

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

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IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE GRAND JURY

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PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
PLAINTIFFS,)	INDICTMENT
V.)	NO. 211045
)	
RONALD R. GONZALES,)	
JOSEPH AUGUST GUERRA III, AND)	
NORCAL WASTE SYSTEMS, INC.,)	
DEFENDANTS.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SAN JOSE, CALIFORNIA

VOLUME 11
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MAY 3, 2006
MAY 4, 2006

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APPEARANCES:

FOR THE PEOPLE:

JULIUS FINKELSTEIN
DEPUTY DISTRICT ATTORNEY

26
27
28

SUE HERFURTH, CSR #9645

1701

1 SAN JOSE, CALI FORNIA MAY 3, 2006

2

3

PROCEEDINGS:

4

(ROLL WAS CALLED BY THE FOREPERSON.)

5

MR. FINKELSTEIN: THANK YOU VERY MUCH. WE' LL CALL

6

OUR NEXT WITNESS.

7

ARCHIE HUMPHREY,

8

CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED

9

AS FOLLOWS:

10

THE WITNESS: YES.

11

EXAMINATION:

12

BY MR. FINKELSTEIN:

13

Q. MR. HUMPHREY, COULD YOU STATE YOUR FULL NAME FOR

14

THE RECORD, PLEASE.

15

A. ARCHIE LEROY HUMPHREY.

16

Q. PLEASE SPELL YOUR NAME FOR THE REPORTER.

17

A. A-R-C-H-I -E, L-E-R-O-Y, H-U-M-P-H-R-E-Y.

18

Q. MR. HUMPHREY, GOOD MORNING.

19

A. GOOD MORNING.

20

Q. I WANT TO ADVISE YOU THAT IF YOU' RE REPRESENTED BY

21

COUNSEL TODAY, THE GRAND JURY WILL AFFORD YOU A REASONABLE

22

OPPORTUNITY AT ANY TIME DURING THE QUESTIONING TO STEP

23

OUTSIDE THE GRAND JURY ROOM AND CONSULT WITH COUNSEL BEFORE

- 24 ANSWERING ANY QUESTIONS IF YOU SO DESIRE.
25 DO YOU UNDERSTAND THAT?
26 A. YES.
27 Q. MR. HUMPHREY, WHERE ARE YOU EMPLOYED?
28 A. NORCAL WASTE SYSTEMS, 160 PACIFIC AVENUE,

SUE HERFURTH, CSR #9645

1702

- 1 SAN FRANCISCO.
2 Q. WHAT'S YOUR POSITION WITH NORCAL?
3 A. I'M THE CHIEF OPERATING OFFICER AND EXECUTIVE VICE
4 PRESIDENT OF OPERATIONS.
5 Q. THAT'S SOMETIMES ABBREVIATED AS THE COO?
6 A. CORRECT.
7 Q. AS DISTINGUISHED FROM THE CEO?
8 A. CORRECT.
9 Q. WHO DO YOU REPORT TO AT NORCAL?
10 A. TO MIKE SANGIACOMO, THE CEO.
11 Q. ARE YOU FAMILIAR WITH AN INDIVIDUAL NAMED JON
12 BRASLAW?
13 A. YES.
14 Q. WHO IS JON BRASLAW?
15 A. JON BRASLAW IS CORPORATE CONTROLLER.
16 Q. WHO DOES HE REPORT TO?
17 A. HE REPORTS TO MARK LOMELE, THE CFO.
18 Q. AND DO YOU KNOW SOMEONE NAMED JOHN NICOLETTI?
19 A. YES.
20 Q. IS HE CURRENTLY EMPLOYED WITH NORCAL?
21 A. YES.

- 22 Q. WHAT' S HIS POSITION?
23 A. HE' S NORCAL' S SPECIAL PROJECTS MANAGER, CURRENTLY
24 AT THE CORPORATE OFFICE.
25 Q. HOW LONG HAVE YOU BEEN A NORCAL COO?
26 A. SINCE JUNE -- IT WAS TEMPORARY AT FIRST, BUT
27 APPROXIMATELY JUNE, 1999.
28 Q. YOU HELD THAT POSITION DURING ALL OF 2000, CORRECT?

SUE HERFURTH, CSR #9645

1703

- 1 A. YES.
2 Q. WHAT DID YOU DO BEFORE YOU WERE A NORCAL COO?
3 A. I WAS A REGIONAL GROUP MANAGER FOR COMPANIES
4 OUTSIDE OF SAN FRANCISCO.
5 Q. WHICH COMPANIES?
6 A. UH -- THEY WERE DEL NORTE DISPOSAL --
7 Q. N-O-R-T-E?
8 A. CORRECT. HUMBOLDT CITY GARBAGE OF EUREKA, YUBA
9 CITY DISPOSAL, AUBURN PLACER DISPOSAL, VALLEJO GARBAGE
10 SERVICE, LOS ALTOS GARBAGE, SAN BRUNO GARBAGE, GILROY
11 GARBAGE, NORCAL WASTE SERVICES OF SAN JOSE, AND A COMPANY IN
12 L. A. CALLED NORCAL WASTE SERVICES. AND WE HAD A LANDFILL
13 AND COMPOST BUSINESS, ALTA LANDFILL SERVICE.
14 Q. DO YOU KNOW SOMEONE NAMED BILL JONES?
15 A. YES.
16 Q. WHO IS BILL JONES?
17 A. BILL JONES WAS OUR GROUP MANAGER IN WHAT WE CALL
18 THE SOUTH BAY AREA.
19 Q. THAT WOULD HAVE BEEN INCLUDED LOS ALTOS GARBAGE

20 COMPANY?

21 A. YES.

22 Q. AND AFTER THE WINNING OF THE CONTRACT FROM CITY OF
23 SAN JOSE, THAT WOULD HAVE INCLUDED THE NORCAL SAN JOSE
24 OPERATION?

25 A. CORRECT.

26 Q. SO, IN THE YEAR 2000, WE UNDERSTAND NORCAL
27 SUBMITTED A PROPOSAL TO THE CITY OF SAN JOSE FOR RECYCLE
28 PLUS SERVICES, CORRECT?

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1704

1 A. CORRECT.

2 Q. AND DID YOU HAVE ANY INVOLVEMENT IN THE NORCAL
3 PROPOSAL, EITHER BY WAY OF PREPARATION OR SEEKING ITS
4 APPROVAL FROM THE CITY COUNCIL?

5 A. YES. I DID SOME REVIEW WORK.

6 Q. CAN YOU TELL US WHAT YOUR INVOLVEMENT WAS IN THE
7 NORCAL PROPOSAL.

8 A. UH -- IT'S HARD TO SAY. IT WAS MORE REVIEWING
9 PRODUCTION STANDARDS, MAKING SURE THAT THE DOCUMENT WAS
10 PRESENTED CLEARLY, COMPLETELY.

11 Q. DID NORCAL HIRE SOME OUTSIDE CONSULTANT TO ASSIST
12 IN PREPARING THE PROPOSAL?

13 A. YES.

14 Q. WHO DID THEY HIRE?

15 A. A GENTLEMAN NAMED ED MCGOVERN, AND THERE WAS ONE
16 OTHER CONSULTANT. I CAN'T THINK OF HER NAME RIGHT NOW.

17 Q. DID MR. MCGOVERN OR HIS COMPANY WORK ON ACTUALLY
Page 6

18 DRAFTING THE PROPOSAL OR GETTING THE PROPOSAL APPROVED ONCE
19 IT HAD BEEN SUBMITTED, OR BOTH?

20 A. I BELIEVE MOST OF THEIR WORK WAS WORKING ON
21 ADVISING US ON THE PROPOSAL; WHAT WAS IMPORTANT, WHAT
22 WASN' T, AND GETTING THE PROPOSAL THROUGH.

23 Q. PRIOR TO THE FIRST CITY COUNCIL VOTE ON NORCAL' S
24 PROPOSAL ON TUESDAY, OCTOBER 10, 2000, DID YOU ATTEND
25 MEETINGS AT NORCAL CONCERNING THE CONTENTS OF THE PROPOSAL
26 PRIOR TO ITS SUBMISSION TO THE CITY OF SAN JOSE?

27 A. I DON' T REMEMBER THE EXACT DAY OR THE MEETING
28 SPECIFICALLY.

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1705

1 Q. I' M JUST ASKING GENERALLY.

2 A. GENERALLY, I KNEW THE PROPOSAL WAS GOING, YES.

3 Q. AND SO DID YOU KNOW THAT THE NORCAL PROPOSAL
4 CONTEMPLATED SUBCONTRACTING OUT TO A COMPANY CALLED CWS,
5 CALIFORNIA WASTE SOLUTIONS, THE SORTING OF THE RECYCLABLES?

6 A. YES, I DID.

7 Q. DID YOU KNOW THAT THE NORCAL PROPOSAL CONTEMPLATED
8 THAT CWS WOULD EXTEND ITS COLLECTIVE BARGAINING AGREEMENT
9 WITH THE LONGSHOREMEN FROM OAKLAND DOWN TO THE PROPOSED
10 SAN JOSE OPERATION?

11 A. YES.

12 Q. AND WAS THERE ANY DISCUSSION AT NORCAL PRIOR TO THE
13 SUBMISSION OF THE PROPOSAL TO THE CITY OF SAN JOSE ABOUT
14 WHETHER OR NOT THERE WOULD BE ANY PROBLEMS SUBMITTING A
15 PROPOSAL IN SAN JOSE THAT CONTEMPLATED USING LONGSHOREMEN TO

16 DO THE SORTING OF THE RECYCLABLES?

17 A. NOT THAT I RECALL.

18 Q. DID NORCAL'S PROPOSAL HAVE SOME KIND OF FINANCIAL
19 ADVANTAGE BECAUSE IT USED, CONTEMPLATED USING LONGSHOREMEN
20 VERSUS TEAMSTERS TO DO THE SORTING AND RECYCLABLES?

21 A. YES.

22 Q. CAN YOU EXPLAIN THAT TO US, PLEASE.

23 A. WELL, WE BELIEVE THE LONGSHOREMEN'S CONTRACT TO
24 BE -- BETTER ECONOMICS TO USE IN A BID THAN A TEAMSTER
25 CONTRACT WOULD.

26 Q. WHEN YOU SAY BETTER ECONOMICS, YOU MEAN CHEAPER?

27 A. YES.

28 Q. CONSEQUENTLY, NORCAL'S BID COULD BE LOWER?

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1706

1 A. THAT IS THE GOAL.

2 Q. RIGHT. THAT'S WHAT YOU AND NORCAL BELIEVED,
3 CORRECT?

4 A. YES.

5 Q. AND I ASSUME YOU AND NORCAL THOUGHT THAT HAVING A
6 LOW PRICE WOULD GIVE YOU AN ADVANTAGE IN BEING SELECTED AS
7 ONE OF THE PROPOSERS TO DO THE WORK FOR THE CITY, RIGHT?

8 A. CORRECT.

9 Q. SO HOW DID YOU FIRST LEARN THAT THE ENVIRONMENTAL
10 SERVICES DEPARTMENT PRIOR TO THE COUNCIL VOTE HAD, WAS
11 RECOMMENDING NORCAL AS ONE OF THE SUCCESSFUL BIDDERS?

12 A. IT PROBABLY WOULD HAVE BEEN THROUGH BILL JONES. I
13 DON'T REMEMBER SPECIFICALLY, BUT HE WAS THE DIRECT REPORT

14 AND WE TALKED MOST EVERY DAY.

15 Q. WOULD YOU CHARACTERIZE MR. JONES' ROLE IN THE
16 NORCAL PROPOSAL AS SORT OF THE POINT PERSON DOWN IN SAN JOSE
17 ON THE PROPOSAL?

18 A. YES.

19 Q. WOULD HE BE THE PERSON MOST INVOLVED IN SHEPHERDING
20 THE PROPOSAL THROUGH APPROVAL DOWN IN SAN JOSE?

21 A. CORRECT.

22 Q. HE REPORTED DIRECTLY TO YOU?

23 A. CORRECT.

24 Q. NOW, UPON FRIDAY, OCTOBER 6 -- BY THE WAY --
25 WITHDRAW THAT QUESTION.

26 YOUR OFFICE IN NORCAL IS WHERE IN RELATION TO MIKE
27 SANGIACOMO'S OFFICE?

28 A. JUST A WALL SEPARATES US.

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1707

1 Q. YOUR TWO OFFICES ARE NEXT TO EACH OTHER?

2 A. CORRECT.

3 Q. AND YOU SHARE A COMMON WALL?

4 A. CORRECT.

5 Q. WOULD YOU CHARACTERIZE FOR US HOW FREQUENTLY OR
6 OFTEN YOU INTERACT WITH MIKE SANGIACOMO ON A DAILY BASIS AT
7 NORCAL?

8 A. NUMEROUS TIMES A DAY.

9 Q. SO YOU HAVE FREQUENT DISCUSSIONS, COMMUNICATIONS,
10 E-MAILS AND SO FORTH?

11 A. CORRECT.

12 Q. WHAT ARE YOUR RESPONSIBILITIES AS A COO FOR NORCAL?

13 A. I OVERSEE OPERATION OF THE COMPANY, MAKE SURE WE
14 HAVE EQUIPMENT IN PLACE, MANAGEMENT IN PLACE, AND THAT
15 GARBAGE AND RECYCLABLES GET PROCESSED AND TAKEN CARE OF
16 EVERY DAY.

17 Q. SO WOULD YOU SAY DAY-TO-DAY OPERATIONS?

18 A. YES.

19 Q. ON THE FRIDAY, OCTOBER 6, BEFORE THE FIRST CITY
20 COUNCIL VOTE OF TUESDAY, OCTOBER 10, DID YOU TRAVEL DOWN TO
21 SAN JOSE?

22 A. UH -- I'M NOT SURE OF THE DATE, BUT --

23 Q. NO?

24 A. NO.

25 Q. SO YOU DID NOT GO DOWN TO SAN JOSE, TO CITY HALL
26 WITH MIKE SANGIACOMO THAT FRIDAY, OCTOBER 6?

27 A. YES, IF THAT'S THE DATE.

28 Q. SO YOUR LAST RESPONSE WAS YES, YOU JUST WEREN'T

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1708

1 SURE OF THE DATE?

2 A. RIGHT.

3 Q. LET ME ORIENT YOU TO THE DATE. THE FIRST CITY
4 COUNCIL MEETING WAS ON A TUESDAY, OCTOBER 10, 2000. OKAY?

5 A. OKAY.

6 Q. THERE WAS THIS NOW FAMOUS ADDENDUM TO THE
7 NORCAL/CWS AGREEMENT THAT WAS SIGNED ON MONDAY, OCTOBER 9,
8 2000. YOU'RE FAMILIAR WITH THAT?

9 A. YES.

10 Q. THIS WOULD BE THE FRIDAY BEFORE THE MONDAY SIGNING
11 OF THE ADDENDUM AND TUESDAY, FIRST CITY COUNCIL VOTE. THAT
12 HAPPENS TO BE FRIDAY, OCTOBER 6, 2000. DO YOU HAVE THE
13 DATES IN MIND?

14 A. YES.

15 Q. LET ME ASK YOU AGAIN. ON FRIDAY, OCTOBER 6, 2000,
16 DID YOU TRAVEL DOWN TO SAN JOSE WITH MIKE SANGIACOMO?

17 A. YES.

18 Q. WHO DROVE?

19 A. MIKE.

20 Q. WHO ELSE WAS IN THE CAR?

21 A. I DON'T REMEMBER ANYBODY ELSE BEING IN THE CAR.

22 Q. WHAT IS THE NAME OF MIKE SANGIACOMO'S SECRETARY?

23 A. OH, AT THAT TIME, LAURIE SHAEFFER.

24 Q. DOES HE HAVE AN ADMINISTRATIVE AIDE AS WELL?

25 A. NO.

26 Q. DID MISS SHAEFFER TRAVEL DOWN TO SAN JOSE WITH YOU
27 AND MIKE SANGIACOMO?

28 A. NOT THAT I REMEMBER.

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1709

1 Q. WHAT WAS YOUR REASON IN GOING DOWN TO SAN JOSE ON
2 THAT FRIDAY, OCTOBER 6, 2000?

3 A. WE HAD BEEN CALLED TO THE MAYOR'S OFFICE FOR A
4 MEETING.

5 Q. WHAT TIME WAS THE MEETING; DO YOU RECALL?

6 A. NO, I DON'T.

7 Q. WAS IT BEFORE LUNCH OR AFTER LUNCH?

- 8 A. I CAN'T REMEMBER.
- 9 Q. DID YOU HAVE LUNCH AT A RESTAURANT NEAR CITY HALL
10 CALLED 840 NORTH FIRST STREET?
- 11 A. I DON'T REMEMBER THAT DETAIL.
- 12 Q. OKAY. DID YOU MEET BILL JONES DOWN IN SAN JOSE
13 THAT DAY?
- 14 A. YES.
- 15 Q. AND WAS HE THERE FOR THE MEETING AS WELL?
- 16 A. YES.
- 17 Q. AND WHO ELSE FROM NORCAL WAS PRESENT, WAS DOWN IN
18 SAN JOSE FOR THIS MEETING OTHER THAN YOURSELF, MIKE
19 SANGIACOMO, AND BILL JONES?
- 20 A. THAT'S ALL I REMEMBER BEING THERE.
- 21 Q. OKAY. AND WHY DON'T YOU TELL US, AS BEST YOU CAN,
22 WHAT YOU REMEMBER OF THE CIRCUMSTANCES OF THAT MEETING.
- 23 A. WE ARRIVED AT CITY HALL AND WENT UPSTAIRS, AND
24 MR. GUERRA CAME OUT TO TALK TO THE ASSISTANT THERE,
25 RECEPTIONIST, AND MR. GUERRA CAME OUT AND TOLD US ONLY TWO
26 PEOPLE FROM NORCAL WOULD BE ALLOWED IN THE MEETING.
- 27 Q. WHERE DID YOU MEET UP WITH BILL JONES? WAS HE IN
28 SAN FRANCISCO DRIVING DOWN WITH YOU, OR DID YOU MEET HIM AT

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1710

- 1 CITY HALL OR WHAT?
- 2 A. I CAN'T REMEMBER IF WE WENT BY THE OFFICE, HIS
3 OFFICE IN SAN JOSE OR HE MET US AT CITY HALL.
- 4 Q. OKAY. SO THEN WHAT HAPPENED?
- 5 A. UH -- WE DISCUSSED WHO WAS GOING TO GO INTO THE

6 MEETING, AND THERE WAS SOME OTHER PEOPLE PASSING THROUGH, WE
7 WERE STANDING IN THE LOBBY AND --

8 Q. I'M SORRY?

9 A. WE WERE STANDING IN THE LOBBY. I DID NOT GO INTO
10 THE MEETING. IT WAS DECIDED THAT MR. JONES AND
11 MR. SANGIACOMO WOULD GO.

12 Q. DO YOU KNOW SOMEONE NAMED TRAN?

13 A. NO.

14 Q. SO MR. JONES, MR. SANGIACOMO WENT INTO THE MEETING
15 PRESUMABLY WITH THE MAYOR, CORRECT?

16 A. YES.

17 Q. AND YOU WAITED OUTSIDE?

18 A. YEAH, IN THE LOBBY THERE.

19 Q. AND HOW DID YOU LEARN ABOUT THIS MEETING?

20 A. AFTERWARD?

21 Q. NO, BEFORE.

22 A. BEFORE, FROM MR. SANGIACOMO.

23 Q. OKAY. AND HOW LONG DID THE MEETING LAST -- STRIKE
24 THAT. HOW LONG DID YOU WAIT OUTSIDE BEFORE MR. SANGIACOMO
25 AND MR. JONES EMERGED FROM THE MEETING?

26 A. I DON'T REMEMBER THE EXACT TIME, BUT IT WASN'T
27 HOURS.

28 Q. ARE WE TALKING MINUTES, FIVE MINUTES, TEN MINUTES?

SUE HERFURTH, CSR #9645

1711

1 A. I WOULD SAY AN HOUR OR UNDER.

2 Q. DO YOU KNOW DAVID DUONG, THE PRESIDENT OF CWS?

3 A. YES.

4 Q. DID HE GO INTO THE MEETING AS WELL?

5 A. YES.

6 Q. NOW, WHERE WERE YOU WAITING IN RELATION TO WHERE
7 THE MEETING WAS TAKING PLACE?

8 A. THERE IN THE LOBBY, BY THE ELEVATORS.

9 Q. COULD PEOPLE HAVE LEFT THE MEETING WITHOUT YOU
10 OBSERVING THEM LEAVE?

11 A. YES. THE MEETING ROOM WAS TO THE LEFT OF A
12 RECEPTION AREA, AND I DON'T KNOW WHAT OTHER OFFICES ARE BACK
13 THERE.

14 Q. SO YOUR RECOLLECTION IS THAT IT WAS POSSIBLE THAT
15 SOMEONE COULD HAVE EMERGED FROM THE MEETING AND NOT WALKED
16 BY YOU?

17 A. I DON'T THINK THEY COULD HAVE LEFT THE BUILDING
18 WITHOUT WALKING BY ME.

19 Q. ARE YOU SURE ABOUT THAT?

20 A. WELL, I CAN'T BE SURE. AS I SAID, THE ELEVATORS
21 ARE --

22 Q. FROM WHAT YOU OBSERVED, DID ANYONE LEAVE THE
23 MEETING BEFORE OTHERS, OR DID EVERYONE LEAVE THE MEETING AT
24 THE SAME TIME?

25 A. I REMEMBER EVERYBODY LEAVING AT THE SAME TIME.

26 Q. SO IN YOUR MIND, YOU PICTURE MR. DUONG, MR. JONES,
27 AND MR. SANGIACOMO LEAVING THE MEETING AT THE SAME TIME?

28 A. CORRECT.

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1712

1 Q. AND DO YOU HAVE A PICTURE IN YOUR MIND OF MR. DUONG
Page 14

2 GOING INTO THE MEETING AT THE BEGINNING?

3 A. YES.

4 Q. WHO ELSE WENT INTO THE MEETING?

5 A. JOE GUERRA WAS THERE; HE MET US. BOB MORALES, THE
6 TEAMSTERS UNION. I BELIEVE AMY DEAN IS HER NAME, WITH THE
7 LABOR COUNCIL OF SAN JOSE, AND THAT'S -- I DON'T THINK
8 ANYBODY ELSE.

9 Q. SO YOU NEVER WENT INTO THE ROOM WHERE THE MEETING
10 TOOK PLACE?

11 A. NO.

12 Q. SO DO YOU KNOW WHETHER THIS WAS SOME CONFERENCE
13 ROOM ATTACHED TO THE MAYOR'S OFFICE OR A SEPARATE CONFERENCE
14 ROOM OR WHAT THE CONFIGURATION WAS?

15 A. NO. I HAD NEVER BEEN INTO THE MAYOR'S OFFICE.

16 Q. YOU DON'T KNOW WHETHER OR NOT, FOR EXAMPLE, OF THIS
17 LARGE GROUP THAT WENT IN, WHETHER OR NOT THEY BROKE DOWN
18 INTO A SMALLER GROUP WITH THE MAYOR; YOU CAN'T TELL US?

19 A. NO.

20 Q. SO WHAT HAPPENED WHEN MR. JONES AND MR. SANGIACOMO
21 EMERGED FROM THE MEETING?

22 A. WE WENT DOWN TO THE FRONT OF THE BUILDING IN THE
23 PARKING LOT AND HAD A DISCUSSION.

24 Q. AND WHO PARTICIPATED IN THIS DISCUSSION?

25 A. UH -- JONES AND SANGIACOMO AND I.

26 Q. AND TELL US WHAT YOU RECALL BEING SAID.

27 A. UH -- I DON'T REMEMBER EXACTLY HOW LONG JONES
28 STAYED THERE. HE LEFT, AND I REMEMBER MORE TALKING WITH

1 MIKE THAN BILL.

2 Q. TELL US WHAT YOU RECALL MIKE TELLING YOU.

3 A. HE SAID THAT IT HAD BEEN AGREED THAT CWS WOULD USE
4 THE TEAMSTERS' UNION FOR THEIR SORTING AND THAT THE MAYOR
5 WOULD USE HIS BEST EFFORTS TO MAKE UP THE DIFFERENCE IN THE
6 COST.

7 Q. OKAY. IF YOU CAN TRY TO KEEP YOUR VOICE UP, I
8 WOULD APPRECIATE IT.

9 A. OKAY.

10 Q. WHAT DID YOU SAY WHEN MR. SANGIACOMO SHARED THAT
11 INFORMATION WITH YOU?

12 A. UH -- I REALLY DON'T REMEMBER.

13 Q. WHAT'S YOUR BACKGROUND IN TERMS OF EDUCATION AND
14 PRIOR --

15 A. AS FAR AS COLLEGE?

16 Q. YEAH, START WITH COLLEGE.

17 A. I WENT TO SACRAMENTO STATE COLLEGE, B. A. IN
18 SOCIOLOGY.

19 Q. AFTER THAT?

20 A. AFTER THAT I WENT TO WORK IN THE FOOD BUSINESS FOR
21 EIGHT YEARS.

22 Q. IN WHAT CAPACITY?

23 A. BASIC VEGETABLE PRODUCTS.

24 Q. WHAT WAS YOUR POSITION?

25 A. I WAS, FIRST I WAS AN HR MANAGER, AND LATER BECAME
26 A PURCHASING MANAGER.

27 Q. AND AS PURCHASING MANAGER, YOU'RE FAMILIAR WITH THE
28 CONTRACTING PROCESS?

1 A. YES.

2 Q. AND WHAT DID YOU DO AFTER THAT?

3 A. UH -- AFTER THAT I WENT TO WORK FOR VACAVILLE
4 SANITARY SERVICE, THAT SERVICES THE CITY OF VACAVILLE, AS
5 GENERAL MANAGER.

6 Q. AFTER THAT?

7 A. THEY WERE OWNED BY GOLDEN GATE DISPOSAL AT THAT
8 TIME, AND, WHICH LATER BECAME NORCAL. FOR OVER 24 YEARS.

9 Q. YOU KNEW AT THE TIME THAT MIKE SANGIACOMO TOLD YOU
10 THAT IT WAS NOW AGREED THAT CWS WOULD USE TEAMSTERS, THAT
11 NORCAL' S PROPOSAL AND CWS' S CONTRACT WITH NORCAL WAS
12 PREDICATED ON USING LOWER COST LONGSHOREMEN, CORRECT?

13 A. CORRECT.

14 Q. SO WERE YOU SURPRISED WHEN YOU HEARD MIKE
15 SANGIACOMO TELL YOU THIS?

16 A. UH -- NO, WE KNEW THAT THE UNIONS WERE LOBBYING TO
17 NOT HAVE NORCAL GET THE BID.

18 Q. OKAY.

19 A. IT WAS DONE AT PUBLIC HEARINGS AT CITY COUNCIL
20 MEETINGS.

21 Q. THOSE HADN' T OCCURRED YET, HAD THEY?

22 A. PARDON ME?

23 Q. THOSE MEETINGS HADN' T OCCURRED YET?

24 A. MY TIMING MAY BE OFF THEN.

25 Q. WE' RE TALKING ABOUT FRIDAY, OCTOBER 6?

26 A. MM-HMM.

27 Q. THIS IS THE FRIDAY BEFORE THE VERY FIRST CITY
28 COUNCIL MEETING ON TUESDAY, OCTOBER 10 CONCERNING NORCAL' S

1 PROPOSAL.

2 SO AS OF FRIDAY, OCTOBER 6, THERE HAD BEEN NO CITY
3 COUNCIL HEARINGS ON NORCAL' S PROPOSAL. OKAY? HAVING THAT
4 IN MIND, I WOULD LIKE YOU TO THINK BACK TO THAT FRIDAY 2006
5 OUTSIDE CITY HALL WHEN MIKE SANGIACOMO TELLS YOU THAT IT' S
6 BEEN AGREED THAT CWS WILL USE TEAMSTERS AND THE MAYOR WILL
7 TRY AND MAKE UP THE DIFFERENCE. OKAY? WERE YOU SURPRISED
8 WHEN YOU HEARD THAT?

9 A. I WOULD SAY YES.

10 Q. WHY WERE YOU SURPRISED?

11 A. UH -- WELL, I BELIEVED NORCAL HAD THE LOW BID FOR
12 THE CONTRACT.

13 Q. OKAY. AND HOW DID THAT, WHY DID THAT CAUSE YOU TO
14 BE SOMEWHAT SURPRISED?

15 A. UH -- I GUESS I HADN' T, YOU KNOW, BEEN INVOLVED
16 WITH LABOR THAT MUCH IN THE SAN JOSE AREA.

17 Q. LET ME ASK YOU THIS. WHEN MIKE SANGIACOMO
18 EXPLAINED TO YOU OUTSIDE CITY HALL THAT CWS WAS NOW GOING TO
19 USE TEAMSTERS, WAS ANYBODY FROM CWS PRESENT?

20 A. NO.

21 Q. OKAY. WAS YOUR ASSUMPTION THAT CWS WAS GOING TO
22 ABSORB THAT EXTRA EXPENSE ON ITS OWN?

23 A. NO.

24 Q. AND WHY IS THAT?

25 A. WELL, WITH THE RFP PROCESS, THERE' S NOT ENOUGH ROOM
26 IN THE BID TO ABSORB MORE LABOR.

27 Q. SO YOU THOUGHT NORCAL WAS GOING TO HAVE TO MAKE CWS
28 WHOLE IN SOME FASHI ON?

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1716

1 A. I GUESS I VIEWED IT MORE AS THE CITY WAS IT GOING
2 TO MAKE CWS WHOLE.

3 Q. THESE WERE NOT INSIGNIFICANT AMOUNTS OF MONEY, THE
4 DIFFERENCE BETWEEN THE LONGSHOREMEN LABOR COSTS, WERE THEY?

5 A. WE DIDN' T KNOW AT THAT TIME.

6 Q. YOU HAD A SENSE IT WAS A LARGE AMOUNT OF MONEY,
7 RIGHT?

8 A. YES.

9 Q. AND WE KNOW ULTIMATELY IT WAS SOMETHING ON THE
10 ORDER OF \$11, 000, 000 DIFFERENCE, RIGHT?

11 A. CORRECT.

12 Q. AND GIVEN THE WAY THE NORCAL PROPOSAL WAS PUT
13 TOGETHER, THERE WASN' T ENOUGH PROFIT GOING IN TO THAT TO
14 ABSORB THAT COST, RIGHT?

15 A. THERE WAS NOT.

16 Q. DID YOU ASK MR. SANGI ACOMO WHETHER HE HAD GOTTEN
17 ANYTHING IN WRITING FROM THE MAYOR ABOUT GETTING EXTRA MONEY
18 FROM THE CITY TO PAY FOR THESE EXTRA COSTS?

19 A. YES, I DID.

20 Q. WHAT DID MR. SANGI ACOMO SAY?

21 A. UH -- HE SAID WE DIDN' T KNOW THE AMOUNTS AND THAT
22 IT WOULD BE, THIS MAYOR WAS KNOWN FOR KEEPING HIS POLITICAL
23 PROMISES, AND THAT IT WOULD BE, THAT THE CITY WOULD DEAL
24 WITH IT.

25 Q. NOW, YOU UNDERSTOOD AT THAT TIME THAT IF NORCAL WAS
26 SUCCESSFUL AND WAS AWARDED THE CONTRACT FROM THE CITY, IT
27 WOULD BE ASKED TO SIGN AN AGREEMENT WITH THE CITY REFLECTING
28 THE AWARD OF THE CONTRACT, RIGHT?

SUE HERFURTH, CSR #9645

1717

1 A. CORRECT.

2 Q. AND YOU'RE FAMILIAR ENOUGH WITH CONTRACTS TO KNOW
3 THAT TYPICALLY CONTRACTS HAVE WHAT'S SOMETIMES CALLED AN
4 INTEGRATION CLAUSE OR AN ENTIRE AGREEMENT CLAUSE THAT
5 ESSENTIALLY SAYS, THIS WRITTEN AGREEMENT SUPERSEDES ANY
6 PRIOR UNDERSTANDINGS AND PROMISES.

7 YOU'RE FAMILIAR WITH THAT CONCEPT, RIGHT?

8 A. YES.

9 Q. WERE YOU CONCERNED THAT YOU HAD NOTHING IN WRITING
10 FROM THE MAYOR AND YOU WENT AHEAD, WON THE PROPOSAL, GOT THE
11 CONTRACT SIGNED, THERE MIGHT BE SOME LEGAL IMPEDIMENTS TO
12 GETTING THIS ADDITIONAL MONEY FROM THE CITY OF SAN JOSE
13 GIVEN THAT THERE WAS GOING TO BE AN INTEGRATION CLAUSE
14 REQUIRED IN THE CITY'S CONTRACT?

15 A. I DIDN'T VIEW IT THAT WAY.

16 Q. WHY NOT?

17 A. BECAUSE IT WAS AN RFP PROCESS, AND CHANGES ARE MADE
18 QUITE REGULARLY IN RFP PROCESSES.

19 Q. OKAY.

20 A. BASED ON THE CITY'S INTERESTS.

21 Q. WE KNOW THAT THE CITY DID AWARD A CONTRACT TO
22 NORCAL, AND THE CONTRACT WAS SIGNED IN MARCH OF 2001,

23 CORRECT?
24 A. CORRECT.
25 Q. DID YOU REVIEW THE CONTRACT BEFORE IT WAS SIGNED?
26 A. YEAH, I DID SOME REVIEW OF IT.
27 Q. WAS THERE ANYTHING IN THE WRITTEN CONTRACT ABOUT
28 EXTRA MONEY TO NORCAL FOR THESE EXTRA LABOR COSTS FOR USING

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1718

1 THE TEAMSTERS?
2 A. NOT THAT I REMEMBER.
3 Q. OKAY. WELL, AT THAT TIME, WERE YOU CONCERNED THAT
4 NOW WE HAVE A WRITTEN CONTRACT, AND EVEN THOUGH IN THE RFP
5 PROCESS, AS YOU TOLD US, THINGS CAN BE CHANGED, THIS
6 CONTRACT WASN' T CHANGED, AND THERE IS NOTHING IN WRITING
7 REFLECTING WHAT THE MAYOR HAD APPARENTLY TOLD
8 MR. SANGIACOMO. WERE YOU CONCERNED AT THAT TIME?
9 A. NOT MAJOR CONCERN WITH IT.
10 Q. WELL, WHAT KIND OF CONCERN DID YOU HAVE?
11 A. UH -- I VIEWED IT MORE AS THE CITY' S ISSUE THAN
12 NORCAL' S ISSUE.
13 Q. WHY DID YOU VIEW IT THAT WAY?
14 A. BECAUSE THE MAYOR REPRESENTS THE CITY AND THE CITY
15 COUNCIL.
16 Q. SO YOU FELT THE MAYOR COULD BIND THE ENTIRE CITY OF
17 SAN JOSE ON HIS OWN WITHOUT THE VOTE OF THE COUNCIL?
18 A. NO, IT WAS NEVER SAID HE WAS BINDING THE WHOLE
19 CITY.
20 Q. MR. SANGIACOMO HAS TOLD US THAT HE ESTIMATED THE

21 EXTRA COST AT APPROXIMATELY \$2,000,000 A YEAR OVER FIVE
22 YEARS, AND HE ESTIMATED THAT IF THIS EXTRA MONEY WASN'T
23 REIMBURSED BY THE CITY, THE DEAL WITH THE CITY WOULD CHANGE
24 FROM APPROXIMATELY \$1,000,000 A YEAR PROFIT TO A \$1,000,000
25 A YEAR LOSS. WOULD YOU AGREE WITH THAT?

26 A. YEAH, AT LEAST THAT.

27 Q. OKAY. SO WOULDN'T THAT BE OF SIGNIFICANT CONCERN
28 TO NORCAL, NOT GETTING REIMBURSEMENT FROM THE CITY AND

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1719

1 TURNING A \$1,000,000 A YEAR PROFIT INTO A \$1,000,000 A YEAR
2 LOSS?

3 A. I THINK SOME OF THAT IS BUSINESS RISK.

4 Q. NORCAL IS NOT IN BUSINESS TO LOSE MONEY, IS IT?

5 A. YOU'RE NOT GUARANTEED TO MAKE MONEY.

6 Q. SO DID YOU ATTEND ANY OF THE CITY COUNCIL VOTES ON
7 NORCAL'S PROPOSAL?

8 A. YES.

9 Q. DID YOU ATTEND THE FIRST ONE ON OCTOBER 10?

10 A. I DON'T REMEMBER THE DATE; I DID ATTEND ONE.

11 Q. WAS IT THE FIRST ONE?

12 A. UH -- I DON'T KNOW. I JUST REMEMBER THE UNION AT
13 THE MEETING.

14 Q. OKAY. DID ANYONE FROM NORCAL ADDRESS THE CITY
15 COUNCIL ABOUT GETTING EXTRA MONEY TO REIMBURSE FOR THE
16 SWITCH FROM LONGSHOREMEN TO TEAMSTERS?

17 A. NOT THAT I REMEMBER.

18 Q. WHY IS THAT?

- 19 A. I DON'T KNOW. I VIEWED IT AS A CITY ISSUE.
- 20 Q. WELL, YOU WERE IN CITY HALL, TALKING TO THE CITY
- 21 COUNCIL. WHY WOULDN'T YOU WANT TO -- YOU TOLD US THE MAYOR
- 22 ON HIS OWN CAN'T BIND THE CITY. WHY WOULD YOU NOT WANT TO
- 23 SHARE THAT INFORMATION WITH THE REST OF THE CITY COUNCIL?
- 24 A. I DIDN'T FEEL THAT THAT WAS MY PLACE TO DO.
- 25 Q. WERE THERE ANY DISCUSSIONS THAT YOU WITNESSED AT
- 26 NORCAL ABOUT WHETHER OR NOT TO RAISE THIS WITH THE REST OF
- 27 THE CITY COUNCIL?
- 28 A. NO.

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1720

- 1 Q. WASN'T THERE A BRIEFING SESSION THE DAY BEFORE THE
- 2 CITY COUNCIL VOTE AT NORCAL'S OFFICES WITH BILL JONES AND
- 3 MIKE SANGIACOMO, AND POSSIBLY OTHERS, REGARDING THE CITY
- 4 COUNCIL VOTE?
- 5 A. THERE COULD HAVE BEEN.
- 6 Q. YOU AT ANY TIME DIDN'T ATTEND SUCH A BRIEFING
- 7 SESSION?
- 8 A. I MAY HAVE, BUT I DON'T REMEMBER.
- 9 Q. JUST GIVE ME A MOMENT.
- 10 LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 119.
- 11 THIS IS A, IT SAYS DATEBOOK OF BILL JONES. AND IF WE LOOK
- 12 AT THE ENTRY FOR TUESDAY, OCTOBER 10, 2000, YOU'LL NOTICE
- 13 MR. JONES' DATEBOOK REFLECTS AN ENTRY FROM 9:00 A.M. TO
- 14 12:00 A.M., AND SAYS, "PREP MEETINGS FOR SAN JOSE." DO YOU
- 15 SEE THAT ENTRY?
- 16 A. YES.

17 Q. DO YOU KNOW WHAT THAT REFERS TO?
18 A. UH -- I COULD SPECULATE.
19 Q. I DON'T WANT YOU TO SPECULATE. DO YOU KNOW?
20 A. NO.
21 Q. SO IF SUCH A MEETING OCCURRED, YOU DIDN'T
22 PARTICIPATE IN IT?
23 A. I MAY HAVE, MAY NOT HAVE. YOU'VE GOT TO KIND OF
24 PUT IT IN PERSPECTIVE. SAN JOSE -- WE STILL HAVE THE REST
25 OF THE COMPANY. SAN JOSE WAS THREE OR FOUR PERCENT OF
26 NORCAL'S BUSINESS; I STILL HAD ALL THE OTHER OPERATIONS. WE
27 HAD ISSUES IN SAN BERNARDINO GOING ON. WE HAD HUGE PROJECTS
28 IN SAN FRANCISCO GOING ON AT THE TIME, AND A FULL MANAGEMENT

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1721

1 TEAM --
2 Q. YOU WERE SPREAD THIN?
3 A. YEAH.
4 Q. THIS WAS THE ONLY PROPOSAL THAT WAS PENDING AROUND
5 THAT TIME, RIGHT?
6 A. I CAN'T SAY THAT, IF WE HAD OTHERS OUT. WE SERVICE
7 OVER 50 CITIES.
8 Q. THIS WAS YOUR FIRST ENTRY INTO A MAJOR MARKET IN
9 SAN JOSE, IN NORTHERN CALIFORNIA?
10 A. YES.
11 Q. SO IT WAS AN IMPORTANT FIRST STEP IN EXPANDING
12 NORCAL'S BUSINESS?
13 A. WE WERE IN SANTA CLARA COUNTY ALREADY.
14 Q. RIGHT, IN SMALLER CITIES?

- 15 A. RIGHT, YES.
- 16 Q. YOU TOLD US YOU HAVE A CLOSE WORKING RELATIONSHIP
- 17 WITH MIKE SANGIACOMO, CORRECT?
- 18 A. YES.
- 19 Q. DID YOU ASK HIM WHY CWS WAS SWITCHING TO
- 20 TEAMSTERS -- YOU ASKED HIM WHAT HAPPENED, WHAT WAS SAID IN
- 21 THE MAYOR'S OFFICE?
- 22 A. YES.
- 23 Q. WHAT DID HE SAY?
- 24 A. HE SAID THAT THE CITY WANTED TO MAINTAIN -- I DON'T
- 25 KNOW IF THESE WERE THE EXACT WORDS -- BUT I'LL USE THE WORD
- 26 LABOR PEACE.
- 27 Q. ANYTHING ELSE?
- 28 A. NO.

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1722

- 1 Q. DID MR. SANGIACOMO INDICATE THAT HE HAD BEEN
- 2 PRESSURED BY THE MAYOR IN SOME WAY?
- 3 A. NO.
- 4 Q. DID THE RFP ISSUED BY THE CITY OF SAN JOSE REQUIRE
- 5 THAT CWS OR ANY PROPOSER USE TEAMSTERS?
- 6 A. NO.
- 7 Q. DID YOU THINK THE CITY COULD LAWFULLY REQUIRE A
- 8 BIDDER TO RECOGNIZE A PARTICULAR UNION?
- 9 A. NO, BUT THE CONTRACT HAD LANGUAGE IN IT ON CERTAIN
- 10 WAGE ISSUES AND RETENTION OF CURRENT WORKERS EMPLOYED BY THE
- 11 COMPANIES.
- 12 Q. AS COO, DID YOU HAVE ANY INTERACTION WITH THE

- 13 UNIONS REPRESENTING NORCAL' S WORKERS?
- 14 A. I INTERACTED QUITE DIRECTLY. I DON' T REMEMBER ANY
- 15 SPECIFICS ON THIS ISSUE.
- 16 Q. I' M NOT TALKING THIS ISSUE. ON ANY ISSUE.
- 17 A. I HAVE DEALT WITH TEAMSTERS SINCE 1974.
- 18 Q. IN NORCAL' S PROPOSAL, IT INDICATED THAT CWS WAS
- 19 GOING TO RECOGNIZE LONGSHOREMEN PURSUANT TO AN EXISTING
- 20 COLLECTIVE BARGAINING AGREEMENT IT HAD IN OAKLAND, WITH A
- 21 UNION IN OAKLAND?
- 22 A. THAT WAS MY UNDERSTANDING.
- 23 Q. DID YOU HAVE ANY QUALMS ABOUT CWS NOT HONORING THAT
- 24 AGREEMENT WITH THE LONGSHOREMEN?
- 25 A. NO.
- 26 Q. WHY IS THAT?
- 27 A. I WOULDN' T GET INVOLVED IN CWS' S LABOR RELATIONS.
- 28 Q. BUT NORCAL WAS GETTING INVOLVED IN CWS' S LABOR

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1723

- 1 RELATIONS, WEREN' T THEY?
- 2 A. I BELIEVE THE CITY WAS GETTING INVOLVED.
- 3 Q. WELL, WHO WAS IT WHO ASKED CWS TO SWITCH FROM
- 4 LONGSHOREMEN TO TEAMSTERS?
- 5 A. I DON' T KNOW EXACTLY. I WASN' T. I BELIEVE IT
- 6 HAPPENED IN THAT MEETING.
- 7 Q. OKAY. AND YOU TOLD US YOU' RE FAMILIAR WITH THE
- 8 OCTOBER 9 ADDENDUM ENTERED INTO BETWEEN NORCAL AND CWS?
- 9 A. YES.
- 10 Q. AND WHAT WAS YOUR ROLE OR PARTICIPATION IN THAT

11 PROCESS LEADING UP TO THE ADDENDUM?
12 A. I DON'T REMEMBER HAVING A ROLE IN IT.
13 Q. DID YOU TALK TO MIKE SANGIACOMO ABOUT THE ADDENDUM
14 BEFORE IT WAS SIGNED?
15 A. I DON'T REMEMBER SPECIFICALLY.
16 Q. HOW ABOUT GENERALLY?
17 A. I'M SURE I HAD SOME AWARENESS OF IT.
18 Q. WERE YOU AWARE THAT MR. SANGIACOMO WAS PROPOSING TO
19 OBLIGATE NORCAL TO REIMBURSE CWS FOR THESE EXTRA LABOR
20 COSTS? DID HE DISCUSS THAT WITH YOU?
21 A. YES.
22 Q. WHAT DID HE TELL YOU?
23 A. I DON'T REMEMBER. I HAVE GENERAL KNOWLEDGE OF IT.
24 Q. WHAT, GENERALLY, DO YOU KNOW?
25 A. THAT WE WERE GOING TO REIMBURSE CWS FOR THE LABOR
26 COST, THE DIFFERENTIAL.
27 Q. AND DID YOU ASK HIM WHY YOU WERE GOING TO DO THAT?
28 A. NO.

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1724

1 Q. YOU HAVE NO OPINIONS ABOUT THE WISDOM OF DOING THAT
2 ONE WAY OR THE OTHER?
3 A. I CAN'T COMMENT ON ONE UNION OVER THE OTHER. WE
4 DEAL WITH LOTS OF UNIONS.
5 Q. THAT WASN'T MY QUESTION. MY QUESTION IS, WITH
6 REGARD TO REIMBURSING CWS FOR THE ADDITIONAL LABOR COSTS,
7 DID MR. SANGIACOMO, WHEN MR. SANGIACOMO SHARED WITH YOU HE
8 WAS GOING TO DO THAT, DID YOU HAVE ANY OPINIONS ABOUT THE

9 WISDOM OF DOING THAT?
10 A. NO, HE HAS THE AUTHORITY TO DO IT.
11 Q. I'M NOT ASKING YOU WHETHER HE HAD THE AUTHORITY.
12 I'M ASKING AS, WHETHER AS COO YOU THOUGHT THAT MADE GOOD
13 BUSINESS SENSE FOR MR. SANGIACOMO TO OBLIGATE NORCAL TO PAY
14 POTENTIALLY SUBSTANTIAL ADDITIONAL SUMS OF MONEY TO CWS.
15 A. I DON'T REMEMBER THAT DISCUSSION.
16 Q. WELL, HOW DID YOU FIRST LEARN THAT MR. SANGIACOMO
17 WAS GOING TO COMPENSATE CWS FOR THESE EXTRA LABOR COSTS?
18 A. I BELIEVE IT WAS WHEN I SAW THE AGREEMENT.
19 Q. WHEN YOU SAY THE AGREEMENT, DO YOU MEAN A DRAFT OF
20 THE AGREEMENT OR THE SIGNING OF THE AGREEMENT?
21 A. IF MAY HAVE BEEN A DRAFT.
22 Q. OKAY. AND SO, WHAT WAS THE REASON YOU SAW A DRAFT
23 OF THE AGREEMENT?
24 A. WE WERE WORKING WITH CWS TO GET THE BID, SAN JOSE
25 BID.
26 Q. COME ON, MR. HUMPHREY. YOU SAW A DRAFT OF THE
27 AGREEMENT BECAUSE MR. SANGIACOMO WANTED TO RUN THIS BY YOU
28 TO SEE WHAT YOU THOUGHT OF IT. ISN'T THAT WHAT HAPPENED?

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1725

1 A. NO.
2 Q. SO HE JUST SHOWED YOU A DRAFT OF THIS AGREEMENT
3 FOR, JUST OUT OF IDLE CURIOSITY?
4 A. (NO RESPONSE.)
5 Q. DID HE SHOW YOU THIS DRAFT OF THE AGREEMENT ON
6 COMPANY TIME AT THE COMPANY'S OFFICES?

7 A. I CAN'T REMEMBER THAT, WHERE I WAS WHEN I SAW THAT.
8 I TRAVEL A LOT, TOO, SO --
9 Q. YOUR TESTIMONY -- YOU UNDERSTAND YOU ARE TESTIFYING
10 UNDER OATH?
11 A. YES.
12 Q. YOUR TESTIMONY IS, YOU DON'T RECOLLECT WHERE YOU
13 WERE WHEN YOU SAW THE AGREEMENT?
14 A. NO.
15 Q. AND HOW WAS THE AGREEMENT SHOWN TO YOU? WAS IT
16 FAXED TO YOU, E-MAILED TO YOU, OR WAS A HARD COPY TENDERED
17 TO YOU?
18 A. I BELIEVE IT WAS A FAX FOR SOME REASON.
19 Q. A FAX FROM MR. SANGIACOMO OR FROM SOMEONE ELSE?
20 A. I CAN'T REMEMBER.
21 Q. DID YOU AND MR. SANGIACOMO EVER DISCUSS WHETHER OR
22 NOT YOU SHOULD GET NORCAL'S LAWYER INVOLVED IN THIS
23 SITUATION TO OFFER ADVICE ABOUT THE PROPRIETY OF GOING AHEAD
24 WITH THIS DEAL?
25 A. I DON'T REMEMBER DISCUSSING THAT WITH
26 MR. SANGIACOMO.
27 Q. NOW, AT THE TIME THIS IS OCCURRING, IN OCTOBER OF
28 2000, NORCAL HAD TO DEAL WITH THE FALLOUT IN SAN BERNARDINO,

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1726

1 RIGHT?
2 A. CORRECT.
3 Q. THAT WAS ALLEGATIONS OF BRIBERY DOWN IN SAN
4 BERNARDINO, RIGHT?

- 5 A. THEY WERE MORE THAN ALLEGATIONS, YES.
6 Q. THERE WAS A CONVICTION, RIGHT?
7 A. THERE WAS A CONVICTION OF ONE OF OUR MANAGERS, YES.

8 MR. FINKELSTEIN: LET ME JUST CAUTION THE JURY,
9 THIS IS NOT EVIDENCE OF ANY WRONGDOING IN THIS CASE, BUT I
10 WANT TO EXPLORE THAT FOR A DIFFERENT REASON.

11 BY MR. FINKELSTEIN:

12 Q. GIVEN THE CONTEXT IN WHICH THIS WAS OCCURRING, YOU
13 WENT DOWN TO CITY HALL ON THE FRIDAY BEFORE THE FIRST CITY
14 COUNCIL VOTE. ALL ALONG YOU'RE PROPOSING THAT CWS IS GOING
15 TO GO WITH THE LONGSHOREMEN ON THEIR EXISTING COLLECTIVE
16 BARGAINING AGREEMENT. MR. SANGIACOMO AND MR. JONES GO INTO
17 THE MEETING WITH THE MAYOR; HE EMERGES AND TELLS YOU,
18 MR. SANGIACOMO TELLS YOU THAT WE'RE CHANGING, IT'S GOING TO
19 BE LONGSHOREMEN FOR CWS. AND MONDAY MORNING YOU'RE GOING
20 TO -- MR. SANGIACOMO TELLS YOU, WE'RE GOING TO HAVE TO
21 REIMBURSE CWS SUBSTANTIAL SUMS OF MONEY FOR THESE EXTRA
22 COSTS OF SWITCHING FROM LONGSHOREMEN TO TEAMSTERS.

23 NO BELLS GO OFF, NO LIGHTS FLASH, NO CONCERN ABOUT
24 MAYBE WE SHOULD TALK TO THE LAWYERS ABOUT THIS? IS THAT
25 WHAT YOU'RE TELLING US?

26 A. I DON'T KNOW. THIS WAS MR. SANGIACOMO'S ISSUE TO
27 HANDLE. HE HAS THE AUTHORITY; HE'S THE BOSS.

28 Q. I'M NOT ASKING WHETHER HE HAD THE AUTHORITY. I'M

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1727

1 ASKING YOU WHETHER OR NOT YOU HAD CONCERNS ABOUT THE
2 LEGALITY OF WHAT WAS GOING ON.

- 3 A. NO.
- 4 Q. WHY WOULDN'T SOMEONE FROM NORCAL WANT TO SHARE THIS
5 WITH THE REST OF THE COUNCIL TO ASSURE THEIR SUPPORT FOR
6 WHAT THE MAYOR HAD APPARENTLY PROMISED HE WOULD DO?
- 7 A. I DON'T KNOW. THAT MAY HAVE HAPPENED; I CAN'T SAY.
- 8 Q. YOU WERE AT THE COUNCIL MEETING. DID IT HAPPEN?
- 9 A. I DON'T THINK IT HAS TO HAPPEN AT THE COUNCIL
10 MEETING.
- 11 Q. DID YOU HAVE ANY KNOWLEDGE IT HAPPENED ANYWHERE
12 ELSE?
- 13 A. NO.
- 14 Q. DID YOU TALK TO MR. SANGIACOMO ABOUT WHAT NORCAL'S
15 OPTIONS MIGHT BE IF THE CITY DIDN'T HONOR THE MAYOR'S
16 REPRESENTATIONS AND REIMBURSE NORCAL FOR THIS EXTRA MONEY?
- 17 A. I DON'T UNDERSTAND THE QUESTION.
- 18 Q. RIGHT. LET ME REASK IT. ON THE MONDAY BEFORE THE
19 FIRST COUNCIL VOTE, YOU KNEW THAT NORCAL WAS ON THE HOOK TO
20 PAY CWS SUBSTANTIAL AMOUNTS OF MONEY FOR THESE EXTRA LABOR
21 COSTS, RIGHT?
- 22 A. CORRECT.
- 23 Q. YOU KNEW THAT THE MONEY, YOU WERE HOPING THE MONEY
24 WOULD BE REIMBURSED TO NORCAL BY THE CITY OF SAN JOSE BASED
25 ON WHAT THE MAYOR SAID, RIGHT?
- 26 A. CORRECT.
- 27 Q. YOU HAD NOTHING IN WRITING FROM THE MAYOR, CORRECT?
- 28 A. CORRECT.

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1728

- 1 Q. AND YOU HAD NOTHING IN WRITING IN THE OFFICIAL
2 AGREEMENT BETWEEN NORCAL AND THE CITY OF SAN JOSE THAT WAS
3 SIGNED IN MARCH OF 2001, RIGHT?
- 4 A. CORRECT.
- 5 Q. WELL, DID YOU EVER TALK TO MR. SANGIACOMO ABOUT,
6 WHAT'S YOUR CONTINGENCY HERE, WHAT IF THE MAYOR DOESN'T
7 DELIVER ON WHAT HE TOLD US? WE'RE ON THE HOOK TO CWS, WHAT
8 ARE WE GOING TO DO, SHELL OUT \$2,000,000 A YEAR TO CWS AND
9 WALK AWAY?
- 10 A. THAT'S A BUSINESS RISK.
- 11 Q. YOU CONSIDERED THIS TO BE A RISK?
- 12 A. THE WAY YOU JUST EXPLAINED IT, YES.
- 13 Q. WHAT DID YOU THINK ABOUT IT? DID YOU THINK IT WAS
14 A CERTAINTY OR A RISK?
- 15 A. THERE'S ALWAYS SOME RISK IN ANY DECISION.
- 16 Q. DID YOU THINK THE COLLECTABILITY OF THIS MONEY FROM
17 THE CITY WAS ASSURED?
- 18 A. I WOULD LIKE TO THINK IT WAS.
- 19 Q. AND WHAT BASIS DID YOU HAVE FOR THINKING THAT THE
20 COLLECTABILITY WAS ASSURED?
- 21 A. I DIDN'T HAVE A BASIS.
- 22 Q. I'M SORRY?
- 23 A. I DIDN'T HAVE A BASIS.
- 24 Q. YOU HAD NO BASIS?
- 25 A. UH -- NO, IT'S SIMILAR TO OTHER POLITICAL PROMISES
26 THAT HAPPEN.
- 27 Q. GIVE US SOME EXAMPLES OF SIMILAR POLITICAL PROMISES
28 THAT HAPPEN THAT INVOLVE PAYMENT OF APPROXIMATELY \$2,000,000

1 A YEAR OVER FIVE YEARS.

2 A. WELL, THERE ARE TIMES WHEN WE INVEST MONEY IN THE
3 FUTURE WITHOUT KNOWING EXACTLY WHAT THE FUTURE WILL BE
4 BECAUSE OF CONTRACT LIMITS, TERM LIMITS, OTHER THINGS.

5 Q. WELL, WHAT'S POLITICAL ABOUT THAT?

6 A. WELL, YOU HOPE THAT YOU WILL BE THERE FOR THE LONG
7 TERM.

8 Q. YEAH, BUT YOU USED THE WORD POLITICAL. I'M TRYING
9 TO UNDERSTAND IN YOUR MIND WHAT MAKES THAT POLITICAL AS
10 OPPOSED TO JUST A BUSINESS RISK UNDERTAKEN BY BUSINESSES
11 THROUGHOUT THE COUNTRY EVERY DAY.

12 A. OUR BUSINESS IS MORE POLITICAL THAN MOST
13 BUSINESSES. EVERYTHING WE DO ENDS UP AT THE COUNCIL OR IN
14 FRONT OF THE BOARD OF SUPERVISORS.

