR: Yes.

7 BOARD SECRETARY KARCHER: Lou Moret?

8 BOARD MEMBER MORET: Yes.

9 BOARD SECRETARY KARCHER: Tony Oliveira?

10 BOARD MEMBER OLIVEIRA: Yes.

11 BOARD SECRETARY KARCHER: Ronald Yank?

12 BOARD MEMBER YANK: Yes.

13 PRESIDENT FECKNER: Motion carries.

14 Mr. Diehr.

15 VICE PRESIDENT DIEHR: Agenda Item 3c, Proposed  
16 Regulation for Contract Related Disclosure Policy.

17 Approve the proposed regulatory language, Attachment A,  
18 and initiation of the rule-making process to add Section  
19 559.1 to Title 2 of the California Code of Regulations to  
20 establish required contract disclosures. The proposed  
21 regulation included in your folders was updated after the  
22 BPAC meeting to reflect a revision to Section (a)(2)  
23 definition of Board Member, as requested at the Committee  
24 meeting.

25 PRESIDENT FECKNER: On motion by Committee.

1 Any discussion on the motion?

2 Seeing none, please call the roll.

3 BOARD SECRETARY KARCHER: George Diehr?

4 VICE PRESIDENT DIEHR: Yes.

5 BOARD SECRETARY KARCHER: Michael Bilbrey?

6 BOARD MEMBER BILBREY: Yes.

7 BOARD SECRETARY KARCHER: Terry McGuire for John  
8 Chiang?

9 ACTING BOARD MEMBER McGUIRE: Yes.

10 BOARD SECRETARY KARCHER: Richard Costigan?

11 BOARD MEMBER COSTIGAN: Yes.

12 BOARD SECRETARY KARCHER: J.J. Jelincic?

13 BOARD MEMBER JELINCIC: Yes.

14 BOARD SECRETARY KARCHER: Henry Jones?

15 BOARD MEMBER JONES: Yes.

16 BOARD SECRETARY KARCHER: Grant Boyken for Bill

17 Lockyer?

18 ACTING BOARD MEMBER BOYKEN: Yes.

19 BOARD SECRETARY KARCHER: Priya Mathur?

20 BOARD MEMBER MATHUR: Yes.

21 BOARD SECRETARY KARCHER: Lou Moret?

22 BOARD MEMBER MORET: Yes.

23 BOARD SECRETARY KARCHER: Tony Oliveira?

24 BOARD MEMBER OLIVEIRA: Yes.

25 BOARD SECRETARY KARCHER: Ronald Yank?

1 BOARD MEMBER YANK: Yes.

2 PRESIDENT FECKNER: Motion carriers.

3 VICE PRESIDENT DIEHR: Agenda Item 4a, Board  
4 Member Employer Reimbursement. Approve the proposed Board  
5 Member percentage of time to be spent on Board-related  
6 duties for Michael Bilbrey for fiscal year 2011-12.

7 PRESIDENT FECKNER: On motion by Committee. Any  
8 discussions on the motion?

9 Seeing none, please call the roll.

10 BOARD SECRETARY KARCHER: George Diehr?

11 VICE PRESIDENT DIEHR: Yes.

12 BOARD SECRETARY KARCHER: Michael Bilbrey?

13 BOARD MEMBER BILBREY: Yes.

14 BOARD SECRETARY KARCHER: Terry McGuire for John  
15 Chiang?

16 ACTING BOARD MEMBER MCGUIRE: Yes.

17 BOARD SECRETARY KARCHER: Richard Costigan?

18 BOARD MEMBER COSTIGAN: Yes.

19 BOARD SECRETARY KARCHER: J.J. Jelincic?

20 BOARD MEMBER JELINCIC: Yes.

21 BOARD SECRETARY KARCHER: Henry Jones?

22 BOARD MEMBER JONES: Yes.

23 BOARD SECRETARY KARCHER: Grant Boyken for Bill  
24 Lockyer?

25 ACTING BOARD MEMBER BOYKEN: Yes.

1 BOARD SECRETARY KARCHER: Priya Mathur?

2 BOARD MEMBER MATHUR: Yes.

3 BOARD SECRETARY KARCHER: Lou Moret?

4 BOARD MEMBER MORET: Yes.

5 BOARD SECRETARY KARCHER: Tony Oliveira?

6 BOARD MEMBER OLIVEIRA: Yes.

7 BOARD SECRETARY KARCHER: Ronald Yank?

8 BOARD MEMBER YANK: Yes.

9 PRESIDENT FECKNER: Motion carries.

10 VICE PRESIDENT DIEHR: Agenda Item 4b, Proposed  
11 Regulations Regarding Personal Trading. Approve the  
12 proposed personal trading regulations, Attachment B, as a  
13 first reading, and direct staff to bring back  
14 regulations -- to bring the regulations back for a second  
15 reading before initiating the rule-making process.

16 PRESIDENT FECKNER: On motion by Committee. Any  
17 discussion on the motion?

18 Seeing none, please call the roll.

19 BOARD SECRETARY KARCHER: George Diehr?

20 VICE PRESIDENT DIEHR: Yes.

21 BOARD SECRETARY KARCHER: Michael Bilbrey?

22 BOARD MEMBER BILBREY: Yes.

23 BOARD SECRETARY KARCHER: Terry McGuire for John  
24 Chiang?

25 ACTING BOARD MEMBER MCGUIRE: Yes.

1 BOARD SECRETARY KARCHER: Richard Costigan?

2 BOARD MEMBER COSTIGAN: Yes.

3 BOARD SECRETARY KARCHER: J.J. Jelincic?

4 BOARD MEMBER JELINCIC: Yes.

5 BOARD SECRETARY KARCHER: Henry Jones?

6 BOARD MEMBER JONES: Yes.

7 BOARD SECRETARY KARCHER: Grant Boyken for Bill

8 Lockyer?

9 ACTING BOARD MEMBER BOYKEN: Yes.

10 BOARD SECRETARY KARCHER: Priya Mathur?

11 BOARD MEMBER MATHUR: Yes.

12 BOARD SECRETARY KARCHER: Lou Moret?

13 BOARD MEMBER MORET: Yes.

14 BOARD SECRETARY KARCHER: Tony Oliveira?

15 BOARD MEMBER OLIVEIRA: Yes.

16 BOARD SECRETARY KARCHER: Ronald Yank?

17 BOARD MEMBER YANK: Yes.

18 PRESIDENT FECKNER: Motion carries.

19 VICE PRESIDENT DIEHR: Agenda Item 5a, EFI's

20 Parallel Valuation and Certification of the June 30, 2010

21 Actuarial Valuations for JRS, JRS II, LRS, and the 1959

22 Survivor Program. Accept EFI's parallel valuation and

23 certification reports in completion of Task 3 of contract

24 2009-5377 for the following actuarial valuations as of

25 June 30, 2010:

1           Legislator's Retirement System, Judges Retirement  
2 System, Judges Retirement System II, and 1959 Survivor  
3 Program.

4           PRESIDENT FECKNER: On motion by Committee. Any  
5 discussion on the motion?

6           Seeing none, please call the roll.

7           BOARD SECRETARY KARCHER: George Diehr?

8           VICE PRESIDENT DIEHR: Yes.

9           BOARD SECRETARY KARCHER: Michael Bilbrey?

10          BOARD MEMBER BILBREY: Yes.

11          BOARD SECRETARY KARCHER: Terry McGuire for John  
12 Chiang?

13          ACTING BOARD MEMBER MCGUIRE: Yes.

14          BOARD SECRETARY KARCHER: Richard Costigan?

15          BOARD MEMBER COSTIGAN: Yes.

16          BOARD SECRETARY KARCHER: J.J. Jelincic?

17          BOARD MEMBER JELINCIC: Yes.

18          BOARD SECRETARY KARCHER: Henry Jones?

19          BOARD MEMBER JONES: Yes.

20          BOARD SECRETARY KARCHER: Grant Boyken for Bill  
21 Lockyer?

22          ACTING BOARD MEMBER BOYKEN: Yes.

23          BOARD SECRETARY KARCHER: Priya Mathur?

24          BOARD MEMBER MATHUR: Yes.

25          BOARD SECRETARY KARCHER: Lou Moret?

1 BOARD MEMBER MORET: Yes.

2 BOARD SECRETARY KARCHER: Tony Oliveira?

3 BOARD MEMBER OLIVEIRA: Yes.

4 BOARD SECRETARY KARCHER: Ronald Yank?

5 BOARD MEMBER YANK: Yes.

6 PRESIDENT FECKNER: Motion carries.

7 VICE PRESIDENT DIEHR: The Committee

8 received/accepted informational reports on the following:

9 Agenda Item 3b, 2011 Member-At-Large Special

10 Board Election and Retired Board Election Summaries.

11 Agenda Item 5b, Review of Board Actuarial

12 Policies.

13 Agenda Item 5c, Chief Actuary Report.

14 Agenda Item 6a, California Employers' Retirement

15 Benefit Trust update.

16 Agenda Item 6b, Deputy Executive Officer Report.

17 Agenda Item 6c, Draft Agenda for the December 13,

18 2011 Benefits and Program Administration Committee

19 Meeting.

20 The next meeting of the Benefits and Program

21 Administration Committee is scheduled for December 13,

22 2011 in Sacramento, California.

23 Mr. President, that concludes my report.

24 PRESIDENT FECKNER: Thank you. That brings us to

25 Agenda Item 10, Health Benefits Committee. For that I

1 call on the Vice President of the Board, Mr. Diehr.

2 VICE PRESIDENT DIEHR: The Health Benefits  
3 Committee met on October 18, 2011. The Committee accepted  
4 information reports on the following:

5 Agenda Item 3, Health Plan Contract Innovations  
6 (Pilots) and Data Analysis Projects Update.

7 I note analysis is misspelled in the document  
8 here.

9 Agenda Item 4, Catholic Healthcare West/Hills  
10 Physicians Pilot Update.

11 Agenda Item 5, anthem Blue Cross Innovations  
12 Update.

13 Agenda Item 6, Deputy Executive Officer's Report.

14 The next meeting of the Health Benefits Committee  
15 is scheduled for November 15, 2011 in Sacramento,  
16 California

17 PRESIDENT FECKNER: Thank you. That brings us to  
18 Agenda Item 11, the Finance Committee. There was no  
19 Committee meeting, hence no report.

20 Moving on to Agenda Item 12, welcome you to the  
21 George Diehr Committee Report Day.

22 (Laughter.)

23 PRESIDENT FECKNER: We have Board Governance  
24 Committee and I'm call on the Vice President of the Board,  
25 Dr. Diehr.

1           VICE PRESIDENT DIEHR: Thank you, Mr. President.  
2 I assure you this is my last report for the day.

3           (Laughter.)

4           VICE PRESIDENT DIEHR: The Board Governance  
5 Committee met on Tuesday, October 18, 2011.

6           Agenda Item 2, Approval of the Minutes -- of the  
7 September 13, 2011 Board Governance Committee Meeting  
8 Minutes. The minutes were approved with revisions.

9           Agenda Item 3, Board Governance Project  
10 Implementation Plan and Final Report Summary. As an  
11 information item, Peter Mixon, CalPERS General Counsel,  
12 and Anne Stausboll, Chief Executive Officer, presented the  
13 final summary of the Board Governance Project including  
14 the projected timeline and project overview.

15           Agenda Item 4, Public Comment. There was no  
16 public comment.

17           Mr. President, that concludes my report.

18           PRESIDENT FECKNER: Thank you.

19           Agenda Item 13, Performance and Compensation  
20 Committee. There was no meeting, hence no report.

21           That brings us to Agenda Item 14, External  
22 Affairs Update. Mr. Glazier.

23           DEPUTY EXECUTIVE OFFICER GLAZIER: Good morning,  
24 Mr. President, members of the Board. I have two brief  
25 items for my update for you today. The first I have is an

1 update on our involvement with the changes in accounting  
2 standards proposed by GASB, the Governmental Accounting  
3 Standards Board.

4           As we reported last month to you, over the past  
5 two years, GASB has been engaging the public in their  
6 efforts to make changes to the accounting methods and  
7 standards used by the public employee pension plans. Some  
8 of their proposed changes would have a significant impact  
9 on many of our employers and how they would have to change  
10 the way they report their pension costs. The proposed  
11 changes by GASB would also affect CalPERS and how we serve  
12 our employers.

13           In order to adequately coordinate our internal  
14 and external efforts, to share this information with our  
15 employers, and to urge GASB to make changes to their  
16 proposals, CalPERS formed an internal task force on this  
17 issue. During the past two months, we've worked closely  
18 with our partners and stakeholders to develop fact sheets,  
19 talking points, and frequently asked questions.

20           We've reached out to all of our employers to make  
21 sure they knew about these issues and had the opportunity  
22 to express their views to GASB. We submitted our own  
23 extensive comments to GASB urging them to modify their  
24 proposals, or at the least, delay their implementation to  
25 provide more time for us to be able to comply with these

1 changes.

2 We also worked closely with NASRA, the National  
3 Association of State Retirement Administrators to draft a  
4 coalition letter to GASB expressing concerns about their  
5 proposed changes.

6 Most importantly, our Chief Actuary, Alan  
7 Milligan, and I went to San Francisco for one of GASB's  
8 three national hearings on the matter.

9 Alan testified before GASB Board and represented  
10 CalPERS well in his Q&A exchange with them. They heard a  
11 variety of opinions over the two-day hearings. And in the  
12 coming months, they will determine what, if any,  
13 modifications they will make to their proposals, and  
14 whether or not to delay the implementation of the proposed  
15 changes.

16 The second item I have for you is just a quick  
17 update on the annual Ed Forum, our educational conference  
18 for employers. As you well know, it is next week at the  
19 Long Beach Convention Center.

20 The Ed Forum is planned and organized by our  
21 Strategic Event Management Unit, which was formerly known  
22 as conference services, and led by Linda Evans. As part  
23 of our Stakeholder Relations Office, under the direction  
24 of the Laura Enderton, the strategic event management team  
25 has done an excellent job with this year's Ed Forum.

1           Not only will hundreds of employers be  
2 represented at this year's Ed Forum, but I was just  
3 informed last night that we have surpassed our total goal  
4 for attendees. We now have over 600 attendees registered  
5 to join us in Long Beach next week. Not only does that  
6 exceed the attendance levels in previous years, but it's  
7 an impressive accomplishment in this current economic  
8 environment with tough budgetary challenges for local  
9 governments.

10           I know we're all looking forward to a great  
11 learning experience next week, and we appreciate the Board  
12 taking the time to join us and be with our members and  
13 employers there next week.

14           That concludes my report, Mr. President. Unless  
15 you have questions for me, I'll turn the time over to  
16 Danny Brown.

17           PRESIDENT FECKNER: Thank you. Seeing no  
18 requests, lucky you.

19           Item 15, the Board's State Legislative Program.

20           Mr. Brown.

21           OFFICE OF GOVERNMENTAL AFFAIRS CHIEF BROWN: Good  
22 morning, Mr. President and Board members. I'm just going  
23 to provide a brief recap of the legislative session, and  
24 add some additional comments around the interim conference  
25 committee that's coming up next week.

1           As you all know, the legislative session I guess  
2 officially ended Sunday the 9th. And although we had to  
3 wait till the very last day, I am happy to report that the  
4 Governor did sign AB 1042, which gives this Board salary  
5 setting authority over the CFO. So we are happy about  
6 that.

7           And I think overall it was a successful session  
8 for us with three of our four bills being signed.

9           A couple of other important bills that were  
10 signed on that last day were SB 398 by Hernandez, which  
11 makes some necessary clarifying amendments to the  
12 placement agent bill that we sponsored last year.

13           And then also AB 1247, which makes some  
14 amendments and simplifies the actuarial reporting  
15 requirements that were enacted in last year's budget bill.

16           Moving to the two bills sponsored by the State  
17 Controller, the Governor did sign AB 873, which sets  
18 limits for post-separation employment for the Board and  
19 specified employees. However, he did veto the gift limit  
20 bill SB 439. Your packet does contain a printout of the  
21 chaptered bills and the vetoed bills that we were watching  
22 along with the veto messages.

23           Moving on to the interim conference committee.  
24 As it was mentioned, they're meeting next week. Last week  
25 the conferees were named. On the Senate side they include

1 Gloria Negrete-McLeod, Joe Simitian and Mimi Walters. And  
2 the Assembly Members include Warren Furutani, Michael  
3 Allen and Jim Silva. Senator Negrete-McLeod and  
4 Assemblymember Warren Furutani will co-chair the  
5 Committee.

6           The first committee hearing that's taking place  
7 next week will focus on looking at the current benefit and  
8 types of reforms that have already taken place at both the  
9 State and local level. CalPERS has been asked to  
10 participate on a panel that will be focusing on the  
11 CalPERS contracting agencies. Ann Boynton who will be  
12 there to make the presentation on behalf of CalPERS and  
13 David Lamoureux will be there to assist.

14           We anticipate there will be at least two more  
15 hearings before the legislature reconvenes in January.  
16 And, you know, these interim conference committees I guess  
17 are rare outside the budget process. So I think there is  
18 a lot of unknowns as to how this is going to play out.

19           I think we're fortunate to -- actually, we have  
20 Karen Green and Pam Schneider who are participating at our  
21 Ed Forum as part of my panel on the State Legislative  
22 Updates. So I think one of takeaways for myself and for  
23 attendees is to get a better understanding of what to  
24 expect at this conference committee. So I think that will  
25 be, you know, an important topic that they will be talking

1 about.

2           One of the things that I have found out that I  
3 think is important to note is once the Committee votes on  
4 the bill, and the bill goes -- or the legislation that  
5 goes into print, it can't be amended. So whatever comes  
6 out of this Committee will go to the floor for an up or  
7 down vote and can't be amended. So it is going to be  
8 important that we are engaged throughout the process on  
9 those issues that are definitely important to us.