15 Q. I GUESS YOU MIGHT SAY YOU RELY ON THE KINDNESS OF
16 ELECTED OFFICIALS FOR YOUR REVENUE; IS THAT TRUE?

17 A. I WOULDN'T PUT IT THAT WAY BUT --

18 Q. I SEE YOU'RE SMILING. HOW WOULD YOU CHARACTERIZE
19 NORCAL'S DEPENDENCY ON ELECTED OFFICIALS?

20 A. THE WORD KINDNESS IS PRETTY STRONG. NO.

21 Q. WELL, YOU RELY ON FAVORABLE VOTES, OPINIONS, AND
22 JUDGMENTS OF ELECTED OFFICIALS?

23 A. YEAH.

24 Q. CORRECT?

25 A. EVEN WHEN YOU'RE LOW BID, YOU'RE NOT GUARANTEED
26 THAT YOU'LL GET A CONTRACT. IT DOES COME DOWN TO VOTES.

27 Q. YOU RELY ON THE FAVORABLE ACTION, VOTE, AND OPINION
28 OF AND JUDGMENT OF ELECTED OFFICIALS.

1 A. MUCH OF OUR BUSINESS IS FRANCHISED, THAT'S CORRECT.

2 MR. FINKELSTEIN: WHY DON'T WE TAKE OUR MORNING
3 RECESS. ABOUT FIVE MINUTES.

4 THE FOREPERSON: LET ME READ A CONFIDENTIALITY
5 ADMONITION TO YOU BEFORE WE BREAK.

6 YOU ARE ADMONISHED NOT TO REVEAL TO ANY PERSON,
7 EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS WERE ASKED
8 OR WHAT RESPONSES WERE GIVEN OR ANY OTHER MATTERS CONCERNING
9 THE NATURE OR SUBJECT OF THE GRAND JURY'S INVESTIGATION
10 WHICH YOU LEARNED DURING YOUR APPEARANCE BEFORE THE GRAND
11 JURY, UNLESS AND UNTIL SUCH TIME AS THE TRANSCRIPT OF THIS
12 GRAND JURY PROCEEDING IS MADE PUBLIC. VIOLATION OF THIS
13 ADMONITION IS PUNISHABLE AS CONTEMPT OF COURT.

14 MR. FINKELSTEIN: I WANT TO AMPLIFY THAT. I KNOW
15 YOU'RE REPRESENTED BY COUNSEL BECAUSE HE'S OUTSIDE IN THE
16 HALLWAY. YOU MAY SHARE INFORMATION WITH COUNSEL PROVIDED
17 COUNSEL AGREES NOT TO FURTHER DISCLOSE THE INFORMATION. DO
18 YOU UNDERSTAND?

19 THE WITNESS: OKAY. THANK YOU.

20 MR. FINKELSTEIN: SEE YOU IN ABOUT FIVE MINUTES.
21 THANK YOU.

22 (A BRIEF RECESS WAS TAKEN.)

23 THE FOREPERSON: THE RECORD WILL SHOW ALL JURORS
24 ARE PRESENT.

25 BY MR. FINKELSTEIN:

26 Q. MR. HUMPHREY, I'LL JUST REMIND YOU YOU'RE STILL
27 UNDER OATH BECAUSE YOU HAVE BEEN PREVIOUSLY SWORN IN THIS
28 INVESTIGATION. DO YOU UNDERSTAND THAT?

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1731

- 1 A. YES, I DO.
- 2 Q. YOU'VE TOLD US THAT YOU DROVE DOWN WITH MICHAEL
3 SANGIACOMO ON FRIDAY BEFORE THE FIRST CITY COUNCIL VOTE ON
4 OCTOBER 10, 2000 ON NORCAL'S PROPOSAL, CORRECT?
- 5 A. CORRECT.
- 6 Q. WHICH WOULD HAVE BEEN FRIDAY, OCTOBER 6?
- 7 A. CORRECT.
- 8 Q. YOU DON'T REMEMBER WHETHER IT WAS IN THE MORNING OR
9 AFTERNOON?
- 10 A. NO.
- 11 Q. YOU DON'T REMEMBER WHERE YOU HAD LUNCH THAT DAY?
- 12 A. NO.
- 13 Q. DID YOU DRIVE BACK TO THE CITY WITH MR. SANGIACOMO
14 AFTER THE MEETING WITH THE MAYOR?
- 15 A. YES.
- 16 Q. AND WAS IT JUST YOU AND MR. SANGIACOMO AGAIN?
- 17 A. UH -- THAT'S WHO I REMEMBER.
- 18 Q. OKAY. DID BILL JONES DO ANY FUNDRAISING FOR MAYOR
19 GONZALES?
- 20 A. I DON'T KNOW IF MR. JONES DID ANY HIMSELF. I
21 ATTENDED A FUNDRAISER DOWN HERE.
- 22 Q. WHERE WAS THAT HELD?
- 23 A. IT WAS AT A RESTAURANT UPSTAIRS.
- 24 Q. BLAKE'S STEAKHOUSE?
- 25 A. THAT SOUNDS RIGHT.
- 26 Q. DID BILL JONES SOLICIT CONTRIBUTIONS FROM YOU AND

27 OTHER EMPLOYEES OF NORCAL FOR THE MAYOR?

28 A. I DON'T REMEMBER IF THEY CAME THROUGH BILL JONES OR

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1732

1 THROUGH THE MAIL OR HOW WE GOT THEM.

2 Q. LET ME SHOW YOU WHAT'S BEEN MARKED PREVIOUSLY AS
3 GRAND JURY EXHIBIT 120 IN THIS PROCEEDING. DO YOU RECOGNIZE
4 THIS MEMO?

5 A. I DON'T RECOGNIZE IT, BUT I KNOW WHY I ATTENDED IT.

6 Q. SO YOU DID ATTEND THE EVENT THAT IS REFERENCED IN
7 THAT MEMO?

8 A. YES, I DID.

9 Q. 120?

10 A. YES.

11 Q. AND THAT'S THE ONE THAT TOOK PLACE ON JANUARY 28 AT
12 5:30 P.M. TO 7:00 P.M. AT BLAKE'S STEAKHOUSE IN SAN JOSE?

13 A. CORRECT.

14 Q. AND DID YOU MAKE A \$500 CONTRIBUTION?

15 A. I DON'T REMEMBER THE AMOUNT.

16 Q. DID YOU MAKE A CONTRIBUTION?

17 A. I MADE A CONTRIBUTION.

18 Q. WAS THAT AS A RESULT OF BEING ASKED TO MAKE A
19 CONTRIBUTION BY BILL JONES?

20 A. UH -- I DON'T REMEMBER HIM SPECIFICALLY ASKING ME,
21 BUT I MAY HAVE MADE IT AS A RESULT OF THIS MEMO.

22 Q. DO YOU HAVE ANY REASON TO BELIEVE YOU DID NOT
23 RECEIVE A COPY OF THIS MEMO ON OR ABOUT JANUARY 23, 2002?

24 A. NO.

- 25 Q. YOU DO RECALL ATTENDING THE EVENT?
26 A. YES, I DO.
27 Q. YOU DO RECALL MAKING A CONTRIBUTION?
28 A. YES.

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1733

- 1 Q. DO YOU RECALL THE AMOUNT OF THAT CONTRIBUTION?
2 A. NO. IT SHOULD HAVE BEEN REPORTED.
3 Q. WERE YOU REIMBURSED IN WHOLE OR IN PART FOR THIS
4 CONTRIBUTION BY NORCAL?
5 A. NO.
6 Q. THIS WAS FROM YOUR OWN FUNDS?
7 A. CORRECT.
8 Q. DID YOU LIVE IN SAN JOSE AT THE TIME YOU MADE THIS
9 CONTRIBUTION?
10 A. NO, I LIVED IN THE NORTH BAY.
11 Q. AND WHY WAS IT YOU WERE MAKING CONTRIBUTIONS TO THE
12 MAYOR OF SAN JOSE FROM YOUR OWN FUNDS?
13 A. TO SUPPORT THE FUNDRAISER. WE SUPPORT CHARITIES
14 AND FUNDRAISERS IN COMMUNITIES.
15 Q. THIS WAS NOT A CHARITY, WAS IT?
16 A. NO. FUNDRAISER.
17 Q. FOR AN ELECTED OFFICIAL IN SAN JOSE?
18 A. YES.
19 Q. WHO AS OF JANUARY 2002 HAD NOT DELIVERED ON HIS
20 PROMISE TO PAY EXTRA MONEY TO NORCAL FOR THE EXTRA COSTS OF
21 USING TEAMSTERS, CORRECT?
22 A. I DON'T BELIEVE BY THAT DAY HE HAD, NO.

23 Q. WHO ELSE FROM NORCAL ATTENDED THIS EVENT, TO YOUR
24 RECOLLECTION?

25 A. I BELIEVE MIKE SANGIACOMO DID, BILL JONES. I
26 BELIEVE ED MCGOVERN WAS THERE. WELL, HE DOESN'T ACTUALLY
27 WORK FOR NORCAL; HE'S EMPLOYED ON BEHALF OF NORCAL.

28 Q. THAT'S FINE.

SUE HERFURTH, CSR #9645

1734

1 A. I DIDN'T LISTEN. I'M SORRY.

2 Q. HE WAS EMPLOYED ON BEHALF OF NORCAL?

3 A. HE WAS A CONSULTANT, YES. THERE WERE ROUGHLY, I
4 WANT TO SAY 20 PEOPLE AT THE EVENT.

5 Q. WHO IS GEORGE MCGRATH?

6 A. OUR CIO, CHIEF INFORMATION OFFICER.

7 Q. HE SORT OF INTERACTS WITH THE PRESS AND PUBLIC?

8 A. NO, NO. ACTUALLY, COMPUTERS.

9 Q. I.T.?

10 A. YES, I.T.

11 Q. NOW, WE KNOW THAT UNDER THE TERMS OF THE CONTRACT
12 BETWEEN NORCAL AND THE CITY OF SAN JOSE, OPERATIONS WERE TO
13 COMMENCE UPON JULY 1, 2002, CORRECT?

14 A. YES.

15 Q. AND IS IT TRUE THAT CWS'S RECYCLING FACILITY IN
16 SAN JOSE WAS NOT FULLY OPERATIONAL AS OF JULY 1, 2002?

17 A. THAT'S CORRECT.

18 Q. AND TO YOUR RECOLLECTION, HOW LONG WAS IT BEFORE
19 CWS'S FACILITY IN SAN JOSE WAS FULLY OPERATIONAL AND
20 RECEIVING 100 PERCENT OF THE RECYCLABLES?

21 A. IT WAS SOMEWHERE BETWEEN AUGUST AND OCTOBER; ABOUT
22 TWO OR THREE MONTHS.

23 Q. DURING THAT -- AND YOU' RE AN OPERATIONS GUY?

24 A. CORRECT.

25 Q. SO YOU WOULD BE ON TOP OF ANY PROBLEMS IN
26 OPERATIONS REGARDING CONTRACTS, RIGHT, AT LEAST YOU' RE
27 SUPPOSED TO BE?

28 A. WELL, WITH OUR COMPANY, YES.

SUE HERFURTH, CSR #9645

1735

1 Q. DID GARBAGE PILE UP ON THE STREETS THOSE TWO OR
2 THREE MONTHS WHEN THE CWS RECYCLE FACILITY WASN' T FULLY
3 OPERATIONAL?

4 A. NO.

5 Q. WAS GARBAGE NOT BEING COLLECTED AT THAT TIME?

6 A. NO.

7 Q. OKAY. SO WHAT DID NORCAL DO WITH THE RECYCLABLES
8 THAT COULD NOT BE DELIVERED TO CWS?

9 A. UH -- WE DELIVERED THEM, CWS MADE AN ARRANGEMENT
10 WITH BROWNING FERRIS INDUSTRIES. WE WOULD DELIVER THEM TO
11 THEM, AND THEY TRANSFERRED THEM UP TO THE CWS OAKLAND
12 FACILITIES.

13 Q. SO OTHER THAN THE ADDED COST AND PROBABLY
14 INCONVENIENCE, AS FAR AS THE RESIDENTS OF THE CITY WERE
15 CONCERNED, THEY WERE NOT IMPACTED BY THIS SITUATION,
16 CORRECT?

17 A. WELL, YES AND NO. THE CITY CONTRACT REQUIRED THE
18 RECYCLABLES TO BE PROCESSED IN SAN JOSE.

19 Q. BUT THE HOMEOWNERS WEREN' T IMPACTED BY WHERE NORCAL
20 DELIVERED ITS RECYCLABLES, RIGHT?

21 A. I BELIEVE WE PAID SOME FINES TO THE CITY, SO THEY
22 WERE UNDER THE IMPRESSION WE WERE INCONVENIENCING SOMEBODY.

23 Q. WERE THERE ANY RECYCLABLES THAT, AT THE CURBSIDE
24 THAT WERE NOT PICKED UP BECAUSE OF THAT SITUATION?

25 A. NO.

26 Q. SO NORCAL UNDERTOOK SOME EFFORTS TO GET THE
27 ADDITIONAL MONEY FROM THE CITY AFTER THEY WENT OPERATIONAL
28 IN JULY 2002, CORRECT?

SUE HERFURTH, CSR #9645

1736

1 A. CAN YOU SAY THAT AGAIN, PLEASE.

2 Q. AFTER THE CONTRACT WITH THE CITY BECAME OPERATIONAL
3 IN JULY 2002, DID NORCAL UNDERTAKE ANY EFFORTS TO GET
4 ADDITIONAL MONEY FROM THE CITY OF SAN JOSE?

5 A. YES.

6 Q. WHAT DID THEY DO?

7 A. WE WANTED TO GET MONEY TO MAKE UP THE DIFFERENCE
8 BETWEEN THE TEAMSTERS AND LONGSHOREMEN.

9 Q. TO WHAT?

10 A. TO MAKE UP THE DIFFERENCE BETWEEN THE TEAMSTERS IN
11 THE CONTRACT WITH CWS.

12 Q. I' M NOT SURE YOU UNDERSTOOD THE QUESTION. NORCAL
13 WAS CONTRACTUALLY OBLIGATED TO PAY CWS FOR THE EXTRA COST OF
14 USING TEAMSTERS, CORRECT?

15 A. CORRECT.

16 Q. AND THE CONTRACT WENT, BECAME OPERATIONAL IN JULY

- 17 2002, CORRECT?
- 18 A. CORRECT.
- 19 Q. OKAY. NORCAL WANTED THE CITY TO REIMBURSE FOR THAT
- 20 EXTRA EXPENSE, CORRECT?
- 21 A. NOT THAT I REMEMBER -- FOR THE EXPENSE OF
- 22 TRANSPORTING THE GARBAGE TO OAKLAND?
- 23 Q. NO. FORGET ABOUT THE OPERATIONAL DIFFICULTIES THAT
- 24 CWS HAD.
- 25 A. OKAY.
- 26 Q. I'M NOT TALKING ABOUT THAT. I'M MOVING ON TO
- 27 ANOTHER TOPIC.
- 28 A. OKAY.

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1737

- 1 Q. MR. SANGIACOMO, YOU TOLD US, HAD OBLIGATED NORCAL
- 2 TO REIMBURSE CWS FOR THE EXTRA COST OF USING TEAMSTERS.
- 3 A. CORRECT.
- 4 Q. AND THAT CONTRACT AND THAT OBLIGATION WENT INTO
- 5 EFFECT ON JULY 1 OF 2002, RIGHT?
- 6 A. CORRECT.
- 7 Q. AND AS OF JULY 1, 2002, THE CITY WASN'T PAYING ANY
- 8 EXTRA MONEY TO NORCAL, CORRECT?
- 9 A. NO.
- 10 Q. IT'S NOT CORRECT?
- 11 A. NO, IT'S CORRECT.
- 12 Q. SO WHAT DID NORCAL DO TO TRY AND GET THE CITY TO
- 13 REIMBURSE NORCAL FOR THE EXTRA EXPENSES IT WAS INCURRING OR
- 14 OBLIGATED TO PAY CWS FOR THE TEAMSTERS?

- 15 A. I DON' T KNOW ALL THE DETAILS OF THAT.
- 16 Q. TELL US THE DETAILS THAT YOU DO KNOW ABOUT.
- 17 A. (NO RESPONSE.)
- 18 Q. DO YOU KNOW ANYTHING ABOUT THAT SUBJECT?
- 19 A. I KNOW WE WERE ATTEMPTING TO GET THE MONEY, BUT I
20 DON' T KNOW THE DETAILS.
- 21 Q. DO YOU KNOW HOW, WHAT EFFORTS WERE BEING MADE?
- 22 A. NO. I MAY BE AWARE OF PIECES, BUT I CAN' T THINK OF
23 ANY SPECI FICS.
- 24 Q. THE MONEY THAT NORCAL OWED TO CWS UNDER THIS
25 OCTOBER 9 ADDENDUM, WAS THAT BOOKED ON NORCAL' S FINANCIAL
26 STATEMENT AS A LIABILITY?
- 27 A. I BELIEVE WE WERE BOOKING IT AS AN EXPENSE AS WE
28 PAID CWS.

SUE HERFURTH, CSR #9645

1738

- 1 Q. OKAY. AND THE MONEY THAT NORCAL HOPED TO RECEIVE
2 FROM THE CITY OF SAN JOSE, HOW WAS THAT ACCOUNTED FOR IN
3 NORCAL' S FINANCIAL STATEMENT?
- 4 A. I DON' T KNOW THE DETAILS OF THE FINANCIALS.
- 5 Q. OKAY. LET ME SEE IF THE GRAND JURY HAS ANY
6 QUESTIONS FOR YOU.
- 7 BY MR. FINKELSTEIN:
- 8 Q. THIS QUESTION RELATES TO THE FUNDRAISER FOR THE
9 MAYOR AT BLAKE' S STEAKHOUSE. YOU TOLD US YOU RECALL
10 APPROXIMATELY 20 PEOPLE IN ATTENDANCE AT THE FUNDRAISER?
- 11 A. YES; SOMEWHERE IN THAT NEIGHBORHOOD.
- 12 Q. HOW MANY OF THE PEOPLE WERE EITHER NORCAL EMPLOYEES

13 OR PERSONS EMPLOYED ON BEHALF OF NORCAL?

14 A. UH -- I CAN'T REMEMBER. I WOULD SAY A MAJORITY OF
15 THE PEOPLE THERE WERE NORCAL, OVER HALF.

16 Q. OVER HALF?

17 A. YES.

18 Q. OKAY. DO YOU KNOW WHETHER OR NOT THEY WERE IN
19 ATTENDANCE AS A RESULT OF MR. JONES'S EFFORTS IN CONNECTION
20 WITH THIS FUNDRAISER?

21 A. I CAN'T SAY THAT FOR SURE.

22 Q. OKAY. I HAVE MORE QUESTIONS ABOUT FUNDRAISERS IN
23 GENERAL.

24 A. OKAY.

25 Q. IS IT COMMON FOR NORCAL TO CONTRIBUTE TO
26 FUNDRAISERS TO ELECTED OFFICIALS THROUGHOUT THE STATE OF
27 CALIFORNIA?

28 A. YES, NORCAL HAS A PAC.

SUE HERFURTH, CSR #9645

1739

1 Q. OKAY. BUT THESE CONTRIBUTIONS WE WERE TALKING
2 ABOUT AT THE BLAKE'S STEAKHOUSE WERE NOT PAC CONTRIBUTIONS;
3 THEY WERE INDIVIDUAL CONTRIBUTIONS FROM INDIVIDUAL
4 EMPLOYEES, CORRECT?

5 A. RIGHT.

6 Q. IS IT COMMON FOR NORCAL EMPLOYEES TO INDIVIDUALLY
7 CONTRIBUTE IN JURISDICTIONS WHERE NORCAL EITHER HAS OR IS
8 SEEKING BUSINESS?

9 A. (NO RESPONSE.)

10 Q. NOTHING ILLEGAL ABOUT IT.

11 A. NO, BUT -- YES, IT CAN BE EITHER WAY. THE PAC
12 DONATES OR EMPLOYEES DONATE.

13 Q. ARE EMPLOYEES EVER COMPENSATED OR REIMBURSED IN
14 SOME FASHI ON, EITHER DIRECTLY OR INDIRECTLY, FOR THESE
15 CONTRI BUTI ONS?

16 A. NO.

17 Q. I GUESS NORCAL CONSIDERS THAT JUST GOOD BUSINESS IN
18 THE FORM OF PR WORK?

19 A. IN MY EARLY CAREER AT NORCAL THERE WAS -- ACTUALLY,
20 THE LAST MANAGEMENT, BEFORE I CAME TO NORCAL, BEFORE
21 MR. SANGIACOMO CAME OVER -- ACTUALLY HAD GOTTEN IN TROUBLE
22 FOR THAT VERY THING, FOR POLI TICAL CONTRI BUTI ONS. SO IT WAS
23 CLEANED UP AT THAT TIME.

24 Q. WHAT KIND OF TROUBLE?

25 A. THEY HAD A CORPORATION IN OREGON THAT ALL THE
26 SUBSI DI ARI ES DONATED TO IN MAKING POLI TICAL CONTRI BUTI ONS.

27 Q. SO THE TROUBLE HAD TO DO WITH THE WAY THE
28 CONTRI BUTI ONS WERE HANDLED?

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1740

1 A. WERE REPORTED, YEAH. IT WAS LATE '80S, MAYBE '90S,
2 SOMEWHERE IN THERE.

3 MR. FINKELSTEIN: I WANT TO CAUTION THE JURORS
4 THAT'S NOT EVIDENCE OF WRONGDOING IN THIS CASE, SO PLEASE
5 DON'T CONSIDER IT AS SUCH.

6 BY MR. FINKELSTEIN:

7 Q. DO YOU RECALL WHETHER OR NOT MARK LOMELE OR JOHN
8 NICOLETTI OR GEORGE MCGRATH ATTENDED THE FUNDRAISER

9 A. NOT SPECIFICALLY.
10 MR. FINKELSTEIN: OKAY. I THINK I'VE ADDRESSED
11 ALL THESE QUESTIONS.
12 ANY OTHER QUESTIONS?
13 ALL RIGHT. MR. HUMPHREY, I WANT TO THANK YOU FOR
14 COMING TODAY. THE FOREPERSON WILL REMIND YOU OF THE
15 ADMONITION. YOU'RE FREE TO GO, BUT YOU'RE NOT EXCUSED AS A
16 WITNESS, WHICH MEANS YOU ARE SUBJECT TO BEING RECALLED
17 DURING THE INVESTIGATION SHOULD THE NEED ARISE.
18 DO YOU UNDERSTAND THAT?
19 THE WITNESS: YES, I DO.
20 THE FOREPERSON: I'VE READ YOU THE LENGTHY VERSION
21 OF THE ADMONITION. BASICALLY, ANYTHING YOU HAVE HEARD,
22 SAID, OR SAW HERE TODAY IS NOT TO BE COMMUNICATED TO ANYBODY
23 OUTSIDE OF YOUR ATTORNEY AND SUBJECT TO THE SAME
24 CONFIDENTIALITY REQUIREMENTS. DO YOU UNDERSTAND?
25 THE WITNESS: I UNDERSTAND THAT. THANK YOU.
26 JOHN NICOLETTI,
27 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
28 AS FOLLOWS:

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1741

1 THE WITNESS: I DO.
2 EXAMINATION:
3 BY MR. FINKELSTEIN:
4 Q. MR. NICOLETTI, GOOD MORNING.
5 A. GOOD MORNING.
6 Q. CAN YOU PLEASE TELL US YOUR FULL LEGAL NAME AND

- 7 SPELL YOUR LAST NAME FOR THE REPORTER.
- 8 A. JOHN RAMOS N-I -C-O-L-E-T-T-I .
- 9 Q. HOW DO YOU SPELL YOUR MIDDLE NAME?
- 10 A. R-A-M-O-S.
- 11 Q. HOW ARE YOU EMPLOYED?
- 12 A. HOW AM I EMPLOYED?
- 13 Q. YES.
- 14 A. I 'M SORRY. MY EARS ARE PLUGGED, SO BEAR WITH ME.
- 15 Q. WE HAVE AN ASSI STIVE LISTENING DEVI CE.
- 16 A. I 'LL TRY THIS FIRST. I 'M EMPLOYED WITH NORCAL
- 17 WASTE SYSTEMS.
- 18 Q. WHAT' S YOUR POSITI ON THERE?
- 19 A. MY CURRENT POSITI ON IS VICE PRESIDENT AND GENERAL
- 20 MANAGER OF NORCAL WASTE SOLUTIONS, A SUBSI DIARY OF NORCAL.
- 21 Q. AND WHAT IS THE BUSINESS OF NORCAL WASTE SOLUTIONS?
- 22 A. UH -- I AM AN EMPLOYEE OF ONE IN THE COMPANY, AND I
- 23 WORK ON VARIOUS SPECIAL PROJECTS.
- 24 Q. CAN YOU GIVE US SOME EXAMPLES OF WHAT WOULD BE A
- 25 SPECIAL PROJECT YOU WORK ON.
- 26 A. I 'M CURRENTLY WORKING ON CONTAMINATI ON OF YARD
- 27 WASTE, DOING SOME LOOKING INTO BUILDING A NEW FACILI TY, AND
- 28 WHAT ELSE AM I DOING CURRENTLY -- I AM -- I WORK ON BIDS

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1742

- 1 ONCE IN A WHILE AS THEY COME DUE.
- 2 Q. WHO DO YOU REPORT TO?
- 3 A. ARCHIE HUMPHREY.
- 4 Q. HOW LONG HAVE YOU HELD THAT POSITI ON YOU DESCRIBED

5 TO US?
6 A. I BELIEVE SINCE NOVEMBER OF 2005.
7 Q. WHAT WAS YOUR POSITION AT NORCAL BEFORE THAT?
8 A. VICE PRESIDENT AND GENERAL MANAGER OF NORCAL WASTE
9 SYSTEMS OF SAN JOSE.
10 Q. WHEN DID YOU FIRST BECOME THE VICE PRESIDENT AND
11 GENERAL MANAGER OF NORCAL WASTE SYSTEMS OF SAN JOSE?
12 A. I BELIEVE IT WAS IN DECEMBER OF '02 -- NO, '01.
13 Q. DID YOU REPLACE BILL JONES?
14 A. I DID NOT; I REPORTED TO BILL JONES AT THAT TIME.
15 Q. I SEE. WHAT HAPPENED, WHAT WAS MR. JONES' S
16 POSITION AT NORCAL AT THAT TIME?
17 A. VICE PRESIDENT AND REGIONAL MANAGER.
18 Q. AND DID MR. JONES LEAVE NORCAL IN 2003?
19 A. I BELIEVE THAT WAS WHEN HE LEFT, YES.
20 Q. WAS THAT IN FEBRUARY, 2003?
21 A. I THINK THAT' S THE DATE.
22 Q. AND WHAT, DID YOUR POSITION CHANGE AS A RESULT OF
23 HIS DEPARTURE?
24 A. NO.
25 Q. SO WHO TOOK OVER THE MANAGEMENT OF THE SAN JOSE
26 OPERATION AFTER MR. JONES LEFT?
27 A. WELL, I WAS THE MANAGER OF THE SAN JOSE OPERATIONS;
28 BILL JONES MANAGED THE ENTIRE SOUTH BAY. WHEN HE LEFT, A

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1743

1 MAN NAMED DAN DAY TOOK HIS POSITION.
2 Q. SO LET ME SEE IF I HAVE THE TIMING STRAIGHT. YOU

3 STARTED WORKING FOR NORCAL WHEN?

4 A. JANUARY OF '96.

5 Q. WHAT WAS YOUR FIRST POSITION THERE?

6 A. UH -- I WAS SORT OF AN EFFICIENCY -- I WOULD GO TO
7 DIFFERENT COMPANIES, EVALUATE THEM AND LOOK FOR EFFICIENCY
8 IMPROVEMENTS.

9 Q. WHAT WAS YOUR NEXT POSITION?

10 A. GENERAL MANAGER OF NORCAL WASTE SYSTEMS IN CHI CO,
11 CALI FORNIA.

12 Q. AND WHEN DID YOU START THAT POSITION?

13 A. UH -- ABOUT A YEAR INTO MY EMPLOYMENT, SO EARLY IN
14 '97.

15 Q. WHAT DID YOU DO AFTER THAT?

16 A. I WAS THE GENERAL MANAGER OF NORCAL WASTE SYSTEMS.
17 IT'S CALLED SOUTH VALLEY DISPOSAL, WHICH COVERED GILROY,
18 MORGAN HILL, AND SOME SOUTH COUNTY AREAS.

19 Q. WHAT WAS YOUR NEXT POSITION?

20 A. GENERAL MANAGER AND VICE PRESIDENT OF NORCAL
21 SAN JOSE.

22 Q. SORRY, BUT WHEN DID THAT CHANGE TAKE PLACE?

23 A. I BELIEVE IT WAS DECEMBER '01.

24 Q. PRIOR TO DECEMBER OF '01, DID YOU HAVE ANY
25 RESPONSIBILITY IN CONNECTION WITH NORCAL'S EFFORTS TO SECURE
26 A CONTRACT FROM THE CITY OF SAN JOSE?

27 A. UH -- OTHER THAN TO LOOK AT SOME DOCUMENTS THAT WE
28 WORKED ON FOR THE BID; HOW MANY ROUTES, HOW MANY PEOPLE WE

1 WOULD NEED, THAT SORT OF THING, THAT KIND OF INVOLVEMENT.

2 Q. THAT WAS THE EXTENT OF YOUR INVOLVEMENT PRIOR TO
3 DECEMBER OF '01?

4 A. CORRECT.

5 Q. AND SO WHEN YOU -- WOULD YOU SAY THAT YOU WERE NOT
6 IN THE LOOP REGARDING NORCAL'S EFFORTS TO SECURE THE BID IN
7 2000?

8 A. CORRECT.

9 Q. SO WHEN YOU TOOK OVER IN DECEMBER OF 2001 THE
10 RESPONSIBILITY FOR THE SAN JOSE OPERATION THAT WAS TO
11 COMMENCE JULY, 2002, DID SOMEBODY BRIEF YOU OR FILL YOU IN
12 ON THE BACKGROUND OF WHAT HAD TRANSPIRED?

13 A. NOT AT THAT TIME.

14 Q. YOU SAID YOU REPORTED TO ARCHIE HUMPHREY, CORRECT?

15 A. CORRECT.

16 Q. WHO DID YOU REPORT TO IN DECEMBER 2001?

17 A. BILL JONES.

18 Q. AND WHAT WAS YOUR ASSIGNMENT WHEN YOU TOOK OVER
19 THAT POSITION?

20 A. AT THAT TIME WE HAD BEEN AWARDED THE CONTRACT, AND
21 MY ASSIGNMENT WAS TO MAKE SURE THE FACILITY GOT BUILT IN
22 TIME, THAT THE TRUCKS ARRIVED, EMPLOYEES WERE HIRED AND
23 TRAINED. PREPARING FOR THE ACTUAL COLLECTION.

24 Q. SO BASICALLY IT WAS TO MAKE SURE THAT NORCAL COULD
25 IMPLEMENT AND CARRY OUT THE CONTRACT?

26 A. YES.

27 Q. SO ARE YOU FAMILIAR WITH A DOCUMENT KNOWN AS THE
28 OCTOBER 9 ADDENDUM TO THE AGREEMENT BETWEEN NORCAL AND CWS?

1 A. OCTOBER 9 OF WHAT --

2 Q. 2000.

3 A. I HAVE SEEN IT AFTER THE FACT.

4 Q. I WONDERED IF YOU HAD EVER SEEN THE DOCUMENT.

5 A. YES.

6 Q. NOW, DID YOU KNOW THAT THE WAY NORCAL BID ITS

7 PROPOSAL INITIALLY, CWS WAS GOING TO DO THE SORTING OF THE

8 RECYCLABLES ON A SUBCONTRACT TO NORCAL?

9 A. YES, I WAS AWARE OF THAT.

10 Q. WAS IT YOUR UNDERSTANDING THAT NORCAL INITIALLY,

11 WHEN IT BID THE PROPOSAL, WAS NOT GOING TO PAY ANY MONEY TO

12 CWS FOR RECEIVING THE RECYCLABLES?

13 A. THAT WAS MY UNDERSTANDING, YES.

14 Q. AND THAT PRESUMABLY CWS WOULD LOOK TO THE RESALE OF

15 THE SORTED RECYCLABLES FOR ITS PROFIT?

16 A. YES.

17 Q. AND AT SOME POINT YOU LEARNED THAT THE SITUATION

18 HAD CHANGED AND THAT NORCAL HAD OBLIGATED ITSELF TO MAKE

19 PAYMENTS TO CWS FOR CWS' S ADDITIONAL LABOR COSTS IN

20 EMPLOYING TEAMSTERS INSTEAD OF LONGSHOREMEN, CORRECT?

21 A. AT SOME POINT I WAS AWARE OF THAT, YES.

22 Q. HOW DID YOU FIRST BECOME AWARE OF THAT?

23 A. THROUGH BILL JONES.

24 Q. WHAT DID HE TELL YOU?

25 A. HE TOLD ME THAT SOMEWHERE IN THE COURSE OF

26 NEGOTIATIONS THAT THE CITY HAD PREFERRED THAT WE USE

27 TEAMSTERS, AND THAT WE EXPLAINED THAT WAS NOT PART OF OUR

28 FINANCIAL CONSIDERATION WHEN WE PUT OUR BID TOGETHER AND

1 THAT WE WOULD HAVE TO BE REIMBURSED FOR THOSE ADDITIONAL
2 COSTS.

3 Q. CAN YOU FIX THE APPROXIMATE DATE WHEN THAT
4 HAPPENED? BY THAT, I MEAN BILL JONES EXPLAINING TO YOU HOW
5 THE AGREEMENT CHANGED.

6 A. I BELIEVE THAT IT OCCURRED AFTER THE ACTUAL START,
7 FIRST DAY OF COLLECTION. SO MAYBE SEPTEMBER, OCTOBER OF
8 2002.

9 Q. AND WAS THIS -- DID BILL JONES EXPLAIN THIS TO YOU
10 IN A FACE-TO-FACE MEETING, OVER THE PHONE, OR BY SOME OTHER
11 MEANS?

12 A. FACE TO FACE.

13 Q. WHERE DID THIS TAKE PLACE?

14 A. OVER LUNCH AT THE SAN JOSE MUNICIPAL GOLF COURSE.

15 Q. ARE YOU A GOLFER?

16 A. I TRY.

17 Q. NOW, WHEN BILL JONES EXPLAINED THIS TO YOU, DID HE
18 SAY THAT THE CITY HAD ASKED NORCAL TO GET CWS TO SWITCH TO
19 TEAMSTERS OR THAT SOME PARTICULAR INDIVIDUALS AT THE CITY
20 HAD MADE THIS REQUEST?

21 A. I DON'T REALLY RECALL HOW HE WORDED THAT.

22 Q. ARE YOU SAYING HE MIGHT HAVE REFERRED TO THE
23 MAYOR'S OFFICE OR THE MAYOR AND YOU JUST CONSTRUED THAT AS
24 THE CITY, OR YOU DON'T KNOW WHICH WAY IT WENT?

25 A. I DON'T RECALL WHICH WAY IT WENT.

26 Q. TO YOUR KNOWLEDGE, WAS THERE ANYTHING IN WRITING IN
27 THE ORIGINAL AGREEMENT BETWEEN THE CITY AND NORCAL THAT

28 OBLIGATED THE CITY TO REIMBURSE NORCAL FOR THE EXTRA MONEY

SUE HERFURTH, CSR #9645

1747

1 IT WAS REIMBURSING CWS?

2 A. NOT TO MY KNOWLEDGE.

3 Q. DID YOU TALK TO MR. JONES ABOUT THE MECHANICS OF
4 HOW THIS EXTRA MONEY WAS GOING TO COME FROM THE CITY TO
5 NORCAL?

6 A. YES, I DID. I THINK I DID.

7 Q. WHAT DID HE SAY?

8 A. THAT THE MONEY WOULD BE FORTHCOMING, AND MY JOB WAS
9 TO STAY ON TOP OF IT, THE CITY, TO SEE THAT WE GOT THOSE
10 FUNDS.

11 Q. NOW, IN YOUR EXPERIENCE AT THAT TIME, THE CITY --
12 DID THE CITIES GENERALLY PAY CONTRACTORS MONEY THAT'S NOT
13 CALLED FOR IN THE CONTRACT BETWEEN THE CITY AND THE
14 CONTRACTOR?

15 A. I HAVE SEEN CONTRACTS NEGOTIATED AFTER THEY WERE
16 AWARDED TO ADD OR SUBTRACT THINGS FROM TIME TO TIME.

17 Q. ADJUSTMENTS?

18 A. PARDON ME?

19 Q. ADJUSTMENTS?

20 A. YES.

21 Q. SO WHEN MR. JONES TOLD YOU ABOUT THE SITUATION,
22 WERE YOU ENVISIONING AT THAT TIME THAT THE CITY WOULD BE
23 AGREEING TO SOME KIND OF CONTRACT AMENDMENT TO PROVIDE FOR
24 THESE ADDITIONAL PAYMENTS?

25 A. YES.

26 Q. AND SO AS I UNDERSTAND YOUR TESTIMONY THUS FAR, ONE
27 OF YOUR ASSIGNMENTS WAS TO STAY ON TOP OF GETTING THE CITY
28 TO PAY NORCAL THIS EXTRA MONEY, RIGHT?

SUE HERFURTH, CSR #9645

1748

1 A. CORRECT.

2 Q. SO WHAT DID YOU DO IN THAT REGARD?

3 A. MR. JONES DIRECTED ME TO MR. GUERRA'S OFFICE AND TO
4 DEAL WITH MR. GUERRA'S OFFICE IN RELATIONSHIP TO THOSE
5 FUNDS.

6 Q. DID YOU DEAL WITH MR. GUERRA?

7 A. I DID.

8 Q. TELL US ABOUT THAT.

9 A. UH -- MR. JONES, AND I BELIEVE MR. LOMELE, OUR --

10 Q. MR. WHO?

11 A. LOMELE.

12 Q. CAN YOU MOVE THE MICROPHONE CLOSER?

13 A. SURE. WE DISCUSSED WITH MR. GUERRA WHEN WE COULD
14 EXPECT THE FUNDS. HE WAS CERTAINLY NOT GIVING US A SPECIFIC
15 DATE AT THAT TIME, AND I THINK I STATED TO HIM WOULD HE HAVE
16 A PROBLEM IF I CALLED HIM EVERY TWO WEEKS OR SO TO SEE THE
17 STATUS OF THOSE FUNDS.

18 Q. WELL, THIS MEETING TOOK PLACE AT CITY HALL?

19 A. YES.

20 Q. AT MR. GUERRA'S OFFICE?

21 A. YES.

22 Q. AND YOU AND MR. LOMELE WERE THERE?

23 A. AND MR. JONES.

24 Q. AND MR. JONES AS WELL?
25 A. RIGHT.
26 Q. AND WHAT WAS THE DAY OF THIS MEETING?
27 A. I DON'T RECALL, BUT SOMEWHERE IN THE FIRST HALF
28 OF '03, I WOULD SAY.

SUE HERFURTH, CSR #9645

1749

1 Q. OKAY. WHO SET UP THE MEETING?
2 A. I DON'T KNOW.
3 Q. WAS ANYONE ELSE FROM THE CITY OTHER THAN MR. GUERRA
4 IN ATTENDANCE AT THE MEETING?
5 A. NO.
6 Q. WHO SPOKE FIRST AT THE MEETING, OTHER THAN
7 INTRODUCTIONS?
8 A. OTHER THAN WHO?
9 Q. OTHER THAN INTRODUCTIONS, WHO SPOKE FIRST?
10 A. I DON'T RECALL.
11 Q. WHAT ELSE DO YOU REMEMBER ABOUT THAT MEETING?
12 A. UH -- I REMEMBER THAT MR. GUERRA THEN ASSIGNED ME
13 TO SPEAK TO A WOMAN IN HIS OFFICE NAMED JULIE -- THE LAST
14 NAME ESCAPES ME -- WHEN I SAID I WOULD LIKE TO CONTACT HIM
15 EVERY COUPLE WEEKS TO SEE THE STATUS. SO I WOULD CALL THIS
16 JULIE EVERY COUPLE WEEKS TO SEE WHAT WAS HAPPENING.
17 Q. RIGHT. I GUESS WHAT I HAVE BEEN TRYING TO GET A
18 SENSE OF IS WHAT EXACTLY WAS SAID TO MR. GUERRA TO ORIENT
19 HIM AS TO WHAT THE ISSUE WAS YOU WERE THERE TO ADDRESS.
20 IN OTHER WORDS, DID SOMEBODY SAY, REMEMBER WAY
21 BACK WHEN YOU SAID THIS OR WE SAID THAT OR SOMEBODY SAID

22 THIS?

23 A. NO. AT THAT POINT I THINK IT WAS ACKNOWLEDGED THAT
24 WE EXPECTED TO RECEIVE THESE FUNDS. AT THE MEETING I WAS
25 AT, THERE WASN'T A DISCUSSION LIKE, DO YOU REMEMBER WHAT YOU
26 SAID. IT WAS MY RECOLLECTION AT THAT TIME IT HAD ALREADY
27 BEEN ESTABLISHED, IF YOU WILL, THAT WE WERE EXPECTING THESE
28 FUNDS.

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1750

1 Q. WELL, I ASSUME, MR. NICOLETTI, WHEN YOU AND THE
2 OTHER NORCAL REPRESENTATIVES TALKED TO MR. GUERRA SOMEONE
3 DIDN'T JUST SAY, JOE, WE WANT THESE FUNDS. SOMEBODY
4 CHARACTERIZED THE FUNDS IN SOME WAY?

5 A. YES. I DON'T RECALL WHO IT WAS, BUT SOMEONE DID
6 SAY, YOU KNOW, WE'RE STILL LOOKING FOR THE FUNDS THAT WE
7 ASSUMED THAT WERE COMING TO US BASED ON CONVERSATIONS WITH
8 THE MAYOR'S OFFICE.

9 Q. OKAY. AND WHAT DID MR. GUERRA SAY AT THAT POINT?
10 DID HE SAY, WHAT CONVERSATIONS AT THE MAYOR'S OFFICE?

11 A. NO, HE ACKNOWLEDGED THAT THOSE FUNDS HAD BEEN
12 COMMITTED TO US.

13 Q. OKAY. AND DID HE SAY ANYTHING ABOUT THE MECHANICS
14 OF HOW THE FUNDS MIGHT BE PAID FROM THE CITY TO NORCAL?

15 A. HE STATED THAT HE WAS STILL -- SORT OF
16 PARAPHRASING -- WORKING ON THE FUNDS, AND THAT THEY WEREN'T
17 AVAILABLE YET.

18 Q. DID HE SAY ANYTHING ABOUT THE NECESSITY OF THE CITY
19 ADOPTING A GARBAGE RATE INCREASE TO PAY THESE FUNDS AT THAT

20 TIME?

21 A. I DON'T RECALL HIM SAYING THAT.

22 Q. AND AS BEST AS YOU CAN, WHEN WOULD YOU FIX THE DATE
23 OF THIS MEETING?

24 A. MARCH, APRIL OF '03 I WOULD GUESS.

25 Q. BEAR WITH ME A MOMENT. LET ME SEE IF WE CAN WORK
26 ON THE DAY A LITTLE BETTER.

27 A. OKAY.

28 Q. THE CONTRACT BECAME OPERATIONAL JULY 1, '02,

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1 CORRECT?

2 A. CORRECT.

3 Q. AND CWS BEGAN PAYING THESE HIGHER WAGES EARLY ON,
4 CORRECT?

5 A. CORRECT.

6 Q. AND SO IT WAS LOOKING TO GET REIMBURSED BY NORCAL
7 PURSUANT TO THIS OCTOBER 9, 2000 ADDENDUM, CORRECT?

8 A. CORRECT.

9 Q. AND INITIALLY NORCAL WAS NOT MAKING THOSE
10 REIMBURSEMENTS BECAUSE IT WANTED MONEY FROM THE CITY TO
11 COVER THOSE REIMBURSEMENTS, RIGHT?

12 A. INITIALLY NORCAL WAS NOT MAKING THOSE
13 REIMBURSEMENTS, BUT I WASN'T PRIVY TO WHY.

14 Q. NORCAL WASN'T MAKING THE REIMBURSEMENTS?

15 A. (SHAKING HEAD NEGATIVELY.)

16 Q. AND DID YOU LEARN THAT IN EARLY '03 NORCAL AND CWS
17 ENTERED INTO AN INTERIM SETTLEMENT AGREEMENT THAT RESULTED

- 18 IN NORCAL STARTING TO MAKE SOME PAYMENTS TO CWS?
19 A. YES.
20 Q. LET ME SHOW YOU WHAT HAS BEEN MARKED AS EXHIBIT 75.
21 WE'VE HAD TESTIMONY THAT THIS IS THE INTERIM SETTLEMENT
22 AGREEMENT, AND LET ME SHOW YOU THE DATE ON THE SIGNATURE
23 PAGES. THE DATE ON THE SIGNATURE PAGES ARE MARCH 6 AND
24 MARCH 17 OF 2003; DO YOU SEE THAT?
25 A. YES.
26 Q. SO JUST -- HAVE YOU EVER SEEN THE AGREEMENT BEFORE?
27 A. I HAVE.
28 Q. YOU RECOGNIZE THE AGREEMENT?

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- 1 A. YES.
2 Q. SO THIS MEETING WITH MR. GUERRA, WAS IT BEFORE OR
3 AFTER THIS INTERIM SETTLEMENT AGREEMENT?
4 A. I BELIEVE IT WAS AFTER.
5 Q. OKAY. DO YOU HAVE ANY WAY OF FIXING THE TIME
6 FRAME, HOW LONG AFTER THAT INTERIM SETTLEMENT?
7 A. I THINK ABOUT A MONTH OR SO LATER.
8 Q. THAT WOULD PLACE THE MEETING SOMETIME IN APRIL
9 2003?
10 A. TO THE BEST OF MY RECOLLECTION.
11 Q. LET ME SHOW YOU EXHIBIT 37, WHICH IS A NOTICE THAT
12 WENT OUT ON A PUBLIC HEARING OF PROPOSED RATE HIKES ON
13 RECYCLE PLUS SERVICES. IT'S DATED APRIL 11 OF 2003. I TAKE
14 IT THAT'S SOMETHING YOU'RE GENERALLY FAMILIAR WITH?
15 A. YES, GENERALLY FAMILIAR WITH THAT.

16 Q. THE MEETING WITH MR. GUERRA, DID IT TAKE PLACE
17 BEFORE OR AFTER THE NOTICE OF THIS PROPOSED RATE HIKE WENT
18 OUT?

19 A. I REALLY DON'T RECALL.

20 Q. SO WHAT WAS THE NEXT THING -- WE'RE GOING TO HAVE
21 TO BREAK SOON, BUT A FEW MORE QUESTIONS. AFTER THIS MEETING
22 IN APPROXIMATELY APRIL 2003 WITH MR. GUERRA, WHAT WAS THE
23 NEXT THING THAT HAPPENED IN CONNECTION WITH NORCAL'S EFFORTS
24 TO GET PAID BY THE CITY?

25 A. I CONTINUED TO CALL MR. GUERRA'S OFFICE ON A
26 BIWEEKLY BASIS, EVERY TWO WEEKS OR SO, AND SPOKE MOSTLY TO
27 JULIE, BUT OCCASIONALLY TO MR. GUERRA.

28 Q. CAN YOU TELL US ANYTHING MORE ABOUT CONVERSATIONS

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1 YOU HAD WITH MR. GUERRA ON THOSE OCCASIONS?

2 A. FROM MY END OF THE CONVERSATION IT WAS, WHERE IS
3 THE PROCESS, I HAVE THIS LIABILITY HANGING ON THE BOOKS,
4 ALTHOUGH IT'S NOT ON THE BOOKS. WHERE IS THE MONEY, WHERE
5 ARE THE FUNDS?

6 Q. WHAT DID MR. GUERRA SAY?

7 A. THEY ARE NOT AVAILABLE YET. KEEP CALLING JULIE;
8 SHE WILL LET YOU KNOW WHEN THEY ARE AVAILABLE.

9 Q. WHAT HAPPENED AFTER THAT?

10 A. UH -- I KEPT CALLING JULIE AND KEPT GETTING
11 STALLED.

12 Q. AND THEN?

13 A. THEN WE WENT TO 2004; WE WENT TO COUNSEL TO

14 ACTUALLY GET THE MONEY. A LOT DIDN'T HAPPEN BETWEEN THIS
15 PERIOD OF '03 AND '04 --

16 Q. OKAY.

17 A. -- WITH RELATIONSHIP TO MR. GUERRA'S OFFICE.

18 MR. FINKELSTEIN: MAYBE THIS WOULD BE A CONVENIENT
19 TIME TO TAKE THE LUNCHEON RECESS.

20 LET ME JUST HAVE YOU WAIT; THE FOREPERSON WANTS TO
21 READ AN ADMONITION TO YOU ABOUT YOUR TESTIMONY. PLEASE
22 LISTEN CAREFULLY.

23 THE FOREPERSON: THIS IS AN ADMONITION ABOUT
24 CONFIDENTIALITY.

25 YOU ARE ADMONISHED NOT TO REVEAL TO ANY PERSON,
26 EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS WERE ASKED
27 OR WHAT RESPONSES WERE GIVEN OR ANY OTHER MATTERS CONCERNING
28 THE NATURE OR SUBJECT OF THE GRAND JURY'S INVESTIGATION

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1 WHICH YOU LEARNED DURING YOUR APPEARANCE BEFORE THE GRAND
2 JURY, UNLESS AND UNTIL SUCH TIME AS THE TRANSCRIPT OF THIS
3 GRAND JURY PROCEEDING IS MADE PUBLIC. VIOLATION OF THIS
4 ADMONITION IS PUNISHABLE AS CONTEMPT OF COURT.

5 MR. FINKELSTEIN: DO YOU UNDERSTAND THAT
6 ADMONITION?

7 THE WITNESS: I UNDERSTAND.

8 MR. FINKELSTEIN: I KNOW YOU'RE REPRESENTED BY
9 COUNSEL OUTSIDE IN THE HALLWAY. YOU CAN SHARE INFORMATION
10 WITH COUNSEL PROVIDED COUNSEL AGREES NOT TO FURTHER DISCLOSE
11 THE INFORMATION. DO YOU UNDERSTAND?

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Vol 11G~1
THE WITNESS: I UNDERSTAND.

MR. FINKELSTEIN: WE' LL SEE YOU BACK HERE AT 1: 30.

THANK YOU.

(THE LUNCHEON RECESS WAS TAKEN.)

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SAN JOSE, CALI FORNIA

MAY 3, 2006

AFTERNOON SESSI ON:

THE FOREPERSON: CAN WE COME TO ORDER, PLEASE.

LET THE RECORD SHOW ALL JURORS ARE PRESENT.

MR. FINKELSTEIN: I' LL ASK MR. NICOLETTI TO COME
BACK I N.

JOHN NICOLETTI ,
HAVING BEEN PREVIOUSLY SWORN, TESTIFIED ON HIS OATH AS
Page 60

10 FOLLOWS:

11 EXAMINATION (CONTINUED):

12 BY MR. FINKELSTEIN:

13 Q. MR. NICOLETTI, I'LL JUST REMIND YOU YOU'RE STILL
14 UNDER OATH, HAVING BEEN PREVIOUSLY SWORN IN THIS MATTER. DO
15 YOU UNDERSTAND THAT?

16 A. I DO.

17 Q. MR. NICOLETTI, I THINK YOU TOLD US BEFORE WE BROKE
18 FOR LUNCH THAT IT WAS YOUR RECOLLECTION THAT AFTER YOUR
19 MEETING WITH JOE GUERRA IN APPROXIMATELY APRIL OF 2003,
20 NOTHING ELSE REALLY HAPPENED IN CONNECTION WITH NORCAL'S
21 EFFORTS TO GET ADDITIONAL MONEY FROM THE CITY OF SAN JOSE
22 UNTIL 2004; IS THAT CORRECT?

23 A. YES.

24 Q. SO WHAT WAS THE NEXT THING THAT YOU REMEMBER BY WAY
25 OF NORCAL'S EFFORTS TO GET MORE MONEY FROM THE CITY OF
26 SAN JOSE?

27 A. I DON'T RECALL HOW IT OCCURRED, BUT I STARTED
28 WORKING WITH CARL MOSHER, A REPRESENTATIVE FROM THE CITY

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1 MANAGER'S OFFICE.

2 Q. AND WHEN WAS THAT?

3 A. EARLY 2004.

4 Q. WHEN YOU SAY WORKING WITH CARL MOSHER, WHAT DO YOU
5 MEAN?

6 A. TRYING TO PURSUE ANY ANGLE I COULD TO GET THIS
7 RESOLVED, SOME RESOLUTION TO THIS.

8 Q. WHAT ANGLE DID YOU PURSUE?

9 A. I TRIED TO GET THE CONTRACT THROUGH CARL MOSHER'S
10 OFFICE, GET THE BALL ROLLING TO GET THE MONEY.

11 Q. WHAT DO YOU MEAN BY GETTING THE BALL ROLLING; WHAT
12 ACTIONS DID YOU TAKE?

13 A. KIND OF, WHAT MORE DO WE NEED TO DO. WE FULFILLED
14 OUR OBLIGATIONS --

15 Q. YOU MEAN IN DISCUSSION WITH CARL MOSHER?

16 A. CORRECT.

17 MR. FINKELSTEIN: I WILL ASK TO HAVE MARKED
18 AS EXHIBIT 123 A THREE-PAGE DOCUMENT. THE TOP PAGE APPEARS
19 TO BE AN E-MAIL FROM JOHN NICOLETTI TO CARL MOSHER; IT'S
20 DATED AUGUST 11, 2003. IT HAS A NORCAL BATES STAMP, N08716,
21 AND PAGES -- IT'S A FOUR-PAGE DOCUMENT. PAGES TWO, THREE,
22 AND FOUR APPEAR TO BE A PRINTOUT OF AN ATTACHED DRAFT LETTER
23 TO CARL MOSHER.

24 THE FOREPERSON: SO MARKED.

25 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
26 JURY EXHIBIT 123.)

27 BY MR. FINKELSTEIN:

28 Q. CAN YOU TAKE A LOOK AT EXHIBIT 123, AND DO YOU HAVE

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1 IT IN FRONT OF YOU?

2 A. (NO RESPONSE.)

3 Q. EITHER THE ONE ON THE SCREEN OR IN FRONT OF YOU.

4 A. OKAY.

5 Q. DO YOU RECALL SENDING THIS E-MAIL?

6 A. I DO.

7 Q. AND WHO DID YOU SEND THE E-MAIL TO?

8 A. CARL MOSHER, THE DIRECTOR OF ENVIRONMENTAL
9 SERVICES.

10 Q. AND THE NAME THAT APPEARS ON THE TOP, DONNA
11 LENHOFF, DO YOU KNOW WHO SHE IS, DONNA L-E-N-H-O-F-F?

12 A. I BELIEVE SHE WORKED IN MR. GUERRA'S OFFICE. I'M
13 SORRY. SHE IS AN ADMINISTRATIVE ASSISTANT AT HOWARD RICE
14 AND ASSOCIATES.

15 Q. AND ARE YOU FAMILIAR GENERALLY WITH THE USE OF THE
16 OUTLOOK E-MAIL PROGRAM?

17 A. YES, GENERALLY, YES.

18 Q. YOU KNOW IF YOU PRINT OUT AN E-MAIL, IT USUALLY
19 PRINTS THE NAME OF THE LOGIN?

20 A. YES.

21 Q. THAT APPEARS TO BE WHAT HAPPENED HERE?

22 A. CORRECT.

23 Q. LET'S DISREGARD THE NAME AT THE TOP ON THE
24 PRINTOUT; LET'S FOCUS ON THE REST. DID YOU SEND THIS E-MAIL
25 ON THE DATE INDICATED, AUGUST 11, 2003?

26 A. YES, I BELIEVE SO.

27 Q. AND WHAT PROMPTED YOU TO SEND THIS E-MAIL TO
28 CARL MOSHER?

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1 A. AS I SAID, I WAS STILL PURSUING THE MONEY.

2 Q. RIGHT, BUT YOU TOLD US NOTHING HAPPENED UNTIL 2004,
3 AND THIS IS AUGUST OF 2003.

4 A. APPARENTLY I WAS INCORRECT ABOUT THE ACTUAL DATE.

5 Q. OKAY. SO HAD YOU HAD A DISCUSSION WITH MR. MOSHER
6 BEFORE SENDING HIM THIS E-MAIL?

7 A. YES, I BELIEVE I CALLED TO TELL HIM I WAS GOING TO
8 SEND HIM A DRAFT LETTER TO GET HIS FEEDBACK.

9 Q. DID MR. GUERRA SUGGEST TO YOU THAT YOU SHOULD TRY
10 TO WORK THIS OUT WITH MR. MOSHER, OR IS THAT SOMETHING YOU
11 DECIDED TO DO ON YOUR OWN?

12 A. MY RECOLLECTION IS THAT MR. GUERRA ASKED ME TO WORK
13 THROUGH CARL MOSHER.

14 Q. WAS THAT AT THE APRIL 2003 MEETING?

15 A. I COULDN'T SPECIFICALLY RECALL. I DON'T THINK SO.

16 Q. DOESN'T SEEM LIKELY YOU WOULD LET FOUR MONTHS PASS
17 WITHOUT DOING ANYTHING, CORRECT?

18 A. CORRECT.

19 Q. APPEARS TO HAVE BEEN MORE COMMUNICATION BETWEEN YOU
20 AND MR. GUERRA BETWEEN AUGUST OF 2003?

21 A. AS I PREVIOUSLY STATED, I WOULD TALK WITH HIM OR
22 HIS AIDE JULIE, MORE FREQUENTLY JULIE THAN HE, BUT YES, WE
23 DID HAVE CONVERSATIONS.