10           And with that, I will answer any questions you  
11 may have.

12           PRESIDENT FECKNER: Mr. Jelincic.

13           BOARD MEMBER JELINCIC: This is my ignorance, but  
14 on page 2 of 17 in your report, AB 52 was held in the  
15 Senate inactive file. AB 72 became a two-year bill.  
16 What's the difference?

17           OFFICE OF GOVERNMENTAL AFFAIRS CHIEF BROWN: Let  
18 me just get to -- I'm sorry. What page was that?

19           BOARD MEMBER JELINCIC: I don't know. It was  
20 page 2 of 17. It's page 22 of my iPad.

21           OFFICE OF GOVERNMENTAL AFFAIRS CHIEF BROWN: The  
22 difference between is, is AB 72 never made it out of the  
23 first committee. And so AB 52, I mean -- I guess  
24 technically, you could say it's a two-year bill, but it  
25 made it out of its first committee. It's gone to the

1 Senate. It can stay.

2 BOARD MEMBER JELINCIC: It passed its original  
3 House.

4 OFFICE OF GOVERNMENTAL AFFAIRS CHIEF BROWN:

5 Right. And it can stay there until the end of  
6 next session. Where AB 72 because it did not make it out  
7 of the first House, it will have to pass out by January.  
8 It has some other deadlines that AB 52 would not have.

9 BOARD MEMBER JELINCIC: Okay. And then -- that's  
10 a two-year bill, so I won't bother you with it.

11 Page six, AB 1151, the fiduciary determination on  
12 Iran. Obviously, that involves some costs to the system  
13 to hold those hearings. The State is mandating it, but  
14 the State is only a third of PERS. Are we able to recover  
15 two-thirds of our costs, so that we can pass it on to the  
16 non-State employee -- or employers?

17 OFFICE OF GOVERNMENTAL AFFAIRS CHIEF BROWN: I  
18 mean, that's something that we've asked before and tried  
19 to get an appropriation to cover those costs, and we  
20 haven't had any luck. So, you know, I don't think that's  
21 something that we can do.

22 BOARD MEMBER JELINCIC: Okay. And then on AB  
23 1247, which got chaptered, we -- did we get the amendments  
24 we were seeking?

25 OFFICE OF GOVERNMENTAL AFFAIRS CHIEF BROWN: We

1 got some of the amendments. They did not change the two  
2 percent to one percent. They left it at the two percent.  
3 But we still felt that that was better than what is the  
4 current -- what was currently in law as far as the  
5 requirements that were under the current provisions. So  
6 you know, the bill still, as chaptered, is better.

7 BOARD MEMBER JELINCIC: Thank you.

8 PRESIDENT FECKNER: Seeing no other requests,  
9 thank you. That brings us to the Board's Federal  
10 Legislative Program, Item 16. Mr. Lussier, are you on the  
11 line?

12 MR. LUSSIER: I am, Mr. President.

13 PRESIDENT FECKNER: Good morning, Tom. You're  
14 live in the auditorium.

15 MR. LUSSIER: Good morning to you and to the  
16 Board. There are two overarching discussions happening  
17 here in Washington. One has -- both of which you've seen  
18 perhaps on the evening use on a regular basis.

19 The first is the escalating debate over the  
20 President's so-called jobs bill, which is becoming  
21 increasingly political and controversial. And I'm not  
22 sure that anyone would predict at this point in time what  
23 it's likely to look at, either in whole or in parts.

24 The second is the ongoing work of the special  
25 deficit reduction super committee. The work is currently

1 actually being -- is actually kind of quiet, which leads  
2 some to suggest that nothing is happening, and others to  
3 suggest that the lack of public posturing indicates that  
4 actually some serious work is taking place, and that a  
5 legitimate proposal will be presented to the Congress.

6           Actually, in the case of this latter situation,  
7 the super committee, as I've indicated to you before that  
8 we continue to work rather quietly, but we hope  
9 effectively, to make sure that things like Social Security  
10 changes and tax policy changes that would have a negative  
11 effect on public sector DB plans are not incorporated in  
12 this package. And as we speak today, we feel pretty  
13 comfortable that we're still safe in that regard.

14           But those are two large public debates, which are  
15 really taking a lot of the oxygen out of the air of the  
16 City of Washington, and will continue to probably for the  
17 next many weeks.

18           It's against that big picture that we're actually  
19 working on some very specific and rather technical issues,  
20 which are way below the radar screen, but which could be  
21 very important to all of you.

22           The first, we are continuing to work very closely  
23 with a coalition of public plans to influence some  
24 specific rules regarding business conduct standards which  
25 are pending before the Commodities Futures Trading

1 Commission. We believe that the CFT Commissioners and  
2 staff are hearing our concerns. We have had some very  
3 successful meetings that have included members of your  
4 Investment staff, and we are -- we believe that the CFTC  
5 is continuing to look for ways to accommodate and to  
6 respond to the concerns that you all have in a way that  
7 protects the integrity of the sections of the Dodd-Frank  
8 Act, that there are concerns with, but at the same time  
9 preserves the regulatory structure that you all were  
10 advocates for.

11           The second area, and this is an area I've  
12 mentioned before, we have heard from the Treasury and the  
13 Internal Revenue Service on a number of occasions that  
14 they are about to address three pending issues that could,  
15 if they were done wrong, have negative consequences to  
16 your plan and to others.

17           Those issues -- and the reason I'm raising it is  
18 because we are hearing again that Treasury and IRS  
19 decisions on these three areas are imminent. The first  
20 deals with the definition of retirement age, which could  
21 cause ripples, not only in your statutes, but in statutes  
22 of public plans all over the country if it is defined in a  
23 way that's inconsistent with the principles of a public  
24 sector defined benefit program.

25           The second is the definition of a governmental

1 plan, which could, in fact, if it comes out wrong, could  
2 affect the ability of certain individuals or certain  
3 groups of individuals to even be members of your plan.  
4 And the third deals with issues around the qualification  
5 of the employer pick up. The provision that allows folks  
6 to make their contributions on a tax-deferred basis.

7           The questions that have been raised  
8 specifically -- or initiated specifically in a case in  
9 Orange County, but which has ripples again across the  
10 whole industry, if it's done wrong.

11           We have been working with Treasury and IRS  
12 officials literally for years on some of these issues.  
13 And if that work is successful, then these three decisions  
14 will come out and hopefully you will never hear of them.  
15 But if they -- the Service or the Treasury advances  
16 proposals that continue to deal us some unintended  
17 consequences, they are issues that individually or  
18 collectively could require some legislative action down  
19 the road.

20           So I raise them, because I don't want anyone to  
21 be surprised if all of a sudden there's an announcement,  
22 Treasury has done this and the result is that. We're  
23 working with your Benefits and Legal staff on the details.  
24 And we'll continue to attempt to make sure, as best as we  
25 can, not only working individually, but with our partners

1 and other -- from other plans, and with the trade  
2 associations that those, albeit technical, but important  
3 Internal Revenue Code issues come out in the best  
4 interests of not only your plan but of public sector  
5 defined benefit plans in general.

6 I also just wanted to mention -- again, I'm sure  
7 you've read this and seen this in other publications.  
8 There is this sort of continuing drum beat of legislation  
9 to undo whether it be provisions of the Dodd-Frank  
10 Regulatory Reform Act, or the Affordable Care Act on the  
11 health care side.

12 We are monitoring all of those bills very  
13 carefully. We are in touch with committee staff in the  
14 House that are primarily dealing with these issues. And,  
15 where appropriate, we are recommending to your staff that  
16 CalPERS weighs in.

17 Now, to be truthful, we believe that most of  
18 these bills will, never mind pass the House, will never  
19 pass the Senate. One could make the argument that we  
20 don't need to engage at all. We're trying to cherry pick  
21 those which are significant, which deal with issues that  
22 have been priorities for CalPERS. Those that are not  
23 priorities, we're letting pass. Those that are  
24 priorities, we're recommending that CalPERS' voice be  
25 heard in the process.

1           And in doing so, obviously we're working with  
2 your Health staff on the ACA issues and with the  
3 Investment staff on the Dodd-Frank regulatory issues. And  
4 we will continue to do that. We will continue to share  
5 that, not only with you, but with the staff as we think  
6 engagement is important.

7           With that, I'd be happy to answer any questions  
8 about those couple of technical issues or about anything  
9 else that members of the Board might be interested in.

10           PRESIDENT FECKNER: Thank you, Tom.

11           Mr. Jelincic.

12           BOARD MEMBER JELINCIC: Tom, can you give us a  
13 brief background on what this retirement age issue is and  
14 what the proposals are?

15           MR. LUSSIER: The simplest way for me to explain  
16 it is the Service believes -- the Internal Revenue Service  
17 believes that the definition of normal retirement -- and  
18 by the way, some plans have an explicit definition and  
19 some don't. But the Service believes that the definition  
20 of normal retirement cannot include service as a factor.

21           So if you have a formula that says, you know, 30  
22 and out or if you have a formula that is a combination of  
23 age and years of service, under the -- under where we  
24 started with the Service, that definition of normal  
25 retirement age would not be allowed, and you would be

1 required, if you wanted to maintain your tax qualified  
2 status, to go to your legislature and redefine normal  
3 retirement age.

4           We have consistently made the argument that  
5 service is an essential component of a public sector  
6 define benefit program. And if they are to undermine that  
7 provision, the effect would be significant across the  
8 country.

9           And we have also argued, particularly at a time  
10 when there is so much controversy around public sector  
11 define benefit programs, that we really don't want to have  
12 to open such a fundamental factor to legislative debate in  
13 legislatures all over this country.

14           So we think we have convinced them that service  
15 needs to be recognized. We think we have convinced them  
16 that if it's recognized in a document and a process that's  
17 a public process, whether it's a Board of trustees, or a  
18 State Legislature or some sort of local ordinance or a  
19 local plan, that it should be accepted.

20           But as I said, we have been back and forth with  
21 them. They have delayed the application of their  
22 definition time after time, but we're hopeful that this  
23 time they have finally heard our arguments and will back  
24 off.

25           BOARD MEMBER JELINCIC: If the IRS were to rule

1 that service wasn't a factor, would that apply to private  
2 sector plans as well or is this a rule specifically for  
3 public sector.

4 MR. LUSSIER: I think it would apply -- depending  
5 upon exactly which -- how they made that interpretation, I  
6 think it could apply across the Board. Obviously, the  
7 discussions that we've had with them have been very  
8 specific to public sector defined benefit plans, but I  
9 think it would be across the Board.

10 BOARD MEMBER JELINCIC: Well, that would suggest  
11 we have some additional allies and I'll take them.

12 Thank you, Tom.

13 PRESIDENT FECKNER: Okay. Seeing no other  
14 requests to speak, thank you, Tom.

15 MR. LUSSIER: Thank you, Mr. President. I'll see  
16 you all next week in Long Beach.

17 PRESIDENT FECKNER: Very good.

18 Agenda Item 17, Public Affairs Update.

19 Mr. Pacheco.

20 OFFICE OF PUBLIC AFFAIRS CHIEF PACHECO: Thank  
21 you, Mr. President. Good morning. Before you is our  
22 strategic communications report since our last Board  
23 meeting. I just wanted to call out two quick items.

24 Last month, KCRA News, which is the Sacramento's  
25 NBC affiliate, visited CalPERS to do a feature story on

1 the launch of the my|CalPERS system. And we worked  
2 closely with the PSR project team to give them an inside  
3 look at the my|CalPERS war room, our customer service  
4 areas, and the new and smaller footprint that the system  
5 leaves in our data center.

6 If you haven't had a chance to view the video,  
7 I'd encourage you to do so. I think it does a great job  
8 in explaining the purpose and goals of the project, and it  
9 also is a testament to the hard work by the CalPERS' staff  
10 in launching the system.

11 And then secondly, I wanted to mention that we've  
12 updated the CalPERS Pension Buck to reflect the income  
13 through June 30th. And as you would suspect, the amount  
14 of money that pays pensions from investments has  
15 increased. Over the last 20 years, investments account  
16 for 66 cents of every dollar in pensions paid, employers  
17 or taxpayers 21 cents, and members 13 cents. And Cheree  
18 has recopies of these samples for you. And we have  
19 additional copies for those of you that go out and speak.

20 And that concludes my report, Mr. President.

21 PRESIDENT FECKNER: Thank you. I do want to say  
22 that yesterday a number of the Board members took  
23 advantage of an opportunity to take the same kind of tour  
24 that you gave to the media. And some of them were a  
25 little happier that they got to see areas that weren't

1 shown on the TV show. So they were happy they got a  
2 little more insight, but it was a great tour, and I want  
3 to thank all the staff that was involved, both in leading  
4 us around and making the presentations when we were there.  
5 It was a great outcome. I think all the Board members  
6 that went really enjoyed themselves, so thank you.

7           Agenda Item 18, since I see no requests to speak,  
8 Pension System Resumption Project update.

9           Mr. Jablonsky.

10           ASSISTANT EXECUTIVE OFFICER JABLONSKY: Good  
11 morning, Mr. President, and members of the Board. Dale  
12 Jablonsky, CalPERS staff.

13           I would like to point out that we are changing  
14 our structure a little bit, and we're adding Donna's  
15 report that she originally started out of her BPAC agenda.  
16 We believe that the service delivery and workload item  
17 needs to come in front of the full Board and not just the  
18 Committee. So she will be giving a report today.

19           I'd also like to announce that today is the  
20 one-month anniversary of our go-live. We have submitted  
21 already six significant changes to the system in the last  
22 30 days. So that's one significant change every five  
23 days, which is symbolic of a very responsive project. We  
24 just didn't stop and celebrate our go-live. We've been  
25 very, very busy ever since we went live.

1           So Karen will continue with our report.

2           PSR PROJECT MANAGER RUIZ: Okay. Good morning,  
3 Karen Ruiz, CalPERS staff. And I was going to open with  
4 that and say if the organization thought we were busy  
5 before launch, we have proved them wrong. We can be  
6 busier and we are.

7           We have certainly had many great successes. And  
8 as expected, we've also experienced numerous challenges.  
9 Donna is going to talk about service levels in a minute,  
10 but from a system perspective, when we initially launched  
11 in the first couple days, we did have some performance  
12 issues.

13           As Dale said, we've had a -- the team has been  
14 extremely responsive, and we've been able to address these  
15 issues as they've come up.

16           In addition, related to conversion, with over the  
17 30 years of data and the 3.2 billion records that we've  
18 talked about, we knew that some data would either be  
19 missing or wrong or converted wrong. And so we did have  
20 to set -- we set up processes to make sure that we caught  
21 all of that and fixed it before it impacted a benefit, but  
22 we have had a few instances where things have kind of  
23 slipped through the cracks.

24           We have also had some challenges switching over  
25 to our new payment processing method. And working with

1 some of our key business partners, including our health  
2 carriers and, of course, the State Controller's Office,  
3 they've been very, very good working with us to make sure  
4 that, you know, some of the issues that we've encountered  
5 don't ultimately impact our member's ability to get  
6 benefits.

7           We have, you know, other smaller items that  
8 impact the system. But on the success side, we have,  
9 since day one, we've been getting an average of over  
10 500,000 page views to the system every single day. And  
11 with the exception of those first couple days, where we  
12 did have some performance issues, we've been running an  
13 average of right around two to two and a half seconds  
14 average response time.

15           Dale missed a couple releases. We've actually  
16 had eight releases since the beginning -- since the system  
17 launched, which is five more than we had originally  
18 planned. And this weekend we're going to be -- we're  
19 going to have our ninth release on the system.

20           As of this weekend, we will have addressed almost  
21 700 different issues or incidents that have been brought  
22 up, whether it's a specific data item or something of  
23 broader importance.

24           In addition, on open enrollment, as you know,  
25 open enrollment started last week. And as of yesterday,

1 you know, normally it is slower in the beginning weeks.  
2 But as of yesterday, we had processed just under 2,500  
3 open enrollment transactions in the new my|CalPERS system.

4 And then finally, since going live, we've ran  
5 four weekly benefit rules, and then our first monthly  
6 benefit rule yesterday. So we've issued a total of just  
7 under 550,000 warrants, totaling about \$1.3 billion.

8 So while we have had our challenges, we've  
9 certainly also had our successes. But the team remains  
10 very committed, working very hard with primarily Donna's  
11 staff and the rest of the program areas to make sure that  
12 as things come up, they're being addressed very quickly,  
13 and in a manner that is -- that -- the point is to try to  
14 make sure that we don't have impacts on our members.

15 So with that, I'm going to -- John's here to  
16 answer questions, if necessary later, but we're going to  
17 go ahead and just go directly to our Independent Project  
18 Oversight.

19 MR. ROY: Good morning, Mr. President, members of  
20 the Board. Adam Roy with KPMG, providing IPOC and IPMP  
21 for the PSR project. And the last month's Board update,  
22 the KPMG team reported that substantive improvements have  
23 been made in several of our reported focus areas leading  
24 into the window preceding the launch of the my|CalPERS  
25 system at the end of August.

1           The launch of the new system on September 19  
2 demonstrated that further condition improvements were  
3 warranted in several areas at the close of the September  
4 reporting period.

5           For example, the scheduled focus area improved to  
6 a green condition for the month of September, due to the  
7 project team beating the major milestone of initial launch  
8 on time. Similarly, as Karen and Dale reported, the  
9 project team had delivered a number of planned post-launch  
10 releases subsequently that were also on time.

11           While we do not currently foresee evidence of  
12 obstacles to maintaining the integrity of the schedule, we  
13 do reserve a measure of caution until the project team is  
14 able to further demonstrate that it's able to maintain  
15 pace with the baseline schedule, while also managing  
16 emerging production issues.