24 Q. AT SOME POINT MR. GUERRA REFERRED YOU TO MR. MOSHER
25 IN TRYING TO GET THIS RESOLVED?

26 A. CORRECT.

27 Q. SO NOW IN THE E-MAIL YOU HAVE WRITTEN:

28 CARL, ATTACHED PLEASE FIND A DRAFT LETTER

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2 UNANTICIPATED EXPENSES.
3 CORRECT?
4 A. CORRECT.
5 Q. WHAT ARE THE UNANTICIPATED EXPENSES YOU'RE
6 REFERRING TO?
7 A. IS IT POSSIBLE TO SPEAK TO COUNSEL FOR A MOMENT?
8 Q. SURE.
9 A. CAN I TAKE THIS DOCUMENT?
10 Q. NO, UNFORTUNATELY YOU CAN'T.
11 (WHEREUPON THE WITNESS LEFT THE COURTROOM.)
12 MR. FINKELSTEIN: LET ME CAUTION THE JURY AGAIN:
13 PLEASE DO NOT DRAW ANY INFERENCES WHATSOEVER FROM THE FACT
14 THAT A WITNESS WISHES TO CONSULT WITH COUNSEL.
15 BY MR. FINKELSTEIN:
16 Q. DO YOU REMEMBER THE QUESTION?
17 A. YES.
18 Q. WHAT'S THE ANSWER?
19 A. THE ANSWER IS THE LETTER WAS DRAFTED BY THE HOWARD
20 RICE ATTORNEY'S OFFICE. I HAVE NO IDEA WHY THEY USE THE
21 WORD UNANTICIPATED.
22 Q. DID YOU REVIEW THE LETTER BEFORE ATTACHING IT TO
23 YOUR LETTER TO MR. MOSHER?
24 A. YES.
25 Q. AND DID YOU DISAGREE WITH SENDING THIS LETTER OUT?
26 A. NO.
27 Q. AND AT THE TIME YOU SENT THE LETTER OUT, WERE YOU
28 AWARE THAT IT REFERRED TO THIS ADDITIONAL LABOR COST --

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1 (INTERRUPTION BY THE COURT REPORTER.)

2 MR. FINKELSTEIN: LET ME BACK UP. CAN YOU READ
3 BACK THE WITNESS' S FIRST ANSWER UPON HIS RETURN TO THE
4 COURTROOM?

5 (THE RECORD WAS READ.)

6 BY MR. FINKELSTEIN:

7 Q. LET ME ASK THE QUESTION AGAIN, MR. NICOLETTI.
8 YOU' RE LOOKING AT EXHIBIT 123, AND WE' RE LOOKING AT YOUR
9 E-MAIL WHICH CONTAINS, ATTACHED TO IT, THE DRAFT OF A LETTER
10 TO CARL MOSHER, CORRECT?

11 A. CORRECT.

12 Q. IS YOUR ANSWER -- AND MY QUESTION IS, IN YOUR
13 E-MAIL YOU SAY, "ATTACHED PLEASE FIND A DRAFT LETTER
14 REQUESTING FINANCIAL CONSIDERATIONS FOR CERTAIN
15 UNANTICIPATED EXPENSES," CORRECT?

16 A. CORRECT.

17 Q. SO MY QUESTION IS, IN YOUR E-MAIL -- I ASSUME YOU
18 WROTE THE E-MAIL, CORRECT?

19 A. THIS E-MAIL, YES.

20 Q. THIS WAS NOT DRAFTED BY YOUR ATTORNEYS; IT WAS
21 DRAFTED BY YOU, THE E-MAIL?

22 A. I DON' T NECESSARILY THINK THAT' S THE CASE.

23 Q. SO THE WORDING FOR THE E-MAIL CAME FROM SOMEONE
24 ELSE?

25 A. YES. I BELIEVE IT CAME FROM THE HOWARD RICE
26 OFFICE.

27 Q. MAYBE I' M MAKING A DISTINCTION BETWEEN THE DRAFT
28 LETTER ATTACHED TO THE E-MAIL AND THE BODY OF THE E-MAIL

1 ITSELF.

2 A. I BELIEVE BOTH WERE DRAFTED BY HOWARD RICE'S
3 OFFICE.

4 Q. AND YOUR TESTIMONY IS THAT'S WHERE THE
5 UNANTICIPATED EXPENSES LANGUAGE COMES FROM?

6 A. CORRECT.

7 Q. AND YOU WENT AHEAD AND SENT IT OUT UNDER YOUR NAME,
8 CORRECT?

9 A. CORRECT.

10 Q. DID YOU PROTEST OR DISAGREE WITH ANYONE ABOUT USING
11 THAT PHRASE TO DESCRIBE THESE ADDITIONAL LABOR COSTS?

12 A. I DON'T RECALL.

13 Q. OKAY. AND THE REFERENCE TO UNANTICIPATED EXPENSES
14 IS A REFERENCE TO WHAT EXPENSES?

15 A. TO THE MONIES THAT WE WERE EXPECTING FOR THE
16 DIFFERENCE OF LABOR RATES.

17 Q. THE ADDITIONAL LABOR COSTS?

18 A. CORRECT.

19 Q. LOOK AT PAGE TWO OF EXHIBIT 123. THE LETTER
20 STATES, IN THE SECOND FULL PARAGRAPH ON THE FIRST PAGE:

21 PRIOR TO NORCAL'S ENTERING INTO THE RECYCLE
22 PLUS AGREEMENT, CITY REPRESENTATIVES SUGGESTED TO
23 NORCAL AND CWS THAT IT WOULD BE UNFAIR IF LABORERS
24 EMPLOYED BY THE RECYCLABLES CONTRACTOR UNDER THE
25 CITY'S THEN EXISTING SOLID WASTE AGREEMENT WERE
26 TERMINATED.

27 AND IT GOES ON TO SAY SOME MORE THINGS. WHAT DOES
28 THE REFERENCE TO THE CITY REPRESENTATIVES REFER TO?

- 1 A. THE MAYOR' S OFFICE.
- 2 Q. AND DID YOU KNOW THAT AT THE TIME THAT YOU SENT
- 3 THIS LETTER OUT?
- 4 A. YES.
- 5 Q. HOW DID YOU LEARN THAT?
- 6 A. THROUGH CONVERSATIONS WITH BILL JONES.
- 7 Q. IS THIS THE CONVERSATION YOU' VE ALREADY TESTIFIED
- 8 ABOUT, OR A DIFFERENT CONVERSATION?
- 9 A. UH -- THAT --
- 10 Q. STARTED OUT --
- 11 A. THAT AND SUBSEQUENT ONES.
- 12 Q. WHEN YOU SAY THE MAYOR' S OFFICE, DID YOU HAVE AN
- 13 UNDERSTANDING MORE SPECIFIC THAN THE MAYOR' S OFFICE?
- 14 A. YES, I HAD AN UNDERSTANDING IT WAS THE MAYOR
- 15 PERSONALLY.
- 16 Q. I' M SORRY?
- 17 A. I HAD AN UNDERSTANDING IT WAS THE MAYOR PERSONALLY.
- 18 Q. THE MAYOR PERSONALLY WHO HAD DONE WHAT?
- 19 A. COMMITTED TO REIMBURSE NORCAL FOR THE INCREASED
- 20 LABOR RATES.
- 21 Q. WHAT WAS YOUR UNDERSTANDING AS TO WHICH CITY
- 22 REPRESENTATIVE HAD REQUESTED THAT CWS SWITCH FROM THE
- 23 LONGSHOREMEN TO THE TEAMSTERS?
- 24 A. THE MAYOR.
- 25 Q. THAT WAS ALSO FROM BILL JONES?
- 26 A. YES.

27 Q. SO BY THE DAY OF THIS LETTER, AUGUST 11, 2003, YOUR
28 UNDERSTANDING WAS THAT PRIOR TO THE SIGNING OF THE NORCAL

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1 AGREEMENT, THE MAYOR HAD PERSONALLY REQUESTED OF NORCAL THAT
2 CWS SWITCH FROM LONGSHOREMEN TO TEAMSTERS AND HAD PERSONALLY
3 GIVEN SOME KIND OF ASSURANCE THAT THE CITY WOULD PAY THE
4 EXTRA COST OF THE SWITCH, CORRECT?

5 A. CORRECT.

6 Q. OKAY. AND IS IT YOUR TESTIMONY THAT THE THREE-PAGE
7 LETTER WHICH WAS ATTACHED TO THIS E-MAIL OF YOURS FROM
8 AUGUST 11, 2003 TO CARL MOSHER WAS DRAFTED BY NORCAL'S
9 ATTORNEYS?

10 A. CORRECT.

11 Q. DID YOU ASSIST IN THE PREPARATION OF THIS LETTER IN
12 ANY WAY?

13 A. I MADE COMMENTS ON IT, YES.

14 Q. AND WHICH ATTORNEYS DID YOU WORK WITH?

15 A. PRIMARILY MIKE BAKER AND TODD THOMPSON.

16 TODD THOMPSON FIRST, MIKE BAKER LATER.

17 Q. DO YOU RECALL WHAT CHANGES OR COMMENTS YOU MADE ON
18 THE DRAFT LETTER?

19 A. I DON'T.

20 Q. WHAT WAS THE REASON YOU MADE CHANGES OR COMMENTS IN
21 THE DRAFT LETTER?

22 A. UH -- I SUPPOSE I FOUND SOME INACCURACIES. I DON'T
23 REMEMBER THE SPECIFIC CHANGES. IT'S HARD TO REMEMBER WHY I
24 MADE THEM.

25 Q. ANOTHER WAY TO SAY THAT IS YOU MADE CHANGES AND
26 COMMENTS TO MAKE THE LETTER MORE ACCURATE TO YOUR
27 UNDERSTANDING OF THE FACTS; WOULD THAT BE FAIR?

28 A. YES.

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1 Q. OKAY.

2 MR. FINKELSTEIN: I WILL ASK TO HAVE MARKED AS
3 EXHIBIT 124 A ONE-PAGE PRINTOUT OF WHAT APPEARS TO BE AN
4 ENTRY FROM JOE GUERRA'S CALENDAR FOR MONDAY, NOVEMBER 17,
5 2003.

6 THE FOREPERSON: SO MARKED.

7 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
8 JURY EXHIBIT 124.)
9 BY MR. FINKELSTEIN:

10 Q. MR. NICOLETTI, AT THIS POINT, BEFORE YOU LOOK AT
11 THIS NEXT EXHIBIT, LET ME RETURN TO EXHIBIT 123, YOUR E-MAIL
12 OF AUGUST 11, 2003 TO CARL MOSHER.

13 IN YOUR E-MAIL YOU HAVE SAID THAT "WE CAN DISCUSS
14 THE NUMBER," MEANING THE AMOUNT OF THE REIMBURSEMENT, "AT
15 OUR 10:30 MEETING," CORRECT?

16 A. CORRECT.

17 Q. WAS THERE A 10:30 MEETING ON AUGUST 11, 2003
18 BETWEEN YOU AND CARL MOSHER?

19 A. I BELIEVE SO.

20 Q. WHO ELSE ATTENDED THE MEETING?

21 A. I THINK DAN DAY, AND I BELIEVE JIM HOLGERSON FROM
22 THE CITY MANAGER'S OFFICE, AND POSSIBLY SUSAN DEVENCENZI,

23 BUT I'M NOT 100 PERCENT SURE.
24 Q. SHE WORKS FOR THE CITY ATTORNEY'S OFFICE?
25 A. CORRECT.
26 Q. NOW LET'S LOOK AT EXHIBIT 124, THE ENTRY FROM
27 MR. GUERRA'S CALENDAR. I REALIZE THIS IS NOT YOUR CALENDAR,
28 BUT I'M SIMPLY SHOWING THIS TO SEE IF IT REFRESHES YOUR

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1 RECOLLECTION ABOUT WHETHER OR NOT THE MEETING THAT PURPORTS
2 TO HAVE BEEN SET ON THIS CALENDAR IN FACT TOOK PLACE.
3 A. I BELIEVE THERE WAS A MEETING WITH DAN DAY AND MIKE
4 SANGIACOMO IN JOE GUERRA'S OFFICE. WHETHER THAT WAS THE
5 17TH OF NOVEMBER --
6 Q. YOU ARE NOT SURE OF THE DAY, BUT YOU DID ATTEND A
7 MEETING WITH THOSE PARTICIPANTS SOMETIME IN THIS TIME FRAME?
8 A. CORRECT.
9 Q. WHAT HAPPENED AT THIS MEETING?
10 A. UH -- I BELIEVE THAT THIS MEETING WAS MORE OF A
11 MEETING TO ESTABLISH THAT WE NEEDED SOME DOCUMENTATION FOR
12 OUR FINANCIAL RECORDS OF THE BUSINESS AT YEAR-END TIME
13 RECOGNIZING THIS COMMITMENT TO US. THAT'S WHAT THIS MEETING
14 WAS REGARDING.
15 Q. AND WHY DID YOU NEED -- NOW, YOUR FISCAL YEAR ENDS
16 SEPTEMBER 30?
17 A. CORRECT.
18 Q. THIS IS A MEETING THAT, ACCORDING TO MR. GUERRA'S
19 CALENDAR, IS SET FOR NOVEMBER 17, AFTER THE CLOSE OF THE
20 FISCAL YEAR, RIGHT?

21 A. CORRECT.
22 Q. AND WHY DID YOU NEED FINANCIAL
23 DOCUMENTATION -- STRIKE THAT. ARE THOSE YOUR WORDS; IS THAT
24 WHAT YOU CALLED A FINANCIAL DOCUMENTATION?
25 A. UH -- I THINK THAT'S WHAT I SAID.
26 Q. WHAT DO YOU MEAN BY FINANCIAL DOCUMENTATION?
27 A. WE NEEDED SOME RECOGNITION THAT THESE MONIES WERE
28 DUE TO US AND HOPEFULLY COMING AT SOME DATE SPECIFIC.

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1 Q. WHY DID YOU NEED THAT?
2 A. BECAUSE OUR EXTERNAL AUDITORS WANTED SOMETHING.
3 Q. KPMG?
4 A. RIGHT.
5 Q. WHY DID THEY WANT SOMETHING? HAD --
6 A. WE HAD BEEN BOOKING OUR PAYMENTS TO CALIFORNIA
7 WASTE SOLUTIONS AND NEEDED THE OFFSET TO THAT.
8 Q. ON YOUR FINANCIAL STATEMENT YOU HAD BEEN BOOKING,
9 YOU HAD BEEN LISTING AS EXPENSES THE PAYMENTS TO CWS FOR THE
10 EXTRA LABOR COSTS, CORRECT?
11 A. CORRECT.
12 Q. AND DID YOU BOOK SOME KIND OF RECEIVABLE FOR THE
13 EXPECTED MONEY FROM THE CITY OF SAN JOSE?
14 A. I DON'T BELIEVE WE DID AT THAT TIME.
15 Q. WHY DID YOU NEED DOCUMENTATION THAT THE MONEY WOULD
16 BE PAID; WHY WOULD THE AUDITORS SEEK FURTHER EVIDENCE OR
17 PROOF THAT THE MONEY WAS GOING TO BE PAID IF THE RECEIPT OF
18 MONEY WAS NOT ON YOUR FINANCIAL STATEMENT? DID THAT MAKE

19 ANY SENSE?

20 A. I UNDERSTAND WHAT YOU'RE SAYING. I DON'T KNOW.

21 Q. WELL, WHO TOLD YOU -- HOW DID YOU GET INVOLVED IN
22 THIS MEETING? WHO ASKED YOU TO ATTEND THIS MEETING?

23 A. MOST PROBABLY DAN DAY.

24 Q. HIS POSITION IS WHAT AGAIN?

25 A. HE REPLACED BILL JONES, WHO WAS THE REGIONAL
26 MANAGER.

27 Q. WHAT DID MR. DAY EXPLAIN TO YOU WAS THE PURPOSE OF
28 THIS MEETING?

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1 A. I THINK HE EXPLAINED IT WAS TWO-FOLD; ONE, TO GET
2 SOME SORT OF DOCUMENTATION THIS MONEY WAS OWED TO US, AND I
3 THINK MR. SANGIACOMO MIGHT HAVE WANTED AN UPDATE ON WHERE WE
4 WERE IN THE PROCESS.

5 Q. SO WHAT HAPPENED AT THE MEETING? WHO SPOKE ON
6 BEHALF OF NORCAL?

7 A. MIKE SANGIACOMO.

8 Q. WHAT DID HE TELL MR. GUERRA?

9 A. UH -- IT WAS MORE QUESTIONING MR. GUERRA ON WHERE
10 THE PROCESS STOOD. WHERE IN THE CHAIN IS THE MONEY; IS THE
11 MONEY SET ASIDE; IS IT AVAILABLE.

12 Q. WHAT DID MR. GUERRA SAY?

13 A. I BELIEVE HE SAID NOT AT THIS TIME.

14 Q. OKAY. SO WHAT DID MR. SANGIACOMO SAY?

15 A. I JUST RECALL HIM BEING VERY FRUSTRATED OVER THE
16 ISSUE.

17 Q. I CAN UNDERSTAND. DID HE SAY, THANKS VERY MUCH,
18 HAVE A NICE DAY, OR WHAT?

19 A. I DON'T THINK HE SAID, THANKS VERY MUCH, HAVE A
20 NICE DAY. I DON'T RECALL WHAT HE DID SAY ASIDE FROM THE
21 FACT THAT I WAS GOING TO CONTINUE TO PURSUE HIS OFFICE ON A
22 REGULAR BASIS FOR FUNDS.

23 Q. HOW DID NORCAL LEAVE IT WITH MR. GUERRA? USUALLY
24 AT THE END OF THE MEETING WHEN THERE IS AN OUTSTANDING
25 ISSUE, THE PARTIES AGREE TO SOME FURTHER ACTION TO MOVE
26 TOWARD SOME GOAL, RIGHT? HOW DID YOU LEAVE IT IN THIS CASE?

27 A. I DON'T THINK WE GOT THAT SORT OF SATISFACTION. I
28 THINK WE WERE STILL ABOUT AS UP IN THE AIR AS WE WERE WHEN

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1 WE GOT THERE.

2 Q. DID MR. SANGIACOMO REQUEST ANYTHING IN WRITING FROM
3 MR. GUERRA TO CONFIRM THAT MONEY WOULD EVENTUALLY BE PAID BY
4 THE CITY OF SAN JOSE FOR THIS EXPENSE?

5 A. I BELIEVE SO.

6 Q. TELL US WHAT MR. SANGIACOMO SAID TO MR. GUERRA.

7 A. I THINK THAT HE SAID SOMETHING, THAT WE NEED
8 SOMETHING FOR OUR EXTERNAL AUDITORS TO INCLUDE IN OUR
9 FINANCIAL STATEMENTS THAT REFLECTS THIS DEBT.

10 Q. BY DEBT, YOU MEAN THE DEBT THE CITY OWED NORCAL?

11 A. CORRECT.

12 Q. WHAT DID MR. GUERRA SAY IN RESPONSE?

13 A. I DON'T THINK HE SAID MUCH MORE THAN THE FUNDS
14 AREN'T AVAILABLE YET.

15 Q. I'M HAVING TROUBLE UNDERSTANDING YOUR TESTIMONY ON
16 THIS MEETING. YOU'RE SAYING MR. SANGIACOMO SAID TO
17 MR. GUERRA, WE NEED SOME DOCUMENTATION TO CONFIRM THAT THIS
18 MONEY IS GOING TO BE PAID, OR WORDS TO THAT EFFECT, AND
19 MR. GUERRA'S REPLY IS NOT ABOUT DOCUMENTATION, BUT ABOUT THE
20 MONEY IS NOT AVAILABLE YET?

21 A. I THINK ON THE ISSUE OF DOCUMENTATION, MR. GUERRA
22 DIDN'T SAY MUCH MORE THAN, I'LL WORK ON SOMETHING.

23 Q. OKAY. DID ANYTHING ELSE HAPPEN AT THIS MEETING?

24 A. NOT TO MY RECOLLECTION.

25 Q. SO WHAT WAS THE NEXT INTERACTION YOU HAD WITH
26 ANYONE FROM THE CITY OF SAN JOSE IN ORDER TO GET THIS MONEY
27 PAID?

28 A. UH -- CONTINUING TO PURSUE THROUGH CARL MOSHER'S

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1 OFFICE.

2 Q. WHAT HAPPENED AT THE -- WHAT WAS MR. MOSHER'S
3 POSITION WHEN YOU TRIED TO GET THE MONEY FROM HIM?

4 A. ESSENTIALLY THAT HE WAS UNAWARE OF ANY ARRANGEMENT,
5 AND HE HAD NOT BEEN INFORMED OF ANY ARRANGEMENT, AND I DON'T
6 KNOW WHAT YOU'RE TALKING ABOUT.

7 Q. SO WHEN HE TOLD YOU THAT, WHAT DID YOU TELL
8 MR. MOSHER?

9 A. UH -- THAT THE MAYOR MADE A COMMITMENT TO US IN THE
10 YEAR 2000, AND THAT I AM NOW PURSUING IT THROUGH YOUR
11 OFFICE.

12 Q. WHAT DID MR. MOSHER SAY ABOUT THAT?

13 A. HE AGAIN STATED THAT HE WAS UNAWARE OF THAT, THAT
14 MR. HOLGERSON HAD BEEN SENT IN TO HELP YOU RESOLVE THE
15 ISSUE.

16 Q. DID YOU HAVE DEALINGS WITH MR. HOLGERSON?

17 A. NEVER ALONE. WITH CARL MOSHER, YES.

18 Q. THIS INTERACTION YOU JUST TOLD US ABOUT WITH
19 MR. MOSHER WHERE YOU REITERATED NORCAL'S POSITION THAT THE
20 MAYOR HAD GIVEN SOME ASSURANCES THAT THE MONEY WOULD BE PAID
21 TO NORCAL TO REIMBURSE FOR THE ADDITIONAL LABOR COSTS, AND
22 MR. MOSHER SAID HE HAD NO KNOWLEDGE OF THAT, WAS THAT AFTER
23 THIS NOVEMBER 17, 2003 MEETING WITH MR. GUERRA?

24 A. IT WAS RIGHT AROUND THE SAME TIME.

25 Q. WOULD HAVE BEEN THE FALL OF 2003?

26 A. I WOULD THINK SO.

27 Q. OKAY. SO WHAT HAPPENED NEXT?

28 A. UH -- I SAT WITH CARL MOSHER AND MR. HOLGERSON ON

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1 SEVERAL OCCASIONS, AND THEY ESSENTIALLY WANTED TO KNOW WHAT
2 I WOULD DO FOR THEM TO GET THIS MONEY.

3 Q. OKAY. LET ME INTERRUPT YOU FOR A MINUTE. IN
4 THINKING BACK TO EARLIER IN 2003, I HAD ASKED YOU WHETHER OR
5 NOT YOU HAD ANY INTERACTION WITH JOE GUERRA ABOUT GARBAGE
6 RATE HIKES, AND YOU DIDN'T RECALL ANY INTERACTIONS TO THAT
7 EFFECT, CORRECT? THAT WAS YOUR PRIOR TESTIMONY.

8 AND IN THINKING ABOUT THAT, DIDN'T SOMEONE FROM
9 NORCAL SUPPLY MR. GUERRA WITH SOME SPREADSHEETS OR NUMBERS
10 TO PLUG IN SO THEY COULD GET SOME IDEA ABOUT HOW MUCH THE

11 RATES NEEDED TO BE RAISED SO THAT THE CITY COULD PAY NORCAL
12 FOR THIS ADDITIONAL MONEY?

13 A. YES.

14 Q. WERE YOU INVOLVED IN THAT?

15 A. NO.

16 Q. DO YOU KNOW WHO WAS?

17 A. I BELIEVE IT WAS MR. LOMELE.

18 Q. SO WHAT WAS THE NEXT THING THAT HAPPENED? YOU TOLD
19 US ABOUT SOME MEETINGS WITH MR. MOSHER AND MR. HOLGERSON
20 WHICH DID NOT YIELD THE DESIRED RESULTS.

21 A. CORRECT.

22 Q. WHAT HAPPENED THEN?

23 A. AT SOME POINT AFTER THIS, I BELIEVE IT WAS EARLY
24 2004 WHEN -- AND I DON'T RECALL WHICH ONE OF THE TWO AT THE
25 MEETING -- EITHER MOSHER OR HOLGERSON, SUGGESTED THAT WE
26 MAKE CERTAIN CONCESSIONS SO THAT WHEN IT WENT TO THE COUNCIL
27 TO APPROVE THIS FUNDING, THAT WE WOULD HAVE MADE SOME
28 CONCESSIONS TO THE CITY.

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1 Q. WHAT KIND OF CONCESSIONS?

2 A. THEY ASKED FOR ADDITIONAL COMMUNITY CLEANUPS.

3 Q. TEN ADDITIONAL BINS?

4 A. I THINK THAT WAS THE NUMBER. THEY ASKED FOR AN
5 ELECTRONIC WASTE RECYCLING PROGRAM, QUARTERLY I THINK. AND
6 THEY ASKED FOR A SUM OF MONEY TO CONDUCT A WASTE
7 CHARACTERIZATION STUDY.

8 Q. THIS SUM OF MONEY FOR THE WASTE CHARACTERIZATION

9 STUDY, WASN' T NORCAL ALREADY OBLIGATED TO DO SOME KIND OF
10 WASTE CHARACTERIZATION STUDY UNDER THE ORIGINAL AGREEMENT?

11 A. UNDER THE ORIGINAL AGREEMENT -- YOU MEAN THE
12 CONTRACT ITSELF?

13 Q. YEAH.

14 A. I DON' T THINK WE WERE.

15 Q. I WAS JUST CHECKING. SO THEN WHAT HAPPENED?

16 A. SO WE AGREED.

17 Q. WAS ANYONE IN THE CITY ATTORNEY' S OFFICE INVOLVED
18 IN THESE DISCUSSIONS BETWEEN NORCAL AND THE CITY REGARDING
19 SOME ADDITIONAL CONSIDERATION OR CONCESSIONS TO THE CITY?

20 A. AS I STATED BEFORE, I BELIEVE THAT SUSAN DEVENCENZI
21 WAS IN SOME OF THOSE CONVERSATIONS.

22 Q. WHAT HAPPENED NEXT IN CONNECTION WITH NORCAL' S
23 EFFORTS TO GET THIS EXTRA MONEY?

24 A. UH -- SOMETIME IN '04 I AGREED TO THESE
25 CONCESSIONS. AND I THINK WE' RE PROBABLY TALKING ABOUT
26 JUNE-ISH, ALTHOUGH I' M NOT 100 PERCENT SURE, THAT WE WOULD
27 MAKE THOSE CONCESSIONS; THEN I STARTED VISITING
28 COUNCILMEMBERS.

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1 Q. OKAY. LET ME JUST CHECK SOMETHING. LET ME SHOW
2 YOU WHAT' S BEEN MARKED AS EXHIBIT 49. CAN YOU READ IT FROM
3 WHERE YOU ARE?

4 A. YES.

5 Q. THIS IS A COPY OF AN E-MAIL THAT PURPORTS TO BE
6 E-MAIL FROM YOU TO CARL MOSHER, DATED APRIL 6, 2004.

7 SUBJECT, SECOND AMENDMENT. DO YOU RECOGNIZE THIS E-MAIL?
8 A. I DO.
9 Q. AND IS THIS IN FACT A COPY OF THE E-MAIL YOU SENT
10 ON APRIL 6, 2004 TO CARL MOSHER?
11 A. I BELIEVE SO.
12 Q. IN THE E-MAIL, WHICH IS ADDRESSED TO CARL AND
13 STEVE WILLIS, WHO IS STEVE WILLIS?
14 A. STEVE WILLIS WAS, I THINK HIS OFFICIAL TITLE WAS
15 INTERIM ASSISTANT ENVIRONMENTAL SERVICES DIRECTOR.
16 Q. AND IN THE E-MAIL YOU SAY:
17 CARL AND STEVE. ON MONDAY, APRIL 5, 2004, I
18 HAND-DELIVERED TO YOU THE SECOND AMENDMENT TO THE
19 SUBCONTRACT BETWEEN NORCAL AND CALIFORNIA WASTE
20 SOLUTIONS. SHOULD YOU HAVE ANY QUESTIONS RELATED
21 TO THAT DOCUMENT, PLEASE FEEL FREE TO CONTACT ME.
22 JOHN NICOLETTI.
23 THAT'S WHAT YOU SAID, RIGHT?
24 A. CORRECT.
25 Q. WHAT IS THIS SECOND AMENDMENT TO THE SUBCONTRACT
26 ALL ABOUT?
27 A. UH -- THIS WAS IN, I RECALL THE SECOND AMENDMENT,
28 THE DOCUMENT THAT MEMORIALIZED OUR INDEBTEDNESS TO

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1 CALIFORNIA WASTE SOLUTIONS FOR THE ADDITIONAL LABOR COSTS.
2 Q. OKAY. AND WHY DID YOU HAND-DELIVER A COPY OF THAT,
3 DID YOU IN FACT HAND-DELIVER A COPY OF THAT AGREEMENT, AS
4 THE E-MAIL RECITES, ON MONDAY, APRIL 5, 2004?

5 A. I HAND-DELIVERED IT. I'M SURE IT WAS AROUND THAT
6 TIME PERIOD.

7 Q. WHY DID YOU DO THAT?

8 A. UH -- I NOW RECALL THAT THEY WANTED THAT DOCUMENT
9 AS PART OF THE EXCHANGE TO SHOW, HOW DO WE REALLY KNOW YOU
10 MADE SOME AGREEMENT WITH CALIFORNIA WASTE SOLUTIONS TO
11 REIMBURSE --

12 Q. WELL, YOU HAD THE OCTOBER 9, 2000 ADDENDUM.

13 A. I DID. THIS WAS NOT AN EASY PROCESS.

14 Q. HAD YOU SHOWN THEM THE OCTOBER 9, 2000 ADDENDUM?

15 A. I DON'T RECALL.

16 Q. IN ANY EVENT, WHAT HAPPENED WHEN YOU HAND-DELIVERED
17 THIS ON APRIL 5 OR THEREABOUTS? DID YOU HAVE FURTHER
18 DISCUSSIONS WITH MR. MOSHER?

19 A. YES, I DID, SEVERAL.

20 Q. AND TELL US ABOUT THOSE DISCUSSIONS.

21 A. I BELIEVE THAT THIS IS ABOUT THE TIME PERIOD WHEN
22 THE CITY, THROUGH CARL'S OFFICE, ASKED US FOR ADDITIONAL
23 CONSIDERATIONS.

24 Q. OKAY. SO NOW WE HAVE A MORE ACCURATE CHRONOLOGY
25 BECAUSE OF THIS E-MAIL, CORRECT?

26 A. YES.

27 Q. LET ME SHOW YOU NEXT WHAT'S BEEN MARKED AS EXHIBIT
28 121, WHICH IS A LETTER DATED MAY 26, 2004 TO MIKE SANGIACOMO

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1 FROM JOE GUERRA THAT MAKES REFERENCE TO DISCUSSIONS RELATING
2 TO UNFORESEEN LABOR COSTS. DO YOU SEE THAT?

- 3 A. I DO.
- 4 Q. HAVE YOU SEEN THAT LETTER BEFORE?
- 5 A. I DON'T THINK SO.
- 6 Q. SO YOU HAD NO INVOLVEMENT IN THE PROCURING OF THIS
7 LETTER FROM MR. GUERRA OR DISCUSSING THE DESIRABILITY OF
8 NORCAL OBTAINING SUCH A LETTER FROM MR. GUERRA?
- 9 A. I HAD INVOLVEMENT IN ASKING FOR SOME SORT OF A
10 LETTER OF THIS NATURE. BUT I THINK AT SOME POINT I WASN'T
11 GETTING RESPONDED TO WHEN MIKE DECIDED TO COMMUNICATE
12 DIRECTLY TO JOE.
- 13 Q. DID YOU CAUSE THAT LETTER TO BE SENT OUT, OR DID
14 MR. SANGIACOMO OR SOMEONE ELSE CAUSE IT TO BE SENT OUT?
- 15 A. I --
- 16 Q. HOW DID THE LETTER COME TO BE SENT OUT?
- 17 A. I WOULD THINK THAT I WAS A PARTY THAT WOULD CAUSE
18 IT TO HAVE BEEN SENT OUT.
- 19 Q. WHAT WAS YOUR ROLE?
- 20 A. ASKING JOE FOR IT ON SEVERAL OCCASIONS.
- 21 Q. THIS WAS TO PROVIDE ADDITIONAL DOCUMENTATION FOR
22 NORCAL AUDITORS, KPMG?
- 23 A. THAT'S MY UNDERSTANDING, YES.
- 24 Q. UH -- DO YOU KNOW WHY THERE'S A REFERENCE TO
25 UNFORESEEN LABOR COSTS IN THIS LETTER?
- 26 A. I DO NOT.
- 27 Q. PARDON ME?
- 28 A. I DO NOT.

- 1 Q. TO YOUR KNOWLEDGE, WAS THERE ANYTHING UNFORESEEN
2 ABOUT THE ADDITIONAL LABOR COSTS?
- 3 A. ABSOLUTELY NOT.
- 4 Q. SORRY?
- 5 A. ABSOLUTELY NOT.
- 6 Q. WHY IS THAT?
- 7 A. BECAUSE IT HAD BEEN DISCUSSED FOR THREE YEARS OR
8 MORE.
- 9 Q. SO NOW, LATER IN 2004 THE CITY COUNCIL TOOK UP THE
10 QUESTION OF WHETHER OR NOT TO AMEND THE NORCAL AGREEMENT TO,
11 SO AS TO PAY NORCAL AN ADDITIONAL 11-AND-A-QUARTER MILLION
12 DOLLARS FOR THESE ADDITIONAL LABOR COSTS, CORRECT?
- 13 A. CORRECT.
- 14 Q. AND AS I RECALL, THERE WERE TWO CITY COUNCIL VOTES,
15 ONE IN SEPTEMBER OF 2004 AND A SECOND AND FINAL VOTE IN
16 DECEMBER 2004, CORRECT?
- 17 A. THAT'S MY RECOLLECTION, ALSO.
- 18 Q. DID YOU ATTEND EITHER OF THOSE COUNCIL MEETINGS?
- 19 A. BOTH.
- 20 Q. OKAY. AND DID YOU SPEAK AT THE DECEMBER COUNCIL
21 MEETING?
- 22 A. I SPOKE AT ONE. I WOULD HAVE TOLD YOU I THOUGHT IT
23 WAS SEPTEMBER, BUT I DID SPEAK AT ONE.
- 24 Q. LET ME JUST CHECK SOMETHING.
- 25 A. I THINK IT WAS THE LATTER OF THE TWO.
- 26 Q. THE DECEMBER MEETING?
- 27 A. I THINK SO.
- 28 Q. LET ME SEE IF I CAN PLAY A SMALL PORTION OF THIS

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1 MEETING FOR YOU AND JUST WATCH IT, AND I WILL ASK THE
2 REPORTER NOT TO REPORT IT BECAUSE WE DO HAVE TEXT WITH IT.

3 (PLAYING VIDEO.)

4 BY MR. FINKELSTEIN:

5 Q. SO THAT WAS YOU ON THE VIDEO, I TAKE IT?

6 A. CORRECT.

7 Q. AND YOU WERE RESPONDING TO A QUESTION FROM
8 COUNCILMEMBER DANDO ABOUT WHO ASKED NORCAL OR CWS TO SWITCH
9 FROM THE LONGSHOREMEN TO THE TEAMSTERS, CORRECT?

10 A. CORRECT.

11 Q. AND AT THE TIME THAT QUESTION WAS ASKED OF YOU,
12 YOUR INFORMATION AND UNDERSTANDING FROM BILL JONES IS THAT
13 IT WAS THE MAYOR PERSONALLY WHO HAD MADE A REQUEST AND GIVEN
14 THAT ASSURANCE, CORRECT?

15 A. CORRECT.

16 Q. YET WHEN YOU WERE ASKED ABOUT THAT BY COUNCILMEMBER
17 DANDO, YOU DID NOT TELL COUNCILMEMBER DANDO OR ANYONE ELSE
18 ON THE COUNCIL THAT IT WAS THE MAYOR WHO HAD MADE THAT
19 REQUEST; IS THAT TRUE?

20 A. CORRECT.

21 Q. WHY IS THAT?

22 A. I BELIEVE I WAS ADVISED BY COUNSEL NOT TO ANSWER IT
23 THAT WAY.

24 Q. AND WHO, WHICH COUNSEL ADVISED YOU TO DO THAT?

25 A. I WOULD THINK MR. BAKER.

26 Q. WELL, WHEN YOU SAY YOU WOULD THINK, DO YOU KNOW OR
27 ARE YOU JUST GUESSING?

28 A. UH -- I'M PRETTY CERTAIN IT WAS MR. BAKER.

1 Q. I DON'T WANT TO GET INTO COMMUNICATIONS WITH
2 COUNSEL, BUT I DO WANT TO ASK YOUR OWN THOUGHTS ABOUT THIS.
3 DID YOU FEEL COMFORTABLE ANSWERING THAT QUESTION THAT WAY?

4 A. NOT PARTICULARLY.

5 Q. WHY IS THAT?

6 A. UH -- WELL, IT WAS THE MAYOR'S OFFICE INVOLVED AT
7 THAT TIME; I WAS AWARE OF THE MAYOR'S OFFICE AT THAT TIME.

8 Q. YOU WERE AWARE OF IT?

9 A. CORRECT.

10 Q. SO YOU WERE UNCOMFORTABLE BECAUSE YOU FELT YOU WERE
11 NOT BEING TOTALLY HONEST WITH COUNCILMEMBER DANDO?

12 A. NO, I THOUGHT I ANSWERED HER QUESTION. HAD SHE
13 PUSHED ME A LITTLE FURTHER, I MAY HAVE BEEN MORE
14 FORTHCOMING.

15 Q. WAS THERE ANY EFFORT ON YOUR PART OR NORCAL'S PART,
16 TO YOUR KNOWLEDGE, TO KEEP SECRET THE FACT THAT THE MAYOR
17 WAS THE PERSON WHO HAD INITIALLY REQUESTED THE SWITCH FROM
18 LONGSHOREMEN TO TEAMSTERS?

19 A. I DON'T THINK SO.

20 Q. WHY NOT JUST ANSWER THE QUESTION STRAIGHTFORWARDLY
21 AND SAY, WHY, IT WAS THE MAYOR SITTING NEXT TO YOU,
22 COUNCILMEMBER DANDO, WHO MADE THE REQUEST. WHY NOT JUST
23 COME FORWARD WITH THAT INFORMATION?

24 A. BECAUSE IT WAS A BUSINESS DECISION AT THE TIME AND
25 WE HADN'T RECEIVED THE MONEY YET.

26 Q. WHY DID YOU THINK DISCLOSING TO COUNCILMEMBER DANDO
27 THAT IT WAS THE MAYOR WHO HAD REQUESTED THIS CHANGE FROM
28 LONGSHOREMEN TO TEAMSTERS AND GIVEN THIS ASSURANCE WOULD

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1 IMPACT UPON HOW THE COUNCIL VOTED?

2 A. IT WAS A PRETTY CONTENTIOUS TIME IN THE COUNCIL
3 DURING THESE TWO MEETINGS, AND ALL THE DOCUMENTATION I HAD
4 PROVIDED AND SPOKEN TO ANYBODY PRIOR TO THOSE MEETINGS
5 REFLECTED THAT IT WAS THE MAYOR'S OFFICE.

6 Q. WHAT DOCUMENTATION WAS THAT, YOUR EXCHANGES WITH
7 MR. GUERRA?

8 A. MR. GUERRA AND SOME OF THE CORRESPONDENCE WITH
9 CARL MOSHER. YOU ASKED ME ON EXHIBIT WHATEVER THIS IS,
10 123 --

11 Q. EXHIBIT WHAT?

12 A. 123 OR 133 -- 123.

13 Q. WHAT IS EXHIBIT 123?

14 A. IT'S THE LETTER I WROTE TO CARL MOSHER ON AUGUST
15 11, AND I BELIEVE HE QUESTIONED ME ON WHAT CITY PERSONNEL,
16 AND I'M QUITE SURE I TOLD HIM THE MAYOR.

17 Q. OKAY. FIRST OF ALL, YOU JUST REFERRED TO EXHIBIT
18 123 AS THE LETTER YOU WROTE. I THOUGHT EARLIER, I THOUGHT
19 YOU SAID ATTORNEYS DRAFTED IT.

20 A. THE LETTER UNDER MY SIGNATURE. I'M SORRY.

21 Q. IN THAT LETTER IT DOESN'T REFERENCE THE MAYOR BY
22 NAME OR OFFICE, DOES IT?

23 A. NO.

24 Q. IT HAS A VAGUE TERM, CITY REPRESENTATIVES, RIGHT?

25 A. CORRECT.

26 Q. NOW YOU'RE SAYING THAT IN AN ORAL DISCUSSION YOU

27 HAD WITH CARL MOSHER, YOU TOLD HIM THAT IT WAS THE MAYOR WHO
28 HAD DONE THIS?

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1 A. I THINK AT THAT TIME IT WAS STILL THE MAYOR'S
2 OFFICE, AND I DON'T THINK ANYBODY PURSUED FURTHER.

3 Q. SO YOU TOLD CARL MOSHER IT WAS THE MAYOR'S OFFICE?

4 A. CORRECT.

5 Q. YOU DIDN'T DISTINGUISH WHO IN THE MAYOR'S OFFICE?

6 A. I DON'T BELIEVE SO.

7 Q. THIS WAS AT THE TIME OF YOUR AUGUST 11, 2003 DRAFT
8 LETTER PREPARED BY COUNSEL?

9 A. CORRECT.

10 Q. SO ARE YOU SUGGESTING THEN THIS WAS NO SECRET, AND
11 LOOK, I TOLD CARL MOSHER IT WAS THE MAYOR'S OFFICE. IS THAT
12 WHAT YOU'RE TRYING TO TELL US?

13 A. YES.

14 Q. SO MY QUESTION THEN IS WHY IS IT IN THAT FOLLOWING
15 YEAR, ONE YEAR LATER AT THIS PUBLIC COUNCIL MEETING, THAT
16 YOU JUST DON'T TELL COUNCILMEMBER DANDO IT WAS THE MAYOR'S
17 OFFICE OR IT WAS THE MAYOR? WHAT WOULD BE THE REASON FOR
18 HOLDING BACK SOMETHING YOU DIDN'T THINK WAS A SECRET?

19 A. I DON'T KNOW.

20 Q. THAT'S YOUR ANSWER?

21 A. THAT'S MY ANSWER.

22 MR. FINKELSTEIN: WHY DON'T WE TAKE A FIVE-MINUTE
23 RECESS.

24 THE FOREPERSON: LET ME REMIND YOU OF THE

25 CONFIDENTIALITY ADMISSION NOT TO TALK ABOUT ANYTHING YOU
26 HEARD, SAID, OR SAW IN THIS SESSION.

27 THE WITNESS: EXCEPT FOR MY COUNSEL.

28 THE FOREPERSON: EXCEPT FOR YOUR COUNSEL, WITH THE

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1 SAME CONFIDENTIALITY REQUIREMENT.

2 THE WITNESS: THANK YOU.

3 THE FOREPERSON: ANY QUESTIONS? LET'S RECESS FOR
4 FIVE MINUTES.

5 (A BRIEF RECESS WAS TAKEN.)

6 THE FOREPERSON: LET THE RECORD SHOW ALL JURORS
7 ARE PRESENT. COULD YOU COME TO ORDER, PLEASE.

8 MR. FINKELSTEIN: I'LL ASK MR. NICOLETTI TO STEP
9 BACK IN.

10 BY MR. FINKELSTEIN:

11 Q. I'LL JUST REMIND YOU, MR. NICOLETTI, AT THIS POINT
12 YOU'RE STILL UNDER OATH. OKAY?

13 A. YES.

14 Q. AS I RECALL YOUR TESTIMONY EARLIER, YOUR
15 RECOLLECTION IS THAT AT SOME POINT YOU SHARED WITH
16 CARL MOSHER THE FACT THAT IT WAS THE MAYOR'S OFFICE THAT HAD
17 REQUESTED A CHANGE FROM LONGSHOREMEN TO TEAMSTERS AND GIVEN
18 SOME KIND OF ASSURANCE ABOUT ADDITIONAL MONEY BEING PAID BY
19 THE CITY FOR THAT PURPOSE?

20 A. CORRECT.

21 Q. AND WHEN DO YOU THINK THAT OCCURRED?

22 A. I WAS TOLD THAT IT OCCURRED IN 2000.

23 Q. NO, NO. WHEN DID YOU SHARE THAT INFORMATION WITH
24 MR. MOSHER?

25 A. EARLY IN '04.

26 Q. IS THERE AN EVENT OR DATE YOU CAN PIN THAT TO?

27 A. NO. THERE WERE SO MANY CONVERSATIONS.

28 Q. OKAY. WE HAD LOOKED BRIEFLY AT EXHIBIT 49, WHICH

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1 WAS THE E-MAIL OF APRIL 6 THAT YOU SENT TO CARL MOSHER
2 REFERENCING THE HAND DELIVERY OF THE SECOND AMENDMENT TO THE
3 NORCAL/CWS AGREEMENT, CORRECT?

4 A. CORRECT.

5 Q. LET ME SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED AS
6 EXHIBIT 52 AND ASK YOU WHETHER OR NOT YOU RECALL RECEIVING
7 THIS LETTER.

8 A. I DO.

9 Q. AND IN THIS LETTER DOES MR. MOSHER STATE THAT THERE
10 IS NOTHING IN THE RECYCLE PLUS AGREEMENT THAT PROVIDES FOR
11 SUCH PAYMENTS?

12 A. IT DOES.

13 Q. AND ADDITIONALLY, THERE IS NOTHING IN THE AGREEMENT
14 THAT IS BINDING OR THAT IMPOSES ANY OBLIGATIONS ON THE CITY?

15 A. IT DOES REFLECT THAT.

16 Q. AND LOOKING AT THE CONTENT OF THAT LETTER, DOES
17 THAT ASSIST YOU IN ANY WAY AS TO THE TIMING OF WHEN YOU MAY
18 HAVE TOLD MR. MOSHER THAT IT WAS THE MAYOR'S OFFICE THAT HAD
19 REQUESTED THE SWITCH FROM LONGSHOREMEN TO TEAMSTERS AND
20 GIVEN ASSURANCES ABOUT ADDITIONAL MONEY FROM THE CITY FOR

21 THAT PURPOSE?

22 A. NOT A SPECIFIC DATE, BUT I DO BELIEVE THAT CARL WAS
23 ACTUALLY AWARE OF THE MAYOR'S COMMITMENT AT THE DATE OF THE
24 DRAFTING OF THAT LETTER.

25 Q. APPARENTLY, MR. MOSHER'S POSITION AS STATED IN THE
26 LETTER IS THAT NOTWITHSTANDING THE REQUEST FROM THE MAYOR'S
27 OFFICE AND ANY ASSURANCES FROM THE MAYOR'S OFFICE, HE DIDN'T
28 FEEL THAT WAS BINDING ON THE CITY; IS THAT WHAT HE'S SAYING

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1 IN THE LETTER?

2 A. THAT'S WHAT I INTERPRET THAT AS SAYING.

3 Q. LET ME HAVE YOU LOOK NEXT AT EXHIBIT 44, AND FIRST
4 DIRECT YOUR ATTENTION TO PAGE TWO OF THE EXHIBIT. I TAKE IT
5 THAT'S YOUR SIGNATURE?

6 A. CORRECT.

7 Q. OKAY. AND DO YOU RECALL SENDING THIS LETTER TO
8 MR. MOSHER?

9 A. I DO.

10 Q. AND DO YOU HAVE ANY REASON TO BELIEVE THAT IT
11 WASN'T SENT ON OR ABOUT THE DATE INDICATED, JUNE 16, 2004?

12 A. NONE.

13 Q. AND IN THIS LETTER YOU TALK ABOUT THE BACKGROUND OF
14 THE REQUEST; IS THAT CORRECT?

15 A. YES.

16 Q. WHO DRAFTED THIS LETTER?

17 A. I'M NOT CERTAIN WHO, BUT HOWARD RICE'S OFFICE.

18 Q. COUNSEL DRAFTED IT?

- 19 A. CORRECT.
- 20 Q. DRAFTED THE LETTER FOR NORCAL?
- 21 A. CORRECT.
- 22 Q. DID YOU REVIEW THE LETTER BEFORE SIGNING?
- 23 A. YES.
- 24 Q. DID YOU HAVE THE OPPORTUNITY TO PROPOSE CHANGES,
25 CORRECTIONS, ADDITIONS, SUBTRACTIONS TO THE LETTER?
- 26 A. YES.
- 27 Q. DID YOU MAKE ANY CHANGES TO THE LETTER BEFORE
28 SENDING IT OUT?

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- 1 A. I DON'T RECALL SPECIFICALLY, BUT PROBABLY.
- 2 Q. IS THERE ANYTHING IN THE LETTER THAT YOU BELIEVE AT
3 THE TIME THE LETTER WENT OUT WAS NOT COMPLETELY ACCURATE OR
4 TRUTHFUL?
- 5 A. NOT IN THE PORTION I CAN READ.
- 6 Q. OKAY. LET ME HAND IT UP TO YOU AND HAVE YOU REVIEW
7 IT IN MORE DETAIL IF YOU WOULD. I'M NOT SUGGESTING THE
8 ANSWER ONE WAY OR THE OTHER. I WOULD LIKE YOUR VIEW AS TO
9 THE STATEMENTS YOU MADE IN THE LETTER, WHETHER YOU BELIEVE
10 THEM TO BE ACCURATE.
- 11 A. THE QUESTION AGAIN?
- 12 Q. LOOKING AT THE LETTER TODAY, IS THERE ANYTHING IN
13 THE LETTER THAT YOU BELIEVE IS NOT COMPLETELY 100 PERCENT
14 ACCURATE AND TRUTHFUL BASED ON YOUR KNOWLEDGE AND
15 UNDERSTANDING OF EVENTS?
- 16 A. NO.

17 Q. OKAY. THE PICTURE THAT'S PAINTED IN THIS LETTER,
18 IS THAT THE SAME PICTURE THAT WAS CONVEYED TO YOU BY
19 BILL JONES ON THE BACKGROUND OF THIS DEAL?

20 A. YES.

21 Q. SO WHEN BILL JONES TOLD YOU THE MAYOR HAD
22 PERSONALLY REQUESTED THE CHANGE FROM LONGSHOREMEN TO
23 TEAMSTERS AND GIVEN SOME ASSURANCES OF ADDITIONAL MONEY FOR
24 THAT PURPOSE, DID HE ALSO TELL YOU THAT ALL THESE OTHER
25 ASPECTS ABOUT PEOPLE LOSING THEIR JOBS, WAGES BEING LOW,
26 ROCK-BOTTOM PRICE, SO FORTH, OR IS THAT EMBELLISHMENT?

27 A. UH -- I DON'T BELIEVE IN OUR FIRST CONVERSATIONS
28 THAT HE TOLD ME THAT.

SUE HERFURTH, CSR #9645

1784

1 Q. IS THERE SOME EFFORT IN THIS LETTER TO PUT A BETTER
2 FACE ON THE SITUATION THAN REALITY WARRANTED?

3 A. NOT HAVING DRAFTED IT, I DON'T KNOW.

4 Q. WHAT IS -- CAN YOU EXPLAIN HOW IT WAS A POSSIBILITY
5 THAT SAN JOSE WORKERS MIGHT LOSE THEIR JOBS; WAS THAT A
6 POSSIBILITY?

7 A. UH -- IT WAS ALWAYS A POSSIBILITY THAT OUR
8 SUBCONTRACTOR WOULD TRY TO USE AS FEW PEOPLE AS POSSIBLE.

9 Q. BUT THE RFP REQUIRED THAT THE JOBS BE OFFERED FIRST
10 TO DISPLACED WORKERS, CORRECT?

11 A. CORRECT, BUT NOT IF YOU DIDN'T THINK YOU NEEDED
12 THEM. YOU ONLY HAD TO KEEP THEM 90 DAYS IF YOU FELT THEY
13 WERE EXCESS WORKERS.

14 Q. WAS THERE ANYTHING IN THE RFP THAT REQUIRED

15 CONTRACTORS TO AGREE TO PAY NO LESS THAN EXISTING WAGES AND
16 BENEFITS FOR THE MRF WORKERS?

17 A. THERE WAS A PREVAILING WAGE CLAUSE IN THE CONTRACT,
18 BUT MY RECOLLECTION WAS THAT IT DID NOT COVER THE MRF
19 WORKERS.

20 Q. SO THERE WAS NO REQUIREMENT IN THE RFP THAT
21 REQUIRED PAYMENT OF ANY MINIMUM AMOUNT AS FAR AS WAGES AND
22 BENEFITS FOR MRF WORKERS, CORRECT?

23 A. AS I RECALL, THAT'S CORRECT.

24 Q. LET'S LOOK AT EXHIBIT 45. THIS IS A LETTER
25 AUTHORED BY MR. MOSHER. AND MY QUESTION IS, DO YOU RECALL
26 RECEIVING THIS RESPONSE FROM MR. MOSHER TO YOUR JUNE 16
27 LETTER?

28 A. YES.

SUE HERFURTH, CSR #9645

1785

1 Q. NOW, IN THIS RESPONSE BY MR. MOSHER, HE REFERS TO A
2 COMMITMENT MADE BY UNNAMED CITY OFFICIALS AS NOT BEING
3 BINDING ON THE CITY; IS THAT CORRECT?

4 A. CORRECT.

5 Q. NOW, YOUR TESTIMONY IS THAT YOU SHARED WITH
6 MR. MOSHER THAT THE COMMITMENT WAS MADE BY EITHER THE MAYOR
7 OR THE MAYOR'S OFFICE, CORRECT?

8 A. CORRECT.

9 Q. CAN YOU EXPLAIN WHY MR. MOSHER WOULD THEN WRITE
10 BACK TO YOU AND REFER TO THE COMMITMENT AS BEING MADE BY
11 UNNAMED CITY OFFICIALS?

12 A. I DO NOT.

13 Q. SEEING THAT, DOES THAT CHANGE YOUR RECOLLECTION AS
14 TO WHETHER OR WHEN YOU SHARED WITH MR. MOSHER IT WAS THE
15 MAYOR' S OFFICE THAT MADE THIS COMMITMENT?

16 A. ONLY THAT I FELT, I FEEL AS OF THE DATE OF THIS
17 LETTER HE HAD BEEN INFORMED --

18 Q. BY YOU?

19 A. CORRECT.

20 Q. HOW CERTAIN OR UNCERTAIN ARE YOU?

21 A. RELATIVELY CERTAIN.

22 Q. OKAY. ARE THERE ANY COUNCILMEMBERS THAT YOU TOLD
23 PRIOR TO THE FIRST VOTE ON THE AMENDMENT ABOUT WHAT THE
24 MAYOR' S ROLE MIGHT HAVE BEEN IN BRINGING ABOUT A CHANGE FROM
25 LONGSHOREMEN TO TEAMSTERS AND COMMITTING THE CITY TO PAY
26 ADDITIONAL MONEY?

27 A. PRIOR TO THE SEPTEMBER '04 COUNCIL MEETING I MET
28 WITH EIGHT COUNCILPERSONS OR THEIR AIDES. I BELIEVE SIX

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1786

1 COUNCILMEMBERS AND TWO AIDES.

2 Q. CAN YOU GIVE US SOME NAMES?

3 A. UH -- NORA CAMPOS, JUDY CHIRCO, PAT DANDO' S AIDE,
4 MR. CORTESE' S AIDE, MR. REED HIMSELF, NANCY PYLE, I BELIEVE.
5 BUT I DON' T THINK, I' M NOT SURE ABOUT NANCY; THAT WAS A
6 TRANSITION PERIOD WHEN SHE WAS COMING IN.

7 Q. YOU TOLD US ABOUT NORA CAMPOS, JUDY CHIRCO, PAT
8 DANDO' S AIDE, CHUCK REED, MR. CORTESE?

9 A. HIS AIDE, I BELIEVE.

10 Q. OKAY. ANYONE ELSE?

11 A. LINDA LEZOTTE. I BELIEVE WE MET WITH CINDY CHAVEZ.

12 Q. OKAY. THAT'S EIGHT. ARE THERE MORE?

13 A. I THINK THAT WAS IT.

14 Q. AND IN ANY OF YOUR DISCUSSIONS WITH THESE SIX
15 COUNCILMEMBERS AND TWO COUNCILMEMBER AIDES, DID YOU DISCLOSE
16 TO THEM THAT NORCAL HAD BEEN REQUESTED BY THE MAYOR
17 PERSONALLY TO GET CWS TO SWITCH FROM LONGSHOREMEN TO
18 TEAMSTERS AND THAT THE MAYOR HAD PERSONALLY COMMITTED OR
19 GIVEN SOME ASSURANCE THAT THE CITY WOULD PAY THE EXTRA COST
20 OF THE SWITCH?

21 A. I BELIEVE WE REFERRED TO IT AS THE MAYOR'S OFFICE.

22 Q. DID YOU TELL THAT TO EACH ONE OF THE EIGHT
23 INDIVIDUALS YOU LISTED FOR US?

24 A. I BELIEVE THERE WERE A COUPLE THAT WANTED MORE
25 DIRECT -- OTHER THAN THE MAYOR'S OFFICE, WHO SPECIFICALLY,
26 AND I BELIEVE THAT WE DISCLOSED THAT IT WAS THE MAYOR.