17           Similarly, the scope focus area improved to a  
18 green condition for the month of September. This improved  
19 condition is the result of the project team implementing  
20 the solution and the expected scope on time, and also  
21 post-production priority releases to address issues that  
22 had come up in production to date.

23           The team has also witnessed improvements in the  
24 internal implementation readiness aspect of the project,  
25 worthy of improving that rating to a green condition for

1 September. And this condition change is the result of the  
2 project team's success in preparing the CalPERS  
3 organization for initial launch, as well as the broad set  
4 of supports that are in place to bolster the  
5 implementation efforts.

6 In other areas, we have maintained a cautionary  
7 position. For example, in the resource focus area, we  
8 remain in a yellow condition for September, while the  
9 project team has demonstrated that it had resource  
10 capacity to support the initial launch of the new  
11 my|CalPERS system.

12 Until the enterprise is able to complete a  
13 broader spectrum of CalPERS core business transactions,  
14 monthly roll and open enrollment, which are underway now,  
15 and have seen some success in October, there's not yet  
16 complete evidence to demonstrate that the project can  
17 provide the necessary resources on an ongoing basis with  
18 the right skill sets to support the remaining releases.

19 In the quality focus area, we also remain in a  
20 yellow condition through September. The first two weeks  
21 in my|CalPERS production through September were very  
22 successful, and that the solution remained available to  
23 users throughout each business day.

24 However, there are several components to the  
25 system with functional constraints as we know, and

1 residual risks that were understood and accepted by the  
2 business, prior to initial launch, that have demonstrated  
3 challenges for program area operations, these include  
4 death processing, service credit purchase, as examples.

5           Until the organization is able to validate that  
6 these core functions deliver accurate and timely results,  
7 and the project can execute functional fixes to enable  
8 staff to complete their work in affected areas, we believe  
9 continued caution is necessary.

10           In summary, the launch of the my|CalPERS system  
11 was a noteworthy accomplishment for the project team, and  
12 the entire CalPERS organization. While the launch of the  
13 new system was the pinnacle achievement of the project's  
14 effort to date, it does not mark the end of the  
15 organization's transition.

16           The next several months will be critical to  
17 proving out the functionality of the system, and achieving  
18 stability and operations and service performance. Until,  
19 the functionality of the system is sufficiently stable to  
20 enable staff to complete all required transaction types,  
21 and begin to work down their current backlogs, our overall  
22 condition assessment of the project will remain  
23 cautionary.

24           That concludes my remarks, and I'll turn to Donna  
25 for a service briefing.

1           DEPUTY EXECUTIVE OFFICER LUM: Thank you. Good  
2 morning, Mr. President, members of the Board. Donna Lum,  
3 CalPERS staff.

4           Mr. President, thank you very much for your  
5 remarks.

6           As you've heard from the team already, we did  
7 successfully launch the new my|CalPERS system and we are  
8 heavily engaged in the fourth week of using the system.

9           Beginning on day one, many staff were able to  
10 access the system and to begin processing some core  
11 functions. As the days and weeks have gone by, the staff  
12 are becoming more comfortable with using the system and  
13 they are starting to see the benefits of having -- of the  
14 long-term aspect of this system.

15           As reported during prior briefings, we did  
16 anticipate and expect that we would experience service  
17 level impacts due, not only to the learning curve  
18 associated with implementing the new system, but as well  
19 as the manual workarounds that were required, as well as  
20 system functionality that is still in progress, and the  
21 accumulation of several backlogs that we experienced  
22 during the cut-over period, the two-week cut-over period.

23           Today, I want to share with you some of the areas  
24 that have been impacted, the experience that the staff  
25 have gone through, as well as some of our members and our

1 employers.

2           The customer contact center has experienced an  
3 increase in call volumes, as well as abandonment rates,  
4 and longer wait times. Employer inquires have been much  
5 more impacted, the member inquires. Every employer is now  
6 required to use the new my|CalPERS system to do business  
7 with us.

8           And although we had an extensive outreach to our  
9 employers and you heard many reports from our PERT team  
10 with regards to training, we do know that our employers  
11 are going through a learning curve as well to utilize the  
12 system, and many have not afforded themselves of the  
13 training opportunities that were provided in advance of  
14 the launch.

15           Employers are also encountering some system  
16 defects. And for all of these reasons, our employers are  
17 needing much more extensive navigation and assistance from  
18 the CalPERS' staff, which equates to higher volumes as  
19 well as call durations.

20           However, staff have implemented a vast variety of  
21 mitigations over the past few weeks. For example, we have  
22 redirected many resources to the contact center. We have  
23 implemented an escalation process to transfer the system  
24 related issues to a technical team allowing the contact  
25 agents to address other issues.

1           We have offered additional training opportunities  
2 for our employers, including daily webinars, which have  
3 begun this week. In addition to that, we've expanded our  
4 employer communications to inform them of the other  
5 alternatives that are available for them to seek  
6 assistance, other than calling the contact center.

7           We have also extended the contact center hours  
8 from 7 a.m. to 5 p.m. And staff are staying well past 6  
9 p.m. to ensure that all calls that are received are  
10 completed and addressed.

11           In addition to that, this Saturday, we are  
12 beginning to pilot having the call center - this is the  
13 employer side - open on Saturdays from the hours of 7 to  
14 noon. This pilot will help us determine whether or not  
15 those additional hours would be useful for our employers  
16 as well.

17           We also implemented a Rapid Results team. This  
18 was a very effective team that came together very quickly  
19 and identified some additional mitigations to assist the  
20 experience that our employers were having with our call  
21 center.

22           I am pleased to say that during the past four  
23 business days we have begun to see a slight reduction in  
24 the call volumes, as well as improvements in handle times,  
25 abandonment rates, and weight times.

1           Mondays typically tend to be a very busy day in  
2 the contact center. This past Monday, the average call  
3 wait time was reduced to 11 minutes. We experienced wait  
4 times as much as 45 minutes or longer early in the  
5 project.

6           In addition, to that, our call answer rate, which  
7 at the onset of the project was at about 39 percent, on  
8 Monday we saw that increase to 87 percent. A tremendous  
9 amount of improvement that was made in a very short amount  
10 of time.

11           We believe that these are the results of the  
12 mitigations that were put in place very quickly. However,  
13 it may be too early to characterize this as a trend.  
14 However -- and it does demonstrate that we are moving in a  
15 positive direction.

16           Our mitigations don't stop here. We are entering  
17 into the open enrollment season. We know that the call  
18 volumes continue to increase during this period of time.  
19 And therefore, we are continuing again to identify and  
20 evaluate additional mitigations.

21           I do want to turnover to some of the other core  
22 processing areas that we have. Within the first few days  
23 of launch, we successfully key entered over a thousand  
24 service retirement applications. I think early on in my  
25 briefings, you heard a little bit of cautionary reporting

1 from me, in terms of staff learning curve, our ability to  
2 address some of the backlogs that were accumulated during  
3 the cut-over period. And it was really very, very  
4 exciting for us to be able to see that the staff were  
5 immediately able to get in and to key these applications  
6 that were not constrained.

7           As planned, we are validating many of the benefit  
8 calculations, which is impacting some service levels. As  
9 we continue to ensure that specific calculations are  
10 working as we expect, we will release the many  
11 restrictions that we have on the calculations allowing  
12 those applications to process straight through the system.

13           We are also closely monitoring other areas, core  
14 processes, such as death benefits, disability retirements,  
15 refunds, and payroll reconciliations amongst others. And  
16 as you heard from our IPOC representative, we are very  
17 cautiously looking at again how to continue to assess and  
18 improve mitigations that can help these core functional  
19 areas as well.

20           Processing service credit -- service credit  
21 purchases continues to be a challenge. As you are aware,  
22 we entered into the new -- the system with a backlog. And  
23 there are many, many workarounds in this area.

24           I do want to assure you that the project team is  
25 working very closely with the program staff to identify

1 and implement fixes to address this area. We are using  
2 the manual workarounds, as they were designed. And as  
3 staff are becoming more familiar with this system, they  
4 are coming up with additional creative ways to be able to  
5 produce our outcomes. And therefore, we are refining the  
6 workarounds as needed.

7           And I'm really pleased to say, and as Karen  
8 shared with you, I think we kind of all held our breath a  
9 little bit as we were going through the process of running  
10 our weekly rolls, as well as this monthly roll that was  
11 run this week. The fact that we are able to run those  
12 rolls means that we are getting benefits out the door.

13           We have experienced a few unanticipated issues.  
14 One that Karen also mentioned with you -- or mentioned to  
15 you. And that is prior to the launch of the system, our  
16 staff were unaware that what is known as an ACH number had  
17 been issued -- a new number had been issued for processing  
18 EFT transactions in the new system.

19           Approximately 50 employers were impacted by using  
20 the incorrect system, resulting in some rejected  
21 transactions. Upon notification of this issue, again, the  
22 staff immediately began communicating this new number to  
23 our employers. And as of yesterday, all impacted  
24 employers had been contacted and provided with assistance  
25 in resubmitting their payments. We've also made

1 arrangements with Citibank to ensure that old numbers can  
2 be received for a period of time.

3           So again, to demonstrate that as issues have come  
4 up, we have been very effective in getting them escalated  
5 and addressed. Our planned processes, and I want to  
6 emphasize planned processes, to validate specific  
7 activities, such as processing the benefit roll of our  
8 public agency billings, our health transactions, and our  
9 outbound letters have proven to be beneficial.

10           As we have gone through this quality assurance  
11 process and we have identified issues, again, as you've  
12 heard from the team, those issues are being addressed and  
13 many of them have already -- fixes for many of them have  
14 already been implemented.

15           We do have many support systems that are in  
16 place. We had an outstanding support team -- technical  
17 support team that was on the floor with our staff from day  
18 one, and continue to be on the staff -- on the floor  
19 with -- in many of our processing areas.

20           Our triage rooms in the area of death benefits  
21 and retirement have really proven as well to assist in  
22 managing our operations.

23           Staff is working through, what I consider to be,  
24 a smooth process. There are challenges. I've shared many  
25 of them with you. However, we are again working very

1 collaboratively to identify the kinks to get them  
2 resolved. And I will say that there is growing enthusiasm  
3 about the look and the future and the potential of this  
4 system.

5 I will be giving you a comprehensive update with  
6 specific information about the service levels and the  
7 durations that we will have experienced through January.  
8 Again, in this four-week period of time, it's very early  
9 on to begin to articulate what the impacts are. However,  
10 between now and January, I will continue to provide you  
11 updates in the interim.

12 So, Mr. President, that completes my report. And  
13 I'm available to answer any questions you may have.

14 PRESIDENT FECKNER: Thank you.

15 Mr. Jelincic.

16 BOARD MEMBER JELINCIC: As the Board member who's  
17 at least verbally been the most cynical of the project, I  
18 want to commend you on how well it is coming off. I am  
19 pleasantly surprised. However, that doesn't end all the  
20 questions.

21 (Laughter.)

22 BOARD MEMBER JELINCIC: When we went into this,  
23 we developed a number of workarounds as we learned that  
24 there were going to be problems. And I would assume that  
25 since, in the last month we've probably created some new

1 workarounds, because we found some problems we didn't know  
2 were going to exist.

3           So my question is of the workarounds we went in  
4 knowing about, how many have we been able to fix to the  
5 point where we don't have to use the workarounds anymore,  
6 and how many new workarounds did we create?

7           And you're all looking. You knew the question  
8 was coming.

9           PSR PROJECT MANAGER RUIZ: I just wanted to make  
10 sure. So I don't have the specific numbers. However,  
11 what I can tell you is that the 688 system investigation  
12 reports that have been made, and some of those were made  
13 prior to our launch, that many of those were implemented  
14 in these releases in order to address workarounds.

15           So in our first release, which was on September  
16 25th, we had 206 fixes that went in. Many of those were  
17 because we knew that there were some things that weren't  
18 working properly, and maybe we wouldn't need those until  
19 later. So those were all to address issues that resulted  
20 in workarounds.

21           The same thing with the release that's going in  
22 this weekend. So everyone of those items that goes in is  
23 going in, because it's addressing a workaround or  
24 something that causes extra work on the program area.

25           As far as new workarounds, what we did, we talked

1 a lot about the implementation support staff that was  
2 going to be on the floor. And what their job is, is they  
3 not only help folks go through the system, but their job  
4 is to every day meet in the morning, and meet in the  
5 evening with the development team to identify -- both the  
6 development team and the transition team, and they  
7 identify things that might have come up that we didn't  
8 know about before launch. And they typically, in any  
9 given day, they might create two to four new workarounds.

10 So sometimes they create those workarounds and  
11 they're only in place until a priority release can be done  
12 that weekend. And sometimes they're in place a little bit  
13 longer, but on average they're creating two to four  
14 workarounds per day.

15 BOARD MEMBER JELINCIC: Thank you.

16 PRESIDENT FECKNER: Thank you. Seeing no other  
17 requests, anything else, Dale?

18 ASSISTANT EXECUTIVE OFFICER JABLONSKY: No. That  
19 concludes our report.

20 PRESIDENT FECKNER: Very good. Agenda Item 19,  
21 Draft Agenda for November 16.

22 Ms. Stausboll.

23 CHIEF EXECUTIVE OFFICER STAUSBOLL: The agenda is  
24 before you. I'll be happy to take any additions or  
25 questions?

1           PRESIDENT FECKNER: Seeing no requests, that  
2 moves us to Agenda Item 20, Board Meeting Calendar.

3           Ms. Stausboll.

4           CHIEF EXECUTIVE OFFICER STAUSBOLL: Thank you.  
5 This is the rolling calendar for the next 12 months. I  
6 would just note that beginning next month on this  
7 calendar, we'll start showing the new Committee structure  
8 as we enter 2012.

9           PRESIDENT FECKNER: Very good. I also would like  
10 to have it noted that in January you notice the off-site,  
11 the dates are scheduled. It's actually going to be in  
12 Monterey on 2600 San Dunes Drive. So everybody has  
13 notice.

14           CHIEF EXECUTIVE OFFICER STAUSBOLL: Thank you.

15           PRESIDENT FECKNER: Yeah. George, the one that  
16 asked, isn't here. George, you hear us back there.

17           (Laughter.)

18           PRESIDENT FECKNER: San Dunes Drive.

19           All right. Board Item 21, Board Travel  
20 Approvals. You have -- in your binder, you have one  
21 request for Mr. Costigan to go to Las Vegas for a Global  
22 Asset Allocation Summit. And in your new folder today,  
23 you have a request for Mr. Costigan to go to the World  
24 Pension Forum in South Africa next May; Mr. Bilbrey to go  
25 to Reno to the PORAC conference, and Mr. Bilbrey to go to

1 Las Vegas for the CPEC Health Conference.

2 What's the pleasure of the Board?

3 BOARD MEMBER JELINCIC: I'll move.

4 BOARD MEMBER MORET: Second.

5 PRESIDENT FECKNER: Moved by Jelincic, seconded  
6 by Moret.

7 We have Mr. Boyken.

8 ACTING BOARD MEMBER BOYKEN: Thank you. I was  
9 actually wondering if we could -- if I could make a  
10 substitute motion to split the travel requests that were  
11 made in the binder before and those that we received  
12 today. I've asked this before. It's hard, as a designee,  
13 I'd like to be able to confer with -- you know, with my  
14 principal before approving these, even if we could get  
15 travel requests, if they're going to be that week of the  
16 meeting, if we could get them maybe a day before the  
17 meeting, so -- if I abstain on those, the only reason for  
18 that abstention will be I haven't had a chance to speak  
19 with the Treasurer.

20 PRESIDENT FECKNER: Very good. So without  
21 objection, we will vote on the -- on Mr. Costigan's trip  
22 to Las Vegas separately than the other three. Seeing no  
23 objection, the motion -- the first motion will be Mr.  
24 Costigan to Las Vegas. Seeing no requests to speak on the  
25 motion, please call the roll.

1 BOARD SECRETARY KARCHER: George Diehr?  
2 PRESIDENT FECKNER: Yes.  
3 BOARD SECRETARY KARCHER: Michael Bilbrey?  
4 BOARD MEMBER BILBREY: Yes.  
5 BOARD SECRETARY KARCHER: Terry McGuire for John  
6 Chiang?  
7 ACTING BOARD MEMBER MCGUIRE: Yes.  
8 BOARD SECRETARY KARCHER: Richard Costigan?  
9 BOARD MEMBER COSTIGAN: Yes.  
10 BOARD SECRETARY KARCHER: J.J. Jelincic?  
11 BOARD MEMBER JELINCIC: Yes.  
12 BOARD SECRETARY KARCHER: Henry Jones?  
13 BOARD MEMBER JONES: Yes.  
14 BOARD SECRETARY KARCHER: Grant Boyken for Bill  
15 Lockyer?  
16 ACTING BOARD MEMBER BOYKEN: Yes.  
17 BOARD SECRETARY KARCHER: Priya Mathur?  
18 BOARD MEMBER MATHUR: Yes.  
19 BOARD SECRETARY KARCHER: Lou Moret?  
20 BOARD MEMBER MORET: Yes.  
21 BOARD SECRETARY KARCHER: Tony Oliveira?  
22 BOARD MEMBER OLIVEIRA: Yes.  
23 BOARD SECRETARY KARCHER: Ronald Yank?  
24 BOARD MEMBER YANK: Yes.  
25 PRESIDENT FECKNER: Thank you. Motion carries.

1           The second motion will be the three that are in  
2 your blue folder for today. That's two for Mr. Bilbrey,  
3 one to Reno and one to Las Vegas and one for Mr. Costigan  
4 to South Africa. Seeing no requests to speak, please call  
5 the roll.

6           BOARD SECRETARY KARCHER: George Diehr?

7           VICE PRESIDENT DIEHR: Yes.

8           BOARD SECRETARY KARCHER: Michael Bilbrey?

9           BOARD MEMBER BILBREY: Yes.

10          BOARD SECRETARY KARCHER: Terry McGuire for John  
11 Chiang?

12          ACTING BOARD MEMBER MCGUIRE: Abstain.

13          BOARD SECRETARY KARCHER: Richard Costigan?

14          BOARD MEMBER COSTIGAN: Yes.

15          BOARD SECRETARY KARCHER: J.J. Jelincic?

16          BOARD MEMBER JELINCIC: Yes.

17          BOARD SECRETARY KARCHER: Henry Jones?

18          BOARD MEMBER JONES: Yes.

19          BOARD SECRETARY KARCHER: Grant Boyken for Bill  
20 Lockyer?

21          ACTING BOARD MEMBER BOYKEN: Abstain.

22          BOARD SECRETARY KARCHER: Priya Mathur?

23          BOARD MEMBER MATHUR: Yes.

24          BOARD SECRETARY KARCHER: Lou Moret?

25          BOARD MEMBER MORET: Yes.

1 BOARD SECRETARY KARCHER: Tony Oliveira?

2 BOARD MEMBER OLIVEIRA: Yes.

3 BOARD SECRETARY KARCHER: Ronald Yank?

4 BOARD MEMBER YANK: Yes.

5 PRESIDENT FECKNER: Motion carries.

6 I will say to Board members, if you can have your  
7 requests in to me by Monday morning of Board week, we will  
8 get those turned back around so everyone has a copy of it  
9 by Tuesday, so they can talk to their respective parties.

10 So in the future, let's have those in by Monday  
11 morning when we have our closed session.

12 That brings us to Agenda Item 22, General  
13 Counsel's report.

14 Mr. Mixon.

15 GENERAL COUNSEL MIXON: Thank you, Mr. President.  
16 You have in front of you the new monthly case report, the  
17 assignment matrix, and the special review implementation  
18 plan. Happy to answer any questions.

19 I have two matters I wish to discuss very briefly  
20 this morning. First is a new approach that the System is  
21 going to be taking with regard to Public Records Act  
22 requests, regarding member retirement allowances.

23 We sent a legal memo to the Board last week  
24 explaining the developments in the case law that have  
25 occurred over the summer. There have been several

1 different lawsuits filed against different public  
2 retirement systems involving the scope of the Public  
3 Records Act as it applies to public pensions.

4           So right now, we disclose the member's name and  
5 the gross amount of the retirement allowance. But in  
6 light of these decisions, we are going to be broadening  
7 our disclosure when requested, of course. Now, we will  
8 include those two items, plus the last employer and the  
9 position that the member held. We will be providing a  
10 breakdown of the calculation, which typically includes  
11 years of service, salary, and COLAs.

12           We will continue, of course, to withhold private  
13 financial information of the members. We are also not  
14 going to be providing anything beyond those calculations.

15           We are working with the Public Affairs Office on  
16 a communication plan with our constituents and our  
17 members.

18           Happy to answer any questions.

19           PRESIDENT FECKNER: Thank you. Seeing no other  
20 requests, thank you very much.

21           GENERAL COUNSEL MIXON: The only other thing I  
22 wanted to mention is that our office will be conducting a  
23 fiduciary workshop early next year, either February or  
24 March.

25           PRESIDENT FECKNER: Thank you.

1           Item 23, Proposed Decisions of Administrative Law  
2 Judges. We have numbers 23a through E.

3           What's the pleasure of the Board?

4           Ms. Mathur is not here.

5           Mr. Jelincic.

6           BOARD MEMBER COSTIGAN: I'll move.

7           BOARD MEMBER JELINCIC: Richard moved it. I'll  
8 second it.

9           PRESIDENT FECKNER: Mr. Costigan moves staff's  
10 recommendation on Items a through e. Mr. Jelincic seconds  
11 it. I have two requests to speak.

12          Mr. Yank.

13          BOARD MEMBER YANK: Yeah. I just noted that  
14 yesterday in, I guess, it's c, Mr. LaSage asked us to kick  
15 this matter over. I've reviewed -- I guess, I'm speaking  
16 just to indicate that we've gotten this document. The  
17 matter Mr. LaSage complains about in his letter dated  
18 October 18th, which I found in my little blue packet. The  
19 witness he's complaining about is not mentioned at all in  
20 the recommendation of the ALJ. So I am perfectly  
21 comfortable voting to accept all of the ALJs' decisions,  
22 including that involving Mr. LaSage. But I think we ought  
23 to at least acknowledge that we received this document  
24 from Mr. LaSage.

25          Thank you.

1           PRESIDENT FECKNER: Very good. Please note for  
2 the record that we do have in our blue folders an update  
3 from Mr. LaSage.

4           BOARD MEMBER MATHUR: Mr. President, may I just  
5 ask for a clarification?

6           PRESIDENT FECKNER: You may.

7           BOARD MEMBER MATHUR: The motion I think was to  
8 accept staff's recommendation, but it should actually, I  
9 believe, be to adopt the proposed decisions of the ALJ.

10          PRESIDENT FECKNER: You are correct.

11          BOARD MEMBER MATHUR: Thank you.

12          PRESIDENT FECKNER: Mr. Jones.

13          BOARD MEMBER JONES: Yes. Should the staff be  
14 directed to, on Item 23b, to expunge the reference to  
15 alcoholism. Is that included in your motion, Mr.  
16 Costigan?

17          BOARD MEMBER COSTIGAN: If that helps clarify  
18 that for you.

19          BOARD MEMBER JONES: Yes.

20          PRESIDENT FECKNER: For those that couldn't here,  
21 is was whether or not we would expunge the reference to  
22 alcoholism in the case. And Mr. Costigan said that he  
23 would include that in his motion.

24                 Any further discussion on the motion?

25                 Seeing none, please call the roll.

1 BOARD SECRETARY KARCHER: George Diehr?  
2 VICE PRESIDENT DIEHR: Yes.  
3 BOARD SECRETARY KARCHER: Michael Bilbrey?  
4 BOARD MEMBER BILBREY: Yes.  
5 BOARD SECRETARY KARCHER: Terry McGuire for John  
6 Chiang?  
7 ACTING BOARD MEMBER MCGUIRE: Yes.  
8 BOARD SECRETARY KARCHER: Richard Costigan?  
9 BOARD MEMBER COSTIGAN: Yes.  
10 BOARD SECRETARY KARCHER: J.J. Jelincic?  
11 BOARD MEMBER JELINCIC: Yes.  
12 BOARD SECRETARY KARCHER: Henry Jones?  
13 BOARD MEMBER JONES: Yes.  
14 BOARD SECRETARY KARCHER: Grant Boyken for Bill  
15 Lockyer?  
16 ACTING BOARD MEMBER BOYKEN: Yes.  
17 BOARD SECRETARY KARCHER: Priya Mathur?  
18 BOARD MEMBER MATHUR: Yes.  
19 BOARD SECRETARY KARCHER: Lou Moret?  
20 BOARD MEMBER MORET: Yes.  
21 BOARD SECRETARY KARCHER: Tony Oliveira?  
22 BOARD MEMBER OLIVEIRA: Yes.  
23 BOARD SECRETARY KARCHER: Ronald Yank?  
24 BOARD MEMBER YANK: Yes.  
25 PRESIDENT FECKNER: Motion carries.

1           Before we go on to the full Board hearing, I'm  
2 going to ask that we take a 15-minute break for the court  
3 reporter, because once we start the hearing, we don't want  
4 to start. So we're going to take a break until, let's  
5 say, 11:10 how's that. That gives us 13 minutes. So we  
6 are in recess until 11:10.

7           (Thereupon a recess was taken.)

8           PRESIDENT FECKNER: Okay. We're calling the  
9 meeting back to order out of recess. We're on Agenda Item  
10 24. Ms. Mathur has decided not to participate in the  
11 hearing, so she's no longer on the line.

12           So I want to start off by saying good morning,  
13 everyone.

14           MR. HARRON: Good morning.

15           PRESIDENT FECKNER: We're now starting on Agenda  
16 Item 24. Open record for the full Board hearing regarding  
17 the calculation Of final compensation for purposes of Mr.  
18 Thomas J. Harron's Application for retirement benefits  
19 with CalPERS.

20           Mr. Harron and the Otay Water District are  
21 respondents in this matter. CalPERS is the petitioner.  
22 The case number is 9729. At the August 17th 2011 Board  
23 meeting, the Board voted to take this matter up for a full  
24 board hearing in which the record from the hearing before  
25 the administrative law judge hearing stands as is. But

1 the parties have the opportunity to present oral and  
2 written arguments -- Mr. Harron, when that plane takes  
3 off, could you put your phone on mute, please.

4 MR. HARRON: I'm sorry. Yes. Sure I will. I'm  
5 in the airport zone.

6 PRESIDENT FECKNER: Well, that's obvious.

7 Thank you.

8 Because everything you do and say is on the -- in  
9 the complete auditorium on the speakers.

10 MR. HARRON: Okay.

11 PRESIDENT FECKNER: Let' see -- in doing so, the  
12 Board neither adopted not rejected the proposed decision  
13 of the administrative law judge. So before we begin, Mr.  
14 Harron has requested permission to appear in the hearing  
15 telephonically. Can we please secure Mr. Harron on the  
16 telephone. We've done so.

17 Good morning, Mr. Harron. Welcome to our  
18 hearing. My name is Rob Feckner. I'm President of the  
19 CalPERS Board of Administration. You're now connected  
20 live into the public hearing regarding calculation of  
21 final compensation for purpose of your retirement  
22 application for CalPERS benefits.

23 For the record, we want to note that Mr. Harron  
24 has requested in writing to appear at this hearing via  
25 telephone. Is that correct, Mr. Harron?

1 MR. HARRON: Yes it is. And I appreciate your  
2 granting that request.

3 PRESIDENT FECKNER: Thank you. And my  
4 understanding is that CalPERS staff does not object to Mr.  
5 Harron's telephone appearance. Appearing for CalPERS  
6 staff today is Patricia Miles. Is that correct, Ms.  
7 Miles, that staff does not object to Mr. Harron's  
8 telephonic appearance in this hearing today?

9 SENIOR STAFF COUNSEL MILES: That's correct, Mr.  
10 President.

11 PRESIDENT FECKNER: Thank you. And the Board has  
12 since granted Mr. Harron's request to appear  
13 telephonically.

14 Mr. Harron, who is an attorney, is representing  
15 himself in this proceeding. Otay Water District has been  
16 giver notice but has not requested to appear in these  
17 proceedings.

18 Let us now take roll call.

19 BOARD SECRETARY KARCHER: Rob Feckner?

20 PRESIDENT FECKNER: Here.

21 BOARD SECRETARY KARCHER: George Diehr?

22 VICE PRESIDENT DIEHR: Here.

23 BOARD SECRETARY KARCHER: Michael Bilbrey?

24 BOARD MEMBER BILBREY: Here.

25 BOARD SECRETARY KARCHER: Terry McGuire for John

1 Chiang?

2 ACTING BOARD MEMBER McGUIRE: Here.

3 BOARD SECRETARY KARCHER: Dan Dunmoyer?

4 PRESIDENT FECKNER: Excused.

5 BOARD SECRETARY KARCHER: Richard Costigan?

6 BOARD MEMBER COSTIGAN: Here.

7 BOARD SECRETARY KARCHER: J.J. Jelincic?

8 BOARD MEMBER JELINCIC: Present.

9 BOARD SECRETARY KARCHER: Henry Jones?

10 BOARD MEMBER JONES: Here.

11 BOARD SECRETARY KARCHER: Grant Boyken for Bill

12 Lockyer?

13 ACTING BOARD MEMBER BOYKEN: Here.

14 BOARD SECRETARY KARCHER: Priya Mathur?

15 PRESIDENT FECKNER: Excused.

16 BOARD SECRETARY KARCHER: Lou Moret?

17 BOARD MEMBER MORET: Here.

18 BOARD SECRETARY KARCHER: Tony Oliveira?

19 BOARD MEMBER OLIVEIRA: Here.

20 BOARD SECRETARY KARCHER: Howard Schwartz for Ron

21 Yank?

22 ACTING BOARD MEMBER SCHWARTZ: Here.

23 PRESIDENT FECKNER: Thank you. Also, let the  
24 record reflect that Chirag Shah from the Los Angeles based  
25 law firm of Shah & Associates, the Board's independent

1 counsel on full Board hearings and proposed decisions from  
2 the Office of Administrative Hearings will be guiding and  
3 advising the Board in these proceedings should Board  
4 members have questions. Mr. Shah will also provide a  
5 brief summary of Mr. Harron's case before we start our  
6 arguments.

7 Now, I would like to provide a general outline of  
8 the procedures that we will follow today. I trust that  
9 both parties have received copies of the Statement of  
10 Policy and Procedures for Full Board Hearings before the  
11 Board. Is that correct, Mr. Harron?

12 MR. HARRON: Yes, it is.

13 PRESIDENT FECKNER: Ms. Miles?

14 SENIOR STAFF COUNSEL MILES: Yes, sir.

15 PRESIDENT FECKNER: Thank you.

16 Mr. Harron, by letter dated September 1, 2011,  
17 you received notice of these proceedings and have also  
18 been offered assistance in understanding the procedural  
19 requirements for a full hearing. Is that also correct?

20 MR. HARRON: Yes, it is.

21 PRESIDENT FECKNER: Thank you. And that the  
22 Board's independent counsel, Mr. Shah has informed you of  
23 the rules and provided you with a copy of the relevant  
24 sections of the Administrative Procedure Act that prohibit  
25 ex parte communication with the Board during the

1 administrative process, is that correct, Mr. Harron?

2 MR. HARRON: It is.

3 PRESIDENT FECKNER: Thank you. We will today, as  
4 we do at every full Board hearing, strictly adhere to the  
5 Board's written procedures. First, as previously  
6 indicated, Mr. Shah will provide a brief summary of the  
7 case. Then we will address any preliminary matters  
8 relating to evidentiary issues.

9 After that, we will proceed with argument. Ms.  
10 Miles will have the first 15 minutes to present staff's  
11 argument. Then Mr. Harron will have 15 minutes to present  
12 his argument. Neither side is compelled to use the full  
13 15 minutes. In other words, you may, but do not have to  
14 use up to the entire 15 minutes to present your argument.  
15 If, however, you conclude your argument in less than 15  
16 minutes, you do not get to roll those minutes over to any  
17 remaining time for your rebuttal or any portion of these  
18 proceedings. So it's a use-it-or-lose-it situation.

19 After both sides have presented their 15-minute  
20 arguments, each side will begin five minutes for rebuttal  
21 arguments in the same order as the original presentation.  
22 Ms. Miles first, then Mr. Harron.

23 Again, you may, but do not have to, use the  
24 entire five minutes allocated to you for rebuttal. But if  
25 you decide to use less time, you will not have any other

1 opportunity for the time remaining. It is forfeited and  
2 there is no bank for the time that you can draw upon  
3 later.

4           There is a timer in the hearing room which will  
5 have a green light when it is time to speak. The time  
6 will have a yellow light when you have two minutes  
7 remaining to speak. When the timer's light turns red,  
8 your time will have expired.

9           Mr. Harron, because you're appearing via  
10 telephone, I will inform you when the light changes on the  
11 timer, so that you will know when you have two minutes  
12 remaining and when your time is up.

13           MR. HARRON: Thank you.

14           PRESIDENT FECKNER: After both sides' arguments  
15 and rebuttals are concluded, the Board may ask questions  
16 from either side. The alternatives available to the Board  
17 are set forth in Agenda Item 24. At the very end of these  
18 proceedings, the Board may go into closed session to  
19 deliberate and vote on the matter. Alternatively, the  
20 Board may vote on the matter in open session without  
21 closed session deliberations.

22           Do we have any questions so far and do both  
23 parties understand the procedure?

24           Mr. Harron?

25           MR. HARRON: No questions. I think I understand

1 it.

2 PRESIDENT FECKNER: Thank you.

3 Ms. Miles?

4 SENIOR STAFF COUNSEL MILES: I understand.

5 PRESIDENT FECKNER: Thank you.

6 Now, then, Mr. Shah, please give us a brief  
7 summary of the case.

8 MR. SHAH: Thank you, Mr. President and members  
9 of the Board. As you said, my name is Chirag Shah, and I  
10 am the Board's independent counsel on full board hearings.

11 I will now provide a brief summary of the case  
12 being heard in these proceedings. This matter involves a  
13 benefit claim and related dispute between Mr. Harron and  
14 CalPERS.

15 Pursuant to CalPERS standard procedure for  
16 resolving benefits disputes, Mr. Harron's case was  
17 submitted to an administrative law judge through the  
18 Office of Administrative Hearings. The matter was heard  
19 by an administrative law judge on November 22nd, 2010 and  
20 then again on January 3rd, 2011.

21 On May 12 of this year, 2011, the administrative  
22 law judge issued a proposed decision, which was reviewed  
23 by the Board at its August 17th, 2011 Board meeting. At  
24 the August 2011 Board meeting, the Board declined to adopt  
25 the proposed decision and instead set this matter for a

1 full Board hearing.

2           The questions before the Board are, one, whether  
3 to \$222,000 that Mr. Harron received as part of his  
4 settlement agreement with the Otay Water District must be  
5 included in Calculating Mr. Harron's final compensation  
6 for purposes of retire -- determining his retirement  
7 benefits.

8           And two, whether there's any authority in the  
9 doctrine of equitable estoppel to give Mr. Harron a  
10 retroactive retirement Effective date, so that he may  
11 collect an additional two years of retirement benefits.