27 Q. AND WHO WANTED MORE INFORMATION?

28 A. I THINK THAT WAS LINDA LEZOTTE WHO WANTED MORE

SUE HERFURTH, CSR #9645

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1 INFORMATION; I BELIEVE THAT MAYBE CINDY CHAVEZ --

2 Q. ARE YOU GUESSING OR REMEMBERING?

3 A. WELL, MISS CHAVEZ IS SOMEWHAT OF A GUESS. I DON'T
4 SPECIFICALLY REMEMBER THAT.

5 Q. SO YOUR RECOLLECTION IS THAT PRIOR TO THE SEPTEMBER
6 2004 PUBLIC VOTE ON THE AMENDMENT TO THE NORCAL AGREEMENT,
7 YOU SPOKE WITH THESE EIGHT INDIVIDUALS, THE SIX
8 COUNCILMEMBERS YOU NAMED AND TWO OF THEIR AIDES YOU HAVEN'T

9 NAMED, AND TOLD THEM GENERALLY BY WAY OF BACKGROUND THAT THE
10 MAYOR' S OFFICE HAD REQUESTED THIS SWITCH FROM LONGSHOREMEN
11 TO TEAMSTERS AND GIVEN SOME ASSURANCES ABOUT REIMBURSEMENT,
12 CORRECT?

13 A. CORRECT.

14 Q. AND IN YOUR DISCUSSIONS WITH THESE INDIVIDUALS,
15 TRYING TO DO THIS COLLECTIVELY, IF I CAN, DID YOU GIVE THEM
16 A TIME FRAME AS TO WHETHER THIS HAD HAPPENED BEFORE OR AFTER
17 THE ORIGINAL AGREEMENT HAD BEEN ENTERED INTO?

18 A. I BELIEVE THAT -- THE ONES THAT ASKED, YES, I TOLD
19 THEM.

20 Q. WHO ARE THE ONES THAT ASKED? YOU TOLD US MISS
21 LEZOTTE?

22 A. MISS LEZOTTE.

23 Q. AND WHO ELSE?

24 A. I BELIEVE PAT DANDO.

25 Q. I THOUGHT YOU SAID YOU TALKED TO MISS DANDO' S AIDE.

26 A. THROUGH HER AIDE. HIS NAME WAS JOSHUA. THERE WERE
27 TWO OR THREE OR FOUR MAYBE THAT ASKED, BUT OTHER THAN THOSE
28 TWO, I DON' T REMEMBER SPECIFICALLY.

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1 Q. YOUR RECOLLECTION IS THAT YOU TOLD COUNCILMEMBER
2 LEZOTTE AND MISS DANDO' S AIDE JOSHUA THAT THE MAYOR
3 PERSONALLY HAD MADE THIS REQUEST AND GIVEN THE ASSURANCE?

4 A. YES.

5 Q. YOU ALSO TOLD THEM THAT THIS HAD OCCURRED BEFORE
6 THE ORIGINAL CONTRACT HAD BEEN ENTERED INTO?

- 7 A. THAT' S MY RECOLLECTION.
- 8 Q. SO WOULD THERE WOULD HAVE BEEN -- DID YOU ASK
9 COUNCILMEMBER DANDO' S AIDE JOSHUA NOT TO COMMUNICATE TO
10 COUNCILMEMBER DANDO WHAT YOU HAD TOLD HIM?
- 11 A. ABSOLUTELY NOT. SHE COULDN' T BE PRESENT AT THE
12 MEETING. SHE ASKED US TO MEET WITH HIM.
- 13 Q. OKAY. SO WHY THEN, CAN YOU EXPLAIN TO US WHY AT
14 THE COUNCIL MEETING IN DECEMBER, COUNCILMEMBER DANDO ASKED
15 YOU WHO MADE THE REQUEST TO SWITCH?
- 16 A. NO. OTHER THAN THAT, I THINK IT WAS A BAD JUDGMENT
17 CALL, LOOKING BACK, NOT TO HAVE SAID THAT.
- 18 Q. I' M NOT ASKING ABOUT YOUR RESPONSE; I' M ASKING
19 ABOUT HER QUESTION. IF YOU BELIEVE YOU COMMUNICATED THROUGH
20 HER AIDE THE INFORMATION THAT IT WAS THE MAYOR WHO HAD ASKED
21 FOR THE SWITCH FROM LONGSHOREMEN TO TEAMSTERS, WHAT REASON
22 WOULD MISS DANDO HAVE FOR POSING THAT QUESTION TO YOU AT THE
23 COUNCIL MEETING IF SHE ALREADY KNEW THE ANSWER?
- 24 A. I DON' T KNOW.
- 25 Q. WHAT REASON WOULD YOU HAVE FOR NOT GIVING THE
26 ANSWER AGAIN THAT YOU HAD GIVEN TO HER AIDE?
- 27 A. AS I JUST SAID, IT WAS A BAD JUDGMENT CALL ON MY
28 PART. OTHER THAN THAT, I DON' T HAVE ANY IDEA WHY I DID

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- 1 THAT.
- 2 Q. BUT YOU TOLD US IT WAS ON THE ADVICE OF COUNSEL?
- 3 A. PARDON ME?
- 4 Q. I THOUGHT YOU TOLD US YOUR REFUSAL TO GIVE AN

5 ANSWER WAS ON THE ADVICE OF COUNSEL, MR. BAKER.

6 A. I DON'T THINK I SAID IT THAT WAY. I THINK THAT
7 MR. BAKER SAID SOMETHING ABOUT, SAY AS LITTLE AS YOU HAVE TO
8 SAY.

9 Q. LET ME SEE IF THE REPORTER CAN LOCATE THAT FOR US.
10 (THE RECORD WAS READ.)

11 BY MR. FINKELSTEIN:

12 Q. SO WE JUST HEARD A READBACK OF PRIOR TESTIMONY,
13 CORRECT?

14 A. CORRECT.

15 Q. AND IS IT CORRECT, AS I INDICATED TO YOU, THAT YOUR
16 PRIOR ANSWER ON WHY YOU DIDN'T ANSWER COUNCILMEMBER DANDO'S
17 QUESTION ABOUT WHO SPECIFICALLY REQUESTED NORCAL TO SWITCH
18 FROM LONGSHOREMEN TO TEAMSTERS WAS ON THE ADVICE OF COUNSEL,
19 MR. BAKER? ISN'T THAT ACCURATE?

20 A. WELL, MR. BAKER'S ADVICE WAS, DON'T GET UP AND
21 ANSWER ANY QUESTIONS.

22 Q. LET'S TRY TO DO THIS IN AN ORDERLY WAY. FIRST OF
23 ALL, YOUR PRIOR TESTIMONY WAS ON THE ADVICE OF COUNSEL,
24 CORRECT?

25 A. CORRECT.

26 Q. NOW YOU'RE SAYING HIS ADVICE WAS, DON'T GET UP AND
27 ANSWER ANY QUESTIONS?

28 A. CORRECT.

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1 Q. BUT AS I RECALL THE VIDEO, YOU WERE STANDING ON
2 YOUR FEET ANSWERING A QUESTION, CORRECT?

3 A. CORRECT.

4 Q. SO SINCE YOU DID STAND UP AND ANSWER A QUESTION,
5 WHAT WAS IT ABOUT HIS ADVICE THAT CAUSED YOU TO BELIEVE THAT
6 YOU SHOULD ANSWER THE QUESTION IN THE WAY YOU DID?

7 A. FIRST OF ALL, I HAD ALREADY DISCLOSED TO ALMOST ALL
8 THE COUNCIL PERSONS DURING PREVIOUS MEETINGS --

9 Q. WELL, IF THAT'S THE CASE, SIR, WHY NOT JUST REPEAT
10 WHAT YOU CLAIM YOU HAD ALREADY DISCLOSED? WHY --

11 A. IT WAS AN ERROR IN JUDGMENT ON MY PART. I DON'T
12 KNOW.

13 Q. WHAT DO YOU MEAN BY ERROR IN JUDGMENT?

14 A. PERHAPS I SHOULD HAVE SAID SOMETHING.

15 Q. WELL, I'M NOT HERE TO SIT IN JUDGMENT ON YOU. I'M
16 JUST TRYING TO UNDERSTAND WHAT YOUR MOTIVATION AND THINKING
17 WAS.

18 A. I UNDERSTAND.

19 Q. SO CALLING THIS AN ERROR IN JUDGMENT AFTER THE FACT
20 DOESN'T REALLY HELP. I'M TRYING TO GET BACK INTO YOUR MIND
21 BACK IN DECEMBER OF 2004 WHEN YOU DID WHAT YOU DID. WE'RE
22 TRYING TO UNDERSTAND WHY YOU DID WHAT YOU DID. CAN YOU HELP
23 US?

24 A. I UNDERSTAND. MR. BAKER URGED ME NOT TO GET UP AT
25 ALL. THAT MADE ME A LITTLE RELUCTANT ABOUT WHAT I WAS GOING
26 TO SAY. SECONDLY, THE COUNCIL AT THAT POINT HADN'T VOTED
27 YET, AND HER QUESTION TO ME WAS MORE, AS I RECALL NOW --

28 Q. WE CAN PLAY IT BACK.

1 A. OKAY. I WOULD LIKE THAT.

2 Q. GIVE ME A SECOND TO GET SET UP.

3 (PLAYING THE VIDEO.)

4 BY MR. FINKELSTEIN:

5 Q. WE JUST REPLAYED THE CLIP AGAIN. SO DO YOU RECALL
6 THE QUESTION?

7 A. YES.

8 Q. WHAT'S THE ANSWER?

9 A. I THINK NOW THAT I RELOOK AT IT, I ANSWERED
10 HONESTLY. I WASN'T THERE.

11 Q. YEAH, BUT YOU WENT ON TO SAY YOU DIDN'T KNOW. DO
12 YOU WANT ME TO PLAY IT BACK AGAIN?

13 A. I DON'T THINK I NEED TO SEE IT AGAIN.

14 Q. PARDON ME?

15 A. I DON'T THINK I NEED TO SEE IT AGAIN.

16 Q. I'M TRYING TO UNDERSTAND. YOU TOLD US SOME THINGS
17 THAT I'M TRYING TO PROBE. YOU TOLD US THAT YOU TALKED TO
18 EIGHT COUNCILMEMBERS OR THEIR AIDES, SIX COUNCILMEMBERS AND
19 TWO AIDES, THAT YOUR TESTIMONY IS PRIOR TO THE SEPTEMBER
20 2004 VOTE, YOU SHARED WITH THEM THAT IT WAS THE MAYOR'S
21 OFFICE THAT HAD REQUESTED NORCAL TO SWITCH FROM LONGSHOREMEN
22 TO TEAMSTERS, AND AT LEAST TWO OF THOSE COUNCILPERSONS,
23 COUNCILMEMBER LEZOTTE AND COUNCILMEMBER DANDO'S AIDE, YOU
24 SPECIFICALLY SAID IT WAS THE MAYOR HIMSELF.

25 SO YET WHEN COUNCILMEMBER DANDO ASKED YOU PUBLICLY
26 AT THE COUNCIL MEETING FOLLOWING THESE DISCUSSIONS, WHO WAS
27 IT WHO ASKED NORCAL TO SWITCH, YOU DIDN'T SHARE THE ANSWER
28 WITH HER OR ANYONE ELSE AT THE COUNCIL AT THAT MEETING,

1 CORRECT?

2 A. CORRECT.

3 Q. YOU'VE TOLD US YOU FELT RELUCTANT BECAUSE THEY
4 HADN'T VOTED YET?

5 A. CORRECT.

6 Q. WELL, WHEN YOU HAD PRIVATE MEETINGS WITH
7 COUNCILMEMBERS, HAD THEY VOTED YET?

8 A. NO.

9 Q. WHY WAS IT OKAY TO SHARE THAT IN PRIVATE MEETINGS
10 AND PROBLEMATIC FOR YOU TO SHARE IN AN OPEN COUNCIL MEETING?
11 ARE YOU SURE YOU SHARED THAT INFORMATION WITH THEM IN THE
12 PRIOR ONE-ON-ONE DISCUSSIONS?

13 A. I'M SURE I SHARED IT WITH THE ONES THAT ASKED, THE
14 ONES I SPECIFIED.

15 Q. WHY WOULD YOU HAVE BEEN RELUCTANT TO REPEAT THE
16 INFORMATION YOU SHARED PRIVATELY AT THE OPEN COUNCIL
17 MEETING?

18 A. AGAIN, BECAUSE OF THE FACT AT THAT MOMENT THEY
19 HADN'T VOTED. IT WAS AN \$11,000,000 RISK; I DIDN'T WANT TO
20 LOSE ANY VOTES. THAT HAD SOME BEARING, I'M SURE, AND OTHER
21 THAN THAT, I DON'T KNOW.

22 Q. WASN'T THIS \$11,000,000 IN PLAY WHEN YOU HAD YOUR
23 ONE-ON-ONE MEETINGS WITH THESE COUNCILMEMBERS?

24 A. YES.

25 Q. WHY CHANGE FROM THE TIME OF THE ONE-ON-ONE MEETINGS
26 TO THE PUBLIC MEETING?

27 A. I DON'T KNOW. I REALLY DON'T. I'M NOT TRYING TO
28 BE STUBBORN OR ARGUMENTATIVE. I DON'T KNOW WHY I DID THAT.

1 I DON' T KNOW.

2 Q. ISN' T IT SOMEWHAT INCONSISTENT TO FREELY SHARE THE
3 INFORMATION IN ONE-ON-ONE MEETINGS, BUT REFUSE TO SHARE THE
4 INFORMATION IN A PUBLIC FORUM INVOLVING THE SAME
5 INDIVIDUALS?

6 A. SOMEWHAT.

7 Q. YOU HAVE NO EXPLANATION TO EXPLAIN THE
8 INCONSISTENCY?

9 A. NO.

10 MR. FINKELSTEIN: LET ME SEE IF THE JURORS HAVE
11 ANY QUESTIONS FOR YOU.

12 THANK YOU, WHOEVER WROTE THIS QUESTION; I MEANT TO
13 ASK YOU THIS QUESTION.
14 BY MR. FINKELSTEIN:

15 Q. CAN YOU GIVE THE JURY SOME SENSE OF DOLLAR COST OF
16 THE ADDITIONAL CONSIDERATION THAT NORCAL AGREED TO PROVIDE
17 FOR AMENDING THE CONTRACT? THERE WERE THE TEN EXTRA
18 NEIGHBORHOOD CLEANUP --

19 A. TEN EXTRA NEIGHBORHOOD CLEANUP BINS, WHICH MEANS 10
20 OR 12 EMPLOYEES WORKING ON SATURDAY OVERTIME, COMMUNITY
21 CLEANUP, OR THE ELECTRONIC WASTE COLLECTION.

22 Q. I THINK THERE WAS A DOLLAR VALUE --

23 A. OH --

24 Q. ON THE COMPOSITION STUDY?

25 A. \$100,000.

26 Q. WHAT WOULD BE THE TOTAL COST YOU WOULD ESTIMATE FOR
27 THESE ADDITIONAL CONSIDERATIONS?

28 A. \$120,000 OR \$130,000 FOR EVERYTHING.

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1 Q. FOR EVERYTHING. SO WE'RE CLEAR, YOU'RE SAYING THE
2 E-WASTE PROGRAM AND 10 NEIGHBORHOOD CLEANUP BINS WOULD PUT
3 THE COST TO NORCAL AT ABOUT \$120,000 OR \$130,000?

4 A. CORRECT.

5 Q. THROW IN THE \$100,000 COMPOSITION STUDY, THAT
6 BRINGS THE TOTAL TO \$120,000 TO 130,000?

7 A. APPROXIMATELY.

8 MR. FINKELSTEIN: I DON'T THINK I CAN ASK THESE
9 OTHER QUESTIONS FOR TECHNICAL OR EVIDENTIARY REASONS.

10 ANY OTHER QUESTIONS?

11 MR. NICOLETTI, THANK YOU VERY MUCH. YOU'RE FREE
12 TO GO. BEFORE YOU DO, LET ME EXPLAIN, YOU'RE NOT EXCUSED,
13 WHICH MEANS YOU'RE STILL SUBJECT TO BEING RECALLED DURING
14 THE PENDENCY OF THIS INVESTIGATION SHOULD THAT NEED ARISE,
15 AND THE FOREPERSON WILL REMIND YOU OF THE ADMONITION.

16 THE FOREPERSON: I WON'T READ THE LONG VERSION,
17 BUT WHAT YOU SAID, HEARD, AND SAW TODAY IS NOT TO BE
18 COMMUNICATED TO ANYBODY BUT YOUR LAWYER UNDER THE SAME
19 CONDITIONS OF CONFIDENTIALITY.

20 THE WITNESS: VERY GOOD. THANK YOU.

21 MR. FINKELSTEIN: THANK YOU VERY MUCH.

22 LET ME ASK THE JURORS, WOULD YOU LIKE ME TO START
23 ANOTHER WITNESS? JUST GIVE ME A MOMENT.

24 JON BRASLAW,

25 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED

26 AS FOLLOWS:

27 THE WITNESS: I DO.

28 //

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1 EXAMINATION:

2 BY MR. FINKELSTEIN:

3 Q. MR. BRASLAW, COULD YOU PLEASE STATE YOUR FULL LEGAL
4 NAME.

5 A. JON DAVID BRASLAW.

6 Q. HOW DO YOU SPELL YOUR LAST NAME?

7 A. B-R-A-S-L-A-W.

8 Q. WHERE DO YOU WORK, MR. BRASLAW?

9 A. FOR NORCAL WASTE SYSTEMS.

10 Q. WHERE ARE YOUR OFFICES LOCATED?

11 A. 160 PACIFIC AVENUE, SUITE 200, IN SAN FRANCISCO.

12 Q. WHAT'S YOUR POSITION WITH NORCAL?

13 A. I'M A VICE PRESIDENT AND CORPORATE CONTROLLER.

14 Q. AND WHO DO YOU REPORT TO?

15 A. TO MARK LOMELE, CHIEF FINANCIAL OFFICER.

16 Q. AND WHAT ARE YOUR RESPONSIBILITIES AS THE CORPORATE
17 CONTROLLER?

18 A. AS THE CORPORATE CONTROLLER, I'M RESPONSIBLE FOR
19 ALL OF THE ACCOUNTING, TAX WORK, BUDGETS, ANYTHING ELSE
20 RELATED TO FINANCIAL ACTIVITIES. BANKING AND TREASURY
21 FUNCTIONS.

22 Q. OKAY. LET ME JUST -- HOW LONG HAVE YOU HELD THAT
23 POSITION?

24 A. I'VE HELD THAT POSITION SINCE 1995.
25 Q. AND WHEN DID YOU FIRST START WORKING FOR NORCAL?
26 A. 1989.
27 Q. WHAT POSITION DID YOU HAVE BEFORE BECOMING
28 CORPORATE CONTROLLER?

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1 A. I WAS ASSISTANT CORPORATE CONTROLLER.
2 Q. WAS THAT YOUR FIRST POSITION AT NORCAL?
3 A. NO.
4 Q. WHAT DID YOU DO BEFORE THAT?
5 A. I WAS A FINANCIAL ANALYST.
6 Q. BEFORE THAT?
7 A. UH -- I BELIEVE MY INITIAL TITLE WAS OPERATIONS
8 ANALYST.
9 Q. OKAY. AND TELL US WHAT EDUCATIONAL BACKGROUND YOU
10 HAVE.
11 A. I HAVE A DEGREE IN BUSINESS ECONOMICS.
12 Q. FROM?
13 A. FROM THE UNIVERSITY OF CALIFORNIA AT SANTA BARBARA.
14 Q. WHEN DID YOU RECEIVE THAT DEGREE?
15 A. IN 1984.
16 Q. WHAT DID YOU DO AFTER GRADUATING?
17 A. I WORKED FOR FOUR YEARS FOR THE SANTA BARBARA
18 METROPOLITAN TRANSIT DISTRICT.
19 Q. IN WHAT POSITION?
20 A. IN VARIOUS POSITIONS. THERE WAS A SMALL STAFF,
21 ABOUT EIGHT PEOPLE. I WORKED AS CONTROLLER FOR A YEAR, THE

22 LAST YEAR I WAS THERE.

23 Q. AND IS THAT -- AFTER THAT, WHAT DID YOU DO AFTER
24 THAT?

25 A. MOVED TO SAN FRANCISCO AND WORKED FOR A YEAR FOR
26 THE SAN FRANCISCO HILTON HOTEL AS A, I BELIEVE MY POSITION
27 WAS FINANCIAL ANALYST. THAT WAS MY TITLE.

28 Q. AFTER THAT?

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1 A. AFTER THAT I JOINED NORCAL.

2 Q. OKAY. DO YOU HAVE AN ADVANCED DEGREE IN
3 ACCOUNTING?

4 A. NO, I DO NOT.

5 Q. YOU HAVE, DO YOU HAVE ANY LICENSES FROM THE STATE
6 OF CALIFORNIA OF ANY KIND?

7 A. NO, I DO NOT.

8 Q. SO COULD YOU JUST VERY GENERALLY AND BRIEFLY
9 EXPLAIN THE OWNERSHIP OF NORCAL WASTE SYSTEMS, INC., HOW
10 THAT WORKS.

11 A. NORCAL WASTE SYSTEMS, INC. IS OWNED BY THE NORCAL
12 WASTE SYSTEMS EMPLOYEE STOCK OWNERSHIP PLAN AND TRUST.

13 Q. THAT'S REFERRED TO AS AN E-S-O-P OR ESOP?

14 A. CORRECT.

15 Q. TELL US YOUR UNDERSTANDING OF WHAT AN ESOP IS.

16 A. AN ESOP IS A PLAN THAT'S SET UP TO PROVIDE EMPLOYEE
17 OWNERSHIP OF A COMPANY, AND SHARES GENERALLY ARE ALLOCATED
18 OVER TIME TO THE EMPLOYEES AS PARTICIPANTS IN THE ESOP.
19 IT'S LIKE A RETIREMENT BENEFIT, ESSENTIALLY.

20 Q. I WANT TO SEE IF I UNDERSTAND IT CORRECTLY. IN
21 OTHER WORDS, IT'S SOMEWHAT AKIN TO A MUTUAL FUND; YOU DON'T
22 OWN THE COMPANY DIRECTLY, YOU OWN IT THROUGH THE
23 INTERMEDIARY OF THE ESOP?

24 A. THAT'S CORRECT. THE ESOP IS THE LEGAL OWNER OF THE
25 COMPANY.

26 Q. THE EMPLOYEES HAVE SHARES IN THE ESOP, AND THE ESOP
27 OWNS THE COMPANY?

28 A. THE EMPLOYEES HAVE ACCOUNTS WHERE SHARES ARE

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1 ATTRIBUTED TO THE EMPLOYEES. THE SHARES ACTUALLY REMAIN AS
2 PROPERTY OF THE ESOP, SO THERE'S ONLY ONE OWNER OF THE
3 COMPANY.

4 Q. THANK YOU FOR THAT CLARIFICATION. AND DOES THE
5 ESOP HAVE A SEPARATE BOARD OF DIRECTORS FROM THE COMPANY?

6 A. IT DOES. THERE'S AN ESOP ADMINISTRATIVE COMMITTEE.

7 Q. ARE ANY MEMBERS OF THE ESOP ADMINISTRATIVE
8 COMMITTEE OFFICERS OR DIRECTORS OF NORCAL?

9 A. YES, THEY ARE.

10 Q. THE SAME PEOPLE?

11 A. THE SAME PEOPLE AS --

12 Q. AS THE -- IN OTHER WORDS, ARE THERE ANY INDEPENDENT
13 DIRECTORS ON THE ESOP?

14 A. ON THE ESOP, THE ADMINISTRATIVE COMMITTEE, NO. THE
15 ONLY PARTICIPANTS IN THE ESOP ARE EMPLOYEES OR FORMER
16 EMPLOYEES.

17 Q. OKAY. DOES NORCAL GENERATE YEARLY FINANCIAL

- 18 STATEMENTS?
- 19 A. YES, WE DO.
- 20 Q. ARE THOSE STATEMENTS AUDITED?
- 21 A. YES, THEY ARE.
- 22 Q. WHO DOES THE AUDIT WORK?
- 23 A. KPMG, LLP, I BELIEVE IS THE CURRENT LEGAL NAME.
- 24 Q. IS THERE A REASON WHY THE STATEMENTS ARE AUDITED?
- 25 A. UH -- IT'S A REQUIREMENT OF OUR ESOP, A REQUIREMENT
- 26 OF OUR FINANCING AGREEMENTS, ALSO.
- 27 Q. I TAKE IT THEY ARE AUDITED ON AN ANNUAL BASIS?
- 28 A. CORRECT.

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- 1 Q. WHEN DOES THE FISCAL YEAR END FOR YOUR COMPANY?
- 2 A. SEPTEMBER 30.
- 3 Q. SO LET ME SHOW YOU WHAT'S BEEN MARKED AS GRAND JURY
- 4 EXHIBIT 75, WHICH APPEARS TO BE A MEMORANDUM FROM JON
- 5 BRASLAW, CORPORATE CONTROLLER, DATED OCTOBER 31, 2003, TO
- 6 KPMG, CORRECT?
- 7 A. CORRECT.
- 8 Q. DO YOU RECOGNIZE THIS MEMORANDUM?
- 9 A. I DO.
- 10 Q. DID YOU PREPARE THIS?
- 11 A. YES, I DID.
- 12 Q. DID YOU SEND IT TO KPMG?
- 13 A. YES, I DID.
- 14 Q. AND WHAT WAS THE PURPOSE OF DOING THAT?
- 15 A. TO PROVIDE INFORMATION ABOUT AN ACCOUNTING ISSUE

16 WITH RESPECT TO THE SAN JOSE CONTRACT.

17 Q. WHAT WAS THE ACCOUNTING ISSUE?

18 A. THE ACCOUNTING ISSUE RELATED TO THE RECOGNITION OF
19 REVENUE THE COMPANY EXPECTED TO RECEIVE FROM THE CITY OF SAN
20 JOSE RELATED TO, AGAIN, RELATED TO THE RECYCLING CONTRACT.

21 Q. THAT WAS MORE PARTICULARLY RELATED TO THE
22 ADDITIONAL COST OF HAVING ITS SUBCONTRACTOR CWS SWITCH FROM
23 LONGSHOREMEN TO TEAMSTERS?

24 A. THAT'S CORRECT.

25 Q. AND AT THE TIME THAT YOU PREPARED AND SENT THIS
26 MEMO ON OCTOBER 31, 2003, HAD THE COMPANY ALREADY PREPARED
27 A FINANCIAL STATEMENT FOR THE YEAR ENDING SEPTEMBER 30,
28 2003?

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1 A. IN DRAFT FORM.

2 Q. OKAY. AND WAS IT THE DRAFT FINANCIAL STATEMENT
3 THAT WAS BEING REVIEWED BY THE AUDITORS?

4 A. THAT'S CORRECT.

5 Q. ALSO THE COMPANY RECOGNIZED THE EXPECTED MONEY FROM
6 THE CITY OF SAN JOSE AS REVENUE ON ITS DRAFT FINANCIAL
7 STATEMENT?

8 A. THAT'S CORRECT, YES.

9 Q. AND DID THE COMPANY HAVE ANYTHING IN WRITING
10 SUPPORTING THAT REVENUE RECOGNITION FROM THE CITY OF SAN
11 JOSE?

12 A. NO.

13 Q. DO YOU KNOW WHOSE DECISION IT WAS TO REPORT THIS

14 EXPECTED REVENUE FROM THE CITY OF SAN JOSE AS ADDITIONAL
15 REVENUE ON THE DRAFT FINANCIAL STATEMENT?

16 A. IT WAS --

17 Q. LET ME WITHDRAW THAT QUESTION. CAN YOU EXPLAIN TO
18 US HOW IT IS THAT THIS EXPECTED ADDITIONAL REVENUE FROM THE
19 CITY OF SAN JOSE CAME TO BE INCLUDED IN NORCAL'S DRAFT
20 FINANCIAL STATEMENT FOR THE FISCAL YEAR ENDING SEPTEMBER 30,
21 2003?

22 A. I EVALUATED THE INFORMATION RELATED TO THAT REVENUE
23 AND RECEIVABLE, I REVIEWED IT WITH MR. LOMELE, AND WE MADE
24 THE DECISION TO INCLUDE THAT INFORMATION IN THE DRAFT
25 FINANCIAL STATEMENTS BASED ON THE ACCOUNTING INFORMATION WE
26 HAD.

27 Q. AND WHAT INFORMATION DID YOU HAVE UPON WHICH YOU
28 BASED YOUR DECISION?

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1801

1 A. UH -- MY INFORMATION WAS PRIMARILY, UH -- IN MY
2 DISCUSSIONS WITH MR. LOMELE, REPRESENTATIONS THAT WE HAD MET
3 THE CRITERIA FOR RECOGNITION OF REVENUE.

4 Q. NO; I GUESS MAYBE MY QUESTION WASN'T THE BEST
5 QUESTION. LET ME TRY TO ASK IT ANOTHER WAY.

6 I ASSUME THAT WHEN YOU GENERATE YOUR FINANCIAL
7 STATEMENTS, THEY ARE GENERATED FROM SOME ACCOUNTING SYSTEM
8 THAT THE COMPANY USES, CORRECT?

9 A. THAT'S CORRECT.

10 Q. WHAT ACCOUNTING SYSTEM DID THE COMPANY USE THEN?

11 A. J. D. EDWARDS.

12 Q. WAS THERE ANYTHING IN THE ACCOUNTING SYSTEM THAT
13 REFERENCED THIS EXPECTED REVENUE?

14 A. YEAH. THERE WERE JOURNAL ENTRIES RELATED TO IT.

15 Q. SO WHO, DO YOU KNOW WHO MADE THOSE JOURNAL ENTRIES
16 INTO THE ACCOUNTING SYSTEM?

17 A. I BELIEVE THE CONTROLLER OF THAT COMPANY AT THE
18 TIME MADE THE JOURNAL ENTRIES.

19 Q. CONTROLLER OF WHICH COMPANY?

20 A. THE CONTROLLER OF NORCAL SAN JOSE, THE SUBSIDIARY
21 WHERE THE REVENUE WAS RECOGNIZED.

22 Q. AND WHO WAS THAT?

23 A. RICHARD LANSER.

24 Q. SO I TAKE IT THIS PROCESS OF, AT LEAST THE FIRST
25 DRAFT OF THE FINANCIAL STATEMENT, IS A PRETTY AUTOMATED
26 PROCESS?

27 A. IT INCLUDES REVIEW.

28 Q. BUT INITIALLY, I MEAN, YOU START WITH SOMETHING

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1802

1 THAT'S GENERATED BY THE SOFTWARE. IT'S A FIRST ATTEMPT AT A
2 FINANCIAL STATEMENT, RIGHT?

3 A. CORRECT.

4 Q. THEN YOU GO THROUGH AND LOOK AT ITEMS AND MAKE
5 CHANGES IN SOME CASES OR NOT, RIGHT?

6 A. CORRECT.

7 Q. JUST TELL US THE PROCESS OF HOW YOU ASSEMBLE THE
8 FINANCIAL STATEMENT.

9 A. AGAIN, AS YOU SUGGESTED, I LOOK AT THE FINANCIAL

10 STATEMENTS THAT ARE PREPARED FROM THE SYSTEM AND THEN GO
11 THROUGH AND EVALUATE ANY SIGNIFICANT ITEMS, LOOK AT THOSE
12 ITEMS IN REFERENCE TO ACCOUNTING LITERATURE AND MAKE SURE
13 THAT THEY ARE VALID.

14 Q. DO YOU KNOW WHY ARE MR. LANSER INCLUDED A JOURNAL
15 ENTRY FOR THIS EXPECTED REVENUE?

16 A. WE -- I REQUESTED THAT HE DO SO.

17 Q. YOU REQUESTED THAT HE DO SO?

18 A. THAT'S CORRECT.

19 Q. MAYBE I'M NOT BEING CLEAR. I THOUGHT YOU TOLD US
20 THAT THE WAY THIS EXPECTED REVENUE FOUND ITS WAY INTO THE
21 DRAFT FINANCIAL STATEMENT WAS THROUGH A JOURNAL ENTRY THAT
22 HAD BEEN MADE BY NORCAL'S SUBSIDIARY IN SAN JOSE.

23 A. THAT'S CORRECT.

24 Q. ARE YOU SAYING THAT YOU ASKED MR. LANSER TO INCLUDE
25 THAT REVENUE IN THAT JOURNAL ENTRY IN ITS FINANCIAL RECORDS?

26 A. I BELIEVE SO, YES.

27 Q. AND WHY DID YOU DO THAT?

28 A. BASED ON REVIEW OF THE CRITERIA FOR RECOGNIZING

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1803

1 REVENUE, WE FELT THAT THE REVENUE AND RECEIVABLE WAS VALID.

2 Q. I THINK -- I'LL ASK IT ANOTHER WAY. I'M NOT ASKING
3 IF YOU TREATED IT AS REVENUE OR NOT; I'M TRYING TO
4 UNDERSTAND SINCE THERE WAS NO INVOICE OR CONTRACT, OR THERE
5 WAS NO AGREEMENT, THIS IS ALL ORAL, CORRECT? THAT'S YOUR
6 UNDERSTANDING?

7 A. THAT'S CORRECT.

8 Q. HOW DID ANYBODY KNOW THIS WAS AN ITEM THAT MIGHT OR
9 MIGHT NOT BE INCLUDABLE IN REVENUE; WHAT'S THE ORIGIN OF
10 THAT?

11 A. THE ORIGIN OF --

12 Q. THE ENTRY. HOW WOULD THE INFORMATION ABOUT THE
13 ENTRY GET COMMUNICATED TO THE FINANCIAL PEOPLE AT NORCAL?

14 A. IT WAS, FROM MY PERSPECTIVE, BASED ON A DISCUSSION
15 WITH OUR CHIEF FINANCIAL OFFICER, WHO REPRESENTED TO ME THAT
16 WE HAD A RECEIVABLE FROM THE CITY RELATED TO THE
17 DIFFERENTIAL IN LABOR COSTS.

18 Q. IN LABOR COSTS?

19 A. CORRECT.

20 Q. WHO NORMALLY MAKES INPUTS TO NORCAL SAN JOSE'S
21 FINANCIAL RECORDS IN THE FIRST INSTANCE? IS IT SOMEONE DOWN
22 IN SAN JOSE?

23 A. GENERALLY.

24 Q. IS IT MR. LANSER?

25 A. GENERALLY.

26 Q. WITH REGARD TO THIS ITEM, WAS IT MR. LANSER WHO
27 INITIALLY INPUT IT INTO YOUR SYSTEM, THIS ITEM, AS A
28 POSSIBLE RECEIVABLE?

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1804

1 A. I DON'T KNOW IF I UNDERSTAND YOUR QUESTION.

2 Q. I'M NOT SURE YOU DO EITHER. SOMEONE HAS TO ENTER
3 THESE ITEMS INTO THE SYSTEM, CORRECT?

4 A. CORRECT.

5 Q. SO WE'RE TRYING TO UNDERSTAND IN THIS CASE WHERE

6 IT'S A LITTLE BIT UNUSUAL BECAUSE THERE IS NO WRITTEN
7 DOCUMENTATION TO SUPPORT IT, CORRECT?

8 A. CORRECT.

9 Q. HOW THIS CAME TO BE ENTERED IN THE FIRST INSTANCE
10 INTO THE NORCAL ACCOUNTING SYSTEM; WHO PICKED IT UP AND WHY.
11 THAT'S WHAT I'M TRYING TO --

12 A. I WAS AWARE THAT THERE WAS A DIFFERENTIAL BETWEEN
13 THE LABOR COSTS INCLUDED IN THE ORIGINAL BID AND THE LABOR
14 COSTS THAT WE WERE INCURRING UNDER THE CONTRACT BETWEEN CWS
15 AND THE TEAMSTERS.

16 Q. RIGHT.

17 A. AND THEREFORE, AS PART OF THE YEAR-END PROCESS, I
18 REVIEWED THAT AS PART OF MY FINANCIAL REVIEW AND DETERMINED
19 THAT THIS WAS A VALID RECEIVABLE AND REVENUE TO BE
20 RECOGNIZED.

21 Q. AND HOW DID YOU MAKE A DETERMINATION; WHAT DID YOU
22 DO, DID YOU TALK TO PEOPLE --

23 A. I REVIEWED THE ACCOUNT CRITERIA FOR RECOGNITION OF
24 REVENUE.

25 Q. THAT'S A GENERAL STANDARD YOU HAD TO APPLY TO THIS
26 SPECIFIC FACT, RIGHT?

27 A. I THEN DISCUSSED THAT WITH MY BOSS, PROVIDED
28 INFORMATION REGARDING THE ISSUE, AND I THEN DOCUMENTED, IN

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1805

1 PART DOCUMENTED IN A MEMO TO KPMG AND AGAIN DETERMINED THAT
2 IT WAS A VALID RECEIVABLE.

3 Q. OKAY. AND WHAT INFORMATION DID MR. LOMELE PROVIDE

4 YOU WITH?

5 A. HE INDICATED THAT THERE WAS SOME TYPE OF AGREEMENT
6 BETWEEN THE CITY OF SAN JOSE AND THE COMPANY FOR THE COMPANY
7 TO BE REIMBURSED FOR THE ADDITIONAL LABOR COSTS.

8 Q. AND AS BEST -- HOW DID HE COMMUNICATE THIS TO YOU,
9 WAS THIS ORAL?

10 A. CORRECT.

11 Q. AND DID HE ELABORATE ANY FURTHER THAN THAT?

12 A. UH -- ELABORATED --

13 Q. LET ME STOP YOU. WHEN MR. LOMELE GAVE YOU
14 THIS -- STRIKE THAT.

15 WHEN YOU LOOKED AT THE INITIAL FINANCIAL
16 STATEMENT, WAS THIS RECEIVABLE OR REVENUE ALREADY INCLUDED?

17 A. (NO RESPONSE.)

18 Q. THE VERY FIRST DRAFT OF THE FINANCIAL STATEMENT,
19 DID IT ALREADY HAVE IT IN?

20 A. I DON'T RECALL SPECIFICALLY.

21 Q. I'M TRYING TO UNDERSTAND IF THIS RECEIVABLE
22 PERCOLATED UP FROM A SUBSIDIARY OR WHETHER SOMEBODY AT
23 CORPORATE DECIDED, WE CAN TREAT IT AS SUCH.

24 A. AS I INDICATED, I DIRECTED MR. LANSER, WHO I
25 BELIEVE IN FACT DIRECTED ONE OF HIS STAFF TO RECORD THE
26 ENTRY IN THE FINANCIAL RECORDS IN SAN JOSE.

27 Q. WOULD IT BE FAIR TO SAY THAT THIS WAS ADDED TO THE
28 RECORDS SOME TIME AFTER THE FACT?

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1806

1 A. IT WOULD BE FAIR TO SAY THAT IT WAS AN ENTRY THAT I

2 DIRECTED THE ACCOUNTING STAFF AT SAN JOSE TO MAKE.

3 Q. OKAY. AND WHY DID YOU DIRECT THEM TO MAKE THIS
4 ENTRY, BECAUSE OF YOUR DISCUSSION WITH MR. LOMELE?

5 A. BECAUSE I DETERMINED THAT IT WAS A RECEIVABLE BASED
6 ON THE FACTS AS I UNDERSTOOD THEM; I BELIEVED IT TO BE A
7 VALID RECEIVABLE.

8 Q. I SEE THE PROBLEM WITH MY QUESTION. HOW DID YOU
9 LEARN ABOUT THIS POTENTIAL RECEIVABLE?

10 A. AGAIN, FROM DISCUSSIONS WITH MR. LOMELE ABOUT THE
11 DIFFERENTIAL BETWEEN THE LABOR COSTS.

12 Q. AND AS BEST AS YOU CAN RECALL, CAN YOU TELL US WHAT
13 HE SAID.

14 A. I CAN'T RECALL THE SPECIFIC WORDS THAT HE USED.

15 Q. I UNDERSTAND, BUT CAN YOU TELL US THE GIST OF WHAT
16 HE SAID, THE IMPORT?

17 A. THE GIST OF WHAT HE SAID WAS THE CITY OF SAN JOSE
18 HAD MADE A COMMITMENT OR INTENDED TO REIMBURSE THE COMPANY
19 FOR ADDITIONAL LABOR COSTS ASSOCIATED WITH THIS CONTRACT.

20 Q. OKAY. DID SOMEBODY WHO WORKS IN ACCOUNTING, DID
21 YOU ASK THEM WHETHER THERE WAS ANY WRITTEN DOCUMENTATION TO
22 SUPPORT THIS?

23 A. YES.

24 Q. WHAT DID HE SAY?

25 A. HE SAID THERE WAS NOT, I BELIEVE.

26 Q. SORRY?

27 A. AGAIN, I WANT TO CLARIFY, I DON'T HAVE A GOOD
28 RECOLLECTION OF SPECIFIC WORDS IN THE CONVERSATIONS.

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- 1 Q. I UNDERSTAND.
- 2 A. I'M PROVIDING THE GIST OF OUR CONVERSATIONS.
- 3 Q. WE UNDERSTAND YOU'RE NOT TELLING US THE EXACT
- 4 WORDS; YOU'RE TELLING THE IMPORT OF WHAT WAS SAID?
- 5 A. CORRECT.
- 6 Q. WHY DID YOU ASK MR. LOMELE WHETHER HE HAD ANYTHING
- 7 IN WRITING TO SUPPORT THIS?
- 8 A. ONE OF THE CRITERIA FOR RECOGNITION OF REVENUE IS
- 9 EVIDENCE OF AN ARRANGEMENT.
- 10 Q. OKAY. SO A WRITING WOULD BE SUCH EVIDENCE?
- 11 A. A WRITING WOULD BE THE MOST PERSUASIVE EVIDENCE.
- 12 Q. AND SO WHEN HE TOLD YOU HE HAD NOTHING IN WRITING,
- 13 WHAT DID YOU SAY?
- 14 A. I EXPRESSED MY CONCERN WITH MEETING THE CRITERIA OF
- 15 REVENUE RECOGNITION.
- 16 Q. WHAT DID MR. LOMELE SAY, IN ESSENCE?
- 17 A. I BELIEVE HE REITERATED THE FACT THAT THE COMPANY
- 18 HAD GOTTEN SOME TYPE OF COMMITMENT FROM THE CITY TO PROVIDE
- 19 REIMBURSEMENT FOR THOSE COSTS.
- 20 Q. DID HE TELL YOU ANYTHING ELSE?
- 21 A. I DON'T RECALL SPECIFICALLY.
- 22 Q. OKAY. WELL, LET'S LOOK AT YOUR MEMORANDUM. MAYBE
- 23 I'LL GET AT IT ANOTHER WAY. IN YOUR MEMORANDUM, IN THE
- 24 SECOND FULL PARAGRAPH ON PAGE ONE, YOU RECITE SOME HISTORY
- 25 ABOUT THIS RECEIVABLE, CORRECT?
- 26 A. CORRECT.
- 27 Q. WHERE DID YOU GET THE INFORMATION FOR YOUR MEMO?
- 28 A. FROM ANALYSIS THAT WAS, THAT I ASSISTED IN THE

1 PREPARATION OF.

2 Q. WHAT ANALYSIS?

3 A. ANALYSIS THAT MR. LOMELE AND I DID RELATED TO THE
4 COSTS OF THE CONTRACT AND THE DIFFERENTIAL BETWEEN THE LABOR
5 COSTS UNDER THE TEAMSTERS' AGREEMENT AND WHAT WOULD HAVE
6 BEEN UNDER THE ILWU AGREEMENT.

7 Q. I UNDERSTAND YOU ARE A NUMBERS PERSON; YOUR ANSWER
8 IS TALKING ABOUT THE NUMBERS. I'M TALKING ABOUT SOMETHING
9 ELSE.

10 A. OKAY.

11 Q. LET ME SEE IF I CAN -- YOU SAY IN YOUR
12 MEMO -- FIRST OF ALL, DID YOU WRITE THIS MEMO?

13 A. YES, I DID.

14 Q. YOU SAY:

15 AS PART OF THE CONTRACTUAL ARRANGEMENTS, NORCAL
16 AGREED TO COMPENSATE CWS FOR ANY LABOR COST DIFFERENTIAL
17 BETWEEN THE INTERNATIONAL LONGSHOREMEN WORKERS UNION, ILWU,
18 WAGES PAID BY CWS AT THE TIME OF THE CONTRACT AND THE
19 TEAMSTERS' WAGES UNDER A NEW CONTRACT SIGNED AS PART OF THE
20 OPERATION OF THE NEW FACILITY.

21 YOU WROTE THAT SENTENCE, RIGHT?

22 A. YES.

23 Q. WHERE DID YOU GET THE INFORMATION FOR THAT
24 SENTENCE?

25 A. FROM MR. LOMELE.

26 Q. AND YOU GO ON TO SAY:

27 THE CITY REQUIRED THE USE OF THE TEAMSTERS
28 INSTEAD OF ILWU WORKERS AS PART OF THE FINAL

1 CONTRACT NEGOTIATIONS WITH NORCAL.

2 CORRECT?

3 A. THAT'S CORRECT. THAT'S WHAT IT SAYS, YES.

4 Q. WHERE DID YOU GET THE IDEA THAT WAS REQUIRED AS
5 PART OF THE FINAL CONTRACT NEGOTIATIONS?

6 A. AGAIN, IT'S DISCUSSIONS THAT I HAD WITH MR. LOMELE
7 REGARDING THE CONTRACT THAT HAD OCCURRED OVER, I ASSUME OVER
8 THE PERIOD OF A YEAR OR 18 MONTHS FROM THE BEGINNING OF THE
9 CONTRACT. WE DISCUSSED ACCOUNTING ISSUES RELATED TO IT,
10 THIS BEING ONE OF THEM.

11 Q. THAT FACT COMES FROM MR. LOMELE THAT THE CITY
12 REQUIRED THAT AS PART OF THE FINAL CONTRACT NEGOTIATIONS?

13 A. I BELIEVE IT DOES.

14 Q. DID YOU HAVE DISCUSSIONS WITH MR. SANGIACOMO?

15 A. NOT SPECIFICALLY ABOUT THE ISSUE.

16 Q. DID YOU HAVE DISCUSSIONS WITH BILL JONES ABOUT THIS
17 ISSUE?

18 A. NO, I DID NOT.

19 Q. DID YOU HAVE DISCUSSIONS WITH JOHN NICOLETTI ABOUT
20 THIS ISSUE?

21 A. NO, I DID NOT.

22 Q. DID YOU HAVE DISCUSSIONS WITH ARCHIE HUMPHREY ABOUT
23 THIS ISSUE?

24 A. I DON'T BELIEVE SO.

25 Q. SO THE SINGLE SOURCE YOU RELIED ON WAS MR. LOMELE,
26 CORRECT?

27 A. CORRECT. MY FOCUS WAS THE ACCOUNTING ISSUES AS
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28 OPPOSED TO ANY OTHER CONTRACTUAL ISSUES WITH RESPECT TO THE

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1810

1 SAN JOSE ACTIVITY.

2 Q. IN THIS CASE THE ACCOUNTING ISSUE, RESOLUTION OF
3 THE ACCOUNTING ISSUE DEPENDS ON WHETHER THE COLLECTION IS
4 REASONABLY ASSURED, RIGHT?

5 A. CORRECT.

6 Q. WHETHER COLLECTION IS REASONABLY ASSURED COULD
7 DEPEND ON THE CIRCUMSTANCES GIVING RISE TO THIS RECEIVABLE?

8 A. CORRECT.

9 Q. THAT'S WHY YOU ATTEMPTED TO, IN YOUR MEMO, SET OUT
10 THE CIRCUMSTANCES GIVING RISE TO THE RECEIVABLE?

11 A. CORRECT.

12 Q. IT WAS IMPORTANT TO KNOW WHETHER THAT INFORMATION
13 WAS ACCURATE OR NOT, RIGHT?

14 A. YES.

15 Q. YOU GO ON TO SAY, THE COMPANY AND THE CITY HAVE
16 AGREED ON THE LEVEL OF REIMBURSEMENT. AND YOU QUOTE NUMBERS
17 FOR 2002 AND 2003, CORRECT?

18 A. CORRECT.

19 Q. WHERE DID YOU GET THOSE NUMBERS FROM?

20 A. I BELIEVE I GOT THE NUMBERS FROM MR. LOMELE.

21 Q. OKAY. SO WOULD IT BE ACCURATE THEN THAT YOUR SOLE
22 SOURCE OF INFORMATION FOR THIS MEMO IS MR. LOMELE?

23 A. I BELIEVE THAT I ALSO REVIEWED CONTRACT ADDENDA
24 RELATED TO THE CONTRACTS BETWEEN NORCAL AND CWS WHICH MAY
25 HAVE INCLUDED -- AGAIN, I DON'T RECALL WHETHER THAT

26 SPECIFICALLY RELATED TO THIS ISSUE OR OTHER ISSUES BETWEEN
27 THE COMPANY AND CWS, AS THERE WERE SEVERAL ACCOUNTING ISSUES
28 ASSOCIATED WITH THE SAN JOSE CONTRACT.

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1811

1 Q. WHAT OTHER ACCOUNTING ISSUES WERE THERE ASSOCIATED
2 WITH THE CONTRACT?

3 A. UH -- THE COMPANY WAS WORKING WITH CWS, AND THERE
4 WAS SOME QUESTIONS ABOUT, I BELIEVE IT WAS REIMBURSEMENT OF
5 TRANSPORTATION COSTS.

6 Q. FOR A LOAD OF RECYCLABLES CWS WAS NOT ABLE TO
7 RECEIVE AND PROCESS?

8 A. THAT'S CORRECT. ALSO, MY RECOLLECTION IS THAT
9 THERE WERE SOME QUESTIONS AS TO WHAT THE ACTUAL LABOR COSTS
10 AND LABOR DIFFERENTIALS WERE.

11 Q. OKAY. LET ME SHOW YOU WHAT HAS BEEN MARKED AS
12 EXHIBIT 15. YOU MENTIONED SOMETHING ABOUT AN AMENDMENT OR
13 ADDENDUM. IS THIS THE DOCUMENT YOU REVIEWED IN PREPARATION
14 OF YOUR OCTOBER 31, 2003 MEMO TO KPMG?

15 A. I BELIEVE SO.

16 Q. THERE ARE NO NUMBERS SET FORTH IN THIS DOCUMENT,
17 ARE THERE?

18 A. NO NUMBERS RELATED TO THE AMOUNTS IN QUESTION,
19 CORRECT.

20 Q. AND THERE IS NOTHING IN THIS ADDENDUM -- IS THERE
21 ANYTHING IN THIS ADDENDUM ABOUT THE CITY AGREEING TO
22 REIMBURSE NORCAL?

23 A. NO, THERE IS NOT.

24 Q. DO YOU RECALL WHEN IT WAS YOU FIRST SAW THAT
25 AGREEMENT?

26 A. I DON'T RECALL SPECIFICALLY.

27 Q. WAS IT IN CONNECTION WITH THIS ISSUE WE HAVE BEEN
28 TALKING ABOUT, THE ACCOUNTING TREATMENT OF THE EXPECTED

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1812

1 ADDITIONAL FUNDS FROM THE CITY OF SAN JOSE, OR WAS IT SOME
2 OTHER --

3 A. I DON'T RECALL SPECIFICALLY. IT'S NOT UNUSUAL AS
4 PART OF MY JOB TO REVIEW CONTRACTS OR CHANGES TO CONTRACTS.

5 Q. NOW, ATTACHED TO EXHIBIT 75, YOUR MEMORANDUM, THERE
6 ARE SOME SPREADSHEETS. THE FIRST ONE IS DATED JUNE 3, 2003.
7 DID YOU PREPARE THAT SPREADSHEET?

8 A. I BELIEVE SO.

9 Q. AND DID YOU PREPARE IT IN JUNE OF 2003?

10 A. YOU KNOW, I DON'T RECALL. ACTUALLY, I DON'T RECALL
11 SPECIFICALLY PREPARING THIS SPREADSHEET, AND I'M NOT SURE,
12 I'M NOT CONFIDENT THAT I DID.

13 Q. OKAY. DO YOU KNOW WHO DID PREPARE IT?

14 A. NO, I DON'T. I MAY HAVE.

15 Q. OKAY. THERE'S A SECOND SPREADSHEET ATTACHED TO
16 YOUR MEMORANDUM. DO YOU KNOW WHO PREPARED THAT SPREADSHEET?

17 A. AGAIN, I DON'T KNOW SPECIFICALLY. I BELIEVE I DID.
18 THAT LOOKS MORE CONSISTENT WITH --

19 Q. THAT LOOKS WHAT?

20 A. CONSISTENT WITH MY STYLE OF PREPARATION.

21 Q. OKAY. DID YOU PREPARE IT IN JUNE OF '03?

- 22 A. I DON'T RECALL SPECIFICALLY.
23 Q. DO YOU HAVE ANY REASON --
24 A. I WOULD EXPECT IF I DATED IT.
25 Q. DO YOU HAVE ANY REASON TO DOUBT THE DATE ON THE
26 SPREADSHEET AS BEING ACCURATE?
27 A. NO.
28 Q. AND WHY DID YOU PREPARE THIS SPREADSHEET, ASSUMING

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1813

- 1 YOU DID?
2 A. UH -- I BELIEVE TO ASSIST IN THE CALCULATION OF THE
3 UH -- LABOR DIFFERENTIAL.
4 Q. WHY WERE YOU WORKING ON CALCULATING A LABOR
5 DIFFERENTIAL?
6 A. AGAIN, THERE WAS A LABOR DIFFERENTIAL BETWEEN THE
7 ORIGINAL COSTS THAT WERE SUBMITTED IN THE BID FOR THE ILWU
8 LABORERS AND THE COST OF THE TEAMSTERS' LABOR.
9 Q. WHAT WAS GOING ON IN JUNE 2003 THAT CAUSED YOU TO
10 WORK ON THIS AT THAT TIME?
11 A. I BELIEVE THAT WE HAD MADE A COMMITMENT TO CWS TO
12 PAY THEM THAT DIFFERENTIAL, AND IT NEEDED TO BE CALCULATED
13 IN PART BECAUSE WE NEEDED TO PAY CWS, ESSENTIALLY.
14 Q. OKAY. LET ME SHOW YOU WHAT HAS BEEN MARKED AS
15 EXHIBIT 122. THESE ARE SOME PAGES FROM KPMG'S AUDIT NOTES,
16 AND I WANT TO DIRECT YOUR ATTENTION TO A PAGE WHICH IS
17 DENOMINATED AS PAGE 21, AND THE BATES NUMBER IS KPMG000143.
18 YOU TOLD US THE AUDITORS HAD SOME QUESTION ABOUT THE
19 TREATMENT OF THIS REVENUE, CORRECT?

- 20 A. THAT'S CORRECT.
- 21 Q. AND ULTIMATELY, WAS IT TAKEN OUT OF THE FINANCIAL
- 22 STATEMENT FOR THE YEAR ENDING '03?
- 23 A. NO, IT WAS NOT. NO; IT WAS INCLUDED IN THE
- 24 FINANCIAL STATEMENTS THAT WERE ISSUED.
- 25 Q. AND THE AUDITOR SIGNED OFF ON THAT?
- 26 A. THAT'S CORRECT.
- 27 Q. NOW, NOTE FOUR ON THIS ISSUE, ENTITLED,
- 28 "COLLECTABILITY IS REASONABLY ASSURED." IT SAYS:

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1814

- 1 THE FOLLOWING IS BASED ON A DISCUSSION WITH
- 2 MIKE SANGIACOMO, CEO, MARK LOMELE, CFO, AND JON
- 3 BRASLAW, CONTROLLER.
- 4 CORRECT?
- 5 A. CORRECT.
- 6 Q. CAN YOU TELL US WHICH PORTION OF THIS INFORMATION,
- 7 IF ANY, YOU CONFIRMED TO THE AUDITORS.
- 8 A. I PARTICIPATED IN THE CONFERENCE CALL WITH THE
- 9 AUDITORS TO DISCUSS THE ISSUES.
- 10 Q. AND WHO ELSE WAS ON THE CONFERENCE CALL?
- 11 A. MR. LOMELE AND MR. SANGIACOMO.
- 12 Q. AND COULD YOU TELL US, WHEN DID THIS CONFERENCE
- 13 CALL TAKE PLACE?
- 14 A. I DON'T RECALL SPECIFICALLY THE DATE.
- 15 Q. WAS IT LATER IN, AFTER YOUR --
- 16 A. IT WAS AFTER THE MEMO.
- 17 Q. WAS IT STILL IN 2003?

18 A. YES.
19 Q. AND DO YOU RECALL WHEN THE AUDIT REPORT CAME OUT?
20 A. UH -- IT CAME OUT, I BELIEVE, IN LATE DECEMBER.
21 Q. SO IT WOULD HAVE BEEN BETWEEN --
22 A. OCTOBER 31.
23 Q. AND LATE DECEMBER, '03?
24 A. CORRECT. I BELIEVE AROUND THE BEGINNING OF
25 DECEMBER.
26 Q. OKAY. AND DO YOU RECALL WHAT MR. SANGIACOMO SAID
27 TO THE AUDITORS IN THIS CONFERENCE CALL?
28 A. I DON'T RECALL THE SPECIFIC LANGUAGE USED.

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1815

1 Q. DO YOU REMEMBER THE GIST -- WELL, LET ME ASK YOU
2 THIS: THE STATEMENT THAT "THE FINANCE DIRECTOR TO THE MAYOR
3 FOR THE CITY OF SAN JOSE, THE MAYOR, AND THE REPRESENTATIVE
4 OF THE CITY ATTORNEY'S OFFICE HAVE ALL AGREED THAT THE CITY
5 WILL COMPENSATE NORCAL FOR THE EXCESS COST OF USING THE
6 TEAMSTERS' UNION OVER THE ILWU."
7 WHO MADE THAT STATEMENT TO THE AUDITORS?
8 A. I BELIEVE MR. SANGIACOMO. I DON'T RECALL FOR
9 CERTAIN THE CONVERSATION.
10 Q. DID MR. SANGIACOMO -- IS THAT YOUR BEST
11 RECOLLECTION, THAT IT WAS MR. SANGIACOMO?
12 A. THAT'S MY BEST RECOLLECTION.
13 Q. I TAKE IT YOU HAD NO FIRST-HAND KNOWLEDGE WHETHER
14 THAT WAS TRUE OR NOT, RIGHT?
15 A. THAT'S CORRECT.

16 Q. YOU HAD NO WAY TO JUDGE WHETHER THAT WAS TRUE OR
17 NOT?

18 A. I HAD NO FIRST-HAND KNOWLEDGE THAT'S CORRECT.

19 Q. OKAY.

20 MR. FINKELSTEIN: I THINK THAT'S ALL THE QUESTIONS
21 I HAVE. LET ME SEE IF THE JURY HAS ANY QUESTIONS. WHILE
22 THEY ARE THINKING, LET ME ASK A FEW MORE QUESTIONS.
23 BY MR. FINKELSTEIN:

24 Q. IN THE FOLLOWING FISCAL YEAR, WAS THERE AN
25 ADJUSTMENT MADE TO RECOGNITION OF REVENUE FOR YEAR ENDING
26 SEPTEMBER 30, 2003, RELATED TO THE ADDITIONAL COST OF GOING
27 FROM LONGSHOREMEN TO TEAMSTERS?

28 A. UH -- WE CONTINUED TO RECOGNIZE THE REVENUE IN THE

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1816

1 NEXT FISCAL YEAR, FISCAL YEAR 2004. AND THEN AGAIN ISSUED
2 THE FINANCIAL STATEMENTS IN 2004. I BELIEVE THE RECEIVABLE
3 AT THAT POINT WAS \$5.1 MILLION, A LITTLE BIT IN EXCESS OF
4 FIVE MILLION.

5 Q. AND WAS -- DID AUDITORS SIGN OFF ON THAT AS WELL?

6 A. THEY DID.

7 Q. SO YOUR RECOLLECTION IS THAT THE AUDITORS APPROVED
8 THE RECOGNITION OF REVENUE RELATED TO THE ADDITIONAL COST OF
9 GOING FROM LONGSHOREMEN TO TEAMSTERS FOR THE FINANCIAL
10 STATEMENT OF THE FISCAL YEAR ENDING SEPTEMBER 30, 2003?

11 A. THAT'S CORRECT.

12 Q. AND WHO FROM KPMG WAS ON THE OTHER END OF THIS
13 CONFERENCE CALL?

14 A. PAULETTE DEFALCO, WHO WAS THE ENGAGEMENT PARTNER;
15 WILLIAM SCHUMANN, WHO WAS THE SENIOR MANAGER FOR KPMG, AND
16 TED HARMS, WHO WAS THE CONCURRING PARTNER FOR KPMG. I
17 BELIEVE PAULETTE DEFALCO AND WILLIAM SCHUMANN WERE PRESENT
18 IN THE ROOM, AND MR. HARMS WAS ON CONFERENCE CALL.

19 MR. FINKELSTEIN: ANY QUESTIONS?

20 BY MR. FINKELSTEIN:

21 Q. TO YOUR KNOWLEDGE, DID NORCAL ATTEMPT TO SUBMIT ANY
22 INVOICES TO THE CITY OF SAN JOSE FOR THESE ADDITIONAL
23 REVENUES?

24 A. I DON'T BELIEVE SO.

25 Q. WHY NOT?

26 A. MY UNDERSTANDING WAS THAT THE REIMBURSEMENT
27 REQUIRED AN AMENDMENT TO THE CONTRACT WHICH WAS REQUIRED TO
28 BE APPROVED BY THE CITY COUNCIL. AND UNTIL THAT TIME THERE

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1817

1 WAS -- NO INVOICES WERE SUBMITTED.

2 MR. FINKELSTEIN: OKAY. ANYTHING ELSE? WITH
3 REGARD TO THE -- WE HAVE BEEN TALKING ABOUT THE FISCAL YEAR
4 ENDING SEPTEMBER '03. WHAT ABOUT THE FISCAL YEAR ENDING
5 SEPTEMBER '04; WAS THERE ADDITIONAL REVIEW BY KPMG OF THIS
6 ISSUE AND ADDITIONAL DISCUSSION AND CLARIFYING OF THE ISSUE?

7 A. THERE WAS.

8 Q. WAS THERE ANOTHER CONFERENCE CALL?

9 A. I DON'T BELIEVE SO. THE AUDITED FINANCIAL
10 STATEMENTS FOR FISCAL YEAR 2004 WERE ISSUED AFTER THE CITY
11 COUNCIL HAD APPROVED THE AMENDMENT TO THE CONTRACT, SO AT

12 THAT TIME THERE WAS --

13 Q. NO ISSUE?

14 A. ESSENTIALLY NO ISSUE. THERE WAS ADDITIONAL
15 EVIDENCE TO SUPPORT THE ARRANGEMENT AND THE COLLECTABILITY
16 FOR THE TWO CRITERIA IN QUESTION.

17 MR. FINKELSTEIN: THANK YOU VERY MUCH.

18 ANY OTHER QUESTIONS?

19 MR. BRASLAW, THANK YOU VERY MUCH. YOU'RE FREE TO
20 GO TODAY, BUT NOT EXCUSED. WHAT THAT MEANS IS YOU ARE
21 SUBJECT TO BEING RECALLED AT A LATER TIME SHOULD THE NEED
22 ARISE. I DON'T ANTICIPATE THAT, BUT IT COULD HAPPEN.
23 THAT'S ONLY AS LONG AS THE GRAND JURY REMAINS IMPANELED
24 UNTIL THE GRAND JURY TERM EXPIRES AT THE END OF JUNE, SO IT
25 WILL BE BEFORE ACTUALLY THE END OF JUNE.

26 THE FOREPERSON HAS AN ADMONITION HE WANTS YOU TO
27 LISTEN TO VERY CAREFULLY, AND I'LL GIVE YOU FURTHER
28 INSTRUCTIONS ABOUT THAT.

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1818

1 THE FOREPERSON: YOU ARE ADMONISHED NOT TO REVEAL
2 TO ANY PERSON, EXCEPT AS DIRECTED BY THE COURT, WHAT
3 QUESTIONS WERE ASKED OR WHAT RESPONSES WERE GIVEN OR ANY
4 OTHER MATTERS CONCERNING THE NATURE OR SUBJECT OF THE GRAND
5 JURY'S INVESTIGATION WHICH YOU LEARNED DURING YOUR
6 APPEARANCE BEFORE THE GRAND JURY, UNLESS AND UNTIL TIME AS
7 THE TRANSCRIPT OF THIS GRAND JURY PROCEEDING IS MADE PUBLIC.
8 VIOLATION OF THIS ADMONITION MAY BE PUNISHABLE AS A CONTEMPT
9 OF COURT.

10 THE WITNESS: IF I MAY, THAT INCLUDES MY ATTORNEY?

11 MR. FINKELSTEIN: LET ME EXPLAIN THAT SITUATION.
12 YOU CAN SHARE THE INFORMATION WITH COUNSEL PROVIDED THAT
13 COUNSEL AGREES NOT TO FURTHER DISCLOSE THE INFORMATION TO
14 ANYONE ELSE.

15 THE WITNESS: OKAY.

16 MR. FINKELSTEIN: OKAY? THANK YOU VERY MUCH.
17 THAT CONCLUDES THE WITNESSES FOR TODAY. AND WE
18 HAVE A WITNESS FOR TOMORROW ALL DAY, I THINK, MOST OF THE
19 DAY, STARTING AT 10:00 A.M.

20 THE FOREMAN: DO YOU HAVE ANY EXPECTATION AT THIS
21 POINT OF NEEDING US ON FRIDAY?

22 MR. FINKELSTEIN: NO. WE WILL NOT BE ABLE TO
23 PRESENT WITNESSES ON FRIDAY.

24 A JUROR: HOW ABOUT THE FOLLOWING MONDAY?

25 MR. FINKELSTEIN: I DON'T HAVE ANYONE LINED UP FOR
26 MONDAY YET, AND WHETHER WE GO -- THIS DISCUSSION CAN GO OFF
27 THE RECORD.

28 (DISCUSSION ABOUT SCHEDULING.)

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1819

1 MR. FINKELSTEIN: ONE OF THE JURORS HAS A
2 QUESTION.

3 A JUROR: YOU SAID THAT YOU WERE CONTINUING TO
4 HAVE WITNESSES FOR THE EVIDENTIARY PORTION OF THIS. I
5 WANTED TO KNOW IF THERE WAS SOMETHING AFTER THAT.

6 MR. FINKELSTEIN: WELL, AS WE'VE SAID AT THE
7 OUTSET, THIS WAS A FORMAL INVESTIGATION, AND THERE ARE A

8 NUMBER OF OPTIONS THAT THE JURY MAY HAVE BEFORE IT IN TERMS
9 OF TAKING FORMAL ACTIONS, WHICH CONCLUDE AN ACCUSATION,
10 WHICH IS A LEGAL PROCESS FOR REMOVING SOMEONE FROM OFFICE.
11 IT CAN INCLUDE A CRIMINAL INDICTMENT, OR IT CAN INCLUDE A
12 FURTHER REPORT, OR NO ACTION WHATSOEVER. SO THAT'S WHAT I
13 MEAN.

14 WE'LL HAVE TO CONSIDER AT THAT TIME, WHEN THE
15 EVIDENCE IS CONCLUDED -- FIRST OF ALL, MY OFFICE WILL HAVE
16 TO DECIDE ON A POSITION, WHETHER OR NOT WE'RE GOING TO
17 RECOMMEND THAT YOU TAKE A PARTICULAR ACTION, AND AT THAT
18 POINT THE JURY WILL HAVE TO CONSIDER WHETHER THEY WANT TO
19 TAKE THAT ACTION OR NOT.

20 A JUROR: THANK YOU.

21 THE FOREMAN: RECOGNIZING THE DIFFICULTIES YOU
22 HAVE IN SCHEDULING WITNESSES, DO YOU HAVE ANY IDEA OF WHAT
23 THE END POINT OF THESE PROCEEDINGS MIGHT BE? THIS IS SIMPLY
24 SO WE --

25 MR. FINKELSTEIN: BARRING FURTHER DIFFICULTIES
26 WITH REMAINING WITNESSES, I WOULD EXPECT THAT MR. -- I'M
27 HOPEING THAT MR. JONES ON MAY 12 WILL BE THE LAST WITNESS.

28 A JUROR: THE TIME WE TAKE FROM THAT TIME, I'M

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1820

1 TRYING TO ESTIMATE HOW MUCH TIME WE WOULD BE USING IN
2 WHATEVER IS LEFT TO DO IN THIS CASE.

3 MR. FINKELSTEIN: IT DEPENDS ON WHERE WE GO FROM
4 HERE. IF, FOR EXAMPLE, OUR OFFICE ASKED YOU TO CONSIDER AN
5 INDICTMENT, THEN I WOULD HAVE TO INSTRUCT YOU ON THE LEGAL

6 PRINCIPLES OF THE LAW. I WOULD HAVE AN INDICTMENT DRAWN UP
7 WITH SUGGESTED CHARGES, WHICH ARE ONLY SUGGESTED CHARGES;
8 YOU ARE NOT BOUND BY THE CHARGES. YOU CAN INDICT OR NOT ON
9 THOSE CHARGES. YOU WOULD HAVE TIME TO DELIBERATE, TAKE A
10 VOTE ON THE CHARGES.

11 IF WE ARE TALKING ABOUT AN INDICTMENT, TWELVE
12 JURORS -- FIRST OF ALL, ONLY THOSE JURORS WHO HEARD ALL OF
13 THE EVIDENCE CAN PARTICIPATE. AND AN INDICTMENT WOULD
14 REQUIRE AT LEAST TWELVE JURORS WHO HEARD ALL OF THE EVIDENCE
15 VOTING IN FAVOR OF THE INDICTMENT. AND UNLIKE A TRIAL,
16 WHERE THE STANDARD OF PROOF IS BEYOND A REASONABLE DOUBT AND
17 IT HAS TO BE UNANIMOUS, HERE WE ONLY REQUIRE TWELVE JURORS
18 TO VOTE IN FAVOR OF THE INDICTMENT. IT'S A LESSER STANDARD
19 CALLED PROBABLE CAUSE. AND IF WE GET TO THAT POINT, I WILL
20 BE INSTRUCTING YOU IN MORE DETAIL.

21 A JUROR: YOU WILL MAKE A SUMMARY OF THE ARGUMENT
22 BEHIND YOUR RECOMMENDATION?

23 MR. FINKELSTEIN: I WILL TRY TO REVIEW FOR YOU THE
24 FACTS IF WE ARE AT THAT POINT. AND I WANT TO EMPHASIZE WE
25 HAVE NOT MADE THAT DECISION YET, BUT IF WE ARE AT THAT POINT
26 I WILL ATTEMPT TO SUMMARIZE FOR YOU THE FACTS THAT WE
27 BELIEVE WOULD SUPPORT A PARTICULAR CHARGE, AND OF COURSE YOU
28 HAVE YOUR NOTES. YOU HAVE THE ABILITY, SHOULD IT BECOME

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1821

1 NECESSARY, TO HAVE TESTIMONY REREAD, JUST LIKE AT A JURY
2 TRIAL.

3 THE FOREPERSON: THANK YOU FOR THAT CLARIFICATION.
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4 AND TO REITERATE, THE INFORMATION I SENT YOU PREVIOUSLY ON
5 THE SCHEDULE IS STILL VALID.

6 MR. FINKELSTEIN: I APPRECIATE THAT.

7 THE FOREPERSON: WE WILL TRY TO BE AT YOUR
8 DISPOSAL.

9 MR. FINKELSTEIN: THANK YOU VERY MUCH. HAVE A
10 GOOD EVENING, EVERYONE. SEE YOU TOMORROW.

11 (COURT WAS ADJOURNED FOR THE DAY.)

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1822

- 1 Q. YOUR FUNCTION IS AN ACCOUNTING-TYPE FUNCTION?
- 2 A. YES.
- 3 Q. AND HOW LONG HAVE YOU HELD THAT POSITION AT NORCAL?
- 4 A. TWO YEARS.
- 5 Q. SO THAT WOULD BE SINCE 2004?
- 6 A. YES.
- 7 Q. DO YOU REMEMBER WHEN IN 2004 YOU STARTED?
- 8 A. APRIL 2004.
- 9 Q. AND JUST BY WAY OF SOME BACKGROUND, NORCAL SAN JOSE
- 10 IS A SUBSIDIARY OF NORCAL WASTE SYSTEMS, INC. ; IS THAT
- 11 CORRECT?
- 12 A. YES.
- 13 Q. AND NORCAL SAN JOSE IS THE SUBSIDIARY THAT
- 14 ADMINISTERS THE CONTRACT THAT NORCAL HAS WITH THE CITY OF
- 15 SAN JOSE?
- 16 A. YES.
- 17 Q. AND COULD YOU TELL US JUST BRIEFLY WHAT KIND OF
- 18 ACCOUNTING SYSTEM IS USED TO KEEP TRACK OF INCOME AND
- 19 EXPENSES, REVENUE EXPENSES.
- 20 A. YES, THROUGH J. D. E.
- 21 Q. J. D. EDWARDS?
- 22 A. YES, ONE WORLD SYSTEM.
- 23 Q. THAT'S A COMPUTER PROGRAM THAT'S USED?
- 24 A. YES.
- 25 Q. AND I TAKE IT NORCAL EMPLOYEES MAKE ENTRIES INTO
- 26 THE SOFTWARE TO RECORD INCOME, REVENUE, AND EXPENSES?
- 27 A. YES.
- 28 Q. NOW, YOU HAVE BROUGHT SOME RECORDS AND DOCUMENTS

1 WITH YOU THIS MORNING IN RESPONSE TO A SUBPOENA THAT WAS
2 SERVED ON NORCAL; IS THAT CORRECT?

3 A. YES.

4 Q. LET ME LOOK AT THOSE DOCUMENTS, IF YOU WOULD.

5 MR. FINKELSTEIN: I'M GOING TO MARK THREE PAGES OF
6 THE DOCUMENTS THAT THE WITNESS HAS PRODUCED; THEY ARE BATES
7 STAMPED N102345 THROUGH N102347 CONSECUTIVELY. AND THE TOP
8 PAGE READS, "NORCAL WASTE SYSTEMS, INC. G/L," WHICH I ASSUME
9 STANDS FOR GENERAL LEDGER, "BY OBJECT ACCOUNT."

10 THE FOREPERSON: SO MARKED.

11 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
12 JURY EXHIBIT 125.)

13 BY MR. FINKELSTEIN:

14 Q. MR. KELLY, CAN YOU LOOK AT EXHIBIT 125 AND TELL US
15 WHAT THAT IS.

16 A. THIS IS A RE-CREATION OF OUR GENERAL LEDGER; THIS
17 SPECIFIC ACCOUNT IS OUR ACCOUNTS RECEIVABLE ACCOUNT.

18 Q. ONE OF YOUR ACCOUNTS RECEIVABLE ACCOUNTS?

19 A. YES.

20 Q. FIRST OF ALL, YOU SAID THIS IS A RE-CREATION. YOU
21 MEAN IT'S A PRINTOUT OF THAT ACCOUNT?

22 A. YES.

23 Q. AND THE INFORMATION THAT IS REFLECTED ON THAT
24 PRINTOUT, IS THAT INFORMATION THAT WAS INPUT INTO THE SYSTEM
25 BY NORCAL EMPLOYEES?

26 A. YES.

27 Q. AND WAS THAT INFORMATION INPUT INTO THE SYSTEM IN
28 THE REGULAR COURSE OF BUSINESS?

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1825

1 A. YES.

2 Q. IN OTHER WORDS, THIS ACCOUNTING SYSTEM WASN' T
3 CREATED FOR THE PURPOSE OF ANY LITIGATION OR ANYTHING?

4 A. NO.

5 Q. AND THE EMPLOYEES AT NORCAL INPUT THE INFORMATION
6 INTO THE SYSTEM. IS IT THEIR BUSINESS DUTY TO MAKE ACCURATE
7 ENTRIES INTO THE SYSTEM?

8 A. YES.

9 Q. AND DO THEY MAKE THE ENTRIES AT OR NEAR THE TIME
10 THAT THE EVENT IS OCCURRING?

11 A. YES.

12 Q. AND DO YOU BELIEVE THAT THE SYSTEM THAT NORCAL USES
13 TO TRACK, KEEP TRACK OF ITS ACCOUNTING RECORDS IS AN
14 ACCURATE AND RELIABLE SYSTEM?

15 A. YES.

16 Q. AS A MATTER OF FACT, YOUR FINANCIAL STATEMENTS ARE
17 GENERATED WITH THE SAME SYSTEM?

18 A. YES.

19 Q. AND THEY ARE AUDITED ON AN ANNUAL BASIS, CORRECT?

20 A. YES.

21 Q. I ASSUME YOU GET FEEDBACK FROM THE AUDITORS?

22 A. YES.

23 Q. AND BASED ON ALL THAT, YOU BELIEVE IT TO BE
24 ACCURATE AND TRUSTWORTHY?

25 A. YES.

26 Q. AND BASICALLY YOU BROUGHT TO THE GRAND JURY A

27 PRINTOUT OF SOME PORTION OF NORCAL' S BUSINESS RECORDS
28 RELATING TO SOME MONIES IT RECEIVES FROM THE CITY OF SAN

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1826

1 JOSE, CORRECT?

2 A. YES.

3 Q. AND THE PARTICULAR ACCOUNT -- LET' S ALL TAKE A LOOK
4 AT THIS FOR A MOMENT, IF I CAN BORROW THAT EXHIBIT.

5 LOOKING AT EXHIBIT 125, IF WE LOOK AT THE TITLE,
6 IT SAYS, "NORCAL WASTE SYSTEMS, INC. G/L BY OBJECT ACCOUNT,"
7 CORRECT?

8 A. CORRECT.

9 Q. WHAT DOES THAT STAND FOR?

10 A. THAT STANDS FOR GENERAL LEDGER BY OBJECT ACCOUNT;
11 BY OBJECT ACCOUNT, IT' S THE SEPARATE ACCOUNTS THAT MAKE UP
12 THE ENTIRE GENERAL LEDGER.

13 Q. RIGHT. SO WHAT YOU' VE DONE IN THIS PRINTOUT IS
14 SHOWN US THE DEBITS AND CREDITS FOR A PARTICULAR ACCOUNT IN
15 THE GENERAL LEDGER, CORRECT?

16 A. CORRECT.

17 Q. THIS PARTICULAR ACCOUNT RELATES TO WHAT?

18 A. THIS IS OUR, IT' S ANOTHER ACCOUNTS RECEIVABLE
19 ACCOUNT, AND IT RELATES TO THE DOLLARS OWED TO US BY THE
20 CITY OF SAN JOSE.

21 Q. AND THIS IS IN RELATION TO -- IS THIS IN RELATION
22 TO THE AMENDMENT TO THE CONTRACT THAT TOOK PLACE IN 2004?

23 A. YES.

24 Q. IN OTHER WORDS, YOU HAVE, YOU TRACK -- AND IT IS

25 YOUR UNDERSTANDING THAT AMENDMENT RELATES TO SOME ADDITIONAL
26 LABOR COSTS THAT NORCAL HAD TO REIMBURSE CWS FOR?

27 A. YES.

28 Q. AND YOU TRACK THAT AS A SEPARATE ACCOUNT FROM THE

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1827

1 ORIGINAL ACCOUNT THAT TRACKS PAYMENTS UNDER THE ORIGINAL
2 AGREEMENT?

3 A. I DON'T KNOW THAT I UNDERSTOOD THAT QUESTION.

4 Q. MAYBE IT WAS A BAD QUESTION.

5 NORCAL RECEIVES, WAS RECEIVING A PAYMENT, MONTHLY
6 PAYMENT IN CONNECTION WITH ITS ORIGINAL AGREEMENT WITH THE
7 CITY OF SAN JOSE FOR THE COLLECTION OF THE GARBAGE AND
8 RECYCLABLES, CORRECT?

9 A. YES.

10 Q. AND THEN IN 2004, THE END OF 2004, THE AGREEMENT
11 WAS AMENDED TO PROVIDE FOR THESE ADDITIONAL PAYMENTS,
12 CORRECT?

13 A. YES.

14 Q. THIS ACCOUNT THAT YOU BROUGHT THIS PRINTOUT FOR
15 RELATES TO THESE ADDITIONAL PAYMENTS RELATED TO THE EXTRA
16 LABOR COSTS?

17 A. YES.

18 Q. SO, FOR EXAMPLE, IF WE WERE TO LOOK AT THE FIRST
19 ENTRY, WHICH I GUESS IS AT THE BOTTOM OF THE RECORD,
20 PRINTOUT; IS THAT CORRECT?

21 A. YEAH. THAT'S NOVEMBER. OUR FIRST ENTRY I WOULD
22 ANTICIPATE WOULD HAVE BEEN IN OCTOBER, SO THERE MIGHT BE

23 SOMETHING ON A SEPARATE PAGE.

24 Q. LET'S LOOK AT THE NEXT PAGE. IT'S, THE THIRD PAGE
25 HAS THE FIRST ENTRY?

26 A. YES.

27 Q. AND THE FIRST COLUMN IS AN EXPLANATION OF THE
28 ACCOUNT DESCRIPTION?

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1828

1 A. YES.

2 Q. AND SO THE FIRST COLUMN, WE SEE IT SAYS, "RECORD OF
3 RECEIVABLES FROM SAN JOSE CITY;" IS THAT CORRECT?

4 A. YES.

5 Q. AND WHAT'S THE NEXT COLUMN?

6 A. THAT'S THE TYPE OF ENTRY THAT ACTUALLY PUT IT INTO
7 THE GENERAL LEDGER.

8 Q. THAT WOULD BE A JOURNAL ENTRY?

9 A. EXACTLY.

10 Q. THIS REFERENCE TO A DOCUMENT, 695024, WHAT IS THAT?

11 A. THAT'S THE DOCUMENT, THE NUMBER ASSOCIATED WITH
12 THAT JOURNAL ENTRY; SO AFTER WE POST A JOURNAL ENTRY, THAT
13 DOCUMENT COMES UP AND WE ATTACH THAT NUMBER TO A PHYSICAL
14 DOCUMENT.

15 Q. SO THE EVENT GENERATES A DOCUMENT IN THE SYSTEM?

16 A. RIGHT.

17 Q. THEN THE NEXT COLUMN, IS THAT GENERAL LEDGER DATE?

18 A. YES.

19 Q. WHAT DOES THAT REFER TO?

20 A. THAT REFERS TO THE END OF THE MONTH IN WHICH THE

21 ENTRY WAS MADE.

22 Q. SO FROM THIS PRINTOUT WE KNOW SOMETIME DURING THE
23 MONTH OF OCTOBER 2004, THIS MONEY WAS RECEIVED FROM THE CITY
24 OF SAN JOSE?

25 A. NO. THAT THERE IS OUR ENTRY RECORDING THE
26 RECEIVABLE. WE HAD RECEIVED MONEY IN OCTOBER 2004.

27 Q. OKAY. SO THIS RECORD JUST RECORDS WHAT YOU EXPECT
28 TO RECEIVE?

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1829

1 A. YES.

2 Q. AND SO IS THERE SOME OTHER RECORD THAT WOULD SHOW
3 US WHETHER OR NOT THE MONEY WAS ACTUALLY RECEIVED?

4 A. IT WOULD SHOW IT WHEN WE RECEIVED IT.

5 Q. YES. BUT DOES THIS RECORD TELL US WHAT YOU EXPECT
6 TO RECEIVE OR WHAT YOU ACTUALLY RECEIVED?

7 A. WHAT WE EXPECT TO RECEIVE.

8 Q. HAVE YOU BROUGHT WITH YOU SOME OTHER RECORD THAT
9 SHOWS US WHETHER OR NOT YOU ACTUALLY RECEIVED THE MONEY?

10 A. YES, IT'S THAT SAME DOCUMENT, THE NEXT PAGE UP.

11 Q. DO WE WANT TO BE AT THE BOTTOM OF IT?

12 A. YOU COULD START AT THE BOTTOM, YES.

13 Q. SO THE LINE, WHICH ENTRY TELLS US WHETHER OR NOT
14 YOU RECEIVED THIS \$184,615.40?

15 A. THE ENTRY THAT IDENTIFIES 56 MONTHLY CASH
16 RECEIPTS -- YES.

17 Q. THAT SHOWS US THAT -- SO WHAT WAS THE FIRST AMOUNT
18 THAT WAS ACTUALLY RECEIVED BY NORCAL, AND WHEN WAS IT

19 RECEIVED?

20 A. THE FIRST AMOUNT THAT WAS RECEIVED WAS THE
21 \$925,000, AND IT WAS RECEIVED IN DECEMBER, 2004.

22 Q. THAT'S IN THE SECOND COLUMN OF NUMBERS?

23 A. YES.

24 Q. WHAT DOES THAT \$184,615.40 REFER TO?

25 A. THAT'S OUR ENTRY IDENTIFYING THE AMOUNTS OWED TO US
26 FROM THE CITY.

27 Q. FOR THAT MONTH?

28 A. RIGHT.

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1830

1 Q. I SEE. SO I GUESS -- YOU'RE ON AN ACCRUAL BASIS
2 ACCOUNTING?

3 A. YES.

4 Q. YOU HAVE TO DISTINGUISH BETWEEN MONEY THAT YOU
5 RECORD AS BEING OWED TO YOU VERSUS WHEN YOU ACTUALLY GET THE
6 MONEY?

7 A. YES.

8 Q. THAT'S WHAT'S GOING ON HERE?

9 A. YES.

10 Q. SO THESE RECORDS INDICATE -- WHY DON'T WE DO IT
11 THIS WAY, IT MAY BE SIMPLER.

12 WHY DON'T YOU JUST TELL US BASED ON THESE RECORDS,
13 THE AMOUNTS TO DATE THAT NORCAL HAS RECEIVED FROM THE CITY
14 OF SAN JOSE FOR THESE ADDITIONAL LABOR COSTS, BASED ON
15 EXHIBIT 125, STARTING WITH THE OLDEST DATE FIRST. PLEASE GO
16 SLOWLY SO THE REPORTER CAN GET THE NUMBERS IN.

17 A. IN DECEMBER 2004 WE RECEIVED \$925,000. IN JANUARY
18 2005 WE RECEIVED \$925,000. IN FEBRUARY 2005 WE RECEIVED
19 \$925,000. IN MARCH OF 2005 WE RECEIVED \$925,000. IN APRIL
20 OF 2005 WE RECEIVED \$925,000. IN MAY OF 2005 WE RECEIVED
21 \$925,000. IN JUNE OF 2005 WE RECEIVED \$900,000. IN JULY OF
22 2005 WE RECEIVED \$200,000. IN AUGUST OF 2005 WE RECEIVED
23 \$200,000. IN SEPTEMBER OF 2005, WE RECEIVED \$200,000. IN
24 OCTOBER OF 2005 WE RECEIVED \$200,000. IN NOVEMBER OF 2005
25 WE RECEIVED \$200,000. IN DECEMBER OF 2005, WE RECEIVED
26 \$200,000. IN JANUARY OF 2006 WE RECEIVED \$200,000. IN
27 FEBRUARY OF 2006 WE RECEIVED \$200,000. IN MARCH OF 2006 WE
28 RECEIVED \$200,000.

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1831

1 MR. FINKELSTEIN: I DON'T THINK I HAVE ANY OTHER
2 QUESTIONS AT THIS TIME. LET ME SEE IF THE JURORS HAVE ANY
3 QUESTIONS.

4 BY MR. FINKELSTEIN:

5 Q. BEFORE I GET TO THE JUROR'S QUESTION, DOES THE
6 RECORD HAVE A TOTAL FOR THAT AMOUNT?

7 A. THE FISCAL YEAR 2005 --

8 Q. THAT ENDS SEPTEMBER 30, 2005?

9 A. RIGHT. THAT IS \$7,050,000. AND YEAR TO DATE FROM
10 MARCH OF THIS YEAR IS \$1,200,000.

11 Q. THAT'S APPROXIMATELY HOW MUCH IN TOTAL?

12 A. \$8,250,000.

13 Q. APPARENTLY, ONE OF OUR JURORS HAS SOME ACCOUNTING
14 BACKGROUND AND WANTS TO KNOW WHETHER YOU NEED AN INVOICE TO

15 POST TO THE GENERAL LEDGER.

16 A. I DO NOT NEED AN INVOICE TO POST TO THE GENERAL
17 LEDGER.

18 Q. WHY IS THAT?

19 A. BECAUSE IF I KNOW AN EVENT TOOK PLACE, WHETHER I
20 HAVE THE INVOICE OR NOT, I STILL HAVE TO POST IT TO THE
21 GENERAL LEDGER.

22 Q. DO YOU KNOW HOW THE MONIES ARE TRANSFERED FROM THE
23 CITY?

24 A. IT'S A WIRE TRANSFER.

25 Q. SO FROM THE CITY'S BANK TO NORCAL'S BANK?

26 A. YES.

27 MR. FINKELSTEIN: ANY OTHER QUESTIONS?

28 THANK YOU VERY MUCH. WE HAVE NO MORE QUESTIONS AT

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1832

1 THIS TIME, BUT YOU'RE NOT EXCUSED, WHICH MEANS THERE IS A
2 REMOTE POSSIBILITY WE MIGHT ASK YOU TO COME BACK AND EXPLAIN
3 SOMETHING ELSE, SO YOU'RE SUBJECT TO BEING RECALLED, AND THE
4 FOREMAN IS GOING TO TELL YOU ABOUT AN ADMONITION THAT
5 APPLIES TO YOUR TESTIMONY HERE TODAY, SO PLEASE LISTEN
6 CAREFULLY.

7 THE FOREPERSON: YOU ARE ADMONISHED NOT TO REVEAL
8 TO ANY PERSON, EXCEPT AS DIRECTED BY THE COURT, WHAT
9 QUESTIONS WERE ASKED OR WHAT RESPONSES WERE GIVEN OR ANY
10 OTHER MATTERS CONCERNING THE NATURE OR SUBJECT OF THE GRAND
11 JURY'S INVESTIGATION WHICH YOU LEARNED DURING YOUR
12 APPEARANCE BEFORE THE GRAND JURY, UNLESS AND UNTIL SUCH TIME

13 AS THE TRANSCRIPT OF THIS GRAND JURY PROCEEDING IS MADE
14 PUBLIC. VIOLATION OF THIS ADMONITION IS PUNISHABLE AS
15 CONTEMPT OF COURT.

16 DO YOU UNDERSTAND THAT?

17 THE WITNESS: YES.

18 MR. FINKELSTEIN: NOW YOU CAN DISCUSS IT WITH
19 COUNSEL PROVIDED COUNSEL AGREES NOT TO FURTHER DISCLOSE THE
20 INFORMATION. OKAY?

21 THE WITNESS: OKAY.

22 MR. FINKELSTEIN: THANK YOU VERY MUCH.

23 THE WITNESS: THANK YOU.

24 MICHAEL SANGIACOMO,
25 HAVING BEEN PREVIOUSLY SWORN, TESTIFIED ON HIS OATH AS
26 FOLLOWS:

27 EXAMINATION, RESUMED:

28 BY MR. FINKELSTEIN:

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1833

1 Q. GOOD MORNING, MR. SANGIACOMO. I'LL REMIND YOU THAT
2 YOU'RE STILL UNDER OATH.

3 A. I UNDERSTAND.

4 Q. NOW, I BELIEVE WHEN YOU WERE LAST BEFORE THE GRAND
5 JURY WE HAD BEEN LOOKING AT SOME AUDIT NOTES, AND I HAVE
6 SOME QUESTIONS FOR YOU ABOUT IT. I WOULD LIKE TO RESUME
7 THAT LINE OF QUESTIONING.

8 LET ME SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED AS
9 GRAND JURY EXHIBIT 122, AND LET ME DIRECT YOUR ATTENTION TO
10 THE SECOND PAGE OF THIS EXHIBIT. THERE IS AN ITEM FOUR ON

11 THIS PAGE WHICH STARTS OUT, "COLLECTABILITY IS REASONABLY
12 ASSURED," AND THEN RECITES THAT THE FOLLOWING IS BASED ON
13 DISCUSSION WITH MIKE SANGIACOMO, CEO; MARK LOMELE, CFO, AND
14 JON BRASLAW, CONTROLLER.

15 IT SAYS:

16 BASED ON THE DISCUSSIONS BETWEEN
17 REPRESENTATIVES FROM THE CITY AND NORCAL, THE
18 FINANCE DIRECTOR TO THE MAYOR FOR THE CITY OF
19 SAN JOSE, THE MAYOR, AND A REPRESENTATIVE FROM THE
20 CITY ATTORNEY'S OFFICE HAVE ALL AGREED THAT THE
21 CITY WILL COMPENSATE NORCAL FOR THE EXCESS COSTS
22 OF USING THE TEAMSTERS' UNION OVER THE ILWU.

23 ARE YOU THE SOURCE OF THAT INFORMATION TO KPMG?

24 A. I'M NOT SURE WHERE THEY CAME UP WITH ALL THEIR
25 CONCLUSIONS. I DID HAVE A DISCUSSION WITH THEM.

26 Q. DO YOU RECALL IN 2003, IN CONNECTION WITH THIS
27 AUDIT REVIEW BY KPMG, A CONFERENCE CALL THAT INCLUDED
28 YOURSELF, MARK LOMELE, JON BRASLAW AND REPRESENTATIVES OF

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1834

1 KPMG DISCUSSING THIS ISSUE ABOUT COLLECTABILITY OF THIS
2 RECEIVABLE?

3 A. CONFERENCE CALL -- I DON'T RECALL A CONFERENCE
4 CALL, NO.

5 Q. YOU DON'T?

6 A. NO, I DON'T.

7 Q. DID YOU PROVIDE INFORMATION TO KPMG TO ASSIST THEM
8 IN THEIR AUDIT OF NORCAL'S FINANCIAL STATEMENTS FOR THE

- 9 FISCAL YEAR ENDING 2003?
- 10 A. I BELIEVE I HAD A DISCUSSION WITH THEM DURING THE
11 2003 AUDIT, YES.
- 12 Q. OKAY. AND DID ANY OF THAT DISCUSSION RELATE TO THE
13 COLLECTABILITY OF THIS ADDITIONAL MONEY YOU WERE SEEKING
14 FROM THE CITY OF SAN JOSE FOR THE ADDITIONAL LABOR COSTS?
- 15 A. I BELIEVE SO.
- 16 Q. OKAY. AND DID YOU SUGGEST TO KPMG THAT THE
17 FINANCIAL DIRECTOR TO THE MAYOR OF THE CITY OF SAN JOSE, THE
18 MAYOR, AND A REPRESENTATIVE OF THE CITY ATTORNEY'S OFFICE
19 HAD ALL AGREED THAT THE CITY WOULD COMPENSATE NORCAL FOR
20 THESE EXCESS COSTS?
- 21 A. I DON'T RECALL SAYING THAT.
- 22 Q. YOU DON'T?
- 23 A. NOT IN THOSE WORDS, NO.
- 24 Q. WELL, DID YOU SAY ANYTHING THAT COULD HAVE
25 SUGGESTED TO THEM WHAT'S WRITTEN IN THE AUDIT NOTES?
- 26 A. THOSE ARE THEIR CONCLUSIONS, I GUESS, BASED ON WHAT
27 I DID SAY.
- 28 Q. WELL, WHAT DID YOU SAY?

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- 1 A. WHAT I REMEMBER SAYING EVERY TIME I HAVE BEEN ASKED
2 ABOUT THIS IS, THE MAYOR GAVE US HIS ASSURANCE HE WOULD MAKE
3 HIS BEST EFFORTS TO TRY TO GET THE MONEY PAID TO US.
- 4 Q. WELL, WHAT ABOUT THE STATEMENT ABOUT THE
5 REPRESENTATIVE FROM THE CITY ATTORNEY'S OFFICE AGREEING THAT
6 THE CITY WOULD COMPENSATE NORCAL; DID YOU SAY ANY WORDS

7 ABOUT THAT?

8 A. I DON'T REMEMBER TALKING ABOUT THE CITY ATTORNEY'S
9 OFFICE.

10 Q. WHEN YOU SAY YOU DON'T REMEMBER IT, DOES THAT MEAN
11 YOU DENY MAKING THAT STATEMENT, OR YOU DON'T KNOW WHETHER
12 YOU MADE IT OR NOT?

13 A. I DON'T REMEMBER EVER TALKING TO THE CITY
14 ATTORNEY'S OFFICE.

15 Q. WELL, THE QUESTION IS NOT WHETHER YOU TALKED TO THE
16 CITY ATTORNEY'S OFFICE; IT'S WHETHER YOU CONVEYED TO KPMG
17 THE IMPRESSION THAT THE CITY ATTORNEY'S OFFICE HAD AGREED TO
18 COMPENSATE NORCAL FOR THESE EXTRA COSTS.

19 A. I DON'T RECALL DOING THAT.

20 Q. SO MY QUESTION IS, ARE YOU DENYING THAT OR SIMPLY
21 SAYING, I DON'T KNOW WHETHER OR NOT I MADE THAT STATEMENT?

22 A. I DO NOT REMEMBER EVER DISCUSSING WITH ANYBODY WHAT
23 THE CITY ATTORNEY'S OFFICE WAS WILLING TO DO.

24 Q. I'M NOT ASKING YOU WHETHER YOU HAD DISCUSSIONS WITH
25 THE CITY ATTORNEY'S OFFICE. I'M ASKING WHETHER YOU
26 COMMUNICATED TO KPMG THE IMPRESSION THAT THE CITY ATTORNEY'S
27 OFFICE HAD AGREED TO COMPENSATE NORCAL FOR THESE EXTRA
28 COSTS. DO YOU UNDERSTAND THE DISTINCTION?

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1 A. I BELIEVE SO.

2 Q. OKAY. SO AGAIN, MY QUESTION IS, DID YOU
3 COMMUNICATE TO KPMG THAT IN SOME MANNER THE CITY, A
4 REPRESENTATIVE OF THE CITY ATTORNEY'S OFFICE HAD AGREED THAT

5 NORCAL SHOULD BE COMPENSATED FOR THESE EXTRA COSTS?

6 A. I DON'T REMEMBER EVER DOING THAT.

7 Q. WELL, NOW, WHEN YOU SAY YOU DON'T REMEMBER EVER
8 DOING THAT, DOES THAT MEAN YOU'RE DENYING HAVING DONE THAT?

9 A. I JUST DON'T HAVE ANY RECOLLECTION OF TALKING WITH
10 THE CITY ATTORNEY'S OFFICE.

11 Q. ONE WAY OR THE OTHER?

12 A. NO, I DON'T.

13 Q. ONE WAY OR THE OTHER?

14 A. THAT'S CORRECT.

15 Q. SO WHO DID YOU TALK TO AT KPMG ABOUT, IN CONNECTION
16 WITH THE 2003 AUDIT, AND SPECIFICALLY THIS ISSUE ABOUT THE
17 COLLECTABILITY OF THIS RECEIVABLE, THIS REVENUE?

18 A. I BELIEVE IN 2003 IT WAS THE AUDIT PARTNER WHOSE
19 NAME IS PAULETTE DEFALCO, AND I THINK THE PERSON WHO WAS THE
20 AUDIT MANAGER AT THE TIME, BUT I DON'T RECALL WHO THAT WAS.

21 Q. OKAY. DO YOU RECALL PARTICIPATING IN A
22 CONVERSATION THAT INCLUDED YOURSELF, JON BRASLAW AND MARK
23 LOMELE WITH PAULETTE DEFALCO AND POSSIBLY OTHERS KPMG ON
24 THIS ISSUE ABOUT WHETHER OR NOT THE MONEY THAT NORCAL
25 EXPECTED TO RECEIVE FOR ADDITIONAL LABOR COSTS SHOULD BE
26 RECOGNIZED AS REVENUE?

27 A. I'M PRETTY SURE I DID, YES.

28 Q. WAS THIS A FACE-TO-FACE CONVERSATION, OR BY PHONE

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1 OR WHAT MANNER?

2 A. I'M SORRY?

3 Q. THE CONVERSATION YOU THINK YOU HAD, WAS IT
4 FACE-TO-FACE, BY TELEPHONE, OR HOW DID IT OCCUR?

5 A. I THOUGHT IT WAS FACE-TO-FACE, BUT I REALLY DON'T
6 REMEMBER.

7 Q. OKAY. DID IT INCLUDE MARK LOMELE AND JON BRASLAW?

8 A. I DON'T REMEMBER.

9 Q. IN THE 2003 AUDIT, DID KPMG HAVE QUESTIONS ABOUT
10 WHETHER OR NOT THIS ADDITIONAL MONEY FROM THE CITY OF
11 SAN JOSE SHOULD BE RECORDED AS REVENUE IN THE 2003 FINANCIAL
12 STATEMENT?

13 A. THAT WAS AN AUDIT ISSUE, YES.

14 Q. YOU DID SOMEHOW COMMUNICATE TO KPMG ON THAT AUDIT
15 ISSUE, RIGHT?

16 A. YES.

17 Q. AND IT WOULD MAKE SENSE, SINCE THIS IS A FINANCIAL
18 ISSUE, THAT YOU WOULD WANT YOUR CFO AND CONTROLLER IN ON THE
19 CONVERSATION, CORRECT?

20 A. I'M SURE THEY HAD CONVERSATIONS IN ADDITION TO ANY
21 THAT I MIGHT HAVE PARTICIPATED IN.

22 Q. DID YOU HAVE ANY SEPARATE CONVERSATION THAT DIDN'T
23 INCLUDE EITHER OF THOSE TWO GENTLEMEN?

24 A. I DON'T RECALL.

25 Q. LET'S LOOK AT THE NEXT PAGE OF THIS EXHIBIT. IT'S
26 MARKED AS PAGE 22, AND IT HAS A BATES STAMP, KPMG000144.

27 LET ME DIRECT YOUR ATTENTION TO AN ENTRY THAT SAYS:

28 PER MIKE SANGIACOMO, BASED ON DISCUSSIONS

1 BETWEEN NORCAL AND CITY COUNCIL MEMBERS, SEVEN OF
2 THE 11 CITY COUNCIL MEMBERS HAVE STATED THAT THEY
3 AGREE WITH THE ADDITIONAL COMPENSATION OWED TO
4 NORCAL.

5 DID YOU IN FACT CONVEY TO KPMG THE IMPRESSION THAT
6 SEVEN OF THE ELEVEN MEMBERS OF THE CITY COUNCIL HAVE STATED
7 THAT THEY AGREE WITH THE ADDITIONAL COMPENSATION TO NORCAL?

8 A. PROBABLY.

9 Q. OKAY. AND WHAT WAS YOUR BASIS FOR SAYING THAT?

10 A. I BELIEVE JOE GUERRA TOLD US AT THE TIME THAT HE
11 HAD TALKED WITH SEVEN COUNCIL MEMBERS WHO WERE SUPPORTIVE.

12 Q. AND DID HE NAME NAMES, TELL YOU WHICH
13 COUNCIL MEMBERS?

14 A. I DON'T REMEMBER HIM DOING THAT. IF HE DID, I
15 DON'T REMEMBER WHO THEY WERE.

16 Q. WHEN DID HE TELL YOU THAT?

17 A. I DON'T REMEMBER.

18 Q. SO IS YOUR TESTIMONY THEN THAT YOU DID CONVEY THE
19 INFORMATION ABOUT SEVEN OF THE 11 MEMBERS ON THE CITY
20 COUNCIL HAVING STATED THEY AGREED WITH THE ADDITIONAL
21 COMPENSATION OWED TO NORCAL TO KPMG?

22 A. I DON'T RECALL THE SPECIFIC CONVERSATION. I DO
23 RECALL HAVING HEARD THAT INFORMATION FROM MR. GUERRA.

24 Q. LET ME ASK YOU, DO YOU HAVE ANY REASON TO BELIEVE
25 THAT THE AUDITORS' NOTE THAT ATTRIBUTES THAT INFORMATION TO
26 YOU IS NOT ACCURATE?

27 A. I HAVE NO REASON NOT TO BELIEVE THAT.

28 Q. LET ME SHOW YOU WHAT HAS BEEN PREVIOUSLY MARKED AS

1 EXHIBIT 119. THIS IS APPARENTLY A PRINTOUT OF
2 MR. BILL JONES' DATEBOOK FOR THE WEEK -- STRIKE THAT. FOR
3 THE PERIOD SEPTEMBER 29, 2000 TO OCTOBER 12, 2000. THERE'S
4 AN ENTRY ON MONDAY, OCTOBER 9, 2000 THAT REFLECTS A PREP FOR
5 TUESDAY, THAT WOULD BE TUESDAY, OCTOBER 10, 2000, THE DATE
6 OF THE FIRST COUNCIL VOTE, IN SAN FRANCISCO WITH MIKE S.,
7 JOHN N. AND RICH L. DO YOU SEE THAT ENTRY?

8 A. YES.

9 Q. DO YOU RECALL SUCH A MEETING TAKING PLACE?

10 A. NO, I DON'T.

11 Q. DID YOU PARTICIPATE IN A PREP MEETING PRIOR TO THE
12 FIRST SAN JOSE CITY COUNCIL VOTE ON THE ORIGINAL NORCAL
13 AGREEMENT?

14 A. I'M NOT SURE.

15 Q. DID YOU HAVE A PRACTICE AT THAT TIME TO HAVE PREP
16 MEETINGS BEFORE COUNCIL VOTES WHEN NORCAL PROPOSALS WERE
17 GOING TO BE CONSIDERED BY CITY GOVERNMENTS?

18 A. I DON'T THINK IT WOULD BE CONSIDERED A PRACTICE; I
19 DIDN'T ATTEND THAT MANY OF THOSE.

20 MR. FINKELSTEIN: I WILL MARK AS EXHIBIT 126 WHAT
21 APPEARS TO BE A NOVEMBER 24, 2003 LETTER TO KPMG FROM NORCAL
22 WHICH PURPORTS TO HAVE THE SIGNATURES OF MICHAEL SANGIACOMO,
23 MARK LOMELE, AND JON BRASLAW.

24 THE FOREPERSON: SO MARKED.

25 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
26 JURY EXHIBIT 126.)

27 BY MR. FINKELSTEIN:

28 Q. WOULD YOU TAKE A LOOK AT THE EXHIBIT AND TELL US

- 1 WHETHER OR NOT YOU'VE SEEN THIS DOCUMENT BEFORE?
- 2 A. YES.
- 3 Q. IS THAT YOUR SIGNATURE ON THE LAST PAGE OF THE
4 DOCUMENT ABOVE THE WORDS MICHAEL J. SANGIACOMO, PRESIDENT
5 AND CHIEF EXECUTIVE OFFICER?
- 6 A. YES, IT IS.
- 7 Q. AND DO YOU RECOGNIZE MR. LOMELE'S SIGNATURE?
- 8 A. YES, I DO.
- 9 Q. AND MR. BRASLAW'S SIGNATURE?
- 10 A. YES.
- 11 Q. AND WAS THIS LETTER IN FACT SENT TO KPMG IN
12 CONNECTION WITH THE 2003 AUDIT?
- 13 A. IT WAS PROVIDED.
- 14 Q. OKAY. WAS THAT IN CONNECTION WITH THE 2003 AUDIT?
- 15 A. YES.
- 16 Q. AND WHAT WAS THE PURPOSE OF THIS LETTER, WHY WAS
17 THIS LETTER PROVIDED TO KPMG?
- 18 A. THIS IS A GENERAL, A FORM LETTER THAT IS USED IN MY
19 RECOLLECTION IN ALMOST EVERY AUDIT; IT'S CALLED A
20 REPRESENTATION LETTER OF MANAGEMENT.
- 21 Q. CAN YOU ADJUST THE MICROPHONE, PLEASE.
- 22 A. WHAT I BELIEVE IS CALLED A REPRESENTATION LETTER OF
23 MANAGEMENT TO THE AUDITORS.
- 24 Q. AND WHAT'S THE PURPOSE OF THE REPRESENTATION
25 LETTER?
- 26 A. THE AUDITORS REQUIRE IT TO MAKE SURE THAT
27 MANAGEMENT IS AWARE THAT CERTAIN ISSUES RELATING TO THE

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1 RESPONSIBILITY.

2 Q. ISN' T ONE OF THE PURPOSES OF THIS REPRESENTATION
3 LETTER TO VOUCH FOR THE INFORMATION THAT THE AUDITORS ARE
4 RELYING ON IN MAKING THEIR CONCLUSIONS ABOUT THE ACCURACY OF
5 THE FINANCIAL STATEMENT?

6 A. YES, ACKNOWLEDGING MANAGEMENT' S RESPONSIBILITY FOR
7 THOSE STATEMENTS.

8 Q. OKAY. CAN YOU TAKE A LOOK AT PAGE FIVE OF THE
9 LETTER. IN PARAGRAPH G, MANAGEMENT IS REPRESENTING TO THE
10 AUDITORS THAT MANAGEMENT BELIEVES THAT THE \$2.4 MILLION IN
11 REVENUE FROM THE CITY OF SAN JOSE RELATED TO CWS HAS BEEN
12 PROPERLY REPORTED IN 2003, CORRECT?

13 A. YES.

14 Q. AND IT GOES ON TO SAY THAT THERE' S PERSUASIVE
15 EVIDENCE OF AN ARRANGEMENT EXISTING, CORRECT?

16 A. YES.

17 Q. WHAT IS THE PERSUASIVE EVIDENCE OF THE ARRANGEMENT
18 THAT EXISTED IN 2003?

19 A. INITIALLY, IT WOULD HAVE BEEN THE MAYOR' S
20 COMMITMENT TO MAKE HIS BEST EFFORTS TO SEE THAT WE WERE
21 REIMBURSED. AND AT SOME POINT, AND I DON' T RECALL WHEN, WE
22 HAD FURTHER ASSURANCES FROM HIS FINANCE OR BUDGET DIRECTOR.

23 Q. MR. GUERRA?

24 A. YES. HE ACKNOWLEDGED THAT THE CITY, HE FELT THE
25 CITY HAD AN OBLIGATION, AND THEY WERE GOING TO DO WHAT THEY

26 NEEDED TO DO TO GET US REIMBURSED.

27 Q. ANYTHING ELSE?

28 A. NOTHING I CAN THINK OF.

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1 Q. SO BASICALLY THE PERSUASIVE EVIDENCE WAS THE ORAL
2 STATEMENTS OF THE MAYOR AND HIS BUDGET AND FINANCE DIRECTOR,
3 MR. GUERRA, RIGHT?

4 A. I CAN'T THINK OF ANYTHING ELSE AT THIS TIME.

5 Q. WE'RE TALKING ABOUT 2003, CORRECT?

6 A. YES.

7 Q. THIS IS THE 2003 REPRESENTATION LETTER, CORRECT?

8 A. RIGHT.

9 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 120,
10 A MEMORANDUM FROM BILL JONES TO YOURSELF AND A NUMBER OF
11 OTHER INDIVIDUALS AT NORCAL. ARCHIE HUMPHREY, MARK LOMELE,
12 GEORGE MCGRATH, REGARDING A JANUARY 28 FUNDRAISER. DO YOU
13 SEE THAT MEMO?

14 A. YES.

15 Q. DO YOU RECALL RECEIVING SUCH A MEMO FROM MR. JONES?

16 A. YES.

17 Q. DID YOU ATTEND THE JANUARY 28 FUNDRAISER FOR MAYOR
18 GONZALES, THAT WOULD HAVE BEEN IN 2002, AT BLAKE'S
19 STEAKHOUSE?

20 A. I BELIEVE THAT'S THE ONE I ATTENDED.

21 Q. DID YOU MAKE A CONTRIBUTION AS WELL?

22 A. YES, I DID.

23 Q. A PERSONAL CONTRIBUTION?

24 A. YES.
25 Q. THAT WAS IN THE AMOUNT OF \$500?
26 A. I ' M PRETTY SURE.
27 Q. AND I TAKE IT YOU' RE NOT A RESIDENT OF SAN JOSE,
28 RIGHT?

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1 A. NO, I ' M NOT.
2 Q. AND WHAT IS THE REASON THAT YOU MADE THIS PERSONAL
3 CONTRI BUTI ON?
4 A. I WAS ASKED BY OUR MANAGER IN SAN JOSE TO HELP
5 SUPPORT THE MAYOR OF THE CITY THAT WE HAD A CONTRACT WITH.
6 Q. SO THIS IS BASICALLY PR WORK, RIGHT?
7 A. I GUESS YOU COULD CALL IT THAT.
8 Q. WHAT ELSE COULD IT BE? YOU DON' T VOTE FOR THE
9 MAYOR; HE DOESN' T GOVERN THE CITY WHERE YOU LIVE, RIGHT?
10 A. THAT' S CORRECT.
11 Q. SO IF IT' S NOT A PUBLIC RELATIONS EFFORT BY YOU AND
12 NORCAL, WHAT ELSE WOULD YOU CALL IT?
13 A. I DON' T HAVE ANYTHING ELSE TO CALL IT.
14 Q. HOW MANY NORCAL PEOPLE ATTENDED THIS FUNDRAISER?
15 A. I DON' T KNOW.
16 Q. CAN YOU GIVE US A BALLPARK ESTIMATE?
17 A. NO, I DON' T THINK I CAN.
18 Q. THE PEOPLE THAT WORK AT NORCAL, DO THEY GET
19 REIMBURSED BY THE CORPORATION FOR INDIVIDUAL CONTRI BUTI ONS?
20 A. NO, THEY DO NOT.
21 Q. OKAY. JUST BEAR WITH US FOR A MI NUTE.

22 LET ME HAVE YOU LOOK AT EXHIBITS 101 AND 102. I
23 DON'T BELIEVE WE ASKED YOU ABOUT THAT LAST TIME YOU WERE
24 HERE. IS THAT YOUR RECOLLECTION?

25 A. THERE WAS SOME QUESTION ABOUT THE ADDENDUM.

26 Q. I THINK I DID ASK YOU ABOUT THAT. THAT'S THE
27 E-MAIL CHAIN BETWEEN YOU AND MR. ROTTENBERG FINALIZING THE
28 WORDING OF THE OCTOBER 9 ADDENDUM BETWEEN NORCAL AND CWS,

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1 CORRECT?

2 A. THEY DON'T LOOK LIKE THE SAME DOCUMENTS YOU SHOWED
3 ME THE OTHER DAY. I'M NOT SURE IF THEY ARE THE SAME OR NOT.

4 Q. I THINK THAT WE MAY HAVE TWO PRINTOUTS OF THAT
5 E-MAIL. APPARENTLY, WE HAVE TWO SETS OF THESE THAT WERE
6 MARKED 117 AND 118 AND 101 AND 102. DOES THAT LOOK MORE
7 FAMILIAR?

8 A. I BELIEVE THESE WERE THE ONES YOU SHOWED ME.

9 Q. RIGHT, AND THE OTHER EXHIBITS, 101 AND 102, APPEAR
10 TO BE JUST A DIFFERENT PRINTOUT OF THE SAME E-MAILS,
11 CORRECT?

12 A. VERY SIMILAR. THE TWO APPEAR TO BE IDENTICAL
13 EXCEPT FOR THE SIZE OF THE PRINT AND THE OTHER ONE IS A
14 LITTLE DIFFERENT.

15 Q. THEY ARE ESSENTIALLY THE SAME E-MAILS IN A
16 DIFFERENT FORMAT PERHAPS? IS THAT WHAT THEY ARE?

17 A. 117 AND 101 APPEAR TO BE THE SAME E-MAIL, JUST WITH
18 DIFFERENT -- ONE SHRUNK. SAME WITH THE OTHER ONE.

19 Q. OKAY. SO NOW, I THINK -- I THINK I ASKED YOU ABOUT

20 THIS BEFORE. YOU WERE THE PERSON WHO TOOK OUT THE REFERENCE
21 TO UNIONS IN THE RECITAL OF THE ADDENDUM, RIGHT; THAT WAS
22 YOUR CHANGE ON THE WORDING OF MR. ROTTENBERG'S DRAFT OF THE
23 ADDENDUM, RIGHT?