12           Some background facts. From 1991 until January  
13 10, 2001 Mr. Harron was employed by Otay Water District as  
14 their General Counsel. On September 4, 2001, Mr. Harron  
15 commenced an employment action against the Otay Water  
16 District that lasted for six years and went all the way to  
17 the California Supreme Court. Mr. Harron's case was set  
18 to go to trial on September 26th, 2007.

19           However, that morning, the morning of September  
20 26th, 2007, Mr. Harron and the Otay Water District, along  
21 with other defendants in the case, reached a settlement  
22 agreement, which is in the Board's materials for Agenda  
23 Item 24.

24           In relevant part, the settlement agreement  
25 provided that the Otay Water District would re-employ Mr.

1 Harron for a one-year period from February 10, 2008 to  
2 February 9, 2009, and pay him \$222,000 plus benefit  
3 contributions during that one-year period.

4           From a benefits perspective, the settlement  
5 agreement would cause Mr. Harron's retirement benefits to  
6 be substantially higher by approximately \$36,000 that  
7 there would have been without the settlement agreement.  
8 The settlement agreement provided that Mr. Harron was to  
9 remain on quote, inactive or leave status, unquote and was  
10 not required or permitted to perform any services for the  
11 Otay Water District during that time period.

12           Under the terms of the settlement agreement, Mr.  
13 Harron was free to work for any other employer. The  
14 settlement agreement placed the responsibility and the  
15 risk upon Mr. Harron to seek clarification from CalPERS as  
16 to whether the \$222,000 settlement amount would be  
17 accepted by CalPERS in calculating his retirement  
18 benefits.

19           So Mr. Harron spoke with his lawyer in the  
20 underlying employment action, and then Mr. Harron spoke  
21 with an expert on the county employees retirement law of  
22 1937 about this issue.

23           Then after that, on the same day, and we're still  
24 on September 26th, 2007, the day that he received his  
25 settlement with Otay Water District in the employment

1 action, Mr. Harron called the CalPERS call center and  
2 spoke with a telephone representative who Mr. Harron  
3 asserts assured him that the \$222,000 would be included by  
4 CalPERS in calculating his retirement benefits.

5 By that time, September 26th, 2007, Mr. Harron  
6 had changed employment and was a Chief Deputy Counsel at  
7 the San Diego County Counsel. Shortly after Mr. Harron's  
8 conversation with the CalPERS call center, Mr. Harron gave  
9 a four-month notice of resignation to the San Diego County  
10 Counsel.

11 Then on December 6th, 2007, after reading an  
12 article in the San Diego Union Tribune about a CalPERS  
13 decision to deny benefits to two former Chula Vista  
14 employees for time after they left their employment, Mr.  
15 Harron submitted an Email to CalPERS asking about his  
16 situation. However, there is no evidence in the record of  
17 a response received from CalPERS to Mr. Harron's inquiry.

18 Then on January 23rd, 2008, Mr. Harron called the  
19 same CalPERS call center representative that he spoke with  
20 on the day that he reached his settlement agreement to  
21 confirm his understanding of the information that had been  
22 previously provided.

23 After speaking with that telephone  
24 representative, Mr. Harron was transferred to another  
25 individual within CalPERS who Mr. Harron asserts

1 distinguished between the Chula Vista cases and his own  
2 situation and assured him that the payment would be  
3 considered compensation for purposes of his retirement  
4 benefits.

5           Staff disagrees with Mr. Harron's  
6 characterization of those telephone conversations. The  
7 details of those conversations and the respective  
8 positions of both parties are in the proposed decision of  
9 the administrative law judge, in Mr. Harron's argument,  
10 and in staff's argument, all of which are included in the  
11 Board's material for Agenda Item 24.

12           Mr. Harron asserts that he decided to accept and  
13 execute the settlement agreement in reliance on the oral  
14 assurances that he received from the CalPERS employees  
15 regarding inclusion of the \$222,000 in his final  
16 compensation calculation, and that had he not received  
17 such oral assurances, he would not have executed the  
18 settlement agreement.

19           In November of 2008, Mr. Harron submitted a  
20 retirement benefits application with CalPERS for the first  
21 time asking for a retirement effective date of February 9,  
22 2009, which is the same day that his re-employment with  
23 the district was set to end under this settlement  
24 agreement.

25           After reviewing his application and the

1 settlement agreement, CalPERS informed Mr. Harron in  
2 writing for the first time that the \$222,000 received  
3 under the settlement agreement would be excluded from  
4 calculating his final compensation. CalPERS' stated  
5 reason for the exclusion of the \$222,000 from final  
6 compensation was, one, that the payment does not meet the  
7 definition of compensation or compensation earnable under  
8 Government Code Section 20630, and; two, that the \$222,000  
9 was specifically excluded from the calculation of final  
10 compensation as quote, final settlement pay, unquote under  
11 Government Section 20636.

12           Soon thereafter, Mr. Harron timely filed his  
13 appeal in accordance with the Public Employees' Retirement  
14 Law and the Administrative Procedures Act, which is the  
15 matter before the Board today.

16           Members of the Board, Mr. President, that  
17 concludes my brief summary of the case.

18           Thank you.

19           PRESIDENT FECKNER: Thank you, Mr. Shah.

20           Let us now turn to our preliminary evidentiary  
21 issues. As both parties are aware, the Administrative  
22 Procedures Act and the Board's procedures governing these  
23 hearings expressly provides of the scope of the Board's  
24 review and full Board hearings will normally be limited to  
25 the administrative record of the hearing before the

1 administrative law judge as it stands.

2 In other words, we are not here to relitigate  
3 factual issues or resubmit evidence into the  
4 administrative record. However, in rare circumstances,  
5 the interests of achieving a just result may require the  
6 consideration of newly discovered evidence, which could  
7 not, with reasonable diligence, have been discovered and  
8 produced at the hearing before the ALJ, and which  
9 therefore is not part of the administrative record.

10 In order to avoid interruptions during each  
11 party's respective time today, please let us know now if  
12 either party has any newly discovered evidence which it  
13 seeks to be admitted into the administrative record.

14 Mr. Harron, do you have any newly discovered  
15 evidence to offer today?

16 MR. HARRON: No, I do not.

17 PRESIDENT FECKNER: Thank you.

18 Ms. Miles?

19 SENIOR STAFF COUNSEL MILES: I do not.

20 PRESIDENT FECKNER: Thank you very much.

21 Ms. Miles, will you now present staff's argument.  
22 Please start the clock for 15 minutes.

23 SENIOR STAFF COUNSEL MILES: Good morning, Mr.  
24 President and members of the Board of administration. My  
25 name is Patricia Miles. I'm pleased to work in the Legal

1 Office as Senior Staff Counsel. And to my right is the  
2 Legal Office's Assistant Chief Counsel, Marguerite  
3 Seabourn.

4 We are here today to address two issues, whether  
5 CalPERS' staff properly excluded settlement payments from  
6 Mr. Harron's retirement calculation, and second, whether  
7 an administrative law judge has authority to set a  
8 retroactive effective date for pension payments.

9 With respect to the first, we urge the Board to  
10 uphold. And with respect to the second, we urge the Board  
11 to reverse.

12 Mr. Harron desires to have 222,000 that he was  
13 paid in settlement of his lawsuit and under the agreement,  
14 it's in tab -- CalPERS Exhibit 7, included in calculation  
15 of his CalPERS retirement benefit.

16 From the time that Mr. Harron submitted his  
17 application for service retirement to the present time,  
18 CalPERS staff have consistently explained in writing that  
19 the 222,000 would be excluded from his retirement  
20 calculation because the Government Code recognizes only  
21 compensation and compensation earnable in calculation of  
22 retirement benefits.

23 Following two days of hearing before an impartial  
24 ALJ at the San Diego office of Administrative Hearings,  
25 CalPERS' position on this point was upheld as correct, as

1 it must be. The definition of compensation is found in  
2 Government Code section 20630.

3 There it is very clear that in order to be  
4 compensation a payment must be for a member's services  
5 performed during normal working hours, unless he or she is  
6 excused from work for one of the six reasons listed under  
7 Section 20630(a).

8 Mr. Harron contends that because the agreement  
9 provides that he will be on inactive relieves status, the  
10 payments to him qualify as compensation for a leave of  
11 absence as provided under subsection (6) of 20630(a).

12 However, the administrative law judge didn't  
13 think this made sense and neither should we here today.  
14 Mr. Harron clearly was not on a leave of absence. It had  
15 been more than six years since the district had employed  
16 him. At the time that he was placed on payroll pursuant  
17 to the agreement, he was not excused from work. He was  
18 not working at all. As the ALJ correctly observed,  
19 Section 20630 subdivision (a) does not encompass someone's  
20 being excused from non-work.

21 The payment was not compensation under any  
22 category, under 20630(a). The payment was not  
23 compensation earnable either. Compensation earnable is  
24 defined in Government Code section 20636 as pay rate and  
25 special compensation.

1           The various categories of special compensation  
2 are defined under Section 571 of the California Code of  
3 Regulations. Special compensation must be excluded,  
4 however, if it is final settlement pay. Final settlement  
5 pay is defined in Government Code section 20636(f), and  
6 Section 570 of the regulations as, "...pay...in excess of  
7 compensation earnable...granted or awarded to a member in  
8 connection with, or in anticipation of, a separation from  
9 employment".

10           In Mr. Harron's case, he was already actually  
11 separated from employment at the time that the offer of  
12 222,000 was made to him. The agreement provided that in  
13 order to receive the money, he would have to agree to  
14 return to the payroll for a year, and the district would  
15 employ him for a one-year period commencing on February  
16 10, 2008 and ending on February 9, 2009.

17           However, the agreement also provided that he  
18 would -- must agree not to come to the office that year or  
19 perform any work for the district. In fact, he was  
20 permitted to continue working full time for other  
21 employment during that same year.

22           From the moment that the agreement was  
23 consummated, Mr. Harron understood and the District  
24 understood that this employment was for one year only.  
25 Therefore, staff contends there was definitely

1 anticipation of a separation from employment on February  
2 9, 2009.

3           And under Section 20636(f) all payments to him  
4 during that period, because they were awarded or granted  
5 to him in anticipation of a separation from employment at  
6 the end of the one-year period are correctly characterized  
7 as final settlement pay. On this basis, they must be  
8 excluded from the definition of compensation earnable.

9           Despite the clear statutory bases for excluding  
10 the 222,000 from his retirement calculation, Mr. Harron  
11 would urge you to disregard the statute and include this  
12 amount, because he claims he was misled by a CalPERS call  
13 center staff person during a five to ten minute phone call  
14 on the morning that the agreement was offered to him.

15           By his terms, the agreement places sole  
16 responsibility for determining whether pension  
17 contributions would be accepted by CalPERS on Mr. Harron  
18 and his attorney. The District included explicit language  
19 to make it clear that although it was offering to pay the  
20 money through payroll, et cetera, it was not at all sure  
21 that this payment would pass muster with CalPERS for  
22 retirement purposes.

23           This makes sense. After all, Mr. Harron was  
24 represented by an attorney that morning, and Mr. Harron  
25 himself was an attorney with more than 30 years experience

1 on that morning. He had been the General Counsel in  
2 charge of the legal department for the District for nearly  
3 10 years. Before that, he had been a city attorney for  
4 several years. And as he stood there that morning, he had  
5 been employed for more than five years. And, in fact, was  
6 still employed as Chief Deputy Counsel for San Diego  
7 County.

8           So on that morning, when a staffer in the CalPERS  
9 call center answered the CalPERS helpline, the caller was  
10 a legally astute sophisticated attorney. The CalPERS'  
11 staffer in the call center, has he is trained to do,  
12 documented his conversation carefully with Mr. Harron as  
13 shown in Respondent's Exhibit 5. The note he recorded  
14 states that he quote, "Advised member that CalPERS does  
15 not have any bearing on settlement between him and his  
16 employer quote", and also quote, "Advised that employer  
17 will just have to send update".

18           The note is correct, CalPERS does not have any  
19 bearing on settlement between anyone and their employer.  
20 We do know that that morning Mr. Harron had the agreement  
21 in his possession, but the representative did not have the  
22 agreement during that phone call.

23           Mr. Harron asked us to believe that he understood  
24 the several minute phone call with a call center  
25 representative to be definitive authority on behalf of

1 CalPERS that the 222,000 paid to him in settlement of  
2 years long litigation would be accepted as compensation or  
3 compensation earnable, and included in calculation of his  
4 retirement benefit.

5 All of us know that CalPERS' employees are  
6 trained to be knowledgeable, courteous, and most  
7 importantly accurate when giving assistance to CalPERS  
8 members. Therefore, I have no doubt that the same was  
9 true of the call center representative that day.

10 But on a matter as important as this, can there  
11 be any satisfactory explanation for the failure of either  
12 Mr. Harron and his attorney, two experienced attorneys, to  
13 fax the agreement to CalPERS, or at the very least to mail  
14 a confirming letter to CalPERS to verify that Mr. Harron's  
15 understanding about that brief phone call that day was  
16 correct?

17 This never occurred. Respondent asserts -- Mr.  
18 Harron asserts that he signed the agreement instead of  
19 proceeding with his lawsuit against the district, because  
20 he relied upon information given to him by CalPERS' call  
21 center employee. He contends that because the information  
22 given to him that morning was erroneous, CalPERS breached  
23 its fiduciary duty to provide timely, accurate, complete  
24 information to him, and that CalPERS therefore should be  
25 estopped from excluding the litigation and settlement

1 proceeds from his pension calculation.

2 This argument is an estoppel argument. It asks  
3 the Board to disregard the governing statutes and instead,  
4 in the interests of fairness, find an equitable remedy.

5 Four elements must be present to evoke equitable  
6 estoppel. One, the party to be estopped here, CalPERS,  
7 must be apprised of the facts. Two, CalPERS must intend  
8 that its conduct or advice be acted upon. Three, Mr.  
9 Harron must be ignorant of the true state of the facts.  
10 And four, Mr. Harron must reasonably rely upon the advice  
11 to his injury.

12 Crumpler versus Board of Administration is the  
13 leading case on this issue. And it held that all four  
14 elements must be present to establish estoppel or no  
15 estoppel exists.

16 The elements required, we contend, are not  
17 present in these circumstances, not least of which because  
18 CalPERS' personnel could not have been fully apprised of  
19 the facts without the agreement. Obviously, Mr. Harron  
20 was not himself ignorant of the true facts, since he held  
21 the agreement itself and all of the pertinent information  
22 containing its terms.

23 Would it be fair to disregard the clear language  
24 of statute and to place responsibility for 222,000 upon  
25 the shoulders of one conscientious call center staffer,

1 when two experienced attorneys, who would be expected to  
2 know how to, failed to take even basic steps to confirm  
3 information given to them on a five to ten minute phone  
4 call?

5           The administrative law judge did not think so.  
6 He concluded that disregarding the statute, in this  
7 instance, would contravene the limitations on compensation  
8 in Government Code section 20630. And in the written  
9 argument I cited to you a case, Larry Hollingsworth, in  
10 which this Board also previously adopted the opinion of an  
11 ALJ that failing to provide all salient information to a  
12 CalPERS representative, particularly when a written  
13 contract is in question, properly defeats equitable  
14 estoppel arguments.

15           To summarize, an impartial ALJ issued a proposed  
16 decision on May 12th, 2011, denying Mr. Harron's appeal  
17 and finding that CalPERS correctly excluded the settlement  
18 proceeds of 222,000 from his pension calculation, because  
19 the money was not compensation as defined in the  
20 Government Code. He also agreed that there was no  
21 estoppel theory, which supported Mr. Harron's appeal.

22           Had he stopped there, staff would urge you to  
23 adopt his proposed decision without hesitation. However,  
24 the ALJ exceeded the scope of his authority to address an  
25 issue that was not presented to him for determination.

1 CalPERS hearings are conducted pursuant to the  
2 Administrative Procedures Act, the APA. Under Section  
3 11504 of the APA, the subject matter of a hearing is  
4 defined by the statement of issues, which CalPERS prepares  
5 based on the issues raised by a member in his or her  
6 appeal.

7 CalPERS Exhibit 1 found at page 465 is the  
8 statement of issues filed in this case. Paragraph 8 found  
9 on page 472 limits the appeal to the issue of whether  
10 payments made to respondent Harron under the September  
11 26th, 2007 settlement agreement and general release of all  
12 claims are compensation or special compensation within  
13 Government Code Section 20636 that can be included for  
14 retirement purposes or final settlement pay that must be  
15 excluded in calculation of the retirement benefits.

16 There was no issue concerning Mr. Harron's  
17 retirement date before the ALJ at the appeal hearing and  
18 the parties did not litigate this issue or offer any  
19 evidence on this issue. Thus, under the APA, the judge  
20 had no authority to order CalPERS to commence benefits on  
21 an earlier date.

22 Government Code Section 21252 governs the  
23 effective date of retirement. Under this section, the  
24 earliest that a member's retirement can be effective is  
25 the last day on which salary is payable, if the retirement

1 application is filed within nine months after  
2 discontinuance of CalPERS' service.

3           Mr. Harron's CalPERS' service compensation ended  
4 at Otay Water District on January 10, 2001, the last date  
5 that he performed services for them. However, because Mr.  
6 Harron worked for the County of San Diego a retirement  
7 system that has established reciprocity with CalPERS,  
8 Section 21252(c) provides that CalPERS may recognize the  
9 last day for which salary is payable under that system,  
10 which was February 8th, 2008.

11           Mr. Harron submitted a retirement application to  
12 CalPERS in November 2008 requesting that his retirement  
13 date be effective February 9, 2009. This retirement date  
14 is permissible under the reciprocity provision, and it is  
15 the date that CalPERS used for retirement purpose.

16           In addition, as permitted under the reciprocity  
17 provisions, CalPERS used Mr. Harron's earnings at the  
18 county to calculate his retirement, even though those  
19 earnings were approximately \$4,000 a month higher than the  
20 earnings in effect at the district when he last worked  
21 there in 2001.

22           The ALJ's rationale for ordering CalPERS to use  
23 an earlier retirement date seemed to be that this would  
24 result in CalPERS urging its employees to be more careful  
25 in the advice that they give. He is, in effect,

1 attempting to punish CalPERS. However, Government Code  
2 Section 818 prohibits the judge from assessing punitive  
3 damages against the State of California or any of its  
4 entities.

5 The APA also does not authorize a proposed  
6 decision to include a penalty against any person, which  
7 includes governmental entities, unless there is a  
8 regulation in effect which permits this.

9 Finally, backdating Mr. Harron's pension to the  
10 fictitious earlier date could create a domino effect  
11 impacting his service credit, his final compensation, and  
12 his eligibility for reciprocity, since Mr. Harron worked  
13 for a reciprocal agency, San Diego County, for several  
14 years before his retirement effective February 9, 2009.

15 In conclusion, staff argues there is no legal or  
16 equitable argument under which respondent, Mr. Harron, must  
17 be permitted to have the 222,000 paid to him in resolution  
18 of litigation between himself and his employer included in  
19 his retirement calculations. The payment made to him was  
20 neither compensation, special compensation, nor  
21 compensation earnable under the relevant Government Code  
22 sections.

23 Therefore, staff properly excluded down from the  
24 calculation of his retirement benefit. Furthermore, the  
25 ALJ has no statutory authority for creating a fictitious

1 retirement date for Mr. Harron and awarding him damages.

2           Therefore, as to issue one, staff's determination  
3 should be upheld and respondent's appeal denied. As to  
4 issue 2, the ALJ's order should be reversed.

5           PRESIDENT FECKNER: Thank you. Good timing.  
6 Right on the light too, by the way.

7           (Laughter.)

8           PRESIDENT FECKNER: Mr. Harron, you can please  
9 begin your argument. We'll start the clock at 15 minutes.

10           MR. HARRON: Okay. Thank you. I'd just like to  
11 start in reverse order, with the statement about the  
12 statement of issues. The argument seems to be that if  
13 your staff doesn't include an issue in the statement of  
14 issues, it's not before the ALJ. In other words, if I  
15 appeal an issue and they don't particularly like it, and  
16 don't want to include it in the statement of issues, it  
17 disappears. I don't get to appeal my issues, only the  
18 ones that they like.

19           They could say there's no issues, and I don't  
20 have any case at all. I just don't think that that makes  
21 any sense and I think it's very arrogant.

22           I'd like to -- do you -- by the way, do you have  
23 the binder in front of you with all the documents.

24           PRESIDENT FECKNER: Yes?

25           MR. HARRON: Okay. Good. If you would turn to

1 page 174 in that.

2 PRESIDENT FECKNER: Continue on.

3 MR. HARRON: The first -- I should say the second  
4 paragraph, last line, says that the ALJ agreed that there  
5 was no estoppel theory underwhich CalPERS must include the  
6 proceeds. And CalPERS' staff lawyer has argued the same  
7 thing. But that's not the case at all. What the ALJ  
8 found was that estoppel would apply, but for the Longshore  
9 case. And this is at page 280 of your binder.

10 He said he would apply estoppel except CalPERS is  
11 a government agency and the Longshore case prevents it --  
12 prevents him from applying estoppel where it would  
13 contravene a statute. So it's not a question of whether  
14 estoppel applies. The judge specifically said it does  
15 apply. He found all those factors for me, but then we  
16 went to the Longshore case.

17 And really it's now an issue of whether you agree  
18 that Longshore is correct. And the reason I said that  
19 Longshore is not correct is that Longshore specifically  
20 states that it does not apply to pensions, at page -- it's  
21 25 Cal.3d at page 28, the case says it does not apply to  
22 pensions.

23 But more than that, Section 20 -- Government Code  
24 Section 2630(a)(6) specifically states that a leave of  
25 absence is an appropriate status for calculating -- for

1 including in compensation.

2           If you would look at page 175 of your binder,  
3 the third paragraph from the bottom that said, "Respondent  
4 testified...". The last four lines mention that Mr. Thach  
5 recorded -- his call -- his record of the call reflected  
6 only that he advised member that CalPERS does not have any  
7 bearing on the settlement between him and his employer,  
8 and also advised that employer will just have to send an  
9 update. That's exactly right.

10           I mean, first of all, I called on September 26th  
11 because I didn't know anything about CalPERS law. It's  
12 not something that somebody who doesn't work at CalPERS  
13 comes across. I asked to speak to the person most  
14 knowledgeable about settlement agreements and their use in  
15 the calculation of pensions. I was transferred three  
16 times till I finally reached Mr. Thach. I read him the  
17 section in the settlement agreement, and he told me that  
18 CalPERS -- how you set your salary between you and Otay is  
19 purely between you. We're going to use whatever you agree  
20 to. All you have to do is update -- is have Otay update  
21 us. He didn't say give me the settlement agreement. He  
22 didn't say we have to review it. He just said have your  
23 employer send the update. And that's exactly what we did.

24           As far as this idea, you know, sending a letter  
25 confirming it later, we went into court that afternoon and

1 settled the case. Later doesn't make it. It had to be  
2 done right then, and that's what I told Mr. Thach. We're  
3 in settlement negotiations. We have to be in court this  
4 afternoon. Will you use this salary set out in the  
5 settlement whereby I'm going to be on leave, but I'm going  
6 to be paying into pension, and I'll be paid bi-weekly.  
7 Will you use that in the calculation of your pension?

8           And his answer was unequivocal, he said, yes,  
9 we -- CalPERS doesn't care what you guys agree to. You  
10 just agree to it, just update us. And that's exactly what  
11 we did.

12           We subsequently -- I subsequently saw that  
13 article in the Union Tribune and it made me nervous, so I  
14 sent an Email to CalPERS. CalPERS ignored it. They -- I  
15 described again, it was a settlement agreement, and that I  
16 had heard that you were going to use that in the  
17 calculation of the pension. CalPERS did not respond to  
18 me.

19           I called Thach again. Thach confirmed his  
20 advice. I told him about the article. He escalated me to  
21 Cathy Schimansky. She confirmed the advice. She even  
22 explained why the Chula Vista situation was different from  
23 my situation. She said that that was the lump sum, or  
24 since I was getting paid in bi-weekly payments that that  
25 was the pay rate.

1           So this wasn't interpretation on my part, and it  
2 was a situation where I could send a letter later and it  
3 would make a difference. I followed his directions and I  
4 settled the case that afternoon in reliance upon that.  
5 He, to my knowledge, was the expert on the use of  
6 settlement agreements in the calculation of pension.

7           If your staff had wanted to transfer me to  
8 somebody more knowledgeable, they could have. He didn't  
9 introduce himself as a call center representative who  
10 doesn't know anything. He introduced himself as the  
11 expert on this question, and he gave me an unequivocal  
12 answer and I relied upon it.

13           If you look at page 176, at the top, the first  
14 full paragraph. It mentions that Mr. Montez did the first  
15 review on this and came to the conclusion that it was  
16 ineligible. There's no indication, one, that Mr. Montez  
17 ever spoke to me. He did not.

18           Two, that he spoke to Mr. Thach or Ms.  
19 Schimansky. I don't think he did. From their testimony,  
20 they'd never heard of this thing again after they took  
21 their notes.

22           And three, he mentions that compensation is for  
23 services performed for the employer. He never  
24 contemplated the question of leave of absence. So this  
25 was the first decision point with CalPERS. And once they

1 made it, they were set in stone. They haven't budged an  
2 inch from this.

3           As facts came in later, as I brought in  
4 additional facts, no one has ever reacted to them. They  
5 just ignore them. Now, on that same page at the bottom,  
6 the last paragraph, it states that obviously the 222,000  
7 paid to me was not for service performed. It says that I  
8 was not physically present. It was not paid for my  
9 services. So at the top of the next page it says clearly  
10 I could not be on leave of absence.

11           Well, since when does a person on leave of  
12 absence physically perform services at the site? A leave  
13 of absence is when you're not at the site. You're being  
14 paid for not being there. This is turning the whole  
15 concept of leave of absence upside down and saying, well,  
16 a leave of absence is when you're physically present  
17 performing services. That's exactly what a leave of  
18 absence is not.

19           Just below on page 177, it says the ALJ  
20 characterized this as non-work. And what I would -- my  
21 response to this is this statute says a leave of absence,  
22 and I was put on a leave of absence, is eligible to be  
23 considered as compensation.

24           This whole thing about non-work and this  
25 limitation on leave of absence is purely a creation of

1 staff and the judge. The law says that you're not  
2 supposed to go beyond the language of the statute by  
3 reading something into it. What they decided was they  
4 didn't like this result, so they started reading things  
5 into the statute that aren't there. This is not found in  
6 any statute. It's not found in any case. It's not found  
7 in any regulation. And it's not even found in the policy.

8 I have cited Cal Jur 3d -- 58 Cal Jur 3d page 562  
9 for the proposition that you can't do that. You can't  
10 just read things into a statute. A little -- at the  
11 bottom of page 177 this concept of final settlement pay is  
12 brought up. And the very last three lines on the page the  
13 ALJ correctly concluded that the terms of Government Code  
14 Section 20630(a) and -- that within the terms of that,  
15 that the \$222,000 was not compensation. That's put right  
16 under this language about final settlement pay.

17 But the fact is that the judge absolutely clearly  
18 stated that final -- this was not final settlement pay.  
19 He said that -- and this is at -- let's see. This is at  
20 page 277 number 5 of the ALJ's decision. And he -- the  
21 ALJ specifically concludes that the \$222,000 was not final  
22 settlement pay.

23 The other thing that throughout this entire  
24 presentation -- written presentation by staff, they keep  
25 saying it's clear, it's clear, it's clear. On page 177

1 they use the word twice. If it was so clear, why didn't  
2 Mr. Thach mention it to me? Why didn't staff respond to  
3 my Ask PERS Email and tell me it's clear that it's not  
4 allowed? Why didn't Ms. Schimansky say it's clear it's  
5 not allowed.

6 All of them told me the opposite. All of them  
7 told me it was allowed. And as a result of my trust in  
8 them, I not only went into the settlement and settled the  
9 case, which I can no longer reopen, I'd lost my  
10 opportunity to go for a different kind of structure, cash  
11 or an annuity, but I also lost a year's worth of pension  
12 payments because I delayed retirement for a year in order  
13 for -- to allow the \$222,000 to be paid.

14 Now, staff says it was totally unreasonable for  
15 me to do that. I'm a lawyer and how can I rely on staff  
16 to do that to know that -- well, that's exactly what I  
17 rely on your staff to do to answer questions like that.  
18 Nobody outside of PERS knows how PERS works or what that  
19 law is. It's a very unique special law that very few  
20 people deal with.

21 Until this day, I'd never even knew that there  
22 were PERS laws in the Government Code. It was only after  
23 I got -- it was told that they weren't going to honor  
24 their advice to me that I started doing the research and  
25 found out what I know today.

1           The idea that they were not apprised of the  
2 facts, the judge specifically said that they were apprised  
3 of the facts after two days of testimony and thorough  
4 briefing. He said that Mr. Thach was fully apprised. And  
5 that is found at page 280, number 13 of the ALJ's  
6 decision.

7           Now, if you're looking at page 179 of staff's  
8 written submittal, they accuse me of having unclean hands.  
9 I think this is just the dirtiest tactics. I was totally  
10 up front with your staff. I read -- I asked for the  
11 person most knowledgeable. I read the settlement  
12 agreement to them. I had no incentive whatsoever to do  
13 anything but get this right, because I was in a position  
14 where I could have settled this case anyway I wanted to.  
15 And the idea that I would misrepresent or somehow mislead  
16 or take advantage of staff is ridiculous.

17           I wanted the right answer. If the right answer  
18 was no you can't do this, that would have been fine with  
19 me, because I could have settled a different way. But the  
20 answer was yes you can, so it was a convenient way of us  
21 doing it to spread the cost over time, and it was  
22 palatable to Otay Water District. So that's why I went  
23 along with it.

24           PRESIDENT FECKNER: You're under your two minutes  
25 now, Mr. Harron.

1 MR. HARRON: Okay. So I'll get to my last point.  
2 This thing about the backdating retirement allowance.  
3 That, again, is a misrepresentation of the ALJ's decision.  
4 The ALJ's order couldn't be more clear. It's on page 283.  
5 It's paragraph number 2. What he's telling PERS to do is  
6 pay money, not create a fictitious retirement date. The  
7 money is to compensate me for what I'd lost by following  
8 staff's advice and delaying my retirement for a year.

9 PRESIDENT FECKNER: You've exhausted your time  
10 now, Mr. Harron.

11 MR. HARRON: Okay.

12 PRESIDENT FECKNER: WE now have, Ms. Miles you  
13 have an opportunity for a rebuttal. Would like to offer  
14 rebuttal at this time?

15 SENIOR STAFF COUNSEL MILES: May I briefly offer  
16 some rebuttal?

17 PRESIDENT FECKNER: Yes, you have up to five  
18 minutes. Please start the clock.

19 SENIOR STAFF COUNSEL MILES: On page 277 of the  
20 exhibits in paragraph 5 of the ALJ's proposed decision, he  
21 me states, "The proposition that the Water District was  
22 reemploying respondent and that his employment would  
23 terminate in February of 2009 was simply part of a charade  
24 -- a charade intended to cause CalPERS to help fund the  
25 settlement".

1           On page 278 paragraph 8 of the Judge's proposed  
2 decision, the very last sentence he states, "Like the  
3 terms 'employment' and 'salary', the term 'leave of  
4 absence' was put in the settlement agreement as part of  
5 the charade intended to cause CalPERS to help fund the  
6 settlement".

7           The judge clearly recognized that Mr. Harron was  
8 neither employed nor on leave of absence. Mr. Harron has  
9 vigorously objected to the notion that he and his attorney  
10 should have given CalPERS more information when they got  
11 the agreement on the morning of settlement. However, it's  
12 clear in the record, that Mr. Harron's attorney was  
13 involved in drafting the agreement, and knew of some of  
14 the terms of the agreement.

15           And on page 325 of the record, in the transcript,  
16 small page 114, Mr. Harron himself admits that the  
17 agreement was drafted by the District's attorney, but that  
18 his attorney approved or would not approve certain  
19 provisions. And on page 330 of the material, small page  
20 134 in the transcript, it is acknowledged that his  
21 attorney had input into the agreement during drafting.

22           So while Mr. Harron contends it wasn't feasible  
23 for him to provide the agreement to CalPERS on the morning  
24 of the settlement, again there's no explanation offered as  
25 to why the agreement was not provided to CalPERS prior,

1 when he and his attorney clearly, or at least his  
2 attorney, had an opportunity to review and approve or  
3 disapprove certain provisions.

4 I'll leave my comment at that.

5 PRESIDENT FECKNER: All right. Thank you. Mr.  
6 Harron, do you wish to have a rebuttal.

7 MR. HARRON: Well, just to respond to that --

8 PRESIDENT FECKNER: Just a second. Are you going  
9 to rebut, we need to set the clock?

10 MR. HARRON: Yes, please.

11 PRESIDENT FECKNER: So please set the clock at  
12 five minutes.

13 Proceed, Mr. Harron.

14 MR. HARRON: Thank you. With regard to my  
15 attorney and I seeing the agreement, of course we did we  
16 had the agreement right in front of us. That's why we  
17 called -- it was a proposed agreement at that time, but we  
18 didn't know if it would work, neither of us knew if  
19 CalPERS would accept it and all the risk was being put on  
20 my.

21 That's why I called CalPERS. And that's why I  
22 asked for the person most knowledgeable. And when Mr.  
23 Thach answered and said all you have to do is an update,  
24 the whole purpose of sending the agreement was to  
25 diminished. We didn't need to. If he had asked -- if he

1 had asked for the agreement, we would have sent it. If  
2 they had asked me when I sent the Email to Ask CalPERS for  
3 a copy of the agreement, I would have sent it. If when I  
4 called Ms. Schimansky she had asked for a copy of the  
5 agreement, I would have sent it, but I had read it to  
6 them.

7           And it was pretty simple. They were -- I was  
8 going to be paid 222 -- I was going to be reemployed, paid  
9 \$220,000 in salary in two week increments, and I was going  
10 to put on leave of absence. That is the only part of the  
11 agreement that had any relevance to the calculation of the  
12 pension. And it was pretty -- in my mind, it was a pretty  
13 simple question.

14           I'd already asked the question of Ann Dunning who  
15 was an expert in retirement law. And she had told me with  
16 all the systems I work with, they would accept that, but  
17 call CalPERS because they're unique, and you need to get  
18 it straight from them. And so I called and I got it  
19 straight from them.

20           As far as the judge calling it a charade, this  
21 was -- this was the culmination of six years of  
22 litigation. It was -- this was fought out about as hard a  
23 case as I've ever seen. This wasn't a charade. This was  
24 absolutely transparent. Two very contentious litigants  
25 coming up with a settlement, at the judge's bequest and

1 calling CalPERS and telling exactly -- telling allegedly  
2 the person most knowledgeable exactly what the terms were  
3 and getting the approval.

4           So I don't see how -- I think that word is the  
5 wrong use of the word. This was an absolutely honest and  
6 open attempt to get advice. I got the advice. I relied  
7 on it. And the question you have to ask yourself is, is  
8 it going to be your position that it's unreasonable for  
9 people to rely upon the advice that CalPERS gives?  
10 CalPERS has a fiduciary duty to give accurate advice. Are  
11 you going to now take the position that even though we  
12 have that duty, no one can rely on that advice.