24 A. I DON'T RECALL IF I PERSONALLY DID THAT.

25 Q. SOMEBODY FROM NORCAL TOOK THAT OUT?

26 A. I THINK SO.

27 Q. FINALLY, YOU ATTENDED THE CITY COUNCIL MEETINGS IN
28 LATE 2004 REGARDING THE AMENDMENT OF THE AGREEMENT BETWEEN

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1 THE CITY AND NORCAL TO PAY THESE ADDITIONAL LABOR COSTS,
2 CORRECT?

3 A. I'M SORRY, IN LATE 2004?

4 Q. YES. SEPTEMBER AND DECEMBER, 2004?

5 A. I DON'T KNOW THAT I DID.

6 Q. YOU DID NOT?

7 A. I DON'T REMEMBER BEING THERE.

8 Q. OKAY. DID YOU INSTRUCT ANY NORCAL EMPLOYEES NOT TO
9 ANSWER QUESTIONS OR NOT TO DISCLOSE THE MAYOR'S CONNECTION
10 TO THE REQUEST BY THE CITY TO CHANGE, HAVE CWS CHANGE FROM
11 LONGSHOREMEN TO TEAMSTERS?

12 A. WOULD YOU REPEAT THAT.

13 Q. YES. YOU KNOW THAT THERE WERE TWO CITY COUNCIL
14 HEARINGS IN LATE 2004 REGARDING WHETHER OR NOT TO AMEND
15 NORCAL'S AGREEMENT TO PAY THIS ADDITIONAL 11-AND-A-QUARTER
16 MILLION DOLLARS, RIGHT?

17 A. I REMEMBER THERE WAS A MEETING, A HEARING. HOW

18 MANY, I DON'T RECALL.

19 Q. OKAY. DID YOU EVER INSTRUCT ANY NORCAL EMPLOYEES
20 WHO MAY HAVE ATTENDED THIS MEETING OR THESE MEETINGS
21 REGARDING THE AMENDMENT TO THE NORCAL AGREEMENT IN 2004 NOT
22 TO DISCLOSE TO THE CITY COUNCIL THE MAYOR'S ROLE OR
23 PARTICIPATION IN GETTING NORCAL TO ASK CWS TO SWITCH FROM
24 LONGSHOREMEN TO TEAMSTERS?

25 A. NO, I DID NOT.

26 Q. OKAY.

27 MR. FINKELSTEIN: I THINK THAT'S ALL THE QUESTIONS
28 I HAVE AT THIS TIME. LET ME SEE IF THE JURORS HAVE

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1 ADDITIONAL QUESTIONS.

2 ANYONE ELSE?

3 BY MR. FINKELSTEIN:

4 Q. GOING BACK TO THIS JANUARY 2002 FUNDRAISER AT
5 BLAKE'S STEAKHOUSE, DO YOU KNOW, DID YOU OR ANY OTHER NORCAL
6 EXECUTIVES PROVIDE ANY OF THE NORCAL EMPLOYEES WHO ATTENDED
7 THE FUNDRAISER ANY OF THE MONEY WHICH THEY CONTRIBUTED TO
8 THE MAYOR IN ADVANCE OF THE FUNDRAISER?

9 A. NO.

10 MR. FINKELSTEIN: OKAY. ANYBODY ELSE?

11 MR. SANGIACOMO, THANK YOU FOR RETURNING THIS
12 MORNING. AS BEFORE, YOU'RE NOT EXCUSED, BUT THE
13 INVESTIGATION IS OBVIOUSLY, GIVEN THE TIME OF THE YEAR AND
14 THE GRAND JURY'S TENURE, EVENTUALLY GOING TO CLOSE, SO AT
15 THAT POINT YOU WILL BE TOTALLY EXCUSED. AT THIS POINT

16 YOU' RE FREE TO GO, BUT NOT EXCUSED. PLEASE REMEMBER THE
17 ADMONI TI ON.

18 THE WITNESS: SURE.

19 MR. FINKELSTEIN: AND THANK YOU VERY MUCH.

20 WOULD THIS BE A CONVENIENT TIME FOR THE MORNING
21 RECESS?

22 THE FOREPERSON: UNTIL 1: 30?

23 MR. FINKELSTEIN: NO, JUST FIVE MINUTES.

24 THE FOREPERSON: LET' S RECESS FOR FIVE MINUTES
25 UNTIL 11: 00 O' CLOCK.

26 (A BRIEF RECESS WAS TAKEN.)

27 THE FOREPERSON: LET THE RECORD SHOW THAT ALL
28 GRAND JURORS ARE HERE.

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1 //

2 TONY ARREOLA,
3 HAVING BEEN PREVIOUSLY SWORN, TESTIFIED ON HIS OATH AS
4 FOLLOWS:

5 MR. FINKELSTEIN: MR. ARREOLA, I' LL JUST REMIND
6 YOU THAT YOU' RE STILL UNDER OATH BECAUSE YOU HAVE BEEN
7 PREVIOUSLY SWORN IN THIS INVESTIGATION. DO YOU UNDERSTAND
8 THAT?

9 A. YES.

10 Q. I THINK WHEN WE RECESSED LAST, YOUR TESTIMONY, WE
11 WERE LOOKING AT EXHIBIT 103, WHICH IS THE E-MAIL THAT YOU
12 SENT ON FRIDAY, SEPTEMBER 13, 2002 TO PAUL ROTTENBERG, THE
13 CONSULTANT FOR CWS, CORRECT?

14 A. YES.

15 Q. AND I THINK I WAS ASKING YOU ABOUT THE THIRD
16 PARAGRAPH THAT BEGINS:

17 IN ADDITION, CONFIDENTIALLY, JOE GUERRA, THE
18 MAYOR'S BUDGET DIRECTOR, HAS COMMITTED TO ME TO
19 SUPPORT A GARBAGE RATE INCREASE TO PAY FOR THE
20 COST OF EMPLOYING TEAMSTERS. I'M HAVING DINNER
21 WITH THE MAYOR TONIGHT AND WILL DISCUSS THE MATTER
22 WITH HIM ALSO TO ENSURE SUCCESS.

23 DO YOU RECALL BEING ASKED ABOUT THAT?

24 A. YES.

25 Q. AS I RECALL YOUR TESTIMONY, YOUR TESTIMONY IS THAT,
26 CONTRARY TO YOUR E-MAIL, JOE GUERRA, THE MAYOR'S BUDGET
27 DIRECTOR, HAD NOT COMMITTED TO YOU TO SUPPORT A GARBAGE RATE
28 INCREASE; IS THAT CORRECT?

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1 A. NOT TO ME INDIVIDUALLY, NO.

2 Q. WELL, WERE YOU PRESENT TO WITNESS THAT COMMITMENT?

3 A. YES. I WAS REFERENCING THE MEETING THAT YOU HAD
4 CITED I BELIEVE ON SEPTEMBER 12, WAS IT?

5 Q. THE DAY BEFORE?

6 A. YES.

7 Q. AND SO DID JOE GUERRA MAKE SOME COMMITMENT AT THAT
8 MEETING TO SUPPORT --

9 A. YES.

10 Q. YOU NEED TO LET ME FINISH MY QUESTIONS.

11 A. I EVEN TALKED TO MYSELF BEFORE COMING HERE TO COUNT

12 TO THREE, I TOTALLY FORGOT.

13 Q. AT THE MEETING ON SEPTEMBER 12, DID JOE GUERRA MAKE
14 A COMMITMENT TO SUPPORT A GARBAGE RATE INCREASE TO PAY FOR
15 THE COSTS OF EMPLOYING TEAMSTERS?

16 A. YES.

17 Q. AND HOW DID HE EXPRESS THAT COMMITMENT; WHAT DID HE
18 SAY?

19 A. AS I REMEMBER, SOMEBODY FROM NORCAL TALKED ABOUT
20 THE WHOLE ISSUE, AND AS I SAID BEFORE, THEY WERE THERE TO
21 REMIND THEM OF WHAT DISCUSSIONS THEY HAD HAD PRIOR AND TO
22 GET HIS COMMITMENT TO WORK WITH HIM ON GETTING THIS CONTRACT
23 AMENDMENT. SO WHAT SPECIFIC WORDS JOE SAID I DON'T
24 REMEMBER, BUT I DEFINITELY REMEMBER THAT HE CONFIRMED OR
25 AGREED TO WORK WITH THEM ON WORKING ON A CONTRACT AMENDMENT.

26 Q. YES. BUT IN YOUR E-MAIL YOU'RE REFERENCING A
27 GARBAGE RATE INCREASE, NOT A CONTRACT AMENDMENT.

28 A. THAT'S WHAT THAT MEANT. THE CONTRACT AMENDMENT WAS

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1 TO INCREASE THE AMOUNT -- AGAIN, THIS IS NORCAL'S STUFF, SO
2 MY UNDERSTANDING WAS THAT THEY WERE ASKING FOR A CONTRACT
3 AMENDMENT SO THAT IT WOULD DEAL WITH THE WHOLE DISPARITY
4 BETWEEN THE LONGSHOREMEN COSTS VERSUS THE COSTS OF THE NEW
5 TEAMSTERS.

6 Q. SO WHY DID YOU WRITE IN YOUR E-MAIL THAT MR. GUERRA
7 MADE A COMMITMENT ABOUT A GARBAGE RATE INCREASE TO PAY FOR
8 THE ADDITIONAL COSTS OF EMPLOYING THE TEAMSTERS?

9 A. I THOUGHT THOSE WERE RELATED. THE RATE INCREASE, I

10 BELIEVED, AND AGAIN, IT'S SECOND-HAND INFORMATION, I
11 BELIEVED WAS TO BE ABLE TO AFFORD THE CONTRACT AMENDMENT, SO
12 THE RATE INCREASE WAS TIED TO THAT.

13 Q. RIGHT. SO WHAT DID MR. GUERRA SAY AT THE SEPTEMBER
14 12 MEETING THE DAY BEFORE?

15 A. I DON'T REMEMBER THE SPECIFIC WORDING, BUT HE
16 DEFINITELY CONFIRMED THE PRIOR COMMITMENT OF A CONTRACT
17 AMENDMENT, AND THAT HE WOULD WORK WITH, THE MAYOR'S OFFICE
18 WOULD WORK WITH THEM ON MAKING THAT HAPPEN AT SOME POINT.

19 Q. AMENDING THE CONTRACT?

20 A. THAT'S WHAT I REMEMBER, YES.

21 Q. SO DID HE SAY ANYTHING ABOUT A GARBAGE RATE
22 INCREASE?

23 A. NOT THAT I REMEMBER, SIR.

24 Q. SO WHY DID YOU USE THE WORDS GARBAGE RATE INCREASE
25 IN YOUR E-MAIL?

26 A. AGAIN, I WAS REFERENCING THE CONTRACT AMENDMENT,
27 AND THOSE THINGS, AGAIN, ARE TIED. I'M NOT FAMILIAR WITH
28 THESE CONTRACTS. I DIDN'T STATE -- I DIDN'T GIVE ANY

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1 BACKGROUND ON THAT MEETING BECAUSE I HAD NO PRIOR KNOWLEDGE;
2 ALL I'M TRYING TO DO IS EXPLAIN TO YOU WHAT I REMEMBER.

3 Q. I UNDERSTAND, BUT I'M TRYING TO ASK YOU TO EXPLAIN
4 TO US WHY YOU MADE A REFERENCE TO A GARBAGE RATE INCREASE IN
5 THE E-MAIL YOU SENT THE DAY AFTER THIS MEETING IN 2002.

6 A. HE COULD HAVE SAID THAT, OR I WOULD BE REFERENCING,
7 AGAIN, THE CONTRACT, SO I DON'T REMEMBER SPECIFICALLY, BUT

8 IT COULD BE EITHER/OR. TO ME, IT MEANT THE SAME THING. THE
9 CONTRACT AMENDMENT MEANT THERE HAD TO BE A RATE INCREASE;
10 THEREFORE, THERE NEEDS TO BE A CONTRACT AMENDMENT. THAT'S
11 WHAT I'M TRYING TO CONVEY TO YOU.

12 Q. WHY DID THE CONTRACT AMENDMENT MEAN THERE HAD TO BE
13 A GARBAGE RATE INCREASE?

14 A. AGAIN, MY UNDERSTANDING IS SECOND- OR THIRD-HAND SO
15 I CAN TELL YOU WHAT I THINK AND --

16 Q. THAT'S WHAT I'M ASKING. WHY DID YOU THINK THAT
17 CONTRACT AMENDMENT WAS SYNONYMOUS WITH GARBAGE RATE
18 INCREASE?

19 A. IT GOES BACK TO THIS WHOLE ISSUE OF LONGSHOREMEN
20 EMPLOYEES VERSUS THE TEAMSTERS; THERE IS A DISPARITY IN
21 TERMS OF HOW MUCH A TEAMSTER MAKES VERSUS A LONGSHOREMAN.

22 Q. I UNDERSTAND. BUT CAN YOU TRY TO FOCUS ON MY
23 QUESTION, WHICH IS, YOU'RE TELLING US TODAY THAT WHAT YOU
24 RECALL MR. GUERRA SAYING WAS SOME KIND OF COMMITMENT TO
25 HONOR A PREVIOUS COMMITMENT THAT HAD BEEN MADE ABOUT THESE
26 EXTRA COSTS, CORRECT?

27 A. YES.

28 Q. AND I'M SAYING, HOW DID THAT GET TRANSLATED THE

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1851

1 NEXT MORNING IN YOUR E-MAIL TO A GARBAGE RATE INCREASE?

2 A. I THOUGHT I JUST EXPLAINED THAT. THE RATE --

3 Q. YOU HAVEN'T, SIR. YOU'VE TOLD US A LOT OF THINGS,
4 BUT WHAT YOU HAVEN'T TOLD US IS WHY IN YOUR MIND HONORING
5 THIS PREVIOUS COMMITMENT FOR THESE EXTRA COSTS TO BE PAID

6 WAS SYNONYMOUS WITH A GARBAGE RATE INCREASE?

7 A. MY UNDERSTANDING, AGAIN, SIR, WAS THAT IT HAD TO DO
8 WITH THE LONGSHOREMEN UNION GUYS GETTING PAID LESS MONEY PER
9 HOUR THAN THE TEAMSTERS, SO THERE NEEDED TO BE A RATE
10 INCREASE SO THAT WHEN THEY DID AMEND THE CONTRACT, THEY HAD
11 ENOUGH RESOURCES TO BE ABLE TO PAY FOR THE CONTRACT
12 AMENDMENT.

13 Q. AND WHERE DID YOU GET THAT UNDERSTANDING?

14 A. EITHER FROM MR. DUONG, OR I DON'T REMEMBER EXACTLY,
15 BUT IT'S ALL SECOND-HAND AND THIRD-HAND INFORMATION.

16 Q. YOU PREVIOUSLY WORKED FOR THE CITY OF SAN JOSE; IS
17 THAT RIGHT?

18 A. YES, I DID, SIR.

19 Q. WHAT WAS YOUR POSITION?

20 A. DEPUTY CHIEF OF STAFF.

21 Q. IN WHAT YEARS WERE YOU IN THAT POSITION?

22 A. UH -- THE FIRST DATE, 1999, WHENEVER THAT, THE 1ST
23 OR THE 2ND OF JANUARY. AND LIKE I SAID BEFORE, I LEFT THE
24 FIRST PART OF JUNE, PHYSICALLY, OF 2000, BUT MY SEPARATION,
25 LEGAL, TECHNICAL DATE WAS, I BELIEVE, JULY 13 OR JULY 10.

26 Q. OR JULY 14.

27 A. NO, I THINK JULY 14 WAS, BECAUSE THE CONTRACT SAYS
28 THAT, THAT'S MAKING SURE I DIDN'T HAVE ANY DIRECT CONTACT

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1852

1 WITH MY EMPLOYER OR OTHER COUNCILMEMBERS OR OTHER CITY STAFF
2 BEFORE THE REVOLVING DOOR ORDINANCE EXPIRED.

3 Q. WHAT WERE YOUR DUTIES AND RESPONSIBILITIES AS

4 DEPUTY CHIEF OF STAFF?

5 A. SIR, LIKE I SAID BEFORE, MY MAIN AREA OF
6 RESPONSIBILITY WAS PUBLIC SAFETY, SO I DEALT WITH THE
7 BUDGETS OF THE POLICE DEPARTMENT, THE MAYOR'S TASKFORCE, THE
8 FIRE DEPARTMENT, SOME COMMUNITY STUFF, AND I ALSO WAS PART
9 OF THE SENIOR STAFF AT MEETINGS AND SO FORTH.

10 Q. DID YOU HAVE ANY PRIOR EXPERIENCE DEALING WITH ANY
11 CITY CONTRACTS?

12 A. CITY CONTRACTS --

13 Q. CONTRACTS BETWEEN THE CITY AND THIRD PARTIES
14 SUPPORT FOR SERVICES?

15 A. NO. I DIDN'T DEAL WITH THE CONTRACTS, BUT I DID
16 DEAL WITH, WHEN I WAS WORKING IN THE COUNCILMEMBER'S OFFICE,
17 I DEALT MORE WITH THAT, WHERE THE NEIGHBORHOOD GROUP WOULD
18 APPLY FOR A GRANT, SO THEY WOULD MAKE APPLICATIONS FOR
19 GRANTS. I WOULD READ THEM, KIND OF GIVE MY ASSESSMENT ON
20 WHETHER THE SERVICES WERE --

21 Q. WORTHY OF BEING FUNDED?

22 A. WORTHY OF BEING FUNDED, BECAUSE, A NUMBER OF
23 REASONS; ONE, MAYBE THERE IS ANOTHER GROUP THAT'S PROVIDING
24 THAT SERVICE, SO IT WOULD BE A REDUNDANT SERVICE; OR MAYBE
25 IT WAS A SERVICE THAT, JUST, THE CITY COULDN'T AFFORD.

26 Q. BACK IN 2002, WHAT WAS YOUR UNDERSTANDING OF THE
27 SOURCE OF FUNDING FOR THE GARBAGE SERVICES?

28 A. I DON'T KNOW. I DIDN'T GET INVOLVED AT THAT LEVEL,

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1853

1 SIR.

2 Q. YOU HAD NO IDEA WHERE THE CITY GOT THE MONEY TO PAY
3 FOR GARBAGE SERVICES?

4 A. I CAN ASSUME.

5 Q. I AM ASKING YOU WHAT YOU UNDERSTOOD. I'M NOT
6 ASKING YOU TO MAKE A GUESS TODAY. I WANT TO KNOW WHAT YOU
7 THOUGHT BACK IN 2002.

8 A. I'M TRYING TO REMEMBER FOUR YEARS AGO, SO, SINCE
9 IT'S A RATE INCREASE, I WOULD ASSUME IT'S COMING FROM,
10 KNOWING CITY GOVERNMENT, IT'S EITHER COMING FROM ESTABLISHED
11 FEES THAT ARE ASSESSED TO THE PATRONS OR CUSTOMERS OR AN
12 ASSESSMENT DISTRICT. I DON'T KNOW. IT COULD BE A NUMBER OF
13 FUNDING SOURCES.

14 Q. DID YOU KNOW BACK IN 2002 THAT IT COULD ALSO BE
15 PAID FOR IN PART OUT OF THE GENERAL FUND?

16 A. YES. THAT'S ONE OTHER SOURCE, CORRECT. BUT THE
17 GENERAL FUND, IT IS A SOURCE. BUT WHERE DOES THE GENERAL
18 FUND GET THEIR FUNDS FROM, THAT'S THE BIGGER QUESTION, AND
19 THEY COME FROM EITHER TAXPAYERS OR SOME OTHER SOURCES THAT
20 BRING THE MONEY TO THE GENERAL FUND, SO THE GENERAL FUND
21 DOESN'T CREATE THE FUNDS.

22 Q. RIGHT. BUT THAT'S A REPOSITORY FOR MONEY THAT THE
23 CITY COLLECTS THROUGH TAXES AND OTHER SOURCES, RIGHT?

24 A. YES.

25 Q. YOU KNEW BACK IN 2002 THAT GENERAL FUND MONEY COULD
26 BE USED TO PAY FOR OR TO SUPPLEMENT GARBAGE COLLECTION
27 SERVICES, RIGHT?

28 A. IF SOMEBODY ASKED ME THAT QUESTION THAT YOU'RE

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1 ASKING NOW, I PROBABLY WOULD HAVE GONE INTO SOME KIND OF
2 THOUGHT PROCESS AND CONCLUDED THAT, YES.

3 Q. LET ME ASK YOU AGAIN. WHY DID JOE GUERRA'S
4 STATEMENTS ABOUT HONORING A PRIOR COMMITMENT TRANSLATE IN
5 YOUR MIND THE NEXT MORNING, IN THIS E-MAIL, TO A GARBAGE
6 RATE INCREASE?

7 A. BECAUSE OF THE FACT THAT, MY UNDERSTANDING WAS THAT
8 THE ORIGINAL CONTRACT WAS FOR A LESSER AMOUNT, AND THEY
9 NEEDED TO FIND ADDITIONAL RESOURCES --

10 Q. IT COULD HAVE COME FROM THE GENERAL FUND, COULDN'T
11 IT?

12 A. YES.

13 Q. WHY DID YOU ASSUME IT WAS GOING TO BE THROUGH A
14 GARBAGE RATE INCREASE?

15 A. I DON'T KNOW, SIR.

16 Q. ARE YOU SAYING THAT THE STATEMENT ABOUT THE GARBAGE
17 RATE INCREASE IS JUST SOMETHING YOU MADE UP IN THIS E-MAIL?

18 A. NO. I COULD HAVE MADE AN ASSUMPTION THAT THAT'S
19 WHERE IT WAS COMING FROM, OR IT COULD HAVE BEEN, AGAIN, LIKE
20 I SAID EARLIER, THAT MAYBE JOE MENTIONED IT DURING THAT
21 MEETING. I JUST DON'T REMEMBER EXACTLY IF IT WAS ME READING
22 INTO IT THAT HE, I WAS REFERENCING THE CONTRACT AMENDMENT,
23 OR IF HE ACTUALLY SAID PHYSICALLY, VERBALLY, THAT WE NEEDED
24 A RATE INCREASE; I DON'T REMEMBER THAT SPECIFICALLY.

25 Q. OKAY. LET ME ASK YOU THIS: WE'RE TALKING ABOUT
26 WHAT JOE GUERRA MIGHT HAVE SAID THE DAY BEFORE THIS E-MAIL
27 ON SEPTEMBER 12, 2002, RIGHT?

28 A. CORRECT.

1 Q. WOULD IT BE ACCURATE TO SAY THAT WHEN YOU SENT THIS
2 E-MAIL OUT THE FOLLOWING MORNING, WHATEVER YOU HEARD HIM SAY
3 WOULD HAVE BEEN FRESH IN YOUR MIND BACK THEN, RIGHT?

4 A. SURE.

5 Q. AND DO YOU BELIEVE THAT YOU WERE TRYING TO BE
6 COMPLETELY ACCURATE AND TRUTHFUL IN THIS E-MAIL?

7 A. YES.

8 Q. OKAY. AND WOULD THIS E-MAIL BE DOCUMENTING THEN
9 WHAT YOU THOUGHT YOUR BEST RECOLLECTION OF THE CONVERSATION
10 WAS AT THE TIME?

11 A. I WOULD THINK SO.

12 Q. OKAY. SO IN THIS E-MAIL YOU HAVE WRITTEN:

13 IN ADDITION, CONFIDENTIALLY, JOE GUERRA, THE
14 MAYOR'S BUDGET DIRECTOR, HAS COMMITTED TO ME TO
15 SUPPORT A GARBAGE RATE INCREASE TO PAY FOR THE
16 COST OF EMPLOYING TEAMSTERS.

17 AND SIR, WAS THAT YOUR BEST RECOLLECTION AT THE
18 TIME OF WHAT JOE GUERRA HAD SAID?

19 A. I DON'T REMEMBER EXACTLY, BECAUSE IT'S FOUR YEARS
20 LATER BUT --

21 Q. I'M NOT ASKING YOU WHAT YOU REMEMBER TODAY. MY
22 QUESTION NOW IS DIFFERENT, IN LIGHT OF WHAT YOU TOLD US.
23 I'M ASKING WHETHER WHAT YOU WROTE IN YOUR E-MAIL YOU
24 BELIEVED TO BE YOUR MOST ACCURATE RECOLLECTION OF WHAT
25 HAPPENED.

26 A. THE MOST LIKELY SITUATION BACK THEN PROBABLY WOULD
27 HAVE BEEN THAT MAYBE HE DID USE THAT TYPE OF VERBIAGE, YES.

28 Q. I'M NOT ASKING YOU TO SIT BACK, LOOK BACK ON THIS

1 FOUR YEARS LATER; I'M ASKING YOU WHETHER YOU BELIEVE THAT
2 THAT E-MAIL IS THE MOST ACCURATE RECOLLECTION OF WHAT
3 HAPPENED WITH JOE GUERRA THE DAY BEFORE.

4 A. I CAN'T IGNORE THAT IT'S FOUR YEARS, AND I DON'T
5 KNOW EXACTLY WHAT WAS GOING ON EXACTLY, BUT THE POSSIBILITY
6 THAT THAT STATEMENT REFLECTS PROBABLY THE MOST LIKELY THING
7 THAT MR. GUERRA SAID, YES, I WOULD AGREE WITH YOU.

8 Q. LET ME TRY TO GET IT ANOTHER WAY, BECAUSE WE DON'T
9 SEEM TO BE COMMUNICATING WELL. I AM GOING TO GIVE YOU TWO
10 CHOICES. OKAY?

11 A. OKAY.

12 Q. WHAT YOU REMEMBER TODAY ABOUT THE SEPTEMBER 12
13 CONVERSATION AND WHAT YOU PUT DOWN IN YOUR E-MAIL ON
14 SEPTEMBER 13 ABOUT THE SEPTEMBER 12 CONVERSATION, WHICH
15 VERSION DO YOU THINK IS MORE ACCURATE?

16 A. PROBABLY, I THINK THAT ONE IS MOST LIKELY.

17 Q. THAT ONE, MEANING YOUR E-MAIL?

18 A. RIGHT.

19 Q. YOU SAY MOST LIKELY. MOST ACCURATE?

20 A. MOST LIKELY TO BE ACCURATE, YES. IT'S THE SAME
21 THING, ISN'T IT? WHAT I'M TRYING TO SAY IS I CAN'T SAY WITH
22 CERTAINTY THAT'S EXACTLY WHAT HE SAID, EVEN THOUGH --

23 Q. YOU CAN'T SAY WITH CERTAINTY AT THIS POINT BECAUSE
24 TODAY IS FOUR YEARS LATER?

25 A. RIGHT.

26 Q. I'M NOT ASKING YOU TO SAY BASED ON WHAT YOU
27 REMEMBER TODAY. I'M ASKING YOU A DIFFERENT QUESTION. I'M

28 ASKING YOU WHETHER YOU BELIEVE WHAT YOU DID, SAY FOUR YEARS

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1857

1 AGO ABOUT THE CONVERSATION THE DAY BEFORE, WAS THE MOST
2 ACCURATE VERSION OF WHAT HAPPENED.

3 A. YES.

4 Q. WHY DID YOU WRITE "CONFIDENTIALLY," IN THAT
5 PARAGRAPH; WHAT WAS CONFIDENTIAL ABOUT THAT?

6 A. IT'S PART OF THE WHOLE THING THAT I WAS
7 EXAGERRATING A LITTLE BIT, OR A LOT, I SHOULD SAY, THE
8 MEETING BEFORE, BECAUSE HE DIDN'T COMMIT TO ME; HE COMMITTED
9 TO A GROUP OF PEOPLE WHO MOSTLY WERE NORCAL REPRESENTATIVES.

10 Q. IS IT YOUR TESTIMONY THAT YOU WERE AT THIS MEETING,
11 OTHER THAN SAYING, HI, HOW ARE YOU DOING, YOU DIDN'T SAY
12 ANYTHING TO JOE GUERRA?

13 A. I DON'T REMEMBER SAYING ANYTHING BECAUSE I HAD NO
14 KNOWLEDGE ABOUT THE ISSUE AT ALL, AND THE MEETING, AS I
15 REMEMBER, WAS CALLED FROM NORCAL, AND THEY INVITED CWS.
16 DAVID COULDN'T MAKE IT FOR WHATEVER REASON --

17 Q. SO YOU FILLED IN.

18 A. RIGHT. BUT THE MEETING WAS INITIATED BY NORCAL,
19 AND THE WAY THAT I REMEMBER THEY EXPLAINED IT TO DAVID,
20 BECAUSE THEY DIDN'T EXPLAIN IT TO ME, IT WAS THAT THEY FELT
21 THAT THEY NEEDED TO GO AS A UNIFIED FRONT BECAUSE THEY WERE
22 THE SUBCONTRACTOR AND IT WAS JUST BETTER FOR THEM.

23 SO DAVID, KNOWING THAT HE HAD AN AGREEMENT WITH
24 NORCAL, STILL WAS UNCOMFORTABLE BECAUSE HE STILL WAS, ON A
25 DAILY BASIS, RUNNING ON A DEFICIT. SO HE WANTED TO MAKE

26 SURE THAT NORCAL WAS DOING THEIR ATTEMPT AT GETTING A
27 CONTRACT AMENDMENT, THAT THEY WERE SUPPORTED, BECAUSE EVERY
28 DAY THEY HAD A NEGATIVE CASH FLOW AS A RESULT OF TOO MUCH

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1858

1 GARBAGE IN THE RECYCLABLES, THE COST OF THE MACHINERY, THE
2 COST OF THE PROPERTY, THE FACT THAT THEY COULDN' T SELL THE
3 RECYCLABLE MATERIALS BECAUSE THEY WERE CONTAMINATED. THEY
4 THOUGHT THE TEAMSTERS WERE CONTAMINATING THEM ON PURPOSE
5 BECAUSE THEY WERE THREATENING TO STRIKE BECAUSE THEY
6 COULDN' T REACH AN AGREEMENT ON THIS WAGES ISSUE.

7 SO MR. DUONG WAS ON A HUGE DEFICIT ON A DAILY
8 BASIS AND WAS, IN SO MANY WORDS, IN A DESPERATE SITUATION TO
9 MAKE SURE THAT ONE, HIS CONDITIONAL USE PERMIT DIDN' T GET
10 REVOKED, OR TWO, THAT NORCAL WAS SUCCESSFUL, WHICH GAVE HIM
11 A BETTER CHANCE OF FUNDING THAT GAP, BECAUSE HE WAS RUNNING
12 UNDER A HUGE, HUGE GAP THAT WAS BASICALLY BANKRUPTCY
13 DIRECTION FOR MR. DUONG, SO THAT' S WHY HE FELT HE NEEDED TO
14 ACCOMMODATE TO SOME DEGREE NORCAL' S INTERESTS IN MAKING A
15 CONTRACT AMENDMENT.

16 Q. OKAY. IT' S NOT COMPLETELY ACCURATE TO SAY YOU
17 DIDN' T KNOW ANYTHING ABOUT THIS GOING INTO THE MEETING
18 BECAUSE YOU HAD BEEN GIVEN SOME INFORMATION BY MR. DUONG
19 BEFORE THE MEETING, RIGHT?

20 A. I SAID THAT BEFORE, YES. THE INFORMATION I KNEW
21 WAS EITHER SECOND- OR THIRD-HAND BECAUSE OF DAVID TELLING ME
22 WHATEVER HE KNEW, SO AT LEAST I DIDN' T WALK IN NOT KNOWING
23 WHAT WAS GOING ON, YES.

24 Q. RIGHT. OKAY. ITEM TWO, LABELED TEAMSTER CONTRACT,
25 CORRECT?

26 A. YES.

27 Q. AND YOU SAY IN YOUR E-MAIL TO CWS' S REPRESENTATIVE
28 MR. ROTTENBERG:

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1859

1 WE SHOULD BE PREPARED TO DISCUSS THE TEAMSTER
2 CONTRACT AND REITERATE THE COST IMPLICATIONS.

3 JOE GUERRA ASKED ME FOR A COPY OF THE GREEN TEAM
4 AGREEMENT WITH THE CARPENTER' S UNION. CAN YOU GET
5 A COPY, PAUL? IF NOT, I WILL ASK CARLA TO GET A
6 COPY.

7 THOSE ARE YOUR WORDS, CORRECT?

8 A. YES, SIR.

9 Q. WHEN DID JOE GUERRA ASK YOU FOR A COPY OF GREEN
10 TEAM' S AGREEMENT WITH THE CARPENTER' S UNION?

11 A. UH --

12 Q. WAS IT AT THE MEETING THE DAY BEFORE?

13 A. NO, NO. THIS WAS SOME OTHER TIME. THIS GOES BACK
14 WITH THIS WHOLE ISSUE THAT THE TEAMSTERS WERE THREATENING TO
15 STRIKE BECAUSE THEY COULDN' T REACH AN AGREEMENT WITH MR.
16 DUONG, SO GUERRA AT THIS POINT INTERJECTED HIMSELF KIND OF
17 AS A MEDIATOR, I WOULD SAY, IN TERMS OF COMING TO AN
18 AGREEMENT BETWEEN CWS AND THE TEAMSTERS ON WHAT A FAIR
19 CONTRACT WOULD BE. SO WHAT MR. GUERRA WAS TRYING TO ASSESS,
20 READING INTO IT BECAUSE OF WHAT HE REQUESTED, IS THAT HE WAS
21 TRYING TO GET A SENSE OF OTHER CONTRACTS ALREADY IN PLACE OF

22 SIMILAR TYPE OF WORK OR JOBS THAT HE COULD USE AS A BASE FOR
23 DISCUSSION IN TERMS OF WHATEVER DISCUSSIONS HE HAD WITH
24 DAVID AND THE TEAMSTERS REPRESENTATIVES. HE WAS TRYING TO
25 GET KIND OF A SAMPLE CONTRACT.

26 Q. SO YOU HAVE GIVEN YOUR VIEW AS TO WHAT THE
27 BACKGROUND AND MOTIVATION MIGHT BE FOR MR. GUERRA, BUT MY
28 QUESTION RELATES TO A TIME PERIOD. I ASKED YOU WHEN

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1860

1 SOMETHING HAPPENED. WHAT I'M LOOKING FOR IS A DATE.

2 A. I TOLD YOU RIGHT FROM THE GET-GO, SIR, I DON'T
3 REMEMBER WHEN, BUT IT WAS NOT AT THAT MEETING; I'M A HUNDRED
4 PERCENT SURE. IT WAS SOME TIME BEFORE, I DON'T KNOW EXACTLY
5 WHEN.

6 Q. SO IT WAS PRIOR TO THE SEPTEMBER 12, 2002 MEETING?

7 A. PROBABLY, YEAH.

8 Q. AND ISN'T THE REASON MR. GUERRA WANTED TO SEE THIS
9 OTHER UNION'S CONTRACT IS BECAUSE HE WAS INTERESTED IN
10 LOOKING AT NUMBERS?

11 A. YES, HE WANTED TO GET A COMPARISON OF WHAT
12 INDIVIDUALS IN THAT KIND OF POSITION MADE SO HE WOULD USE IT
13 AS A BASIS FOR, I'M ASSUMING, RATIONALIZING WHAT A FAIR WAGE
14 WAS, WHETHER IT WAS WHAT MR. DUONG WAS PRESENTING OR WHETHER
15 IT WAS WHAT THE TEAMSTERS WERE ASKING FOR, SO I AM ASSUMING
16 HE WAS TRYING TO GET A, YOU KNOW, A BENCHMARK.

17 Q. SO WHY DID MR. GUERRA MAKE THAT REQUEST OF YOU AS
18 OPPOSED TO CWS OR MR. ROTTENBERG OR ANYBODY ELSE?

19 A. BECAUSE I WAS MEETING WITH HIM AND CHATTING WITH

20 HIM, SO HE WAS ASKING ME TO PASS THAT ON TO DAVID, WHICH I
21 BELIEVE --

22 Q. SO YOU WERE MEETING WITH HIM REGARDING USE PERMIT
23 ISSUES, AND IN THE MIDDLE OF THAT MEETING HE SAID, BY THE
24 WAY, I'D LIKE TO SEE A COPY OF THIS CONTRACT?

25 A. LIKELY.

26 Q. WHAT DOES LIKELY MEAN?

27 A. WHAT YOU SAID, YEAH. I COULD HAVE BEEN MEETING
28 WITH HIM ON A NUMBER OF ISSUES, AND ONE THE POINTS THAT CAME

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1861

1 UP IS THIS WHOLE THREAT OF THIS STRIKE FROM THE TEAMSTERS,
2 SO HE, LIKE I SAID, INTERJECTED HIMSELF KIND OF AS A
3 MEDIATOR AND WAS ASKING FOR A CONTRACT EXAMPLE THAT HE
4 COULD USE AS A BASIS FOR WHATEVER DISCUSSIONS HE WAS GOING
5 TO HAVE IN THE FUTURE.

6 Q. SO AFTER THIS SEPTEMBER 12 MEETING, SEPTEMBER 12,
7 2002, DID YOU HAVE SOME ADDITIONAL DISCUSSION WITH
8 MR. GUERRA ABOUT THE REIMBURSEMENT ISSUE, LET'S CALL IT?

9 A. THE REIMBURSEMENT ISSUE IS DIFFERENT THAN THIS.
10 REIMBURSEMENT --

11 Q. WHAT DO YOU UNDERSTAND THE REIMBURSEMENT ISSUE TO
12 MEAN?

13 A. IT REFERS BACK TO THE WHOLE DISPARITY OF THE
14 CONTRACT. THIS IS RELATING SPECIFICALLY TO THIS WHOLE
15 CONTRACT NEGOTIATION POSITION BETWEEN CWS AND TEAMSTERS.

16 Q. OKAY. AFTER PARAGRAPH TWO AND BEFORE PARAGRAPH
17 THREE, THERE'S ANOTHER PARAGRAPH, THE PARAGRAPH NUMBERED

18 TWO, THAT SAYS:

19 AS A FOLLOWUP TO THE MEETINGS I HAD WITH
20 JOE GUERRA, HE ASKED ME FOR A DOCUMENT OUTLINING
21 OUR FINANCIAL NEEDS AS A RESULT OF THE TEAMSTER
22 CONTRACT.

23 A. RIGHT.

24 Q. SO WOULD YOU EXPLAIN TO US THAT LINE, WHAT THAT
25 REFERS TO?

26 A. SURE. THE ORIGINAL CONTRACT, AND THIS IS AGAIN
27 FROM WHAT DAVID WAS EXPLAINING TO ME, ASSUMED, AND I HAVE TO
28 GO BACK TO LONGSHOREMEN, AND ALSO TEAMSTERS. ONCE THE

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1862

1 TEAMSTERS WERE IN THE PICTURE AND THE LONGSHOREMEN WERE OUT,
2 HIS NEW CONTRACT WITH NORCAL AS A SUBCONTRACTOR SAID, FOR
3 EXAMPLE, AND I'M JUST PICKING A NUMBER JUST FOR EXAMPLE
4 PURPOSES, ASSUMING I HAD, LET'S SAY, 100 EMPLOYEES, THAT
5 WERE ALL NOW TEAMSTERS. SO THAT HAD A VALUE DIFFERENCE IN
6 ITS OWN.

7 THERE WAS ACTUALLY EVEN A GREATER VALUE DIFFERENCE
8 LATER ON, BECAUSE WHEN THE GARBAGE STARTED COMING IN REALLY
9 CONTAMINATED, 20, 30, 40 PERCENT, I CAN'T REMEMBER THE
10 PERCENTAGE, WHICH WAS REALLY, REALLY BAD, HAD NO VALUE
11 WHATSOEVER, THE RECYCLABLES, DAVID HAD TO HIRE MORE
12 EMPLOYEES.

13 SO NOW THEY HAD TO HIRE MORE TEAMSTERS. SO NOW IT
14 JUST WASN'T THE 100 EMPLOYEE DIFFERENCE; NOW IT WAS 10 MORE
15 OR 15 MORE, I CAN'T REMEMBER WHAT THE NUMBERS WERE. SO

16 DAVID NOW HAD THIS HUGE DIFFERENCE NOW OR COST IN THE
17 CONTRACT --

18 Q. MR. ARREOLA?

19 A. YES.

20 Q. LET' S LOOK SOME MORE AT THAT SAME PARAGRAPH. YOU
21 HAVE SAID:

22 MR. ROTTENBERG: LET' S PREPARE A SPREADSHEET
23 THAT SHOWS DIFFERENT SCENARIOS BASED ON POTENTIAL
24 AGREEMENTS WITH THE TEAMSTERS SINCE WE DO NOT HAVE
25 AGREEMENT AT THIS TIME.

26 I SN' T THAT WHAT YOU' VE ASKED MR. ROTTENBERG?

27 A. YES, SIR.

28 Q. THE REASON YOU WANTED THAT DONE WAS TO GET SOME

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1863

1 HANDLE ON HOW MUCH REIMBURSEMENT THE CITY WAS GOING TO HAVE
2 TO BE CALLED ON TO PAY FOR THE DIFFERENCE OF THE EXTRA LABOR
3 COST, RIGHT?

4 A. YES, BUT SO YOU GET A CLEAR PICTURE, I' M TRYING TO
5 EXPLAIN THAT, IT WAS EXACTLY WHAT YOU SAID, BUT IN ADDITION
6 TO THAT, IT' S NOT JUST BASED ON THE OLD CONTRACT, NOW
7 THERE' S ADDED COST TO IT NOW. NOW THERE' S 50 EMPLOYEES MORE
8 AT A DIFFERENT RATE, SO IT WAS ACTUALLY COSTING HIM MORE
9 MONEY, SO THAT THE NUMBER WAS A LOT DIFFERENT. IT WAS ALL
10 RELATED TO LABOR COSTS.

11 Q. AND GETTING THE CITY TO PAY FOR THESE EXTRA LABOR
12 COSTS?

13 A. RIGHT.

14 Q. OKAY.

15 A. THEY HAD BEEN NEGOTIATING THIS CONTRACT SO THEY
16 WOULDN'T STRIKE AND SO FORTH.

17 Q. BUT -- LET'S SEE IF WE CAN AGREE ON A COUPLE OF
18 THINGS BASED ON THIS SECOND PARAGRAPH AND ITEM NUMBER TWO IN
19 THE TEAMSTER CONTRACT. THE SPREADSHEET WHICH IS GOING TO
20 COMPARE THE LONGSHOREMEN COSTS TO TEAMSTER COSTS UNDER
21 DIFFERENT SCENARIOS, THAT SPREADSHEET IS SOMETHING THAT
22 GUERRA WOULD HAVE WANTED FOR ONE PURPOSE ONLY, AND THAT IS
23 TO FIGURE OUT HOW MUCH EXTRA THE CITY WAS GOING TO HAVE TO
24 PAY FOR ADDITIONAL LABOR COSTS, CORRECT?

25 A. YES, SIR.

26 Q. DID MR. ROTTENBERG PREPARE SUCH A SPREADSHEET FOR
27 YOU?

28 A. I DON'T REMEMBER IF PAUL PREPARED IT HIMSELF OR IF

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1864

1 SOMEBODY ELSE FROM CWS PREPARED IT, AND I DON'T REMEMBER WHO
2 ACTUALLY DELIVERED. IT COULD HAVE BEEN ME OR IT COULD HAVE
3 BEEN DAVID HIMSELF, BECAUSE AT SOME POINT I DIDN'T
4 PARTICIPATE AS MUCH, SO DAVID KIND OF TOOK IT ON.

5 Q. WHO WAS THE SPREADSHEET DELIVERED TO, WHETHER IT
6 WAS YOU OR MR. DUONG?

7 A. BASED ON THIS E-MAIL, I WOULD ASSUME JOE GUERRA.

8 Q. I DON'T WANT YOU TO MAKE AN ASSUMPTION. DO YOU
9 KNOW OR NOT?

10 A. I DON'T REMEMBER, SIR.

11 Q. LET'S LOOK AT ITEM THREE, WHAT YOU HAVE LABELED

12 "CWS CONTRACT WITH THE CITY OF SAN JOSE." DO YOU SEE THAT
13 ITEM?

14 A. YES, SIR.

15 Q. CAN YOU EXPLAIN TO US WHAT ITEM THREE RELATES TO;
16 WHAT DID YOU MEAN BY CWS CONTRACT WITH THE CITY OF SAN JOSE?

17 A. SURE. IF I CAN JUST READ IT.

18 Q. SURE.

19 A. OKAY.

20 Q. SO ARE YOU ABLE TO TELL US WHAT THE CWS CONTRACT
21 WITH THE CITY OF SAN JOSE ISSUE WAS ALL ABOUT?

22 A. SURE, SIR. THIS GOES BACK TO DAVID DUONG'S, WHO
23 WAS THE PRESIDENT OF CWS, IF I COULD SAY DISTRUST OR NOT
24 HAPPY ARRANGEMENT WITH NORCAL, HE FELT -- KIND OF TRYING TO
25 REMEMBER. HE FELT THAT NORCAL WASN'T REPRESENTING CWS'S
26 BEST INTERESTS. ESPECIALLY WHEN THIS CONDITIONAL USE PERMIT
27 WAS STILL UNDER PROBATION, SO THERE WERE ALL KINDS OF
28 EXAMPLES. HE ALSO THOUGHT THAT POTENTIALLY NORCAL WAS

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1865

1 INVOLVED IN, POTENTIALLY IN THIS WHOLE CONTAMINATION ISSUE
2 WITH THE GARBAGE, SO THERE WAS A LOT OF ISSUES WHY DAVID
3 DIDN'T WANT TO BE UNDER, YOU KNOW, AS SUBCONTRACTOR WITH THE
4 CITY.

5 HE WANTED TO HAVE A DIRECT LINK SO THAT HE COULD
6 TALK TO STAFF DIRECTLY, BECAUSE AS IT WAS BEFORE, DAVID
7 COULDN'T GO TO THE CITY WITHOUT NORCAL BEING PRESENT SAYING,
8 MR. CITY, YOU GAVE ME A LETTER WITH 10, 15 ITEMS ON WHY MY
9 CONDITIONAL USE PERMIT IS NOT IN COMPLIANCE WITH CONDITIONAL

10 USE PERMIT LANGUAGE, AND THIS IS HOW I'M GOING TO ADDRESS
11 THEM. HE COULDN'T DO THAT. STAFF WAS NOT TALKING TO HIM
12 DIRECTLY EITHER. THERE WERE CODE ENFORCEMENT OFFICERS GOING
13 TO THE SITE ALL THE TIME, I BELIEVE CITY ATTORNEYS AND SO
14 FORTH, KIND OF ASSESSING THE WHOLE FACILITY, AND IT WAS
15 PUTTING DAVID IN A VERY TOUGH SPOT BECAUSE, IN THE EYES OF
16 CITY, IF YOU BELIEVED CARL MOSHER AND THE OTHER STAFF
17 MEMBERS, DAVID WAS NOT REALLY RESPECTING WHATEVER LETTERS
18 WERE BEING SENT OR REQUESTS WERE BEING MADE THAT, IN TERMS
19 OF FIXING CERTAIN PROBLEMS IN RELATION TO CONDITIONAL USE
20 PERMIT COMPLIANCE.

21 SO HE WAS PUT IN A POSITION, HE THOUGHT, WHERE HE
22 WAS A BAD OPERATOR AND HE FELT THAT THE CITY MIGHT COME IN
23 WITH SOME LEGAL ACTION AGAINST HIM, SHUT HIM DOWN AND
24 BASICALLY PUT HIM IN BANKRUPTCY. SO HE HAD A COUPLE
25 DISCUSSIONS WITH ALL HIS CONSULTANTS AND THOUGHT THAT MAYBE
26 HE SHOULD EXPLORE WHAT PEOPLE THOUGHT ABOUT SEPARATING
27 HIMSELF COMPLETELY WITH NORCAL AND HAVING A DIRECT LINK WITH
28 THE CITY SO HE DIDN'T HAVE THESE PROBLEMS ANYMORE.

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1866

1 Q. DID THE ISSUE HAVE ANYTHING TO DO WITH GETTING THE
2 ADDITIONAL FUNDS FROM THE CITY PAID DIRECTLY TO CWS INSTEAD
3 OF THROUGH NORCAL?

4 A. NO, NOT ALL, SIR.

5 Q. THAT WAS NOT AN ISSUE?

6 A. NO.

7 Q. NOW, AROUND THIS TIME, ARE YOU HELPING CWS DEAL

8 WITH THE ISSUE OF THE ADDITIONAL FUNDS?

9 A. IN THE CAPACITY OF PASSING INFORMATION AND
10 DISCUSSIONS I HAD WITH JOE. I WOULDN'T SAY GETTING
11 ADDITIONAL FUNDS BUT --

12 Q. CAN I MAKE A SUGGESTION. IF YOU COULD START OUT IN
13 YOUR ANSWER OR RESPONSE, IF POSSIBLE, BY FIRST ANSWERING THE
14 QUESTION WITH A YES OR NO IF POSSIBLE, AND THEN IF YOU NEED
15 TO EXPLAIN IT, THAT'S FINE.

16 SO DURING THIS TIME PERIOD IN 2002, WERE YOU
17 HELPING CWS DEAL WITH THE ISSUE OF ADDITIONAL FUNDS.

18 A. I NEVER WENT TO ANYBODY THAT I CAN REMEMBER AND
19 ASKED -- NO. SORRY. NO. I NEVER WENT AND SAID TO JOE, YOU
20 KNOW, YOU GUYS GOT TO WORK ON SOME CONTRACT AMENDMENT, RATE
21 INCREASE TO GET ADDITIONAL FUNDS. WHAT I WAS DOING IN THOSE
22 CAPACITIES THAT YOU SEE THERE IS DEALING WITH THE WHOLE
23 ISSUE THAT DAVID THOUGHT THEY WERE GOING TO STRIKE ON HIM
24 AND HE NEEDED HELP IN BRINGING CLOSURE, NOT NECESSARILY IN
25 GETTING PAID BUT -- CAN I CAN FINISH?

26 GETTING A CONCLUSION OR A RESOLUTION TO THIS WHOLE
27 CONTRACT BETWEEN THE TEAMSTERS, BECAUSE THAT WAS WHAT HE WAS
28 TRYING TO DO. NEGOTIATING THE TEAMSTERS' CONTRACT DIDN'T

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1867

1 MEAN ANYTHING IN TERMS OF GETTING REIMBURSED. THAT'S WHAT I
2 WAS TRYING TO EXPLAIN TO YOU, AND I'M NOT DOING A GOOD JOB.
3 THAT'S WHY DAVID WAS IN SUCH STRESS, BECAUSE, THINK ABOUT
4 IT. IF DAVID SIGNED A CONTRACT WITH THE TEAMSTERS THAT SAID
5 NOW HE HAS TO PAY X NUMBER OF MORE DOLLARS, HE'S ALREADY

6 RUNNING ON A DEFICIT BECAUSE NORCAL IS NOT PAYING HIM FOR
7 THE DIFFERENCE IN THE TEAMSTERS' CONTRACT, SO HE'S GOING IN
8 THE HOLE EVERY DAY. IF HE SIGNS A CONTRACT WITH THE
9 TEAMSTERS FOR X MORE DOLLARS, THAT WAS WITHOUT NORCAL HAVING
10 DONE THEIR PART ON GETTING THE CONTRACT AMENDMENT; HE'S
11 GOING TO GET RUINED SOONER RATHER THAN LATER BECAUSE HE DOES
12 NOT HAVE THE REVENUE FROM FACILITY PRODUCTION TO OFFSET HIS
13 OVERHEAD. IT'S JUST A HUGE OVERHEAD, BECAUSE PLUS THE CART,
14 THE RECYCLABLES HAD ALMOST NO VALUE BECAUSE HE COULDN'T SELL
15 IT.

16 THE NEWSPAPER, HE WOULD SHIP IT TO CHINA, AND
17 CHINA REJECTED IT. HE HAD PROBLEMS OVER THERE BECAUSE IT
18 WAS SO CONTAMINATED. I DON'T KNOW IF THEY EVER CITED HIM,
19 BUT IT WAS THREATENED BECAUSE THEY SAID HE WAS EXPORTING
20 GARBAGE, NOT RECYCLABLES, TO CHINA. SO HIS REVENUE SOURCES
21 WERE VERY DEPLETED; HE WAS GOING IN THE HOLE.

22 SO IT WAS IN HIS BEST INTERESTS THAT WHATEVER
23 CONTRACT HE SETTLED WITH THE TEAMSTERS, THAT IT BE A FAIR
24 ONE IN CASE THIS CONTRACT AMENDMENT NEVER HAPPENED. HE
25 WOULD BE STUCK IN THIS CONTRACT WITH THE TEAMSTERS, SO HE
26 WOULD BE IN A SERIOUS SITUATION.

27 YES, HE KNEW THT HE HAD THIS OTHER SIDE AGREEMENT
28 WITH NORCAL, BUT GUESS WHAT, HE HAD TO GO TO COURT; HE HAD

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1868

1 TO GO FIGHT IT, AND HIS FINANCIAL SITUATION WAS IN SUCH, I
2 BELIEVE, IN SUCH A LOW STATE THAT HE MIGHT NOT BE ABLE TO
3 DEFEND HIMSELF AGAINST A MULTI-BILLION DOLLAR CORPORATION;

4 HE WAS IN A VERY TOUGH SPOT. THAT'S WHY HE WAS ENGAGED IN
5 MAKING SURE THAT WHATEVER HAPPENED WITH THE TEAMSTERS WAS A
6 FAIR DEAL, OR NOT AS HIGH.

7 HE WAS TRYING TO MINIMIZE THE POTENTIAL COST AS
8 MUCH AS POSSIBLE, BUT THE TEAMSTERS WERE THREATENING FOR
9 STRIKE, WERE DOING THIS, DOING THEIR OWN SHOW. THAT KIND OF
10 AGGRAVATED THE PROBLEM, AND KIND OF EXTENDED IT FOR SOME
11 TIME.

12 A. IT'S A LOT OF INFORMATION, I KNOW.

13 Q. IT IS A LOT OF INFORMATION. SOME OF IT IS HEARSAY,
14 AND MOST OF IT IS JUST NONRESPONSIVE TO MY QUESTION. LET'S
15 SEE IF WE CAN GET AT IT ANOTHER WAY. YOUR E-MAIL CONTAINS
16 THREE NUMBERED ISSUES; ONE, TWO, THREE?

17 A. YES.

18 Q. THE FIRST ISSUE IN THE SECOND PARAGRAPH TALKS ABOUT
19 A -- STRIKE THAT.

20 THE FIRST ISSUE TALKS ABOUT THE GARBAGE
21 CONTAMINATION PROBLEM, RIGHT?

22 A. LET ME READ IT AGAIN.

23 Q. LET ME WITHDRAW THAT QUESTION. LET ME START OUT,
24 START AT THE TOP.

25 LET'S JUST GO THROUGH YOUR E-MAIL. IN THE FIRST
26 PARAGRAPH YOU ARE THANKING PAUL FOR A COPY OF THE LETTER TO
27 NORCAL, RIGHT?

28 A. YES.

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1869

1 Q. IN THE NEXT PARAGRAPH YOU'RE TALKING ABOUT
Page 181

2 CARL MOSHER AND ESD AND MEETING TO DISCUSS THE GARBAGE
3 PROBLEM, RIGHT?

4 A. YES.

5 Q. IN THE THIRD PARAGRAPH YOU'RE TALKING ABOUT A
6 GARBAGE RATE INCREASE, CORRECT?

7 A. LET ME READ IT. YES.

8 Q. AND A GARBAGE RATE INCREASE, THAT'S SOMETHING THAT
9 RELATES TO THE ADDITIONAL FUNDS ISSUE, RIGHT?

10 A. YES.

11 Q. THEN YOU SAY, "IN PREPARATION FOR THE UPCOMING
12 MEETING, WE NEED THE FOLLOWING DELIVERABLES," RIGHT?

13 A. YES, SIR.

14 Q. BY DELIVERABLES, WHAT DO YOU MEAN?

15 A. I GUESS IT REFERS TO SOMETHING BELOW.

16 Q. YOU NEED THE REQUESTS BELOW COMPLETED OR PRODUCED;
17 IS THAT WHAT YOU MEAN BY DELIVERABLE?

18 A. YES, WHATEVER ACTION ITEMS WERE UNDER THERE, YEAH.

19 Q. SO THEN WE HAVE THE THREE ITEMS, AND THE FIRST
20 ITEM, YOU SAY, "AN INTERNAL DOCUMENT FROM JOE DETAILING THE
21 PROBLEMS THAT THE EXCESS GARBAGE IS CAUSING OPERATIONALLY TO
22 CWS," AND IT GOES ON.

23 WHO IS THE JOE YOU'RE TALKING ABOUT?

24 A. UH --

25 Q. LET ME JUST REMIND YOU OF THE QUESTION, BECAUSE
26 YOU'VE TAKEN A MOMENT TO READ THIS. THE QUESTION BEGINS
27 WITH WHO, WHICH MEANS I'M LOOKING FOR A NAME. WHO IS THE
28 JOE YOU'RE REFERRING TO IN THAT SENTENCE?

1 A. ONE OF THE CWS EMPLOYEES. I THINK HE WAS A PLANT
2 MANAGER, OPERATIONS --

3 Q. I DIDN'T ASK YOU WHAT HE DID; I JUST WANT TO KNOW
4 WHO HE WAS.

5 A. SORRY.

6 Q. IN THE NEXT PARAGRAPH, IN ITEM ONE, YOU'RE SAYING
7 THAT YOU NEED A DOCUMENT ABOUT THE COST IMPLICATIONS OF THE
8 EXCESS GARBAGE, RIGHT?