13           I did. I relied upon that advice, and I've been  
14 injured because of it. And I think it's because staff has  
15 made up this bizarre limitation on leaves of absence. If  
16 you look at the clear law, leaves of absence are  
17 appropriate, they should be used in the calculation,  
18 there's no --

19           PRESIDENT FECKNER: Two minutes.

20           MR. HARRON: -- limitation on it in the law.

21           I'll close with that.

22           PRESIDENT FECKNER: All right. Thank you. Thank  
23 you both.

24           Now, we'll open it up for questions from the  
25 Board members. Do Board members have questions for either

1 Ms. Miles or Mr. Harron?

2 Mr. Jelincic.

3 Microphone, please.

4 BOARD MEMBER JELINCIC: Can the statement of  
5 issues be challenged prior to --

6 PRESIDENT FECKNER: Who is your question for?

7 BOARD MEMBER JELINCIC: Actually, I'd like to ask  
8 our own counsel, if I can?

9 PRESIDENT FECKNER: You can ask Mr. Shah.

10 BOARD MEMBER JELINCIC: Mr. Shah, can the  
11 statement of issues be challenged?

12 MR. SHAH: Absolutely. Mr. Harron can challenge  
13 it and offer his input into -- as to how it should be  
14 phrased.

15 BOARD MEMBER JELINCIC: Okay. So prior to the  
16 hearing he had the ability to challenge it?

17 MR. SHAH: That's right.

18 BOARD MEMBER JELINCIC: Thank you.

19 PRESIDENT FECKNER: Mr. Jones.

20 BOARD MEMBER JONES: Yeah. My question is for  
21 Mr. Shah also. In giving advice or direction or  
22 instructions to any entity to any member regarding our  
23 institution policies, processes, et cetera, when we refer  
24 someone to make their decision at the local level, your  
25 agency, your board, whatever, isn't a common man's

1 interpretation that we are also saying provided that it's  
2 legal, that it is in compliance with rules and  
3 regulations, that govern the institution?

4 MR. SHAH: I'm not sure I understand the  
5 question, Mr. Jones.

6 BOARD MEMBER JONES: In other words, when we give  
7 advice -- because the respondent alleges that he was told  
8 that it's left to you and your agency to work it out.

9 MR. SHAH: Sure.

10 BOARD MEMBER JONES: But then on the other hand,  
11 given that advice, we also mean that it must be legal, it  
12 must be within rules and regulations, that's my question.

13 MR. SHAH: Well, I think it depends on  
14 construction. It's a matter of construction. You know  
15 and the law is pretty clear that the unambiguous terms of  
16 the Public Employees' Retirement Law govern how benefits  
17 determinations are to be made. So these are all  
18 modifications. You can't really change the law. That's  
19 the issue.

20 BOARD MEMBER JONES: Right.

21 MR. SHAH: So, you know, I guess the advice was  
22 given, and the -- what staff is arguing is that the advice  
23 should have been followed up on in writing to get some  
24 kind of a confirmation.

25 BOARD MEMBER JONES: But back to that fundamental

1 question though. When we advise members and agencies,  
2 we're telling -- whatever we tell them, when you say you  
3 have to decide at the local level, we're saying that that  
4 has to be within the law. We're not saying that you can  
5 do anything you want. When we say it's left to your local  
6 level, we're suggesting that you -- it's left to your  
7 local level provided that it's within the law of the rules  
8 and the regulations.

9 MR. SHAH: That's correct. And that's the issue  
10 that's really before the Board today.

11 BOARD MEMBER JONES: Right. Okay. Thank you.

12 PRESIDENT FECKNER: Mr. Oliveira.

13 BOARD MEMBER OLIVEIRA: Yes. This is for Mr.  
14 Harron. Mr. Harron, I'm actually from local government,  
15 and have been involved in these type of cases before. And  
16 I guess I would ask you, this comes down to my mind the  
17 intent. And since you had a disagreement with that  
18 particular agency, it would seem that the settlement here  
19 for this lawsuit that went on for some years was an  
20 economic settlement. Because if the settlement was, in  
21 fact, to reemploy, to employ, then I'd have to ask why  
22 didn't you take the job? It wouldn't make sense in local  
23 government that you would rehire someone with no  
24 intention.

25 As a matter of fact, a restricted intention of

1 ever coming to the workplace. Actually, you were  
2 forbidden to come to the workplace with employment  
3 somewhere else. It doesn't meet the test for me. And the  
4 intent was to settle the disagreement by reemploying. It  
5 seems to be an economic settlement.

6 And then the other side of that, an economic  
7 settlement present value would be to take the \$220,000 or  
8 whatever the settlement was, because that particular  
9 jurisdiction would have to consider the cost over 12  
10 months of paying you bi-weekly would also include  
11 workmans' comp and the other costs of doing that.

12 And, in my mind, I wouldn't understand why a  
13 local agency would do that, unless, in fact, the intent  
14 was to run it for a year, so it would, in fact -- the  
15 intent was to allow to accumulation for retirement.

16 MR. HARRON: That's exactly right. That's  
17 exactly what the intent was. And that is why we -- I  
18 called PERS to see if that was something that PERS would  
19 accept, and use in its calculation of my pension.

20 If they had said no, I wouldn't have agreed to  
21 that settlement, but that's exactly why we settled it that  
22 way, was so that it -- I would have a higher pension, and  
23 that way it would spread the cost over time.

24 The other thing -- the other part of it was I'd  
25 been hired -- I'd been at work for 9.7 years, and I'd been

1 wrongfully terminated. Being reinstated and reemployed  
2 was, from a psychological standpoint, it was kind of a  
3 statement that they were wrong and I was right. And they  
4 also did a letter of apology, which also was for that  
5 purpose.

6           So in -- there was an economic component that was  
7 attractive to me, if CalPERS would accept it. And there  
8 was also a psychological component that would allow me to  
9 say, if anybody ever threw that in my face, which it did,  
10 in fact, happen that, oh, yeah, they terminated me, and  
11 they were wrong and this proves they were wrong.

12           BOARD MEMBER OLIVEIRA: And, Mr. Harron, with  
13 that, I guess what -- the reason that would bother me is  
14 that that would be the epitome of, in my opinion, of  
15 against the law about spiking. In fact, if the full  
16 intent is to deceive the public by instead of settling to  
17 keep one in a false employment where you neither could  
18 perform or even be at the facilities and have employment  
19 as another job would seem -- would decry what fair and  
20 equitable, much less what the codes are required here.

21           I find it, to be honest with you, as an attorney  
22 that had experience in local government, experience that  
23 you would think, regardless if you talked to someone at  
24 the call center that something like that could ever be  
25 legal. Even -- and you're admitting here that your intent

1 was to do that. But on the other sides, the intent was  
2 not to act -- not to be engaged. There was nothing there  
3 that you were taking a sabbatical for education or the  
4 true sense of leave, but, in fact, the settlement just  
5 said, and the intent was, to accumulate a higher pension.

6 MR. HARRON: Well, you mentioned a spike. The  
7 salary that I was hired back at was much less than the  
8 General Counsel's salary that was being paid at the time.  
9 Salaries in that 9 -- in the six years had gone up. So my  
10 salary was below what they were paying their General  
11 Counsel. It was contract General Counsel.

12 As far as -- you know, it's deemed illegal, I  
13 didn't know if it was acceptable or not, and that's why I  
14 called CalPERS, that's why I called the experts. I  
15 knew -- I did know that it was acceptable to the Pension  
16 Act -- under the Pension Act of 1937. And I had heard of  
17 other people doing it. And I did confirm that with San  
18 Diego's Counsel and with former counsel, and with Anne  
19 Dunning who serves for a number of counties as expert  
20 retirement counsel.

21 So I knew it was a common practice. I just  
22 didn't know if CalPERS accepted that practice. And when I  
23 called Ms. Dunning, she didn't know, and she told me you  
24 can get an answer. You can call CalPERS and they will  
25 tell you. So I did.

1           And, as I say, the only reason I did this was  
2 because CalPERS said, yes, we will accept it. All you  
3 have to do is update it. Have the employer update us. If  
4 they had said no, I would have said, yeah, I want cash or  
5 I want some other kind of structure to the settlement.

6           BOARD MEMBER OLIVEIRA: Thank you, Mr. Harron.

7           PRESIDENT FECKNER: Thank you.

8           Mr. Costigan.

9           BOARD MEMBER COSTIGAN: Thank you, Mr. Feckner.

10          It's exactly a two-part question to CalPERS' staff. And  
11 you can take it either way you want. Question number one  
12 is can you cite me any authority that would bind CalPERS  
13 to a settlement that CalPERS was not a party to, in this  
14 case?

15          Or, two, what statutory authority exists for an  
16 employee in the call center, for example, to bind CalPERS  
17 to a settlement contract such as this?

18          SENIOR STAFF COUNSEL MILES: I know of none.

19          BOARD MEMBER COSTIGAN: Thank you.

20          Mr. Feckner.

21          Mr. Harron, can you cite any statutory authority  
22 that would bind your argument that a CalPERS call center  
23 employee can bind this institution to a contract that we  
24 were not a party to?

25          MR. HARRON: Absolutely not. There is no intent

1 to bind CalPERS to this agreement. It would be absurd to  
2 try to do that without signing the agreement. I was  
3 merely trying to get advice on whether the provision in  
4 the contract was one that CalPERS would honor. I was not  
5 trying to bind CalPERS to an agreement.

6 BOARD MEMBER COSTIGAN: Well, Mr. Harron --

7 MR. HARRON: But I'll tell you one thing that  
8 does bind CalPERS, Government Code Section 2630(a)(6)  
9 binds CalPERS. And what it says is if you're put on leave  
10 of absence, that constitutes compensation.

11 BOARD MEMBER COSTIGAN: But, Mr. Harron, you're  
12 making the argument that you're entitled to a higher  
13 retirement benefit based upon a conversation that you had  
14 with CalPERS related to a payout, isn't that correct?

15 MR. HARRON: Yes.

16 BOARD MEMBER COSTIGAN: Thank you.

17 PRESIDENT FECKNER: All right. Seeing no other  
18 requests to speak, we need a motion from the Board.

19 Anyone in particular?

20 BOARD MEMBER COSTIGAN: Mr. Chairman, I'll make  
21 the motion that we adopt, if I get this correct, the ALJ's  
22 decision as our own?

23 PRESIDENT FECKNER: No. Mr. Shah, do you want to  
24 give some advice here, please.

25 BOARD MEMBER COSTIGAN: Clarify the motion for

1 me.

2 PRESIDENT FECKNER: There's two parts.

3 MR. SHAH: Do you have a copy of my  
4 recommendation memo on this hearing. It's a confidential  
5 document.

6 BOARD MEMBER JONES: Yes.

7 MR. SHAH: There is right there at the end. The  
8 last sentence.

9 PRESIDENT FECKNER: Mr. Diehr.

10 VICE PRESIDENT DIEHR: All right. I move that we  
11 adopt the ALJ's rejection of the 222,000 as compensation  
12 earnable, but deny the ALJ's rollback of the retirement  
13 date to an earlier year. So we adopt that -- there's two  
14 parts. We adopt the part, agree that the 222,000 is not  
15 compensation earnable, and we deny the ALJ's decision that  
16 the retirement date be rolled back to -- I'm sorry  
17 whatever the date was.

18 BOARD MEMBER COSTIGAN: I'll second.

19 PRESIDENT FECKNER: It's been moved by Mr. Diehr,  
20 seconded by Mr. Costigan.

21 Any discussion on the motion?

22 Seeing none, all in favor say aye?

23 (Ayes.)

24 PRESIDENT FECKNER: Opposed no?

25 Motion carries.

1 Priya is not participating on the phone.

2 Thank you. That ends our full Board hearing.

3 Thank you very much for everyone participating.

4 That brings us to Agenda Item 25, Public Comment.

5 At this point anyone in the public can come down  
6 and address the Board on matters relevant.

7 I have two requests to speak from the audience.

8 I have Willien Davis and Willette Jacobs.

9 Thank you, Mr. Shah for your diligence in this  
10 matter.

11 MR. SHAH: Thank you, sir.

12 PRESIDENT FECKNER: Please identify yourselves  
13 for the record, please. And realize that we are under  
14 good of the order, public comment.

15 MS. DAVIS: Good morning --

16 PRESIDENT FECKNER: Morning -- afternoon.

17 MS. DAVIS: -- gentleman. My name is Willien  
18 Davis and I'm a retired correctional peace officer with  
19 the Department of Corrections. I retired in 1997 on an  
20 industrial disability.

21 From day one, I've been challenging the  
22 calculation of my benefits for the last 14, going on 15  
23 years. I've followed all the procedures. I was subjected  
24 to an administrative process. What I discovered last year  
25 I was under the mistaken belief, based upon staff's

1 determination, that I was not entitled to an annuity  
2 purchase with my contributions that remained in the fund  
3 at the time of retirement for an industrial disability.

4 I am receiving the entitlement under Government  
5 Code Section 20811, which specifically states that the  
6 State is to provide, in addition to contributions made for  
7 the sole purpose of providing compensation for peace  
8 officers retired, under an industrial disability, under  
9 Government Code Section 21151.

10 The issue here is what I learned just a year ago,  
11 when I got my file after repeated lawsuits and actions  
12 taken against this Board. I discovered that the staff had  
13 ordered my funds transferred, closed and rolled off my  
14 time in order to cap my benefits at the 50 percent  
15 disability entitlement. However, I am receiving a small  
16 annuity based upon my membership service in the  
17 miscellaneous category.

18 What is stunning to me is that on June -- excuse  
19 me, June 27th, 1997 I received a letter from CalPERS after  
20 my retirement was authorized on the 31st on -- the 1st of  
21 March 1997. In that letter, CalPERS confirmed that I had  
22 \$40,603.58 on account in CalPERS on June 27, 1997. On  
23 July 1st, when the money is to be reported to the State  
24 Controller, my account was zeroed out. On July 1st, my  
25 account balance as the statements they provided to me, the

1 staff on that meeting, was zero.

2 I have several years of service as a correctional  
3 officer. I've been in the Department and a member of  
4 CalPERS since 1982. According to staff's statement, these  
5 are my years of service, okay. They were just up here  
6 talking about calculations based upon years of service and  
7 contributions earned.

8 As a miscellaneous employees, I had five years --  
9 5.87 years. As a peace officer at the time of retirement,  
10 I had 12 years. That maxed me out at the maximum of 80  
11 percent, 50 percent entitlement for the disability fully  
12 funded by the employer, and my 30 percent best of my  
13 earnings at the 2.5 for that \$40,000.

14 To date, my benefits that I should be -- had  
15 received retroactive to March 1st as a correctional peace  
16 officer with the Department of Corrections at 30 percent  
17 was \$1,150.50 a month. Calculated out to date is  
18 \$228,836.51. My miscellaneous service that has yet to be  
19 paid to me at \$317 by your staff's own calculation comes  
20 to \$91,725.40

21 My contributions in my account that should have  
22 been earning six percent every year since that time, I'm  
23 not getting it. That account should read \$97,308.72. The  
24 purpose of the disability or the purpose for service  
25 retirement in the State is to provide compensation for

1 individuals that provide service to this system. Having  
2 done that in spades as a correctional officer injured in  
3 the course of employment on a fire, I should have gotten  
4 compensation without reduction, but staff were told that  
5 the maximum allowance is 50 percent. I have notes from  
6 staff that I've sent over to be provided to you that  
7 specifically says staff is not authorized to pay a benefit  
8 greater than 50 percent. And that was pre-Arnett.

9           Since the Arnett ruling, it has been determined  
10 that CalPERS system of calculating benefits based on  
11 factors of age was a violation of the ADA. To further  
12 now, members retired on an industry disability's  
13 contributions are completely eviscerated, they're paid the  
14 limited amount of 50 percent, and no benefit to their  
15 contributions. I find that incredible. That would be a  
16 violation under 20085, because there's a system in place  
17 to deprive members of their money.

18           It got worse. And Board Member and Mr. Nixon was  
19 present, and he was assisting Mr. Feckner -- not Feckner.  
20 You were on the Board at the time 12 years ago -- that it  
21 doesn't matter what God thinks, what you as Board members  
22 think, or what we as members think, but what a court  
23 thinks. That many of us are right and some -- and it  
24 doesn't matter, because you guys have a system in place.  
25 That system caps benefits at 50 percent, deprives members

1 who have put their service in and takes their money. I  
2 don't understand that.

3 Not only that, because I've been fighting for 12  
4 years, I've been arrested. I've been molested. I have  
5 been charged, convicted, and done 15 days in jail simply  
6 to get a default in order to obtain my money from this  
7 system. I have filed a writ. You have paid the Attorney  
8 General over \$50,000 to keep me out of court.

9 You guys have judgments in my files that were  
10 never signed by a judge, only presented by the Attorney  
11 General who cannot legally represent you in a court of law  
12 in a private civil matter, okay?

13 I'm here to ask that my \$40,000 be put back in my  
14 account, with six percent interest earned, my benefits  
15 paid retroactive to March 1st, which I should have been,  
16 or an explanation as to where my money went when staff  
17 made the decision to take it.

18 I was surprised to get this when they did the  
19 report on what our rights were as a member, and it's  
20 everything I've said over the last 15 years. There's  
21 nothing different. The only thing different is that the  
22 laws have been amended. 21417 has been stricken from the  
23 books, and it's created its own problem.

24 You have to cap the benefits at 50 percent. But  
25 in order to do that, our money had to be eviscerated,

1 because if it goes to the State Controller, it has to be  
2 reported as income.

3           So we have a serious problem here, gentlemen.  
4 I'm not going to go away, and I won't stop until I get  
5 paid my money. I lost a lot of life here. I'm 57 years  
6 old, and I have not gotten one dime of the money that I  
7 paid into the system. It's unfair, and it's incredible.

8           I understand it's going to be a Pandora's Box,  
9 but that's not my problem. They stole my money. You had  
10 a gentleman talking about staff making decisions. Staff  
11 are deciding to take people's money and nobody is saying  
12 anything. Everybody is just voting lockstep on what  
13 issues are because staff tells them what to say.

14           And it's -- you know, and I don't know you guys,  
15 and it's not personal with me, but I'm sure Mr. Nixon has  
16 something that he would like to say. He's been at this  
17 thing from the beginning. And all I want is my money. I  
18 worked for it. It's my salary. It was taken out of my  
19 account. And everyone of my payroll positions says zero.  
20 It's says time wrote off and money transferred to -- money  
21 transferred to, what is it, REC account normal MF at the  
22 time of retirement, which was March 1st, 1997. My money  
23 was gone. And I was misled into believing that the money  
24 is being used to pay me. That would be both a misdemeanor  
25 and a felony, because the Labor Code says my money cannot

1 be used to pay a benefit.

2 My employer said Department of Corrections, I  
3 asked them in a letter, and it's included in there, are  
4 you subject to Labor Code Section 3751 and 572? They said  
5 absolutely, but your issue is with CalPERS, because it's  
6 dealing with a retirement. We pay the disability.

7 So I need someone to either set it up for me and  
8 get the staff to pay me my money, or explain to me why I'm  
9 not getting it, because all the evidence shows I'm  
10 entitled to it.

11 I just want some answers. Fifteen years is a  
12 long time. I've learned a lot of law. I've been going  
13 long enough to have a frickin law degree, but I don't. I  
14 don't need a law degree. I need gentlemen who are sitting  
15 here to do right by me and the system. There's thousands  
16 of us. It's not just me and Ms. Jacobs.

17 Every officer retired on an industry disability's  
18 benefit is capped at 50 percent because of age now at  
19 retirement. Before it was age at hire, now it's  
20 retirement. We don't get it, because we're already  
21 retired. I'm 57. I still don't have it.

22 So I need some clarification here and I need  
23 somebody to sit down with me and recalculate my money and  
24 pay me. That's all I'm asking for. It's been 15 years,  
25 and I promise you I will not stop coming. This was my

1 money. I left my children. I had to work fires weeks on  
2 end. My children had to stay home with their father,  
3 okay, because I was working. I earned that money. It's  
4 my money. CalPERS can't take it. You can't benefit  
5 another. It can't be in anybody's account but mine.

6 And if you pull up my records, it says my account  
7 is closed. Where's my money?

8 Thank you.

9 PRESIDENT FECKNER: Mr. Mixon, any response? And  
10 can you share with us -- this was not just staff's  
11 decision, was this also taken to the ALJ?

12 GENERAL COUNSEL MIXON: It's not my intention to  
13 sit here and debate the issues, but the members here have  
14 received answers. They've filed nine lawsuits against the  
15 system and various other people and have lost everyone.

16 In fact, the court has declared them what's known  
17 as vexatious litigants, which means that they have to post  
18 a security bond to file another lawsuit. She has a right  
19 to come and address this Board absolutely, but she has no  
20 right to the money that she's seeking. The courts have so  
21 stated.

22 Thank you.

23 MS. DAVIS: I'm going to respond to Mr.

24 MS. JACOBS: Let me --

25 MS. DAVIS: No, let me respond to Mr. Mixon. We

1 have the documentation. CalPERS failed to appear. I came  
2 to CalPERS. I went through the administrative process. I  
3 explained everything, but you have a system in place that  
4 will not pay a benefit greater than 50 percent.

5 Pre-Arnett, it was based on factors of that age, nobody  
6 got it. But yet Arnett settled for \$250 million.  
7 Somebody was wrong.

8           And so Mr. Mixon is trying to get you to believe  
9 that I have filed nine lawsuits. I haven't filed nine  
10 lawsuits. I filed one against CalPERS, and you defaulted  
11 for \$143 million. Do you understand what I'm saying? You  
12 defaulted. Check the records. Mr. Feckner, you're aware  
13 of it, eight million was against you. You know that.  
14 It's not about the money. It's about the right to my  
15 money.

16           I know the system doesn't have \$143 million to  
17 pay me. They certainly have enough to put my \$40,000  
18 back. That's all I ever wanted was my money. I was  
19 entitled to \$1,150.50 for my peace officer, I'm not  
20 getting, and according to staff \$317. That's the truth.

21           I don't have nine lawsuits. Have them produce  
22 all nine of them for you and have them bring them to you  
23 or he just lied to you. Have him produce them. I don't  
24 have to lie to you. What vested interest do I have to lie  
25 over 15 years.

1           A vexous(sic) litigant, you're absolutely right.  
2 I filed a writ. You guys didn't show up for the writ.  
3 They paid the Attorney General to come in and have me  
4 declared a vexous(sic) litigant. I never got that  
5 information. But if you pull up the record in the case,  
6 it's 02AS06428. It says that there's a -- that it's ripe  
7 for judgment, but you can't get default. That's why I was  
8 arrested in the court, because I went to get a default.

9           You could come in and challenge and tell me we  
10 don't owe her the money. But you can't do anything until  
11 the default is entered.

12           So Mr. Mixon is misrepresenting the facts to you.  
13 He's not telling you the truth, okay? If he's got this  
14 legal information ask him how he got it. If he didn't  
15 know we were coming today, he couldn't have. So how did  
16 he know? He has to know me. And if he's that familiar  
17 with me, then what is it he's keeping from the Board?

18           Can he please explain to you how this letter to  
19 me on June 27th said I have \$40,000 and now I don't have  
20 any? Can you have Mr. Mixon please explain 3751 and 52 to  
21 you that an employer cannot use an employee's money to pay  
22 a compensation for an entitlement that's non-taxable under  
23 104(a) of the Internal Revenue?

24           This is a sham. Mr. Mixon has had me drawn out,  
25 shut down. And I was here in 2008, Mr. Feckner, when you

1 asked him what this is about and you shut down the meeting  
2 so that I wouldn't be able to speak. It's not going to  
3 stop. He can't explain to you this. My money is gone.  
4 Ask him, where's my money? He's telling you I'm not  
5 entitled. How am I not entitled if you took eight percent  
6 went out of my check.

7 GENERAL COUNSEL MIXON: Excuse me. We've let you  
8 had a chance to speak --

9 MS. DAVIS: I'm just redressing you.

10 GENERAL COUNSEL MIXON: -- and it's now my turn.  
11 We are happy to explain the entire history of  
12 litigation with these members, absolutely. Nothing to  
13 hide here whatsoever.

14 MS. DAVIS: Let's do it.

15 GENERAL COUNSEL MIXON: But I think that this is  
16 not the time nor the place to do so. The Board President  
17 wishes to have a memo prepared that outlines the entire  
18 procedures that we've gone through with these two members.  
19 Happy to do it.

20 MS. DAVIS: Well, let me respond --

21 MS. JACOBS: Wait, wait, wait.

22 PRESIDENT FECKNER: That will be the -- Excuse  
23 me. This is our meeting, okay? So let me -- I will speak  
24 first.

25 MS. DAVIS: Okay. I'm sorry, sir.

1           PRESIDENT FECKNER: We're going to keep control  
2 of this meeting.

3           MS. DAVIS: Yes, sir.

4           PRESIDENT FECKNER: This is public comment.  
5 We've had a long week already. We want to be respectful  
6 of one another.

7           MS. DAVIS: Yes.

8           PRESIDENT FECKNER: I'm going to request that Mr.  
9 Mixon supply to all Board members the complete history of  
10 this case, include all actions taken to this point. And  
11 if someone can explain to me the \$8 million you're talking  
12 about, because I have no clue what you're speaking about.

13           So, at some point, we need to get clarification  
14 and move forward. So we're going to direct Mr. Mixon and  
15 the staff to prepare all that information for all the  
16 Board members. We will address it at a future meeting.

17           MS. JACOBS: Sir, may I have an opportunity to  
18 speak, because I did sign up and I am separate from her.

19           PRESIDENT FECKNER: You did sign up.

20           MS. JACOBS: Please, can I have that. I'll be  
21 brief.

22           In November 15, 2001 at the Pasadena Board  
23 meeting, Board Member Brown, "Ms. Jacobs, thank you very  
24 much for your time.

25           "Mr. Brown, can you also ask the legal staff

1 to give us advice on the question of the  
2 either/or? I frankly don't understand that  
3 argument. At least I only heard one side of that  
4 argument, 50 percent disability, and then no  
5 application, no accessing the benefits which  
6 you've paid for? That's something wrong with  
7 that argument somewhere.

8 "Mr. Crist, indeed.

9 "Board member, as general policy we ought to  
10 be informed if, in fact, the system is  
11 established that way.

12 "Chairman Crist, yeah.

13 "Mr. Brown, I intend without being explicit  
14 on the point of substance that in the history  
15 that I have asked for of these two instant cases  
16 also full description and for our better  
17 understanding of the policies and the  
18 interpretations of the policies in this matter so  
19 that we'll be part of the report I've requested".

20 Now that was in 2001. And you're again asking  
21 for the same thing, but I want to say this right here.  
22 When I retired, I had 32,000 -- \$31,920.92 in my account.  
23 On October 10th, 1998, the money was subtracted out. My  
24 years of service it says right here, industrial disability  
25 retirement cancelation of retirement adjustment balance

1 forwarded TDMC, cover up -- cover group.

2 My years of service balance 8.99 at the time,  
3 which should have been 8.99 according to CalPERS.  
4 Adjustment service write-off, so zeroed out.

5 Government Code Section 2296089, "Any participant  
6 who is entitled to a distribution for retirement or  
7 disability that equals or exceeds \$5,000 may elect to  
8 receive the distribution in one of the following forms: A  
9 single lump sum payment, substantially level installment  
10 payments for a period of years that exceeds no longer than  
11 a life expectancy of the participant".

12 One other thing, the Board before this honorable  
13 Board in the Davenport case, in that particular case,  
14 dealing with the Arnett, Mr. Davenport established that he  
15 was entitled to at least a 50 percent entitlement. He had  
16 made a buyback contract and bought back his time in order  
17 to get his years of service as a peace officer.

18 At the conclusion of Arnett, he believed, based  
19 on the presentation to the court, that he was entitled to  
20 the 50 percent, no more and no less. At that time, he  
21 came to the Board and requested a refund of his  
22 contributions along with anything he had in the system.  
23 The Board approved it.

24 Why?

25 Because the Board -- because CalPERS only pays 50

1 percent. So this honorable officer lost his 16 point plus  
2 years of service because he took all of his money out.

3 I received in my disability letter on December  
4 the 1st, you can leave your money in and receive a benefit  
5 of 8.899 years of service at 2.5 as my contract said or  
6 you may request a refund and only receive the 50 percent.

7 I was apart of the Arnett case, because my  
8 disability was less than 50 percent. So I was pleased  
9 when I finally got it, but I was also concerned that I was  
10 not receiving my years of service. And so I proceeded in  
11 that quest. I wasn't argumentative. I wasn't upset with  
12 anybody. I just wanted what I was entitled to.

13 My mother was apart of this system. She received  
14 her 50 percent and she withdraw her money, so that's when  
15 I knew I was entitled to more.

16 But I just want to address Mr. Nixon's argument  
17 regarding litigations. I had a litigation against my  
18 employer for discrimination. I was considered a racist.  
19 I'm not a racist. They called me a nigger. I was the  
20 only female officer on the Department. There was no  
21 separate facilities for me, and I went through a lot. It  
22 wasn't fair, and I was retired for it. That was one of my  
23 lawsuits and I won that one.

24 The second litigation was they terminated me  
25 during a pendency at the workers' compensation to get a

1 findings of facts of whether my injuries were work related  
2 or not. Based on the disability I had, I had to get a  
3 finding of fact. I won that one, too. That was more  
4 other litigation.

5 The other litigation he's referring to is one  
6 that we filed against CalPERS, which we didn't want to.  
7 All we wanted was our money, but we were left with no  
8 other choice, because they told us don't come back here,  
9 because we're not going to do anything.

10 So the -- what he was talking about, we filed  
11 a -- we did, and we got an order from the presiding judge.  
12 And I'll just read you this part right here. It says,  
13 "For the reasons forth..." -- here go.  
14 "Accordingly..." -- see, CalPERS and the Attorney  
15 General's office had our case number 02AS06428 allegedly  
16 dismissed. So we filed a writ 05CS0144 to determine  
17 whether or not we had a right to our default, and our  
18 judgment, and whether or not our case was open and active.

19 The presiding judge decided according to the  
20 court orders that Davis versus -- "Accordingly, the court  
21 orders that Davis v. California Public Employees'  
22 Retirement System, case number 02AS06428 shall be  
23 consolidated with Davis versus the Sacramento County  
24 Superior Court case number 05CS0144 for all purposes.  
25 Davis versus CalPERS, Davis versus California Public

1 Employees' Retirement System. Case number 02AS06428 shall  
2 be the lead case". That was in 2006. The alleged  
3 judgment was in 2003.

4 From that day forward, we have been trying to get  
5 inside the Sacramento County Superior Court. The  
6 Sacramento County Superior Court, the reason is the  
7 zero -- the writ is because they added themselves to our  
8 pension case as a defendant, without notice, just the  
9 court. The Sacramento County Superior Court night clerks  
10 are now a defendant in 06AS24 -- our case against CalPERS.  
11 That case is an active case. It's a open case. It's not  
12 closed.

13 We're not vexous(sic) litigants. They  
14 didn't -- look, guys. I don't even care about the  
15 litigation. All I wanted was my money in 1998. That's  
16 all. Right now, I mean, the back pay I mean is just  
17 that's like 129. At the time, it was only \$715.07. And I  
18 came in. \$715.07, in addition to my 50 percent. That was  
19 all, which was like \$2,300, 1998.

20 It's bigger because it took so long. It wouldn't  
21 have been. We shouldn't have to go through two Boards. I  
22 just wanted my money. I mean, I live on 50 percent. I  
23 lost my house, my cars, when it all first started. Who  
24 lives on \$1,000 a month, when you're used to 3,000, 3,200?  
25 Who does that? You can't. I lost everything.

1           And all I wanted was what I was entitled to.  
2 None of this -- we're not here to give anybody a hard time  
3 or argue about what the legalese are, because as I read it  
4 says I'm entitled to 100 percent of my money,  
5 irregardless, just Davenport. He got all of his. He's  
6 still getting 50. I'm getting 50. I don't even have my  
7 other money. I was too young. I was 44 when I retired.  
8 I needed my years of service to give me that extra to  
9 survive. That's all I was asking for. This legal stuff  
10 shouldn't have happened.

11           PRESIDENT FECKNER: I appreciate that. You've  
12 heard the direction of the Chair. Mr. Mixon will report  
13 back to the Board. You can get a copy of the report that  
14 Mr. Mixon provides us, minus anything that is confidential  
15 attorney-client privilege and we'll address it at a future  
16 date.

17           MS. JACOBS: And may I ask one more question.

18           MS. DAVIS: We would respectfully request that we  
19 be provided with the report this time with any redactions  
20 you believe is necessary for your counsel, and that we be  
21 given an opportunity to prepare any response to what Mr.  
22 Mixon may put together for you. And we ask that you have  
23 an open mind when you're reviewing this information.  
24 We're not bad people, okay? We worked hard for our  
25 living.

1           GENERAL COUNSEL MIXON: No one is saying that  
2 you're bad people.

3           MS. DAVIS: The purpose -- Excuse me. Excuse me.  
4 We put together -- I came to the Department of  
5 Corrections, as an employee. I left out the Department of  
6 Corrections as a peace officer. All these contracts are  
7 based around our contract. County workers get a better  
8 court than we do, and we're the State. I just want the  
9 right to respond to Mr. Mixon, whatever he says.

10           PRESIDENT FECKNER: You'll have that opportunity  
11 when Mr. Mixon finishes his report.

12           MS. DAVIS: That's all I'm asking for.

13           GENERAL COUNSEL MIXON: I need to say a few  
14 words. First of all, no one is saying these members are  
15 bad people. Make that perfectly clear. They have a right  
16 to come and address this Board about their issues that  
17 they have with the system. The second point I want to  
18 make is that CalPERS did not arrest these two members at  
19 the courthouse. They were arrested for basically  
20 disturbing the peace is my understanding in connection  
21 with one of the proceedings.

22           The third is I will work with the Board President  
23 to outline, as you have directed, all of the steps, the  
24 procedural steps, that this system has gone through to  
25 address these very same issues that are being brought up

1 here today, which have been brought up over the years,  
2 again and again and again. They have been addressed in  
3 lawsuits. They've been addressed by our office. They've  
4 been addressed by staff.

5 We can put that together to the Board. However,  
6 my suggestion, and I will work with the Board President.  
7 This is an attorney-client privileged communication. If  
8 you wish to have information provided to these members as  
9 part of that process, then that's your right, but allow me  
10 first to put the information together before that decision  
11 is made.

12 PRESIDENT FECKNER: I said what they would get  
13 was minus attorney-client privilege information.

14 GENERAL COUNSEL MIXON: Right.

15 PRESIDENT FECKNER: We will work together.

16 MS. JACOBS: One more item right here.

17 PRESIDENT FECKNER: We need to put AN end to  
18 this, ma'am.

19 MS. JACOBS: I know but let me just say this.

20 PRESIDENT FECKNER: There will be plenty of time  
21 later. This meeting is adjourned.

22 (Thereupon the California Public Employees'  
23 Retirement System, Board of Administration  
24 open session meeting adjourned at 12:44 p.m.)

25