9 A. CAN I READ IT?

10 Q. SURE.

11 A. YES, SIR.

12 Q. ITEM TWO, YOU'VE DENOMINATED A TEAMSTER CONTRACT,
13 RIGHT?

14 A. YES, SIR.

15 Q. AND IN ITEM TWO YOU TALK ABOUT A FOLLOWUP TO THE
16 MEETING THAT YOU HAD WITH JOE AND A DOCUMENT OUTLINING CWS'S
17 FINANCIAL NEEDS AS A RESULT OF THE TEAMSTER CONTRACT, RIGHT?

18 A. YES, SIR.

19 Q. THAT'S SOMETHING THAT RELATES TO THE ADDITIONAL
20 FUNDS ISSUE, CORRECT?

21 A. THAT RELATES TO WHAT I EXPLAINED TO YOU --

22 Q. DOES IT RELATE TO THE NEED FOR ADDITIONAL FUNDS
23 FROM THE CITY?

24 A. WHAT DO YOU MEAN BY THAT?

25 Q. GETTING NORCAL COMPENSATED FOR THE EXTRA LABOR
26 COSTS THAT IT'S GOING TO PAY TO CWS?

27 A. NO. WHAT IT MEANS, AS I UNDERSTOOD IT, IS THE
28 WHOLE CONTRACT NEGOTIATIONS BETWEEN THE TEAMSTERS AND CWS.

1 Q. REALLY?

2 A. YES, SIR.

3 Q. SO HOW MUCH EXTRA MONEY CWS IS GOING TO HAVE TO PAY
4 UNDER A NEW TEAMSTER CONTRACT HAS NO BEARING ON HOW MUCH
5 MONEY THE CITY IS GOING TO BE ASKED TO PAY PURSUANT TO THE
6 PRIOR COMMITMENT THAT THE MAYOR MADE?

7 A. I DON'T KNOW THE ANSWER TO THAT QUESTION.

8 Q. WELL, LET'S THINK ABOUT THIS FOR A MINUTE. THE
9 PRIOR COMMITMENT FROM THE CITY HAS TO DO WITH THE
10 DIFFERENTIAL IN COSTS BETWEEN THE LONGSHOREMEN AND THE
11 TEAMSTERS, RIGHT?

12 A. YES, SIR.

13 Q. WOULDN'T THAT DIFFERENTIAL BE AFFECTED BY HOW MUCH
14 THE TEAMSTERS GET UNDER A NEW CONTRACT WITH CWS?

15 A. MM-HMM.

16 Q. YES?

17 A. YES, SIR.

18 Q. WOULDN'T THAT ITEM THEN RELATE TO THE ADDITIONAL
19 MONEY THAT NORCAL WAS SEEKING AND CWS WANTED NORCAL TO GET
20 TO ENSURE THAT NORCAL WOULD PAY CWS?

21 A. ULTIMATELY, YES.

22 Q. OKAY.

23 MR. FINKELSTEIN: WE'RE AT OUR LUNCH BREAK. WHY
24 DON'T WE TAKE OUR RECESS, AND WE'LL SEE YOU AT 1:30.

25 THE FOREPERSON: LET ME REMIND YOU OF THE
26 CONFIDENTIALITY ADMONITION. ANYTHING THAT WAS SAID BY YOU
27 OR ANYBODY ELSE HERE OR WHAT YOU SAW IS NOT TO BE
28 COMMUNICATED TO ANYBODY BUT YOUR ATTORNEY. DO YOU

1 UNDERSTAND THIS?
2 THE WITNESS: YES, SIR.
3 THE FOREPERSON: THANK YOU.
4 (THE LUNCHEON RECESS WAS TAKEN.)
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28

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1873

1 SAN JOSE, CALIFORNIA MAY 4, 2006

2

3

AFTERNOON SESSION:

4

THE FOREPERSON: LET THE RECORD SHOW ALL 19 JURORS
5 ARE PRESENT.

6

MR. FINKELSTEIN: GOOD AFTERNOON, MR. ARREOLA.

7

I'LL REMIND YOU THAT YOU'RE STILL UNDER OATH; DO YOU
8 UNDERSTAND THAT?

9

A. YES.

10

Q. WE HAVE BEEN LOOKING AT EXHIBIT 103, YOUR SEPTEMBER
11 13, 2003 E-MAIL TO PAUL ROTTENBERG AND DAVID DUONG, CORRECT?

12

A. YES.

13

Q. NOW, LET ME DIRECT YOUR ATTENTION TO THE LINE IN
14 THE E-MAIL THAT READS:

15

I'M HAVING DINNER WITH THE MAYOR TONIGHT AND

16

WILL DISCUSS THE MATTER WITH HIM ALSO TO ENSURE

17

SUCCESS.

18

YOUR TESTIMONY IS YOU DID NOT HAVE DINNER WITH THE
19 MAYOR THAT NIGHT; IS THAT CORRECT?

20

A. WHAT I SAID IS I DO NOT REMEMBER IF I DID OR NOT,
21 BUT SINCE -- MY GUT TELLS ME THAT I DIDN'T, BECAUSE I DON'T
22 REMEMBER ANY DETAILS, SO NOT LIKELY.

23

Q. IF YOUR GUT TELLS YOU THAT YOU DIDN'T, WHY DID YOU
24 PUT THAT IN THE E-MAIL?

25 A. MAYBE THAT WAS MY INTENTION, TO HAVE DINNER THAT
26 NIGHT.

27 Q. OH, I SEE. YOU'RE THINKING PROBABLY IT WAS YOUR
28 INTENT TO HAVE DINNER, BUT FOR SOME REASON IT DIDN'T TAKE

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1874

1 PLACE?

2 A. MAYBE IT DIDN'T, BECAUSE I DON'T REMEMBER
3 SPECIFICALLY EVER TALKING TO HIM ABOUT HAVING A MEETING
4 REGARDING THE CWS INFORMATION. I DID HAVE DINNERS WITH HIM,
5 YOU KNOW, BUT I DON'T REMEMBER SPECIFICALLY EVER TALKING --

6 Q. AROUND THIS TIME FRAME, SEPTEMBER 2002, DID YOU
7 SPEAK TO THE MAYOR ABOUT A RATE INCREASE?

8 A. NEVER.

9 Q. I'M SORRY? WHAT WAS YOUR ANSWER?

10 A. NEVER.

11 Q. LET'S LOOK A LITTLE FURTHER UP, OR DOWN, IN YOUR
12 E-MAIL. IN ITEM THREE, CWS CONTRACT WITH THE CITY OF SAN
13 JOSE, YOU MAKE A REFERENCE TO CARL MOSHER, CORRECT?

14 A. YES.

15 Q. AND YOU SAY IN YOUR E-MAIL THAT HE IS GOING TO BE
16 VERY HAPPY IN HEARING THAT THE MAYOR IS GOING TO SUPPORT THE
17 RATE INCREASE. IS THAT WHAT YOU SAID IN YOUR E-MAIL?

18 A. YES.

19 Q. WHEN YOU SAY HE, YOU MEAN CARL MOSHER?

20 A. WHEN I SAY HE, YES.

21 Q. AND CAN YOU EXPLAIN TO US HOW YOU KNEW WHEN YOU
22 WROTE THIS E-MAIL THAT THE MAYOR IS GOING TO SUPPORT THE

23 RATE INCREASE?

24 A. THAT'S REFERENCING BACK TO JOE GUERRA DISCUSSIONS.
25 SO WHEN YOU SAY MAYOR, BASICALLY, IT COULD BE HIS STAFF; IT
26 COULD BE, YOU KNOW, I WAS REFERENCING BACK TO DISCUSSIONS
27 WITH JOE GUERRA.

28 Q. I WANT TO BE CLEAR ON THIS. ARE YOU SUGGESTING

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1875

1 THAT YOUR REFERENCE THAT THE MAYOR IS, IN ITEM THREE, THAT
2 THE MAYOR IS GOING TO SUPPORT THE RATE INCREASE IS A
3 REFERENCE TO JOE GUERRA; IS THAT WHAT YOU'RE SAYING?

4 A. WHAT I CAN SAY IS THAT WHEN WE MET WITH JOE, WITH
5 NORCAL AND EVERYBODY, HE AFFIRMED THE COMMITMENT TO DO THE
6 CONTRACT AMENDMENT, SO THAT'S WHAT THAT MEANS, SO IF JOE WAS
7 SAYING IT, SO IT'S THE MAYOR SAYING IT, IF JOE SAYS IT.

8 Q. SO TO ANSWER MY QUESTION, WHEN YOU SAID THE WORDS,
9 "THE MAYOR IS GOING TO SUPPORT THE RATE INCREASE," WHAT YOU
10 MEANT BY THAT WAS JOE GUERRA ON BEHALF OF THE MAYOR WAS
11 GOING TO SUPPORT THE RATE INCREASE; IS THAT CORRECT?

12 A. THAT'S THE UNDERSTANDING, YES.

13 Q. NOW, YOU GO ON TO SAY, "I WILL MENTION TO CARL
14 THAT" -- THAT'S A REFERENCE TO CARL MOSHER?

15 A. CORRECT.

16 Q. "THAT WE HAVE SEVERAL COUNCILMEMBERS THAT SUPPORT
17 CWS HAVING ITS OWN CONTRACT WITH THE CITY TO DO
18 RECYCLABLES." THAT'S WHAT YOU SAID, CORRECT?

19 A. CORRECT.

20 Q. WHO WAS THE WE THAT YOU'RE REFERRING TO?

21 A. CWS -- DAVID -- LIKE I SAID BEFORE, DAVID DUONG
22 WANTED TO SEPARATE THE CONTRACT --

23 Q. I DON'T NEED AN EXPLANATION ABOUT THAT; I JUST WANT
24 TO KNOW WHO THE WE REFERS TO. IS IT CWS?

25 A. CWS, BUT IF I TELL YOU EVERYTHING, YOU'LL GET A
26 BETTER SENSE --

27 Q. I DON'T AGREE THAT I'LL GET A BETTER SENSE OF
28 ANYTHING, MR. ARREOLA. SO JUST TELL ME WHO THE "WE" REFERS

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1876

1 TO.

2 A. CWS.

3 Q. WHO WERE THE SEVEN COUNCILMEMBERS THAT SUPPORTED
4 CWS HAVING A SEPARATE AGREEMENT FOR RECYCLING?

5 A. DAVID DUONG HAD CONVERSATIONS THAT I CAN
6 REMEMBER --

7 Q. MR ARREOLA. WHO, WHAT ARE THE NAMES OF THE
8 COUNCILMEMBERS --

9 A. CAN I SAY EVERYTHING SO YOU UNDERSTAND --

10 Q. YOUR JOB IS NOT TO ENLIGHTEN ME. YOUR JOB IS TO
11 ANSWER MY QUESTIONS AS A WITNESS IN THESE PROCEEDINGS. IF
12 YOU'RE HAVING SOME PROBLEMS WITH THAT, I CAN ASK THE JUDGE
13 TO STEP INSIDE AND MAKE SOME ADDITIONAL ORDERS THAT MIGHT
14 ASSIST YOU IN GIVING RESPONSIVE ANSWERS.

15 MY QUESTION TO YOU IS, WHO ARE THE COUNCILMEMBERS
16 THAT YOU SAID IN THIS E-MAIL SUPPORTED CWS HAVING ITS OWN
17 CONTRACT WITH THE CITY. I'M NOT ASKING HOW YOU LEARNED IT,
18 HOW YOU BECAME AWARE OF IT, WHY IT'S A GOOD THING OR A BAD

19 THING, HOW IT HELPS CWS OR DOESN'T HELP CWS; I'M ASKING FOR
20 NAMES. WHO ARE THE COUNCILMEMBERS?

21 A. AS FAR AS I CAN REMEMBER, IT WAS COUNCILMEMBER REED
22 AND COUNCILMAN CORTESE WERE APPROACHED WITH THIS IDEA TO
23 AMEND THE CONTRACT --

24 Q. I'M NOT ASKING YOU FOR AN EXPLANATION; I'M SIMPLY
25 ASKING YOU TO NAME NAMES. GIVE ME THE NAMES OF THE
26 COUNCILMEMBERS WHO YOU WERE REFERRING TO AS BEING SUPPORTIVE
27 OF CWS HAVING ITS OWN CONTRACT WITH THE CITY TO DO
28 RECYCLING. THE ANSWER CALLS FOR A LIST OF NAMES.

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1877

1 A. COUNCILMAN REED AND COUNCILMAN CORTESE.

2 Q. WHY DID YOU THINK THEY WERE SUPPORTIVE OF THAT
3 ISSUE?

4 A. THERE WERE SOME DISCUSSIONS WITH THEM, AND THEY
5 WERE SYMPATHETIC TO ALL THE ISSUES THAT CWS MADE THEM AWARE
6 OF IN TERMS OF INFORMATION GETTING TO THEM IN COMPLIANCE
7 WITH THE C.U.P. AND SO FORTH, SO THEY THOUGHT IT HAD MERIT
8 IN LOOKING AT THE POSSIBILITY OF GETTING CWS A DIRECT
9 CONTRACT WITH THE CITY.

10 Q. WAS THIS COMMUNICATED TO YOU DIRECTLY BY THE
11 COUNCILMEMBERS REED AND CORTESE?

12 A. I DON'T REMEMBER IF I HEARD IT DIRECTLY OR IF I GOT
13 IT FROM DAVID DUONG.

14 Q. NOW, YOU SAY IN ITEM THREE THAT HE, REFERRING TO
15 CARL MOSHER, IS GOING TO BE VERY HAPPY IN HEARING THAT THE
16 MAYOR IS GOING TO SUPPORT THE RATE INCREASE, CORRECT?

17 A. YES.
18 Q. HOW DID YOU KNOW THAT, OR WHY DID YOU THINK THAT?
19 A. UH -- LET ME SEE IF I CAN REMEMBER THE -- AS FAR AS
20 I CAN REMEMBER, STAFF, EITHER AT THAT SAME TIME WAS WORKING
21 ON THEIR OWN RATE INCREASE, AND MY UNDERSTANDING WAS THAT
22 THEY HAD SOME INTERNAL BUDGET PROBLEMS WITHIN THEMSELVES.
23 SO I DON'T KNOW THE RATE INCREASE THEY WERE LOOKING AT WAS
24 THE SAME AS THIS OR IF THEY WERE GOING TO OVERLAP BOTH RATE
25 INCREASES, BUT I THINK THERE MIGHT HAVE BEEN SOME RESISTANCE
26 FROM THE, I ASSUME THE CITY COUNCIL, SO HIM KNOWING THE
27 MAYOR WAS OPEN TO A RATE INCREASE WOULD HAVE, YOU KNOW,
28 OBVIOUSLY BEEN SUPPORTIVE OF WHAT HIS EFFORT ALSO WAS IN

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1878

1 GETTING THE RATE INCREASE.
2 Q. NOW, THE RATE INCREASE THAT WE HAVE BEEN TALKING
3 ABOUT IS A RATE INCREASE TO GENERATE ADDITIONAL FUNDS TO PAY
4 FOR THESE ADDITIONAL LABOR COSTS, CORRECT?
5 A. YES.
6 Q. AND THAT RATE INCREASE DIDN'T COME BEFORE THE
7 COUNCIL UNTIL THE FOLLOWING YEAR, SPRING OF 2003; ISN'T THAT
8 TRUE?
9 A. I DON'T REMEMBER, BUT PROBABLY, YES.
10 Q. AND DO YOU RECALL THAT THE RATE INCREASE THAT ESD
11 WAS LOOKING AT WAS SOMETHING IN THE MAGNITUDE OF THREE OR
12 FOUR PERCENT AT THE END OF 2002?
13 A. I DON'T REMEMBER THE DETAILS, SIR.
14 Q. DO YOU RECALL THAT IN 2003 THE COUNCIL APPROVED TWO

15 SUCCESSIVE NINE PERCENT INCREASES TO PAY FOR THESE
16 ADDITIONAL COSTS?

17 A. I DIDN'T KEEP MYSELF UP ON THOSE DETAILS. I DON'T
18 REMEMBER.

19 Q. I DON'T REMEMBER IS A FINE ANSWER IF THAT'S A TRUE
20 STATEMENT OR RECOLLECTION; THAT'S ALL YOU NEED TO SAY.

21 A. THANK YOU.

22 Q. DID YOU GIVE JOE GUERRA ANY SPREADSHEETS OR ANY
23 CALCULATIONS TO ASSIST IN THIS FIGURING OUT THE SIZE OF THE
24 RATE INCREASE THAT WOULD BE NEEDED TO PAY FOR THESE
25 ADDITIONAL FUNDS?

26 A. YES, I BELIEVE I DROPPED OFF SOME SPREADSHEETS THAT
27 WERE GIVEN TO ME BY STAFF PEOPLE FROM CWS.

28 Q. DO YOU REMEMBER WHO AT CWS PREPARED THEM?

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1879

1 A. I DON'T REMEMBER SPECIFICALLY WHO PREPARED THEM,
2 BUT I WOULD HAVE RECEIVED THEM FROM EITHER DAVID HIMSELF OR
3 FROM VICTOR DUONG, HIS VICE PRESIDENT, I THINK, AT THE TIME.

4 Q. THAT'S DAVID'S BROTHER?

5 A. CORRECT.

6 Q. YOU DELIVERED THEM TO JOE GUERRA; IS THAT CORRECT?

7 A. DID I DELIVER THEM?

8 Q. YES.

9 A. YES.

10 Q. AND YOU REMEMBER WHEN YOU DID THIS?

11 A. UH -- NO. IF YOU HAD A TIME LINE THAT SHOWED WHEN
12 THEY WERE THREATENING TO STRIKE, THE TEAMSTERS, THAT WOULD

13 HAVE BEEN AROUND THAT TIMEFRAME.

14 Q. IT WOULD HAVE BEEN AROUND THE BEGINNING OF '03?

15 A. IF THAT'S WHEN THEY WERE THREATENING, YES,
16 SOMEWHERE AROUND THERE.

17 Q. WHAT WAS THE REASON THAT YOU DELIVERED THESE
18 SPREADSHEETS TO JOE GUERRA?

19 A. I DON'T KNOW. DAVID ASKED ME, I GUESS.

20 Q. WELL, DID YOU DO ANYTHING MORE THAN JUST DROP OFF
21 SPREADSHEETS; DID YOU HAVE FURTHER CONVERSATION WITH
22 MR. GUERRA?

23 A. WELL, WHEN HE DROPPED THEM OFF, THINKING BACK, I
24 WOULD HAVE EXPLAINED TO HIM WHAT WAS IN THE PACKAGE IN TERMS
25 OF SHEETS. NOT THE DETAILS BECAUSE I DIDN'T GET INVOLVED AT
26 THAT LEVEL, BUT I WOULD HAVE EXPLAINED THIS IS A COVER
27 SHEET, IT HAS X, Y, Z SCENARIOS AND SO FORTH. I DIDN'T DO
28 IT ALL THE TIME, BUT I DID AT LEAST A COUPLE OF TIMES,

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1880

1 PROBABLY.

2 Q. WHAT WERE THESE SPREADSHEETS OF?

3 A. AS I REMEMBER, IT HAD SCENARIOS IN TERMS OF WHAT
4 WAS CWS OFFERING TO THE TEAMSTERS IN THAT CONTRACT PACKAGE
5 THAT INCLUDED SALARIES, BENEFITS, THOSE KINDS OF THINGS.
6 THEN ON THE OTHER END OF THE SPECTRUM, IT INCLUDED WHAT THE
7 TEAMSTERS WERE ASKING FOR, AND THEN MAYBE SOME OTHER
8 SCENARIOS IN BETWEEN TO KIND OF SHOW MAYBE WHERE -- SHOW
9 WHAT A FAIR PRICE WAS. THAT GOES BACK TO THE WHOLE ISSUE OF
10 ARE THERE OTHER SIMILAR CONTRACTS OUT THERE OF PEOPLE THAT

11 DO SIMILAR TYPE WORK THAT WOULD REPRESENT THE FAIR WAGE FOR
12 THAT TYPE OF SKILL AND WORK TYPE.

13 Q. DID YOU DO ANYTHING TO TRY TO ASSIST CWS OR NORCAL
14 IN GETTING A CONTRACT AMENDMENT PASSED FOR THESE ADDITIONAL
15 FUNDS?

16 A. NO.

17 Q. SO WHEN DID YOU STOP WORKING FOR CWS?

18 A. TECHNICALLY, MY CONTRACT ENDED AT THE END OF 2002,
19 BUT AD HOC I DID MISCELLANEOUS THINGS IN 2003. HOW FAR I
20 DON'T REMEMBER, AND, YOU KNOW, SO THAT KIND OF --

21 Q. WHAT WAS THE LAST THING YOU DO REMEMBER WORKING ON
22 FOR CWS?

23 A. THE LAST THING THAT I REMEMBER WAS DEALING WITH
24 THIS WHOLE THING --

25 Q. DEALING WITH WHAT WHOLE THING?

26 A. THE C. U. P. WAS COMING BACK FOR EVALUATION, SO IT
27 WAS JUST COMPLIANCE ISSUES --

28 Q. WHEN WAS THAT?

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1881

1 A. THE CITY ATTORNEY, I THINK, HAD FILED BY THAT TIME
2 A LEGAL ACTION AGAINST CWS BECAUSE I THINK IT WAS ALL
3 RELATED TO BEING NON-COMPLIANT WITH THE C. U. P. CONDITIONS.

4 Q. WHEN WAS THAT?

5 A. I DON'T REMEMBER.

6 Q. WHAT YEAR WAS IT?

7 A. EITHER 2002 OR 2003.

8 Q. YOU FIRST STARTED WORKING ON BEHALF OF CWS IN 2001,
Page 194

- 9 CORRECT?
- 10 A. YES, I THINK SO.
- 11 Q. WELL, YOU LEFT EMPLOYMENT WITH THE CITY OF SAN JOSE
- 12 IN JULY OF 2000, CORRECT?
- 13 A. (NO RESPONSE.)
- 14 Q. YOU HAVE TO ANSWER OUT LOUD.
- 15 A. YES.
- 16 Q. YOUR CONTRACT PROVIDED YOU COULDN' T DO ANY WORK
- 17 WITH THE CITY OFFICIALS UNTIL SOME TIME IN JULY OF 2001
- 18 BECAUSE OF THE REVOLVING DOOR ORDINANCE?
- 19 A. CORRECT.
- 20 Q. YOU STARTED IN 2001, JULY 2001?
- 21 A. CORRECT.
- 22 Q. YOU ENDED YOUR WORK IN, SOME TIME IN 2003, CORRECT?
- 23 A. YES.
- 24 Q. WE'RE TALKING ABOUT TWO YEARS' WORTH OF WORK,
- 25 APPROXIMATELY?
- 26 A. YEAH.
- 27 Q. HOW MUCH WERE YOU PAID FOR THIS WORK?
- 28 A. UH -- THE CONTRACT HAD A MONTHLY RETAINER THAT, YOU

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1882

- 1 KNOW, I CAN'T REMEMBER IF IT WAS, I THINK IT WAS \$2,000 A
- 2 MONTH, AND IT WENT UP TO \$4,000. AND I ALSO HAD A SUCCESS
- 3 FEE THAT WAS BASED ON THE CONDITIONAL USE PERMIT BEING
- 4 APPROVED, BUT ULTIMATELY, IF DAVID DUONG AND HIS COMPANY
- 5 DIDN'T CLOSE ESCROW ON THE PROPERTY THEY WERE BUILDING THE
- 6 FACILITY ON, I WOULDN'T GET PAID THE SUCCESS FEE AT ALL, SO

7 EVEN THOUGH I MIGHT HAVE HELPED THEM GET THE CONDITIONAL USE
8 PERMIT THROUGH, IF FOR WHATEVER REASON HE COULDN'T AFFORD TO
9 BUY THE PROPERTY, FOR WHATEVER REASON HE DECIDED NOT TO
10 CLOSE, THE MONEY HE ADVANCED ME OR THE MONEY HE WAS TO PAY
11 ME WAS NOT DUE AND PAYABLE ANYMORE, I HAD TO ACTUALLY PAY
12 HIM BACK OR IF HE NEVER PAID ME ANYTHING, I WOULDN'T GET
13 PAID ANYTHING.

14 Q. IN TOTAL, HOW MUCH DID YOU ACTUALLY GET PAID BY CWS
15 FOR YOUR EFFORTS?

16 A. UH -- I DON'T REMEMBER THE EXACT AMOUNT, BUT IT'S
17 BASED ON WHATEVER THE CONTRACT SAID.

18 Q. BUT YOUR BEST ESTIMATE -- WOULD LOOKING AT THE
19 CONTRACT HELP?

20 A. WE COULD DO SOME MATH, YEAH.

21 Q. YOU HAVE NO IDEA HOW MUCH YOU GOT PAID?

22 A. I DON'T REMEMBER.

23 Q. LET ME SHOW YOU THE CONTRACT, HAVE YOU LOOK THROUGH
24 IT, SEE IF YOU CAN REFRESH YOUR RECOLLECTION. THAT WOULD BE
25 EXHIBIT 114, WHICH WE'VE IDENTIFIED PREVIOUSLY AS YOUR
26 AGREEMENT WITH CWS. WHY DON'T YOU LOOK AT IT YOURSELF
27 SILENTLY FOR A MOMENT AND SEE IF THAT HELPS YOU FIGURE OUT
28 HOW MUCH YOU RECEIVED.

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1883

1 A. SO --

2 Q. HAVE YOU HAD A CHANCE TO REVIEW THE CONTRACT?

3 A. YEAH, KIND OF QUICKLY, BUT IT LOOKS LIKE I GOT PAID
4 \$150,000 SUCCESS FEE, AND MY ASSOCIATE ALSO GOT \$150,000.

5 Q. THAT'S \$300,000?

6 A. CORRECT, PLUS MONTHLY PAYMENTS OF \$4,000 A MONTH
7 WHICH WE, SEAN KALI-RAI AND I DIVIDED UP \$2,000 EACH.

8 Q. HOW MANY MONTHS, FOR HOW MANY MONTHS DID YOU GET
9 \$4,000?

10 A. FROM JUNE 11 THROUGH JUNE 1, 2002 AT \$4,000. AND
11 AFTER THAT IT GOT REDUCED TO \$2,000 A MONTH, AND IT WAS THAT
12 AMOUNT, I THINK.

13 Q. SO LET'S JUST WORK THIS OUT.

14 A. SURE.

15 Q. YOU GOT \$300,000 IN TOTAL -- WELL, YOUR BUSINESS
16 GOT \$300,000. CWS PAID YOUR COMPANY \$300,000 IN SUCCESS
17 FEES?

18 A. NO. CWS PAID MY COMPANY \$150,000 AND PAID SEAN
19 KALI-RAI DIRECTLY \$150,000. THAT DIDN'T GO THROUGH SILICON
20 VALLEY STRATEGIES; HIS FEE WAS A BROKERAGE FEE.

21 Q. LET'S PUT THAT ASIDE. THEN FOR THE NEXT -- THE
22 FIRST 12 MONTHS, THERE WAS A \$4,000 PER MONTH FEE?

23 A. RETAINER. YES.

24 Q. THAT WOULD BE \$48,000. DID THAT GO THROUGH YOUR
25 COMPANY?

26 A. YES. WHICH AS I SAID, \$2,000 WOULD BE PAID TO SEAN
27 KALI-RAI AS A CONSULTANT AND \$2,000 TO ME.

28 Q. BUT ALL \$48,000 WENT THROUGH YOUR COMPANY?

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1884

1 A. CORRECT.

2 Q. FOR THE SECOND YEAR IT WAS \$2,000 A MONTH?

3 A. I DON'T REMEMBER EXACTLY, BUT I THINK IT WAS, WHICH
4 WE ALSO SPLIT 50-50.

5 Q. IS THERE SOME REASON YOU FEEL IT'S IMPORTANT TO
6 TELL US WHAT YOU DID WITH THE MONEY YOUR COMPANY RECEIVED?
7 I'M SURE YOU PAID RENT, YOU HAD A SECRETARY, YOU HAD PHONE
8 BILLS. WHY ARE YOU TELLING US HOW MUCH KALI -RAI GOT? ARE
9 YOU TRYING TO MINIMIZE HOW MUCH YOU GOT OUT OF THIS DEAL?

10 A. NO. I WANT TO MAKE SURE YOU CAN SEE THE WHOLE
11 PICTURE.

12 Q. MY QUESTION IS HOW MUCH CWS PAID YOUR COMPANY FOR
13 YOUR SERVICES.

14 A. 150.

15 Q. FOR THE FIRST 12 MONTHS. AND FOR THE SECOND 12
16 MONTHS, \$2,000 A MONTH?

17 A. CORRECT.

18 Q. THAT'S ABOUT \$225,000 APPROXIMATELY, RIGHT?

19 A. SURE.

20 Q. SO WHAT SERVICES DID YOUR COMPANY PROVIDE TO CWS
21 FOR THOSE \$225,000, SIR?

22 A. IDENTIFYING A SITE, AGAIN, AND ULTIMATELY MAKING
23 SURE THAT HE WAS IN COMPLIANCE WITH THE C. U. P. TO THE POINT
24 HE FELT COMFORTABLE TO CLOSE ESCROW ON THE PROPERTY AND BE
25 ABLE TO HAVE HIS BUSINESS THERE.

26 Q. AND WHAT?

27 A. AND BE ABLE TO HAVE HIS BUSINESS THERE AT THAT
28 SITE.

1 Q. THAT'S THE ONLY THING YOU DID FOR THE MONEY?

2 A. NO. AS I EXPLAINED TO YOU BEFORE, I GOT INVOLVED
3 IN A NUMBER OF THINGS, INCLUDING WORKING WITH HIS LINE STAFF
4 ON BASIC ISSUES THAT WERE NOT PART OF THE SCOPE OF WORK.
5 BUT I STILL DID BECAUSE IT WAS IN MY INTERESTS TO MAKE SURE
6 AT THE END OF THE DAY HE ENDED UP CLOSING THE PROPERTY SO I
7 COULD MAKE MY SUCCESS FEE; OTHERWISE, I WOULDN'T MAKE IT.
8 IT INCLUDED DELIVERING INFORMATION ON THIS WHOLE ISSUE WITH
9 THE TEAMSTERS, AND THAT WAS IMPORTANT BECAUSE, AS I SAID
10 BEFORE, WITHOUT THE TEAMSTERS DAVID DUONG BELIEVED THAT THE
11 SUPPORT FOR HIS FACILITY AND HIS CONDITIONAL USE PERMIT
12 WOULD EVAPORATE, AND HE NEEDED TO MAKE SURE THE TEAMSTERS
13 WERE ON HIS SIDE, NOT AN ENEMY THREATENING TO DO A STRIKE
14 AGAINST HIM.

15 Q. IN ORDER TO FURTHER THAT GOAL, DID YOU SPEAK TO BOB
16 MORALES OF THE TEAMSTERS?

17 A. SURE.

18 Q. ON A NUMBER OF OCCASIONS?

19 A. YES.

20 Q. WHAT DID YOU TALK ABOUT?

21 A. WELL, IN THE BEGINNING WE TALKED ABOUT GETTING A
22 LETTER OF SUPPORT FOR CWS.

23 Q. LETTER OF SUPPORT FOR WHAT PURPOSE?

24 A. FOR THE CONDITIONAL USE PERMIT, WHICH THEY WROTE A
25 LETTER.

26 Q. ANYTHING ELSE?

27 A. UH -- I NEVER DEALT WITH HIM ONE-ON-ONE IN TERMS OF
28 THIS WHOLE ISSUE WITH WAGES. I DID ATTEND A MEETING WITH

1 DAVID DUONG AND SEAN KALI -RAI . AND THERE WAS ONE OTHER
2 PERSON FROM THE TEAMSTERS, I DON' T REMEMBER HIS NAME, AND
3 THERE MIGHT HAVE BEEN ONE OTHER PERSON FROM CWS.

4 Q. THAT WAS A MEETING TO THEN RESOLVE THE NEW
5 COLLECTIVE BARGAINING AGREEMENT?

6 A. I DON' T REMEMBER IF IT WAS ABOUT THAT OR HAD TO DO
7 WITH THE WHOLE FIGHT THEY HAD IN TERMS OF CONTRACT
8 NEGOTIATIONS BETWEEN THE TWO ENTITIES, OR IF IT WAS RELATED
9 TO GOING TO A HEARING OR GETTING PLANNING COMMISSION
10 SUPPORT. BUT YES, I DID INTERACT WITH MR. MORALES A FEW
11 TIMES.

12 Q. DID YOU EVER INTERACT WITH MR. MORALES IN ORDER TO
13 HELP BRING ABOUT A LABOR AGREEMENT BETWEEN THE TEAMSTERS AND
14 CWS?

15 A. I MIGHT HAVE ATTENDED A MEETING WITH DAVID DUONG,
16 LIKE I SAID. BUT LIKE I SAY, I DON' T REMEMBER, SIR.

17 Q. IN YOUR DEALINGS WITH BOB MORALES, DID HE EVER MAKE
18 A STATEMENT TO YOU TO THE EFFECT THAT, WHY IS DAVID BEING SO
19 DIFFICULT, THE CITY IS GOING TO PAY FOR THIS ANYWAY?

20 A. I DON' T REMEMBER HIM SAYING THAT WITH THAT SPECIFIC
21 KIND OF WORDING. THERE WERE INSINUATIONS ABOUT THAT. BUT
22 AS I EXPLAINED BEFORE, DAVE' S POSITION WAS, YES, HE HAD HAD
23 THIS AGREEMENT WITH NORCAL, BUT HE HAD TO GO TO COURT AND
24 MAKE THAT HAPPEN.

25 AND TWO, HE DIDN' T KNOW HOW LONG HE COULD KEEP THE
26 BUSINESS RUNNING, WHETHER HE WAS GOING TO HAVE RESOURCES FOR
27 FIGHTING THE BATTLE.

28 AND THREE, HE HAD NO ASSURANCE THE CONTRACT

1 AMENDMENT WAS EVER GOING TO GET DONE. SO HE WAS UNDER A LOT
2 OF UNCERTAINTY, SO --

3 Q. I UNDERSTAND. BUT MY QUESTION IS FOCUSED ON
4 MR. MORALES. MR. MORALES IS TRYING TO GET A NEW COLLECTIVE
5 BARGAINING AGREEMENT WITH CWS AND DAVID, RIGHT?

6 A. YES, SIR.

7 Q. I ASSUME ONE OF THE AREAS THAT THEY ARE APART ON IS
8 THE AMOUNT OF WAGES AND BENEFITS?

9 A. YES, IT IS.

10 Q. SO IT SEEMS LOGICAL, GIVEN WHAT YOU TOLD US
11 MR. GUERRA ACKNOWLEDGED TO YOU ABOUT THIS PRIOR COMMITMENT
12 THE CITY WOULD PAY FOR THIS EXTRA COST, I'M WONDERING
13 WHETHER OR NOT MR. MORALES EVER SUGGESTED TO YOU IN SO MANY
14 WORDS THAT DAVID SHOULD JUST AGREE TO THE NEW AGREEMENT
15 BECAUSE, HEY, THE CITY WILL PAY FOR IT ANYWAY.

16 A. NOT TO ME.

17 Q. OKAY.

18 MR. FINKELSTEIN: I WILL ASK TO HAVE MARKED AS
19 EXHIBIT 127 A CALENDAR ENTRY FROM WHAT APPEARS TO BE
20 JOE GUERRA'S CALENDAR, OCTOBER 29, 2002.

21 THE FOREPERSON: SO MARKED.

22 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
23 JURY EXHIBIT 127.)

24 BY MR. FINKELSTEIN:

25 Q. MR. ARREOLA, WOULD YOU TAKE A LOOK AT THIS EXHIBIT,
26 WHICH MAY OR MAY NOT BE TRUE OR MAY NOT HAVE HAPPENED; I'M
27 SHOWING IT TO YOU TO SEE IF REFRESHES YOUR RECOLLECTION

28 WHETHER OR NOT YOU ATTENDED THE MEETING THAT IS LISTED IN

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1888

1 THIS CALENDAR ENTRY WITH JOE GUERRA.

2 A. I DON'T REMEMBER SPECIFICALLY IF I ATTENDED THE
3 MEETING; I DON'T. BUT SINCE THERE'S A THREAT OF STRIKE, IT
4 IS VERY LIKELY THAT I DID.

5 Q. ACCORDING TO THE CALENDAR ENTRY, YOU'RE THE ONLY
6 PERSON ATTENDING THE MEETING ON BEHALF OF CWS, CORRECT?

7 A. YES.

8 Q. IS THAT IN FACT TRUE, YOU HAD A PRIVATE MEETING
9 WITH JOE GUERRA?

10 A. WELL, LIKE I SAID, I DON'T REMEMBER IF IT ACTUALLY
11 HAPPENED, BUT SINCE THERE WAS A THREAT OF STRIKE, IT'S VERY
12 LIKELY IT DID HAPPEN. AND WHATEVER OTHER PEOPLE ATTENDED, I
13 DON'T REMEMBER.

14 Q. OKAY. UNDERSTANDING THAT YOU CAN'T SAY HERE TODAY
15 WHETHER YOU HAD THE MEETING ON THE DATE AND TIME INDICATED,
16 DO YOU RECALL, SOMETIME AFTER YOUR SEPTEMBER 12, 2002
17 MEETING THAT YOU ATTENDED ON BEHALF OF DAVID DUONG WITH
18 JOE GUERRA, ATTENDING SOME MEETING WITH JOE GUERRA ON THE
19 EVE OF A POSSIBLE STRIKE?

20 A. IT'S VERY LIKELY, YES.

21 Q. WHAT HAPPENED AT THAT MEETING? CAN YOU TELL US?

22 A. WELL, JUST FROM READING THE MEMO HERE, IT SAYS,
23 "GARBAGE CONTRACT," AND SAYS, "POSSIBLE STRIKE TOMORROW."
24 SO I WOULD ASSUME I WAS THERE DELIVERING PROBABLY MORE
25 INFORMATION IN TERMS OF SPREADSHEETS AND SO FORTH IN HELPING

26 ASSESS OR BRING TO RESOLUTION THIS ISSUE BETWEEN THE
27 TEAMSTERS AND MR. DUONG, SO TO AVOID THE STRIKE.

28 Q. ARE THERE TWO DIFFERENT KINDS OF SPREADSHEETS THAT

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1889

1 ARE BEING TRANSMITTED TO MR. GUERRA, ONE HAVING TO DO WITH
2 THE TEAMSTER LONGSHOREMEN WAGE AND BENEFIT DIFFERENCES AND
3 ANOTHER LINE OF SPREADSHEETS HAVING TO DO WITH THE
4 TEAMSTERS' LAST OFFER, DAVID'S LAST OFFER, OR ARE WE TALKING
5 ABOUT THE SAME KIND OF SPREADSHEET?

6 A. I THINK IT INCLUDED ALSO POTENTIALLY HAVING
7 LONGSHOREMEN INFORMATION THERE, ALSO. I THINK IT DID.

8 Q. THE PURPOSE OF HAVING THE LONGSHOREMEN INFORMATION
9 WOULD BE TO GET SOME SENSE ON WHAT THE WAGE DIFFERENCE WAS
10 BETWEEN THE TEAMSTERS AND LONGSHOREMEN DEPENDING ON WHAT
11 DEAL WAS STRUCK WITH THE TEAMSTERS, RIGHT?

12 A. PROBABLY, BUT IT WAS ALSO TO SHOW, YOU KNOW, WHAT
13 DAVID THOUGHT WAS FAIR IN TERMS OF THE WAGE. YOU CAN ASK
14 HIM AND SEE WHAT HIS RATIONALE WAS. I WAS NOT INVOLVED IN
15 THAT KIND OF DETAIL OTHER THAN DELIVERING INFORMATION.

16 Q. DO YOU REMEMBER ANY OTHER MEETINGS IN 2002 WITH
17 JOE GUERRA CONCERNING GETTING ADDITIONAL MONEY FROM THE CITY
18 FOR THESE EXTRA LABOR COSTS?

19 A. UH -- NOT SPECIFICALLY, BUT I DID HAVE MORE THAN
20 ONE, LIKE I SAID BEFORE -- I DID MEET WITH HIM MORE
21 FREQUENTLY, JUST TO ASK FOR HELP AND DEALING WITH THIS WHOLE
22 COMPLIANCE ON THE CONDITIONAL USE PERMIT.

23 COUNCILMEMBER REED WAS THE FIRST PERSON APPROACHED

24 IN GETTING STAFF TO RESPOND AND GETTING INFORMATION FOR CWS.
25 AND AT SOME POINT HE SAID HE WASN'T HAVING ANY SUCCESS, SO
26 WE THOUGHT WE SHOULD TRY WITH GUERRA AND SEE IF HE COULD GET
27 ESD TO PROVIDE WHATEVER INFORMATION MORE RAPIDLY.

28 ONE OF THE THINGS THAT STAFF WAS ASKED TO DO AS A

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1890

1 RESULT OF GARBAGE CONTAMINATION, AND THIS WHOLE ISSUE WAS A
2 STUDY ON MEASURING WHERE THE GARBAGE IS COMING FROM. AND
3 STAFF WAS TAKING JUST SO LONG PRODUCING THAT, IT WAS
4 DELAYING THE WHOLE PROCESS OF WHO IS RESPONSIBLE FOR THE
5 CONTAMINATION.

6 WE HAD A LOT OF DISCUSSIONS WITH JOE AND ONE OF
7 HIS AIDES, JULIE YOSHIDA, WHO WAS WORKING AT THE TIME THERE.
8 SO YEAH, I HAD SEVERAL MEETINGS WITH JOE.

9 Q. JOE GUERRA'S POSITION AT CITY HALL WAS WHAT AGAIN?

10 A. AS FAR AS I CAN REMEMBER, HE HAD A LONG LIST OF
11 ITEMS. HE WAS BUDGET DIRECTOR, HE WAS POLICY DIRECTOR, HE
12 WAS RESPONSIBLE FOR HOUSING AND PLANNING AND REDEVELOPMENT.

13 Q. WHAT DID A CONDITIONAL USE PERMIT REGARDING A
14 RECYCLING PLANT HAVE TO DO WITH THE MAYOR'S BUDGET AND
15 FINANCIAL DIRECTOR?

16 A. HE WAS KEY.

17 Q. HE WAS WHAT?

18 A. HE WAS KEY, BECAUSE HE WAS RESPONSIBLE FOR
19 PLANNING, LAND USE PLANNING. THE PLANNING DEPARTMENT AND
20 THE AGENCY THAT QUALIFIES THE CONDITIONAL USE PERMIT IS THE
21 PLANNING DEPARTMENT. SO HE HAD THE MOST, OR SUPPOSEDLY HAD

22 THE MOST KNOWLEDGE ABOUT THE PLANNING PROCESS. AND SO ONE
23 OF HIS RESPONSIBILITIES BEING THAT, THAT'S WHY I GUESS HE
24 WAS INVOLVED.

25 Q. JOE GUERRA HAD RESPONSIBILITY FOR CITY PLANNING
26 ISSUES?

27 A. THAT'S ONE OF HIS POLICY AREAS AND
28 RESPONSIBILITIES, CORRECT.

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1891

1 Q. SO IN ADDITION TO BUDGET AND FINANCE --

2 A. OH, HE HAD A LONG LIST. I TOLD YOU. BUDGET
3 DIRECTOR, POLICY DIRECTOR, PLANNING, LAND USE. ALL LAND USE
4 ISSUES. REDEVELOPMENT, HOUSING, AND THERE WOULD BE MORE.

5 Q. THE TERMS OF THE CONDITIONAL USE PERMIT AND
6 COMPLIANCE WITH THE CONDITIONAL USE PERMIT, THAT WAS A
7 HOUSING ISSUE?

8 A. NO, IT'S A PLANNING ISSUE. SEE, THE PLANNING
9 DEPARTMENT IS AN ENTITY WITHIN THE GOVERNMENT THAT BASICALLY
10 QUALIFIES ALL LAND USE CHANGES. THE LAND USE CHANGE MEANS
11 IT CAN BE A COMMERCIAL USE, AN INDUSTRIAL USE, A HOUSING
12 USE. IT COULD BE A CONDITIONAL INDUSTRIAL USE PERMIT, A
13 NIGHTCLUB USE, ALL SORTS OF USES. SO THEY ARE, THE ENTITY
14 YOU APPLY TO THAT QUALIFIES YOUR PROPOSAL AND DETERMINES AT
15 THE END OF THE DAY WHETHER IT MEETS THE PUBLIC POLICY OR
16 DOESN'T.

17 Q. LET'S ASSUME I HAVE A BUSINESS IN TOWN AND FILE A
18 CONDITIONAL USE PERMIT. IT GOES THROUGH THE PROCESS WITH
19 PLANNING AND I GET MY PERMIT.

20 A. RIGHT.
21 Q. NOW, HAVING GOTTEN MY PERMIT, I START MY
22 OPERATIONS, AND THE CITY ALLEGES THAT I'M IN VIOLATION OF
23 THE TERMS AND CONDITIONS OF MY PERMIT. IS THAT STILL A
24 PLANNING FUNCTION, OR IS IT AN ENFORCEMENT FUNCTION?
25 A. IT'S STILL A PLANNING FUNCTION, BECAUSE THE
26 PLANNING DEPARTMENT STILL, I THINK, HAS OVERSIGHT ON THE
27 ISSUE. IN ADDITION TO THAT, THE ENVIRONMENTAL SERVICES
28 DEPARTMENT GETS INVOLVED IN THE WHOLE PLANNING PROCESS.

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1892

1 Q. WHAT PLANNING IS THERE IN DECIDING WHETHER OR NOT A
2 VIOLATION HAS OCCURRED?
3 A. OKAY. I'LL EXPLAIN THAT.
4 Q. OKAY.
5 A. THIS IS MY UNDERSTANDING, BUT I COULD BE, YOU KNOW,
6 NOT COMPLETELY ACCURATE. BUT WHEN THE PERMIT GETS APPROVED,
7 PLANNING QUALIFIES IT, INCLUDING THE ENVIRONMENTAL SERVICES
8 DEPARTMENT, THAT'S CARL MOSHER'S GROUP. AND THERE MAY BE
9 OTHER CITY AGENCIES, I DON'T REMEMBER EXACTLY. THEY GO
10 THROUGH A PROCESS, THEY QUALIFY AND SAY IT MAKES SENSE OR
11 DOESN'T. IT GOES TO THE PLANNING COMMISSION, THEY VOTE ON
12 IT, AND THEN I DON'T REMEMBER IF THE CONDITIONAL USE PERMIT
13 ACTUALLY GOES TO THE COUNCIL OR NOT. I HAVE TO CHECK ON
14 THAT.
15 THE CONDITIONAL USE PERMIT IS CALLED CONDITIONAL
16 BECAUSE IT'S CONDITIONED; YOU HAVE TO FOLLOW CERTAIN
17 REQUIREMENTS THAT HAVE A TIME FRAME EVALUATION. AND IN THIS

18 CASE, I THINK IT WAS ONE YEAR.

19 SO IN ONE YEAR AFTER APPROVAL, CWS WAS BASICALLY
20 IN A PROBATIONARY PERIOD WHERE PLANNING AND OTHER AGENCIES
21 WOULD BRING INFORMATION TO THE PLANNING COMMISSION AND SAY,
22 I KNOW WE RECOMMENDED APPROVAL OF THIS C.U.P., BUT SINCE THE
23 APPROVAL, WE HAVE LEARNED THAT CWS IS JUST A BAD OPERATOR
24 AND THEY DON'T KNOW HOW TO COMPLY WITH THE NECESSARY THINGS
25 OR HAVE NEGLECTED TO DO SO, SO WE RECOMMEND YOU DON'T EXTEND
26 THE PERMIT ANYMORE. THAT'S AS BEST AS I KNOW WHAT THE
27 PROCESS IS.

28 Q. THANK YOU FOR THAT EXPLANATION. NOW, THIS ISSUE

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1893

1 ABOUT CWS'S CONDITIONAL USE PERMIT, THAT WAS AN ISSUE FOR
2 CWS, NOT FOR NORCAL, CORRECT?

3 A. I'M NOT SURE ABOUT THAT. AGAIN, I NEVER READ THE
4 CONTRACTS. BUT FROM WHAT I CAN RECOLLECT FROM WHAT --

5 Q. MAYBE THAT'S A BAD QUESTION. DID NORCAL OFFER ANY
6 HELP TO CWS ON ITS PROBLEM WITH THE CONDITIONAL USE PERMIT?

7 A. I DON'T KNOW IF THEY OFFERED OR NOT, BUT DAVID
8 DUONG WAS ALWAYS TRYING TO GET THEM ENGAGED IN HELPING, OR
9 AT LEAST NOT BEING AN ADVERSARY.

10 MR. FINKELSTEIN: I'LL MARK AS NEXT EXHIBIT 128, A
11 COPY OF WHAT APPEARS TO BE AN ENTRY ON MR. GUERRA'S CALENDAR
12 FOR NOVEMBER 21, 2002.

13 THE FOREPERSON: SO MARKED.

14 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
15 JURY EXHIBIT 128.)

16 BY MR. FINKELSTEIN:

17 Q. MR. ARREOLA, LOOK AT THIS EXHIBIT AND SEE IF IT
18 JOGS YOUR MEMORY ON ANOTHER MEETING YOU MIGHT HAVE HAD ON
19 NOVEMBER 21, 2002, WITH MR. GUERRA.

20 A. SURE. OKAY.

21 Q. DO YOU RECALL ATTENDING THIS MEETING?

22 A. NO, I DON'T RECALL AT THE MOMENT.

23 Q. OKAY. NOW, LOOKING AT THE CALENDAR ENTRY, NOTICE
24 JOHN NICOLETTI AND BILL JONES FROM NORCAL ARE LISTED AS
25 PEOPLE THAT YOU WILL BE BRINGING TO THE MEETING, CORRECT?

26 A. YES, SIR.

27 Q. DO YOU REMEMBER HAVING A MEETING IN 2002 WITH
28 JOE GUERRA WHERE YOU BROUGHT JOHN NICOLETTI AND BILL JONES

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1894

1 TO THE MEETING?

2 A. AS I SAID, I DON'T REMEMBER THE SPECIFIC MEETING,
3 BUT I DID HAVE MULTIPLE MEETINGS. AND THE REASON, AND THIS
4 IS VERY IMPORTANT, THE REASON, REMEMBER I SAID THE CONTRACT
5 WAS WITH NORCAL? AT SOME POINT NORCAL OR ESD OR SOMEBODY
6 WITHIN THE CITY GOVERNMENT BASICALLY SAID THAT WHENEVER
7 NORCAL [SIC] MEETS WITH CITY REPRESENTATIVES, NORCAL HAS TO
8 BE PRESENT, BECAUSE CWS NEVER HAD A DIRECT CONTRACT WITH THE
9 CITY. SO THAT'S WHY THEY WERE TRYING TO GET THEIR OWN
10 CONTRACT, SO THEY COULD AVOID THE BUREAUCRATIC PROCESS.

11 SO NORCAL -- CWS WAS TOLD WHENEVER THEY HAD CITY
12 BUSINESS MEETINGS, NORCAL WAS GOING TO BE PRESENT AT EVERY
13 MEETING.

14 Q. WHAT'S WRITTEN IN THIS ENTRY, DOESN'T THAT SUGGEST
15 TO YOU THIS IS A MEETING ABOUT GETTING ADDITIONAL MONEY FROM
16 THE CITY, NOT ABOUT CWS'S CONDITIONAL USE PERMIT PROBLEMS?

17 A. I CAN'T READ THAT INTO IT, SIR. AS I TOLD YOU,
18 NORCAL HAD TO BE AT EVERY -- WHAT I REMEMBER, PRESENT AT
19 EVERY CITY BUSINESS -- I DON'T KNOW IF THAT WAS SOMETHING
20 NORCAL SAID, PUSHED WITH CITY STAFF, OR IT CAME FROM THE
21 CITY ATTORNEY'S OFFICE.

22 Q. OKAY. PAUL ROTTENBERG, HE IS A FINANCIAL
23 CONSULTANT FOR CWS, CORRECT?

24 A. YES, SIR.

25 Q. WHY WOULD YOU BRING A FINANCIAL CONSULTANT FROM CWS
26 TO A MEETING TO ADDRESS CONDITIONAL USE PERMIT ISSUES?

27 A. HE WAS INVOLVED IN A NUMBER OF THINGS, INCLUDING
28 FIGURING OUT THE COST OF GARBAGE CONTAMINATION. HE WAS --

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1895

1 Q. HOW DOES INVOLVEMENT IN GARBAGE CONTAMINATION BEAR
2 ON WHETHER OR NOT CWS SHOULD RETAIN A CONDITIONAL USE PERMIT
3 OR WHETHER IT WAS IN VIOLATION OF ITS --

4 A. IT HAD TO DO WITH WHO IS RESPONSIBLE FOR PAYING FOR
5 THE ADDITIONAL COST AND PROCESSING OF THE RECYCLABLES.

6 Q. WHY IS THAT A CITY ISSUE?

7 A. WELL, BECAUSE THE CITY WAS MAKING IT AN ISSUE. THE
8 CONDITIONAL USE PERMIT --

9 Q. WASN'T THE ISSUE IN THE CONDITIONAL USE PERMIT THAT
10 TOO MUCH GARBAGE WAS ACCUMULATING AT THE CWS RECYCLING
11 FACILITY, AND THAT WAS A VIOLATION OF THE TERMS OF THE USE

12 PERMIT?

13 A. CORRECT.

14 Q. HOW IS THE COST OF THAT PROBLEM SOMETHING THAT
15 WOULD BEAR ON THE CITY'S DECISION TO RENEW OR VIOLATE THE
16 CONDITIONAL USE PERMIT?

17 A. I DON'T UNDERSTAND THE QUESTION. SAY IT AGAIN,
18 PLEASE.

19 Q. ACCORDING TO THIS CALENDAR ENTRY, YOU BROUGHT WITH
20 YOU TO A MEETING WITH JOE GUERRA CWS'S FINANCIAL CONSULTANT,
21 PAUL ROTTENBERG. YOU'RE SUGGESTING THAT YOU HAD THIS
22 MEETING; IT WAS ABOUT THE CONDITIONAL USE PERMIT.

23 I'M TRYING TO SUGGEST TO YOU THAT DOESN'T MAKE
24 SENSE, BECAUSE WHY WOULD YOU BRING A FINANCIAL CONSULTANT
25 FROM CWS TO A CONDITIONAL USE PERMIT MEETING?

26 A. I DON'T REMEMBER ANY OF THE PARTICULARS OF THE
27 MEETING. YOU SUGGEST -- YOU MADE A SUGGESTION. I SAID IT
28 COULD HAVE BEEN A NUMBER OF THINGS. IT COULD HAVE BEEN

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1896

1 CONTAMINATION LEVELS, IT COULD HAVE BEEN ANYTHING. I DON'T
2 REMEMBER, SIR.

3 Q. WHEN YOU SAY IT COULD HAVE BEEN ANYTHING, WOULD
4 THAT INCLUDE DISCUSSIONS ABOUT GETTING MORE MONEY FROM THE
5 CITY FOR THE EXTRA LABOR COSTS?

6 A. NO.

7 Q. YOU WOULD RULE THAT ONE OUT?

8 A. YES. IT COULD HAVE BEEN THOUGH ABOUT THIS WHOLE
9 UNION FIGHT AND STRIKE. I DON'T KNOW. IT'S BEEN SUCH A

10 LONG TIME. I DON'T REMEMBER. I CAN'T -- I MEAN, I CAN KEEP
11 GUESSING IF YOU WANT.

12 Q. WHEN YOU SAY YOU CAN KEEP GUESSING, HAVE YOU BEEN
13 GUESSING IN YOUR ANSWERS HERE TODAY?

14 A. ON THIS, SINCE I TOLD YOU FROM THE BEGINNING I
15 DON'T REMEMBER WHAT THE SPECIFICS WERE. YOU SAID, SUGGESTED
16 TO ME THAT I CAN KEEP DOING THAT BUT --

17 Q. I DON'T WANT YOU TO GUESS, MR. ARREOLA. LET ME
18 JUST ASK YOU A FEW MORE QUESTIONS, AND THEN I'LL SEE IF THE
19 JURORS HAVE QUESTIONS.

20 A. I'M SORRY IF I CAN'T HELP.

21 Q. THAT'S QUITE ALL RIGHT. DURING THE TIME THAT YOU
22 WERE UNDER THIS RETAINER WITH CWS, HAVE YOU GIVEN ANY MONIES
23 EITHER TO JOE GUERRA OR RON GONZALES?

24 A. NO, SIR.

25 MR. FINKELSTEIN: LET ME SEE IF THE JURY HAS ANY
26 QUESTIONS.

27 MR. FINKELSTEIN: YOU SEEM TO BE POPULAR WITH THE
28 JURY. THEY HAVE A FEW QUESTIONS.

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1897

1 BY MR. FINKELSTEIN:

2 Q. THE \$150,000 YOU MENTION RECEIVING AS A SUCCESS
3 FEE, WHAT WAS THE CONDITION THAT TRIGGERED THE PAYMENT OF
4 THAT FEE?

5 A. AS I SAID BEFORE, THE ULTIMATE CONDITION WAS THAT
6 HE ACTUALLY CLOSED ON THE PROPERTY, PURCHASING OF THE
7 PROPERTY. IF HE DIDN'T PURCHASE IT, ALL THE WORK I DID --

8 THAT'S THE WAY THE SUCCESS FEE WORKS. BASICALLY, THEY ARE
9 BASED ON SUCCESS. SO IF YOU GET THE THING TITLED, AND AT
10 THE END OF THE DAY THAT ALLOWS THE BUYER OF THE PROPERTY TO
11 BUY THE PROPERTY AND HE CLOSES ESCROW, MEANING THAT HE NOW
12 OWNS THE PROPERTY, YOU GET PAID. IF HE DIDN'T CLOSE ESCROW,
13 IT'S ALL GONE.

14 Q. LET ME TRY TO ASK YOU MAYBE MORE DIRECTLY. WAS
15 THIS \$150,000 A SUCCESS FEE FOR BEING SUCCESSFUL IN LOCATING
16 A SUITABLE SITE FOR THE RECYCLING PLANT?

17 A. I SAID THAT EARLIER. YEAH, THE SITE, AND GETTING
18 IT TITLED FOR THE CONDITIONAL USE PERMIT.

19 Q. WAS FINDING THE SITE, GETTING A PERMIT THAT WOULD
20 MAKE IT VIABLE AS A SITE, IS THAT INCLUDED IN THE SUCCESS?

21 A. YES. BUT IF THAT'S ALL THAT HAPPENED, I GOT ZERO
22 DOLLARS.

23 Q. WHAT ELSE HAD TO HAPPEN?

24 A. CLOSING THE PROPERTY. THAT'S WHAT I WAS TRYING TO
25 EXPLAIN, AND I WAS DOING A GOOD JOB IN EXPLAINING THAT.

26 Q. COULD YOU TELL US SOME MORE ABOUT YOUR BACKGROUND
27 AND EDUCATION IN PUBLIC SAFETY WORK.

28 A. UH -- SURE. I GREW UP BASICALLY IN HOLLISTER AND

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1898

1 WENT TO ELEMENTARY SCHOOL THERE THROUGH AGE -- TO SIXTH
2 GRADE. AFTER THAT, I MOVED TO MEXICO AND LIVED WITH MY
3 GRANDPARENTS. MY PARENTS STAYED IN THE STATES.

4 AS A KID I WORKED IN THE FIELDS, FARM KIND OF
5 WORK, PICKING ONIONS, GARLIC, PICKING LETTUCE; IRRIGATION

6 PIPES, DRIVING TRACTORS. I WAS THE AGE OF 12 TO 17 WHEN I
7 WAS IN MEXICO. I WENT TO HIGH SCHOOL AND ALSO ATTENDED
8 COLLEGE, SO I LEARNED HOW TO SPEAK SPANISH. MY FIRST
9 LANGUAGE IS SPANISH. I LEARNED HOW TO READ AND WRITE AT THE
10 COLLEGE LEVEL.

11 I CAME BACK AT 17. AFTER I WAS MATURE ENOUGH, I
12 REALIZED THE ECONOMY WAS PRETTY BAD AND I WANTED TO COME
13 BACK TO THE STATES TO CONTINUE MY EDUCATION, WHICH I DID.

14 MY PARENTS WERE DISAPPOINTED, BUT I WENT TO
15 GAVILAN COLLEGE, STUDIED ADMINISTRATION OF JUSTICE. I
16 CHALLENGED COURSES, BECAUSE THE COURSES I TOOK IN MEXICO
17 THEY DIDN'T GIVE ME CREDIT FOR. I HAD TO CHALLENGE COURSES
18 SO I COULD GO ON TO UNIVERSITY. I WENT TO SAN LUIS OBISPO,
19 TO CAL POLY, AND STUDIED POLITICAL SCIENCE, CONCENTRATED ON
20 PRELAW.

21 AFTER THAT, I WORKED FOR THE DISTRICT ATTORNEY'S
22 OFFICE IN SAN LUIS OBISPO, BAD CHECK PROGRAM. AND AFTER
23 THAT, I ALSO WORKED IN A MEN'S STORE AND THEN WORKED AS AN
24 AGENT FOR NEW YORK LIFE.

25 I CAME HERE IN THE EARLY '90S. MY PARENTS, FAMILY
26 WAS STILL IN HOLLISTER. I WAS LOOKING FOR A JOB IN
27 GOVERNMENT BECAUSE WHEN I WAS LIVING IN MEXICO I WANTED TO
28 GET INTO GOVERNMENT, BECOME AN ELECTED OFFICIAL. MY

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1899

1 GRANDFATHER WAS MAYOR OF A SMALL VILLAGE OF 10,000 PEOPLE.

2 I APPLIED FOR A JOB HERE AT THE COUNTY. RON'S
3 OFFICE HAD AN OPENING BACK THEN, AND JUDE BERRY, WHO WAS

4 CHIEF OF STAFF AT THE TIME, INTERVIEWED ME, AND EVEN THOUGH
5 I DIDN'T HAVE EXPERIENCE, HE THOUGHT I HAD POTENTIAL, SO HE
6 HIRED ME. I WORKED THERE FOR A COUPLE OF YEARS. SO -- AND
7 WORKED WITH MANNY AT THE COUNCIL LEVEL AS CHIEF OF STAFF FOR
8 COUNCILMEMBER MANNY DIAZ FROM 1995 TO THE BEGINNING OF '98,
9 AND JANUARY 1ST, AS I SAID EARLIER, TO JULY 13, 2000, I
10 WORKED IN RON'S OFFICE AS DEPUTY CHIEF OF STAFF.

11 FROM THERE I STARTED MY MANUSCRIPT HOLDING
12 BUSINESS WHICH I WORKED REALLY THROUGH THE END OF 2005, AND
13 STARTED TRANSITIONING INTO DEVELOPMENT MORE HEAVILY IN 2003.
14 AND SINCE 2005, AT THE END I SHUT DOWN MY CONSULTING
15 BUSINESS COMPLETELY. IT REALLY SHUT MORE IN 2004, BUT NOW
16 I'M DOING 100 PERCENT LAND DEVELOPMENT.

17 I HOPE I ANSWERED MORE OR LESS YOUR QUESTION.

18 Q. LET ME ASK YOU ANOTHER QUESTION. DID YOU EVER
19 REGISTER AS A LOBBYIST WITH THE CITY OF SAN JOSE IN
20 CONNECTION WITH THE WORK YOU DID ON BEHALF OF CWS AND THEIR
21 USE PERMIT ISSUES, EITHER IN 2001 OR 2002 OR 2003?

22 A. NO. I DID NOT, AND THIS IS ACTUALLY SOMETHING I
23 WANT TO TALK TO YOU IN RELATION TO YOU ASKING WHAT MY
24 RELATIONSHIP WAS WITH RON AND JOE.

25 IN 2004, THE CITY ATTORNEY FILED AN ETHICS
26 COMPLAINT AGAINST ME ON THIS WHOLE CITY ORDINANCE. IT WAS
27 DONE UNJUSTLY, AND WE WERE ULTIMATELY CLEARED OF EVERYTHING
28 BY THE ETHICS COMMISSION. AND IT WAS MAINLY DONE, EVEN

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1900

1 THOUGH THE CITY ATTORNEY HAD BEEN ADVISING ME AND NOT ONLY

2 ME AND MY ASSOCIATE, BUT ALL SORTS OF OTHER PEOPLE IN THIS
3 WHOLE ETHICS ORDINANCE. ACCORDING TO FEEDBACK WE GOT FROM
4 THE CITY ATTORNEY, RICK DOYLE, WE DID NOT QUALIFY TO
5 REGISTER, SO WE NEVER REGISTERED.

6 AT SOME POINT THE MERCURY STARTED LOOKING AT THIS
7 WHOLE ORDINANCE, AND THEY TALKED TO THE CITY ATTORNEY AND
8 SAID, WHY AREN'T ALL THESE PEOPLE REGISTERED -- NOT JUST ME,
9 BUT OTHER PEOPLE -- AND THE CITY ATTORNEY'S RESPONSE WAS,
10 WELL, FOR WHATEVER REASONS, THEY DIDN'T QUALIFY.

11 AT SOME POINT THE CITY ATTORNEY'S POSITION CHANGED
12 AND A REPORTER TOLD US THAT --

13 Q. I DON'T WANT YOU TO GET INVOLVED IN ALL THIS
14 HEARSAY.

15 A. BUT THIS IS IMPORTANT.

16 Q. I DON'T WANT YOU TO TELL US WHAT A REPORTER SAID TO
17 YOU AT SOME CONVERSATION ON THE STREET.

18 A. AT SOME POINT THE CITY ATTORNEY CHANGED HIS
19 POSITION IN HOW HE WAS READING THE ORDINANCE. THE REASON
20 WHY WE DISCOVERED THAT HAPPENED IS BECAUSE JOE GUERRA AND
21 REBECCA DISHOTSKI --

22 Q. MR. ARREOLA, I HAVE GIVEN YOU A LOT OF LATITUDE IN
23 DEALING WITH THESE NONRESPONSIVE, VERY LENGTHY ANSWERS, BUT
24 THIS IS A FORMAL INVESTIGATION. WE'RE NOT JUST HAVING A
25 CHAT OUT ON THE STREET; WE HAVE TO GO BY RULES OF EVIDENCE,
26 AND YOU CAN'T JUST INTRODUCE ALL KINDS OF HEARSAY
27 STATEMENTS, YOU KNOW, UNLESS THE QUESTION CALLS FOR IT.

28 AND MY ONLY QUESTION TO YOU WAS, DID YOU REGISTER,

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1 AND YOU HAVE GONE ON SEVERAL MINUTES NOW. I THINK YOU'VE
2 ANSWERED THE QUESTION.

3 A. IT GOES TO WHAT YOU ASK ME EARLIER. I THINK YOU
4 SHOULD HEAR IT, BECAUSE THEY ASKED THE CITY ATTORNEY TO FILE
5 AGAINST ME, RON, JOE, AND REBECCA. SO MY RELATIONSHIP WITH
6 THEM, YOU KNOW, YOU CAN ASSESS WHAT IT IS. LUCKILY, WE
7 DEFENDED IT SUCCESSFULLY, BUT DID IT COST US A LOT OF PAIN,
8 ANGUISH, A LOT OF MONEY DEFENDING IT.

9 I WASN'T REGISTERED BECAUSE OF THE ADVICE THEY
10 GAVE US. FINALLY, WE ENDED UP REGISTERING AFTER THE CITY
11 ATTORNEY'S POSITION CHANGED.

12 Q. YOU SAID YOU WERE CLEARED, BUT AT ANY TIME IS IT
13 TRUE IN THIS INVESTIGATION THEY DIDN'T EXAMINE YOUR
14 ACTIVITIES IN 2001 AND 2002?

15 A. I DON'T REMEMBER IF THEY WENT THAT FAR.

16 Q. DON'T YOU REMEMBER THE MAYOR MAKING SOME, OR
17 SOMEONE AT THE CITY COUNCIL MAKING SOME POLICY DECISION THAT
18 ANY INVESTIGATION IS GOING TO GO BACK MORE THAN TWO YEARS,
19 THAT WOULD NOT HAVE COVERED YOUR ACTIVITIES IN 2001 AND
20 2002.

21 A. NO, THE COMPLAINT INCLUDES EVERYTHING.

22 Q. THEN THE COUNCIL --

23 A. NOT THE COUNCIL.

24 Q. NOT THE COUNCIL?

25 A. NO, THE COUNCIL WAS NOT INVOLVED AT ALL; IT WAS THE
26 CIVILIAN ETHICS COMMISSION.

27 Q. DIDN'T SOMEONE MAKE A POLICY DECISION NOT TO GO
28 BACK MORE THAN TWO YEARS?

1 A. NO, SIR. THAT'S WHAT WAS ALREADY STANDING WITHIN
2 EXISTING RULES.

3 Q. WHAT YEAR WAS THIS INVESTIGATION?

4 A. WHAT YEAR WAS THE INVESTIGATION?

5 Q. YES.

6 A. 2004, AS I SAID EARLIER.

7 Q. THAT WOULD NOT INCLUDE YOUR ACTIVITIES IN 2001.

8 A. NO, THE COMPLAINT WAS FILED IN 2004, AND IT
9 INCLUDED EVERYTHING. THEY HAD A LONG LIST OF ALL THESE
10 POTENTIAL VIOLATIONS, AND THEY DROPPED EVERYTHING AT THE END
11 OF THE DAY.

12 Q. WHY?

13 A. THE ETHICS COMMISSION, NOT THE COUNCIL, NOT ANYBODY
14 AT CITY HALL.

15 Q. LET'S -- WHY DON'T WE TRY TO STAY CLOSER TO WHAT
16 YOU HAVE PERSONAL KNOWLEDGE OF. YOU DID LOBBYING WORK IN
17 2001 AND 2002 AND YOU DIDN'T REGISTER; IS THAT TRUE?

18 A. CORRECT.

19 Q. DURING THE TIME YOU WERE WORKING FOR CWS, DID YOU
20 HAVE OTHER CLIENTS?

21 A. YES.

22 Q. HOW MANY OTHER CLIENTS DID YOU HAVE?

23 A. I DON'T REMEMBER, BUT I HAD A NUMBER OF THEM. THE
24 ONE THAT WAS TAKING THE MOST TIME IS DENNIS FONG IN THE
25 TROPICANA SHOPPING CENTER, THE OWNER. WE WERE HELPING THEM
26 DEFEND A CONDEMNATION THREAT FROM THE CITY OF SAN JOSE.

27 Q. WHAT PERCENTAGE OF THE REVENUE OF YOUR BUSINESS
28 WOULD YOU SAY, APPROXIMATELY, DURING 2001 AND 2002, WAS

1 ATTRIBUTABLE TO THE WORK YOU DID FOR CWS?

2 A. JUST LOOKING AT WHAT I RECEIVED IN 2002, OR IF I
3 DIVIDE BETWEEN A TWO-YEAR PERIOD?

4 Q. LET'S SAY DURING THE TWO-YEAR PERIOD,
5 APPROXIMATELY. GIVE US A BALLPARK.

6 A. UH -- MAYBE 20 PERCENT.

7 Q. AND HOW DID YOU WIND UP GETTING THE CONTRACT WITH
8 CWS? CAN YOU TELL US THAT.

9 A. SURE. IT WAS A REFERRAL FROM RYAN HUBRIS.

10 Q. CAN YOU SPELL THAT FOR THE REPORTER.

11 A. H-U-B-R-I-S, OR R-Y-S.

12 Q. WHAT'S THE FIRST NAME?

13 A. RYAN.

14 Q. RYAN?

15 A. HE'S OF VIETNAMESE DESCENT. HE KNEW THE DUONG
16 FAMILY, FRIEND OF THEM.

17 Q. AND WAS YOUR FIRST CONTACT WITH CWS WITH DAVID
18 DUONG?

19 A. I THINK IT WAS BOTH HIM AND HIS BROTHER VICTOR.

20 Q. WHEN YOU MADE THIS FIRST CONTACT ABOUT POSSIBLY
21 DOING WORK FOR THEM, WHAT DID YOU TELL THEM YOU COULD DO FOR
22 THEM?

23 A. WELL, THEY CAME TO SEAN AND I WITH THEIR PROBLEM OF
24 GETTING A CONDITIONAL USE PERMIT. THEY EXPLAINED TO US THAT
25 THE CONTRACT THEY HAD WITH NORCAL REQUIRED THEM TO HAVE A
26 CONDITIONAL USE PERMIT FACILITY OPERATING WITHIN A CERTAIN
27 TIME FRAME.

28 Q. SO WHAT DID YOU TELL THEM YOU COULD DO FOR THEM?

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1904

1 A. I SAID, WELL, YOU KNOW, DRAW UP A CONTRACT.

2 Q. WHAT DID YOU TELL THEM YOU COULD DO FOR THEM?

3 A. ASSIST THEM IN GETTING THE CONDITIONAL USE PERMIT.

4 Q. AND DID YOU EXPLAIN TO THEM HOW, WHAT KIND OF
5 ASSISTANCE YOU WOULD PROVIDE?

6 A. I EXPLAINED MY EXPERIENCE AND KNOWLEDGE ABOUT LAND
7 USAGE, PUBLIC POLICY, AND HOW I THOUGHT, YOU KNOW, MY
8 EXPERIENCE IN TERMS OF DEALING WITH COMMUNITY ISSUES AND
9 BUSINESS ISSUES, WE COULD HELP HIM GET THE CONDITIONAL USE
10 PERMIT.

11 Q. DID YOU MENTION ANY CONTACTS OR PEOPLE YOU KNEW AT
12 CITY HALL?

13 A. SURE.

14 Q. JUST A MINUTE. DID YOU MENTION ANY CONTACTS OR
15 PEOPLE YOU KNEW AT CITY HALL THAT MIGHT BE OF SOME HELP IN
16 RESOLVING THEIR ISSUE?

17 A. I EXPLAINED TO HIM MY BACKGROUND, JUST LIKE I DID
18 HERE TODAY, TO SHOW MY EXPERTISE, WHO I WORKED FOR.

19 Q. WHAT NAMES DID YOU THROW OUT?

20 A. I GAVE A BACKGROUND. I TOLD HIM WHO I WORKED FOR;
21 AT THAT TIME I HAD RECENTLY WORKED FOR THE MAYOR. BEFORE
22 THAT, I WORKED FOR A CITY COUNCILMEMBER, AND BEFORE THAT I
23 WORKED FOR RON WILLIAMS, THE COUNTY SUPERVISOR. IT SHOWED
24 MY BROAD EXPERIENCE OF PUBLIC POLICY.

25 MR. FINKELSTEIN: ARE THERE ANY OTHER QUESTIONS?

26 BY MR. FINKELSTEIN:

27 Q. IN YOUR SEPTEMBER 13 E-MAIL, YOU MAKE A REFERENCE
28 TO CARL MOSHER NEEDING A RATE INCREASE FOR HIS OWN REASONS.

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1905

1 DO YOU RECALL THAT?

2 A. YES, SIR.

3 Q. WHAT REASONS WERE THOSE?

4 A. WHAT I HAD HEARD WAS, AGAIN, SECOND OR
5 THIRDTHIRD-HAND IS THAT HIS OPERATION WAS RUNNING KIND OF
6 SKINNY. HE NEEDED ADDITIONAL FUNDS FOR STAFF, FOR
7 EQUIPMENT. I DON'T KNOW THE SPECIFICS, BUT HE HAD SOME
8 BUDGET DEFICIENCIES, I GUESS.

9 Q. HOW WOULD PUSHING A GARBAGE RATE INCREASE ASSIST
10 CARL MOSHER WITH HIS STAFFING NEEDS?

11 A. WELL, IT GOES BACK TO HIS BUDGET. HE WAS HOPING
12 THAT PART OF THE INCREASE WOULD HELP COVER THE BUDGET GAP.

13 Q. WITH YOUR VAST BACKGROUND AND KNOWLEDGE IN THOSE
14 AREAS, I'M SURE YOU'RE AWARE THAT UNDER PROPOSITION 218 ANY
15 OF THE MONEY DERIVED FROM RATE INCREASES HAS TO BE USED
16 EXCLUSIVELY TO PAY FOR THAT SERVICE OF COLLECTING GARBAGE,
17 RIGHT?

18 A. I WAS NOT AWARE OF THAT.

19 Q. I SEE.

20 MR. FINKELSTEIN: ANY OTHER QUESTIONS?

21 WE HAVE NO MORE QUESTIONS FOR YOU AT THIS TIME,
22 BUT YOU'RE NOT EXCUSED, WHICH MEANS SHOULD WE HAVE
23 ADDITIONAL QUESTIONS, YOU'RE SUBJECT TO BEING RECALLED.

24 WE' LL NOTIFY YOUR COUNSEL OF THE DATE AND TIME TO APPEAR.

25 THE FOREPERSON HAS AN ADMONITION FOR YOU. PLEASE
26 LISTEN CAREFULLY.

27 THE FOREPERSON: I READ YOU THE FULL ADMONITION.
28 BASICALLY, ANYTHING YOU HEARD, SAID, OR SAW TODAY IS NOT TO

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1906

1 BE COMMUNICATED TO ANYONE.

2 THE WITNESS: THANK YOU.

3 MR. FINKELSTEIN: THANK YOU VERY MUCH,
4 MR. ARREOLA.

5 THE WITNESS: THANK YOU.

6 MR. FINKELSTEIN: I SEE THE REPORTER NODDING AT
7 ME. MAYBE THIS IS A GOOD TIME FOR A RECESS.

8 A JUROR: I HAD A QUESTION BEFORE WE STARTED THAT
9 YOU ASKED TO HOLD AND PUT ON THE RECORD. THE QUESTION WAS A
10 HYPOTHETICAL ONE REGARDING THE REDACTED INFORMATION FROM
11 SOME OF THESE, NOT SPECIFICALLY THIS, BUT WHAT TYPE OF
12 INFORMATION WOULD BE REDACTED IN A CASE SUCH --

13 MR. FINKELSTEIN: WHY DO SOME OF THE EXHIBITS,
14 PARTICULARLY LIKE SOME OF THESE EXHIBITS, HAVE REDACTIONS?

15 A JUROR: YES.

16 MR. FINKELSTEIN: THAT'S BECAUSE PEOPLE HAVE
17 ASSERTED SOME EVIDENTIARY PRIVILEGES THAT ALLOWS THEM TO
18 HOLD CERTAIN INFORMATION THAT'S CONFIDENTIAL. AND EITHER WE
19 DIDN'T SEEK TO CHALLENGE THAT OR THE COURT RULED THAT THEY
20 COULD KEEP IT AS CONFIDENTIAL.

21 A JUROR: BUT PRESUMABLY UNRELATED TO THE EVIDENCE
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22 OF THE CASE?

23 MR. FINKELSTEIN: IT COULD BE UNRELATED; IT COULD
24 BE RELATED. THE ISSUE IS NOT WHETHER IT'S RELATED; IT'S
25 WHETHER THERE IS A PRIVILEGE NOT TO PRODUCE THE INFORMATION.
26 SO, FOR EXAMPLE, THAT'S NOT THE CASE HERE, BUT LET ME
27 EXPLAIN TO YOU BY WAY OF EXAMPLE, IT MAY HELP CLEAR THIS UP.

28 WE COULD HAVE A CRIMINAL CASE, AND THE DEFENDANT

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1907

1 COULD HAVE CONFESSED TO HIS LAWYER. CLEARLY, THAT'S VERY
2 RELATED AND RELEVANT AND WE WOULD LIKE TO KNOW THAT IF WE
3 COULD. BUT BECAUSE OF THE LAWYER-CLIENT PRIVILEGE, THAT
4 LAWYER CANNOT BE CALLED AND ASKED WHETHER OR NOT HIS CLIENT
5 CONFESSED TO HIM.

6 SO IN THIS CASE THERE MAY BE ATTORNEY-CLIENT
7 COMMUNICATIONS OR SIMILAR PRIVILEGES THAT PREVENT US FROM
8 GETTING SOME OF THE INFORMATION. BUT AS I HAVE SAID IN THE
9 PAST, THAT'S REALLY A LEGAL ISSUE AND SHOULD NOT, NEED NOT
10 CONCERN YOU. YOU SHOULD NOT CONSIDER THIS AS EVIDENCE OF
11 ANYONE'S GUILT; IT SHOULD NOT BE CONSIDERED IN ANY WAY,
12 SHAPE, OR FORM.

13 YOUR DECISION, IF YOU'RE ASKED TO MAKE A DECISION,
14 SHOULD BE BASED ONLY ON EVIDENCE THAT HAS BEEN PRESENTED,
15 NOT WHAT MIGHT HAVE BEEN PRESENTED, COULD HAVE BEEN
16 PRESENTED, WHAT YOU THINK IS OUT THERE, BUT -- OKAY.

17 THANK YOU.

18 THE FOREPERSON: LET'S ADJOURN UNTIL A QUARTER OF
19 3:00.

20 MR. FINKELSTEIN: THANK YOU.
21 (A BRIEF RECESS WAS TAKEN.)
22 THE FOREPERSON: COULD WE COME BACK TO ORDER,
23 PLEASE.
24 LET THE RECORD SHOW THAT ALL 19 JURORS ARE
25 PRESENT.

26 MARK LOMELE,
27 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
28 AS FOLLOWS:

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1908

1 THE WITNESS: I DO.
2 EXAMINATION:
3 BY MR. FINKELSTEIN:
4 Q. COULD YOU ADJUST THE MICROPHONE, PLEASE. COULD YOU
5 TELL US YOUR FULL LEGAL NAME.
6 A. MARK RALPH LOMELE.
7 Q. CAN YOU SPELL YOUR LAST NAME FOR THE REPORTER,
8 PLEASE.
9 A. L-O-M-E-L-E.
10 Q. MR. LOMELE, LET ME JUST ASK YOU, IF YOU WOULD,
11 PLEASE WAIT UNTIL I HAVE COMPLETED MY QUESTION IN ITS
12 ENTIRETY BEFORE YOU BEGIN YOUR ANSWER SO THE REPORTER CAN
13 TAKE BOTH MY QUESTION AND YOUR ANSWER DOWN. OKAY?
14 A. YES.
15 Q. MR. LOMELE, WHERE DO YOU WORK?
16 A. I WORK AT NORCAL WASTE SYSTEMS, INC.
17 Q. WHERE ARE YOUR OFFICES LOCATED?

- 18 A. 160 PACIFIC AVENUE, SUITE 200, SAN FRANCISCO,
19 CALIFORNIA.
- 20 Q. WHAT'S YOUR POSITION AT NORCAL?
- 21 A. CHIEF FINANCIAL OFFICER.
- 22 Q. AND THAT'S SOMETIMES REFERRED TO AS CFO?
- 23 A. THAT'S CORRECT.
- 24 Q. HOW LONG HAVE YOU BEEN A CFO AT NORCAL?
- 25 A. SINCE ABOUT 1996, ABOUT 10 YEARS.
- 26 Q. WHAT DID YOU DO BEFORE?
- 27 A. CORPORATE CONTROLLER AT NORCAL WASTE SYSTEMS.
- 28 Q. HOW LONG WERE YOU CORPORATE CONTROLLER?

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1909

- 1 A. FROM 1988 TO 1996.
- 2 Q. BEFORE 1998, WHAT DID YOU DO?
- 3 A. I WORKED AT NATIONAL SEMI CONDUCTOR.
- 4 Q. IN WHAT CAPACITY?
- 5 A. PRODUCT LINE CONTROLLER.
- 6 Q. DO YOU HAVE ANY BACKGROUND IN ACCOUNTING OR
7 FINANCE?
- 8 A. I DO. I'M A GRADUATE FROM THE UNIVERSITY OF SAN
9 FRANCISCO. I SPECIALIZED IN ACCOUNTING, AND THE FIRST TWO
10 OR THREE YEARS AFTER COLLEGE I WORKED FOR A CPA FIRM.
- 11 Q. WHICH FIRM?
- 12 A. JOHN F. FORBES AND COMPANY, SAN FRANCISCO.
- 13 Q. HAVE YOU EVER BEEN LICENSED AS A CPA?
- 14 A. I AM LICENSED AS A CPA. MY LICENSE IS INACTIVE.
- 15 Q. WHEN WERE YOU FIRST LICENSED AS A CPA IN

16 CALIFORNIA?

17 A. IN 1980.

18 Q. WHEN DID YOU FIRST LEARN THAT NORCAL HAD BECOME
19 OBLIGATED TO REIMBURSE CWS FOR THE ADDITIONAL LABOR COSTS OF
20 USING TEAMSTERS INSTEAD OF LONGSHOREMEN?

21 A. MY DIRECT RECOLLECTION OF WHEN I LEARNED ABOUT IT
22 OCCURRED SOMETIME IN 2002 WHEN DAVID DUONG CAME TO OUR
23 OFFICES AFTER THE CONTRACT WAS STARTED AND CAME UP WITH A
24 LAUNDRY LIST OF ISSUES, INCLUDING ASKING WHEN HE WAS GOING
25 TO BE REIMBURSED FOR THE LABOR DIFFERENTIAL. I SAY THAT,
26 ALTHOUGH IT'S NOT UNREASONABLE, I KNEW ABOUT IT, SAY, BACK
27 IN 2000. I JUST DON'T HAVE ANY RECOLLECTION OF WHEN I
28 LEARNED OF IT OTHER THAN WHAT I RECALL WHEN DAVID DUONG

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1910

1 SHOWED UP AND ASKED FOR PAYMENT.

2 Q. SO THE FIRST RECOLLECTION THAT YOU HAVE OF LEARNING
3 ABOUT IT IS IN 2002 IN CONNECTION WITH SOME OF THE DEMANDS
4 DAVID DUONG WAS MAKING OF NORCAL?

5 A. THAT IS CORRECT.

6 Q. WHERE IS YOUR OFFICE IN RELATION TO MIKE
7 SANGIACOMO'S OFFICE?

8 A. WE SIT -- I SIT ONE OFFICE AWAY FROM HIM. MIKE HAS
9 THE CORNER OFFICE; ARCHIE IS NEXT TO HIM. I SIT NEXT TO
10 ARCHIE HUMPHREY.

11 Q. ON A DAILY BASIS, HOW FREQUENTLY OR INFREQUENTLY
12 WOULD YOU HAVE OCCASION TO SPEAK WITH MIKE SANGIACOMO?

13 A. FREQUENTLY, SURE.

14 Q. DO YOU TYPICALLY SPEAK TO HIM ONCE A DAY?
15 A. PROBABLY AT LEAST, YES.
16 Q. SO WHEN YOU LEARNED ABOUT THIS FROM MR. DUONG, WERE
17 THERE OTHER PEOPLE AT THE MEETING, OR JUST YOU AND
18 MR. DUONG?
19 A. NO, THERE WAS QUITE A FEW PEOPLE AT THE MEETING.
20 Q. WHO WAS IN ATTENDANCE?
21 A. I BELIEVE MIKE WAS AT THAT MEETING, ARCHIE WAS AT
22 THE MEETING, DAVID DUONG, AND HE HAD SEVERAL OF HIS PEOPLE
23 AT THE MEETING.
24 Q. OKAY. AND APPARENTLY AT THIS MEETING MR. DUONG
25 PRESENTED A LIST OF DEMANDS TO NORCAL?
26 A. THAT IS CORRECT.
27 Q. ONE WHICH HAD TO DO WITH GETTING REIMBURSED FOR THE
28 EXTRA COST OF USING TEAMSTERS INSTEAD OF LONGSHOREMEN,

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1911

1 CORRECT?
2 A. THAT IS CORRECT.
3 Q. WHEN YOU FIRST HEARD THAT DEMAND FROM DAVID DUONG,
4 WHAT WAS YOUR REACTION?
5 A. UH -- IT WAS JUST, IT'S LIKE, OH, NO, ANOTHER ISSUE
6 WITH A START-UP, BECAUSE THERE WAS A VARIETY OF ISSUES. IT
7 WAS A DIFFICULT START-UP.
8 Q. WEREN'T YOU CURIOUS AS TO WHY DAVID DUONG WAS
9 EXPECTING NORCAL TO PAY FOR HIS EXTRA LABOR COST?
10 A. I WAS, AND AT THAT POINT, ONCE I HEARD OF IT, I DID
11 MORE RESEARCH, AND THEN I BELIEVE AT THAT TIME I SAW THE

12 SECOND AMENDMENT TO OUR CONTRACT WITH DAVID DUONG THAT
13 INDICATED THAT WE WOULD REIMBURSE HIM FOR PAYMENT.

14 Q. WHEN YOU SAY THE SECOND AMENDMENT, ARE YOU TALKING
15 ABOUT --

16 A. OUR CONTRACT WITH DAVID.

17 Q. ARE YOU TALKING ABOUT THIS OCTOBER 9, 2000 ADDENDUM
18 THAT FIRST REFERENCES THIS REIMBURSEMENT ISSUE?

19 A. YES, I AM. IT'S A ONE-PAGE DOCUMENT.

20 Q. LET ME PULL THAT EXHIBIT, MAKE SURE WE'RE TALKING
21 ABOUT THE SAME DOCUMENT.

22 A. SURE.

23 Q. LET ME SHOW YOU WHAT HAS BEEN MARKED AS EXHIBIT 15.
24 IS THIS THE AGREEMENT YOU WERE REFERRING TO IN YOUR
25 TESTIMONY A MOMENT AGO?

26 A. I BELIEVE SO, YES.

27 Q. OKAY. AND THIS IS ACTUALLY ENTITLED "ADDENDUM TO
28 AGREEMENT," DO YOU SEE THAT?

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1912

1 A. YES.

2 Q. WE HAVE BEEN REFERRING TO THAT AS THE ADDENDUM TO
3 DISTINGUISH IT FROM A LATER AMENDMENT THAT IS ACTUALLY
4 ENTITLED SECOND AMENDMENT.

5 A. I USED THE WRONG TERM. I APOLOGIZE.

6 Q. THAT'S OKAY. I JUST WANT TO MAKE SURE WE'RE
7 TALKING ABOUT THE SAME DOCUMENT. YOU BELIEVE THE FIRST TIME
8 YOU SAW THIS ADDENDUM OF OCTOBER 9 WOULD HAVE BEEN SOMETIME
9 IN 2002 WHEN DAVID DUONG CAME TO A MEETING AT NORCAL TO

10 PRESENT SOME DEMANDS?

11 A. THAT'S THE FIRST TIME I RECALL.

12 Q. THAT'S THE FIRST TIME YOU RECALL SEEING IT?

13 A. YES, SIR.

14 Q. DO YOU HAVE ANY WAY OF FIXING WHEN IN 2002 THIS
15 HAPPENED?

16 A. UH -- SURE. IT HAPPENED AFTER THE START-UP; IT HAD
17 TO BE IN AUGUST OR SEPTEMBER.

18 Q. OKAY. SO AFTER THE MEETING, DID YOU SPEAK TO MIKE
19 SANGIACOMO OR ARCHIE HUMPHREY TO GET MORE BACKGROUND ON THE
20 SITUATION ABOUT HIM REIMBURSING CWS FOR THESE LABOR COSTS?

21 A. I BELIEVE WE DID HAVE DISCUSSIONS ABOUT IT, YES.

22 Q. WHAT DID MR. SANGIACOMO TELL YOU?

23 A. I DON'T HAVE A SPECIFIC RECOLLECTION OF WHAT HE
24 SAID. I CAN TELL YOU GENERALLY WHAT I'M AWARE OF, BUT I
25 CAN'T TELL YOU WHAT SPECIFICALLY HE SAID TO ME.

26 Q. UNDERSTANDING THAT YOU DON'T RECOLLECT THE SPECIFIC
27 OR EXACT WORDS, CAN YOU SHARE WITH US THE GIST OF WHAT HE
28 TOLD YOU.

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1913

1 A. SURE. UH -- AS I UNDERSTAND IT, BACK IN THE 2000
2 TIME FRAME HE WAS INVITED TO COME DOWN TO SAN JOSE AND SPEAK
3 WITH THE MAYOR. MY UNDERSTANDING IS THE MAYOR ASKED HIM
4 THAT, OR BASICALLY SAID TO HIM THAT HE PREFERRED THAT OUR
5 SUBCONTRACTOR USE TEAMSTERS LOCAL 350 RATHER THAN THE ILWU,
6 THAT WAS THE NEW ONE CONTAINED WITHIN THE BID, AND MY
7 UNDERSTANDING WAS THAT WE INDICATED THAT WE COULD DO THAT,

8 BUT THERE WAS A COST DIFFERENTIAL AND WE WOULD NEED TO BE
9 REIMBURSED FOR THAT. I THINK THE INDICATION WAS THAT IF WE
10 DID GO AHEAD AND USE TEAMSTERS, HE WOULD SEE TO IT THAT WE
11 WERE REIMBURSED THE DIFFERENTIAL. THAT WAS MY UNDERSTANDING
12 OF WHAT TRANSPIRED.

13 Q. NOW, WHEN IN RELATION TO THIS MEETING WAS IT THAT
14 YOU SAW THAT OCTOBER 9 AMENDMENT?

15 A. IN RELATION --

16 Q. TO THE MEETING. TO THE MEETING WE HAVE BEEN
17 TALKING ABOUT WITH DAVID DUONG AND --

18 A. EITHER THAT EVENING OR THE NEXT DAY.

19 Q. AND WHEN YOU SAW THIS ADDENDUM, DID YOU THINK ABOUT
20 ACCOUNTING IMPLICATIONS AND THE NEED TO REPORT THIS
21 OBLIGATION ON NORCAL'S FINANCIAL STATEMENTS?

22 A. WELL, IT HADN'T REALLY MANIFESTED ITSELF YET. I
23 WAS JUST BEGINNING TO UNDERSTAND THE NATURE OF THE PROBLEM.

24 Q. WELL, MAYBE YOU CAN HELP US UNDERSTAND THIS. THE
25 ADDENDUM WAS APPARENTLY EXECUTED ON OCTOBER 9, 2000,
26 CORRECT?

27 A. YES, SIR.

28 Q. AND THE CONTRACT DID NOT BECOME OPERATIONAL UNTIL

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1914

1 JULY 1 OF '02, CORRECT?

2 A. CORRECT.

3 Q. SO, THEREFORE, LIABILITY DIDN'T GO INTO EFFECT
4 ESSENTIALLY UNTIL JULY 1 OF '02, CORRECT?

5 A. CORRECT, BECAUSE THOSE SERVICES HAD NOT BEEN

6 PERFORMED.

7 Q. RIGHT. SO HERE YOU'RE HAVING A MEETING SOMETIME
8 AFTER JULY 1 OF '02, AND YOU LEARN THAT NORCAL HAS THIS
9 OBLIGATION TO REIMBURSE FOR THESE EXTRA LABOR COSTS?

10 A. THAT'S CORRECT.

11 Q. SO DID YOU DO ANYTHING ABOUT THE REPORTING OF THIS
12 OBLIGATION ON THE COMPANY'S FINANCIAL STATEMENTS?

13 A. WELL, IT ACTUALLY BEGAN RUNNING THROUGH THE
14 COMPANY'S FINANCIAL STATEMENTS, BECAUSE RELATIVELY SHORTLY
15 WE BEGAN MAKING PAYMENTS FOR THIS DIFFERENTIAL TO DAVID
16 DUONG, WHICH WERE ON THE P&L'S. SO WE WERE EXPENSING THAT
17 OBLIGATION AS IT AROSE.

18 Q. WERE YOU THE PERSON WHO CAUSED THAT OBLIGATION TO
19 BE INCLUDED IN THE COMPANY ACCOUNTING RECORDS, FINANCIAL
20 RECORDS?

21 A. YES.

22 Q. HOW DID YOU DO THAT? DID YOU GIVE INSTRUCTIONS TO
23 MR. BRASLAW ABOUT THAT?

24 A. CERTAINLY, YES. WE WERE MAKING PAYMENTS, AND I
25 BELIEVE I INDICATED THAT THEY SHOULD BE EXPENSED.

26 Q. OKAY. DID YOU EVER, WHEN MR. SANGIACOMO EXPLAINED
27 TO YOU THE BACKGROUND OF THIS OBLIGATION, DID YOU HAVE ANY
28 ADDITIONAL DISCUSSION WITH HIM ABOUT WHY NORCAL HAD TAKEN ON

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1915

1 THIS OBLIGATION WITH CWS?

2 A. UH -- NOT THAT I CAN RECALL.

3 Q. DID MR. SANGIACOMO GIVE YOU ANY FURTHER EXPLANATION
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4 OF WHY HE AGREED TO TAKE ON THIS OBLIGATION?

5 A. NOT THAT I CAN RECALL.

6 Q. IN THE 2003 AUDIT BY KPMG, DID THE TREATMENT OF THE
7 MONEY THAT NORCAL EXPECTED TO RECEIVE FROM THE CITY OF SAN
8 JOSE AS REIMBURSEMENT FOR THOSE ADDITIONAL LABOR COSTS
9 BECOME AN ISSUE?

10 A. YES. IT WAS IDENTIFIED AS ONE OF THE KEY ISSUES IN
11 THAT YEAR'S AUDITS.

12 Q. IT WAS IDENTIFIED AS ONE OF THE KEY ISSUES IN THAT
13 YEAR'S AUDIT?

14 A. YES.

15 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 122,
16 WHICH ARE SOME AUDIT NOTES FROM KPMG. AND I WILL DIRECT
17 YOUR ATTENTION TO THE SECOND PAGE OF THIS DOCUMENT, WHICH
18 HAS THE NUMBER FOUR NEXT TO IT AND BEGINS, "COLLECTABILITY
19 IS REASONABLY ASSURED."

20 WHETHER OR NOT THE COLLECTABILITY IS REASONABLY
21 ASSURED, WAS THAT ONE OF THE AUDIT ISSUES THAT WAS OF
22 CONCERN TO KPMG IN CONNECTION WITH THIS ISSUE?

23 A. YES, IT WAS.

24 Q. BECAUSE THAT'S ONE OF THE FACTORS THAT KPMG HAD TO
25 CONSIDER IN DECIDING WHETHER OR NOT TO ALLOW, RECOGNIZING
26 THE ANTICIPATED REIMBURSEMENT FROM THE CITY OF SAN JOSE AS
27 REVENUE, CORRECT?

28 A. THAT IS CORRECT.

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1916

1 Q. NOW, ACCORDING TO THIS AUDIT NOTE, THERE HAD BEEN
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2 SOME DISCUSSION -- THERE HAD BEEN DISCUSSION WITH MIKE
3 SANGIACOMO, MARK LOMELE, AND JON BRASLAW ON IT, THAT
4 COLLECTABILITY ISSUE, CORRECT?

5 A. THAT'S CORRECT.

6 Q. DO YOU RECALL SUCH DISCUSSION BETWEEN YOURSELF, JON
7 BRASLAW AND MIKE SANGIACOMO AND KPMG?

8 A. I BELIEVE THOSE DISCUSSIONS WERE KIND OF ONGOING AT
9 DIFFERENT PARTS OF THE AUDIT, SO I CAN'T TRACK IT TO ONE
10 SPECIFIC CONVERSATION WE HAD.

11 Q. DID YOU RECALL A CONFERENCE CALL IN WHICH THE
12 PARTICIPANTS INCLUDED YOURSELF, JON BRASLAW, MIKE
13 SANGIACOMO, MISS DEFALCO FROM KPMG, AND POSSIBLY OTHER
14 REPRESENTATIVES FROM KPMG DISCUSSING THIS ISSUE?

15 A. VAGUELY. GENERALLY, WHEN THEY CLOSE ON AN AUDIT,
16 THERE IS ALWAYS KIND OF A POST CLOSE CONFERENCE CALL TO WRAP
17 UP ISSUES, SO IT'S VERY LIKELY THERE WAS A POST-CLOSING
18 CONFERENCE CALL.

19 Q. IN THE AUDIT NOTES IT SAYS:

20 BASED ON DISCUSSIONS BETWEEN REPRESENTATIVES
21 FROM THE CITY AND NORCAL, THE FINANCIAL DIRECTOR
22 TO THE MAYOR FOR THE CITY OF SAN JOSE, THE MAYOR,
23 AND A REPRESENTATIVE FROM THE CITY ATTORNEY'S
24 OFFICE HAVE ALL AGREED THAT THE CITY WILL
25 COMPENSATE NORCAL FOR THE EXCESS COSTS OF USING
26 THE TEAMSTERS' UNION OVER THE ILWU.

27 THAT STATEMENT APPEARS THERE, DOES IT NOT?

28 A. YES.

- 1 Q. THAT SOURCE OF INFORMATION, ACCORDING TO THE AUDIT
2 NOTE, ARE DISCUSSIONS WITH MIKE SANGIACOMO, MARK LOMELE, AND
3 JON BRASLAW, CORRECT?
- 4 A. CORRECT.
- 5 Q. DID YOU FURNISH THAT INFORMATION TO KPMG?
- 6 A. I DON'T BELIEVE I FURNISHED ALL OF THAT
7 INFORMATION, BUT CERTAINLY I DID HAVE SOME FIRST-HAND
8 EXPERIENCE ON DEALING WITH THE MAYOR -- I'M SORRY. NOT THE
9 MAYOR, THE FINANCE DIRECTOR TO THE MAYOR.
- 10 Q. THAT WOULD BE MR. GUERRA?
- 11 A. YES, SIR.
- 12 Q. AND WHO WAS IT WHO TOLD KPMG THAT A REPRESENTATIVE
13 OF THE CITY ATTORNEY'S OFFICE HAD AGREED THAT THEY COULD
14 COMPENSATE NORCAL FOR THE EXCESS COST OF USING TEAMSTERS?
- 15 A. (NO RESPONSE.)
- 16 Q. DO YOU KNOW?
- 17 A. I DON'T KNOW.
- 18 Q. WAS IT YOU?
- 19 A. I DON'T THINK IT WAS ME.
- 20 Q. OKAY. DID YOU EVER HEAR MR. SANGIACOMO MAKE ANY
21 SUCH STATEMENT TO THE AUDITORS?
- 22 A. NOT THAT I CAN RECALL.
- 23 Q. SO IF HE MADE SUCH A STATEMENT, IT WASN'T MADE IN
24 YOUR PRESENCE OR TO YOUR KNOWLEDGE?
- 25 A. HE CERTAINLY COULD HAVE SAID THAT. I JUST DON'T
26 REMEMBER IT.
- 27 Q. I'LL SHOW YOU ON THE THIRD PAGE OF THIS DOCUMENT
28 ANOTHER STATEMENT ATTRIBUTED TO MR. SANGIACOMO, WHICH READS:

1 PER MIKE SANGIACOMO, BASED ON DISCUSSIONS
2 BETWEEN NORCAL AND CITY COUNCILMEMBERS, SEVEN OF
3 11 MEMBERS OF THE CITY COUNCIL HAVE STATED THAT
4 THEY AGREE WITH THE ADDITIONAL COMPENSATION OWED
5 TO NORCAL.

6 DO YOU SEE THAT STATEMENT?

7 A. I DO.

8 Q. DID YOU EVER HEAR MR. SANGIACOMO MAKE SUCH A
9 STATEMENT TO ANYONE?

10 A. IT'S POSSIBLE. AGAIN, I'M SORRY. I JUST DON'T
11 RECALL.

12 Q. I THINK YOU INDICATED THIS WAS ONE OF THE MORE
13 SIGNIFICANT ISSUES IN THE 2003 AUDIT, WAS IT NOT?

14 A. YES.

15 Q. LET ME SHOW YOU EXHIBIT 126. THIS IS WHAT IS
16 SOMETIMES REFERRED TO AS A MANAGEMENT REPRESENTATION LETTER
17 TO THE AUDITOR, CORRECT?

18 A. YES, SIR.

19 Q. LET ME HAND THIS COPY UP TO YOU. IT'S STAPLED, AND
20 I HAVE AN UNSTAPLED COPY TO PROJECT.

21 LOOKING AT THE LAST PAGE, IS THAT YOUR SIGNATURE,
22 SIR, ABOVE YOUR NAME?

23 A. YES, IT IS.

24 Q. DO YOU RECOGNIZE ANY OF THE OTHER SIGNATURES ON THE
25 DOCUMENT?

26 A. ALL OF THEM.

27 Q. SO YOU RECOGNIZE MR. SANGIACOMO'S SIGNATURE?

28 A. YES.

1 Q. AND YOU RECOGNIZE MR. BRASLAW'S SIGNATURE?

2 A. YES.

3 Q. YOUR SIGNATURE ON THIS DOCUMENT, WHAT DOES THAT
4 SIGNIFY?

5 A. THAT THESE REPRESENTATIONS ARE TRUE AND CORRECT.

6 Q. IN OTHER WORDS, YOU WERE VOUCHING FOR THE ACCURACY
7 OF THE REPRESENTATIONS?

8 A. YES.

9 Q. ONE OF THE REPRESENTATIONS ON THIS DOCUMENT NUMBER
10 15 IS THAT:

11 MANAGEMENT BELIEVES THAT THE \$2.4 MILLION IN
12 REVENUE FROM THE CITY OF SAN JOSE RELATED TO CWS
13 HAS BEEN PROPERLY RECORDED IN 2003 AS, ONE,
14 PERSUASIVE EVIDENCE OF THE ARRANGEMENT EXISTS.
15 CORRECT?

16 A. YES.

17 Q. WHAT PERSUASIVE EVIDENCE OF THIS ARRANGEMENT DID
18 YOU BELIEVE EXISTED?

19 A. WELL, I BELIEVE CERTAIN THINGS. WE INVOLVED LEGAL
20 COUNSEL IN REACHING OUR CONCLUSIONS ON THESE FOUR POINTS UP
21 THERE, AND THEY ARE COVERED BY ATTORNEY-CLIENT PRIVILEGE ON
22 THAT DOCUMENT.

23 Q. I UNDERSTAND, BUT I'M NOT ASKING YOU FOR THE
24 ATTORNEY'S PRIVILEGED OPINION. THE STATEMENT HERE IS
25 FACTUAL, THERE IS PERSUASIVE EVIDENCE. I'M NOT ASKING YOU
26 WHY DID YOU BELIEVE IT WAS PERSUASIVE; I'M ASKING YOU TO

27 IDENTIFY WHAT WAS PERSUASIVE EVIDENCE.

28 A. WELL, FOR ME, I ATTENDED A MEETING IN, I DON'T

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1920

1 KNOW, DECEMBER, JANUARY OF THE 2003 TIME FRAME, WHERE WE
2 WENT TO TALK TO JOE GUERRA ABOUT HOW WE WERE GOING TO GET
3 PAID FOR THIS. AND AT THAT MEETING HE STATED VERY MATTER OF
4 FACTLY UP FRONT THAT, SOMETHING TO THE EFFECT, DON'T GET MY
5 WORDS EXACT, BUT WE KNOW WE HAVE AN OBLIGATION HERE OR
6 RECOGNIZE AN OBLIGATION HERE. AT NO TIME DID MR. GUERRA
7 LEAD ME TO BELIEVE THE CITY WAS QUESTIONING WHETHER THERE
8 WAS SOME SORT OF OBLIGATION.

9 Q. WHO ELSE WAS PRESENT AT THAT MEETING WITH
10 MR. GUERRA?

11 A. QUITE A FEW PEOPLE. I BELIEVE MR. SANGIACOMO WAS
12 THERE; I BELIEVE MR. JONES WAS THERE; THERE WERE
13 REPRESENTATIVES FROM CWS THERE; POSSIBLY MR. NICOLETTI COULD
14 HAVE BEEN THERE. THERE WAS QUITE A FEW PEOPLE IN
15 ATTENDANCE.

16 Q. AND WHAT WAS THE SUBJECT OF THIS MEETING?

17 A. TO CONTINUE THE PROCESS TO UNDERSTAND HOW WE WERE
18 GOING TO BE PAID THE DIFFERENTIAL.

19 Q. WHAT DID MR. GUERRA SAY, IF ANYTHING, ABOUT HOW THE
20 CITY WAS GOING TO PAY NORCAL THIS DIFFERENTIAL?

21 A. WELL, AGAIN, THAT WAS ALL TO BE WORKED OUT. IN THE
22 FIRST COUPLE OF MEETINGS I ATTENDED, IT WAS MORE FOCUSED ON
23 WHAT WAS THE AMOUNT OF THE DIFFERENTIAL.

24 Q. AND THEREAFTER?

25 A. UH -- WELL, I CAN TELL YOU BY THE END OF 2003, IT
26 WAS CLEAR THAT IT WAS GOING TO REQUIRE A SECOND AMENDMENT TO
27 THE CONTRACT THAT WOULD REQUIRE CITY COUNCIL APPROVAL.

28 Q. AND BEFORE THAT, WAS THERE A DISCUSSION THAT YOU

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1921

1 WITNESSED WITH MR. GUERRA ABOUT THE CITY PASSING SOME KIND
2 OF GARBAGE RATE INCREASE TO CONTINUE COLLECTING MONEY TO
3 MAKE THESE PAYMENTS TO NORCAL?

4 A. CAN YOU ASK THAT QUESTION ONE MORE TIME.

5 Q. SURE. DID YOU ATTEND ANY MEETINGS IN 2003 WITH
6 MR. GUERRA CONCERNING THE CITY INCREASING THE GARBAGE RATES
7 TO PAY FOR THE ADDITIONAL COST OF USING TEAMSTERS?

8 A. OKAY. I DID NOT ATTEND MEETINGS WHERE THE SUBJECT
9 MATTER WAS A RATE INCREASE THAT WAS BEING PUT FORTH BY THE
10 CITY.

11 Q. SO WAS THERE ANYTHING ELSE BESIDES WHAT YOU ALREADY
12 TOLD US IN YOUR MIND THAT CONSTITUTED PERSUASIVE EVIDENCE
13 THE ARRANGEMENT EXISTED?

14 A. AGAIN, WHAT MIKE SANGIACOMO HAD STATED, THAT THERE
15 WAS SOMETHING THAT OCCURRED THAT DAY.

16 Q. RIGHT. SO ESSENTIALLY YOU'RE TELLING US THEN, THE
17 PERSUASIVE EVIDENCE TO YOU WAS WHAT MR. SANGIACOMO TOLD YOU
18 THE MAYOR HAD SAID BACK IN 2000, AND THEN YOUR PERSONAL
19 MEETING WITH MR. GUERRA AND OTHERS WHERE HE DID NOT DENY
20 THIS OBLIGATION?

21 A. AND BEGAN TO WORK TOWARD THE PAYMENT BY TRYING TO
22 FIRST IDENTIFY HOW MUCH THE REIMBURSEMENT WOULD BE IN

23 DECEMBER.

24 Q. HAVE WE NOW EXPLORED EVERYTHING THAT YOU CONSIDER
25 THE PERSUASIVE EVIDENCE IN THIS CASE?

26 A. YES, SIR.

27 Q. OKAY.

28 MR. FINKELSTEIN: I AM GOING TO MARK AS EXHIBIT

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1922

1 129 WHAT APPEARS TO BE A REDACTED COPY OF A DECEMBER 15 OR
2 16, 2003 MEMO FROM MARK LOMELE TO PAULETTE DEFALCO. IT'S A
3 TWO-PAGE DOCUMENT.

4 THE FOREPERSON: SO MARKED.

5 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
6 JURY EXHIBIT 129.)
7 BY MR. FINKELSTEIN:

8 Q. MR. LOMELE, WOULD YOU LOOK AT EXHIBIT 129 AND TELL
9 US WHETHER OR NOT YOU HAVE SEEN THAT DOCUMENT BEFORE.

10 A. YES. I HAVE SEEN THIS DOCUMENT.

11 Q. IS THIS A REDACTED COPY OF A MEMO THAT YOU
12 PREPARED, SIR?

13 A. YES, IT IS.

14 Q. AND DID YOU, CAN YOU TELL US WHAT THE CORRECT DATE
15 IS. THE COPY WE HAVE -- IS IT DECEMBER 15 OR 16?

16 A. I BELIEVE IT'S THE 15TH.

17 Q. YOU THINK IT'S THE 15TH? I'VE BLOWN IT UP ON THE
18 SCREEN HERE.

19 A. 16TH. IT'S THE 16TH.

20 Q. AND DO YOU BELIEVE THAT YOU PREPARED THIS ON OR

21 ABOUT DECEMBER 16, 2003?

22 A. YES.

23 Q. WHY DID YOU SEND THIS -- FIRST OF ALL, WHO IS
24 PAULETTE DEFALCO?

25 A. SHE IS PARTNER IN CHARGE OF OUR ENGAGEMENT WITH
26 KPMG.

27 Q. SO SHE WAS THE ENGAGEMENT PARTNER FOR KPMG'S AUDIT
28 WITH NORCAL?

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1923

1 A. YES.

2 Q. WHY DID YOU -- AND DID YOU SEND THIS MEMO TO MISS
3 DEFALCO?

4 A. YES, I DID.

5 Q. WHAT WAS THE PURPOSE OF SENDING THE MEMO, YOUR
6 PURPOSE?

7 A. WELL, IN ORDER TO RECORD THE RECEIVABLE, IT WAS
8 IDENTIFIED THAT WE HAD TO MEET FOUR CRITERIA UNDER GENERALLY
9 ACCEPTED ACCOUNTING PRINCIPLES, SO THIS MEMO CONSTITUTED OUR
10 UNDERSTANDING OF THE FOUR CRITERIA AND HOW THEY WERE MET.

11 Q. I NOTICE THAT UNDER ITEM CRITERIA ONE, PERSUASIVE
12 EVIDENCE THAT AN ARRANGEMENT EXISTS, PART OF THE EVIDENCE
13 THAT YOU HAVE LISTED HERE IS AN E-MAIL FROM JOE GUERRA TO
14 DAVID DUONG DATED FEBRUARY 10, 2003; IS THAT CORRECT?

15 A. YES.

16 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED AS
17 EXHIBIT 31 AND ASK YOU WHETHER OR NOT THIS APPEARS TO BE THE
18 E-MAIL THAT YOU WERE REFERENCING IN YOUR DECEMBER 16, 2003

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MEMO TO PAULETTE DEFALCO.
A. I BELIEVE IT IS.
Q. WHAT IS IT ABOUT -- LET ME SEE IF I CAN DISPLAY
THIS A LITTLE BETTER.
WHAT IS IT ABOUT, THIS E-MAIL THAT YOU FOUND
CONSTITUTED SOME EVIDENCE OF THE EXISTENCE OF THE
ARRANGEMENT?
A. WELL, IT SAYS THE INCREASE WILL INCLUDE
APPROXIMATELY 1.95. I BELIEVE THAT AMOUNT WAS A TYPO.
Q. IS IT SOMETHING IN ITEM TWO IN THE E-MAIL THAT

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1924

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YOU' RE REFERENCING?
A. YES.
Q. AND IS IT THE STATEMENT BY MR. GUERRA:
OUR OFFICE WORKING WITH THE CITY MANAGER
INTENDS TO BRING FORWARD TO THE CITY COUNCIL A
RATE INCREASE THAT WOULD INCLUDE APPROXIMATELY 95
CENTS SUBJECT TO LEGAL REVIEW, COUNCIL APPROVAL.
THESE FUNDS WOULD BE AVAIL ABLE TO OFFSET
UNANTICIPATED LABOR COSTS.
IS THAT THE PORTION YOU HAVE --
A. YES.
Q. -- THAT YOU FELT WAS THE CONDITIONAL EVIDENCE OF
THE EXISTENCE OF THIS ARRANGEMENT?
A. AND I THINK IT WENT ON TO TALK ABOUT WHAT WOULD
HAPPEN IN SUBSEQUENT YEARS.
Q. IT SAYS:

17 WE WOULD WORK WITH YOU TO ATTEMPT TO INCLUDE
18 ANOTHER INCREASE THAT COULD TAKE EFFECT IN 12
19 MONTHS TO COVER APPROXIMATELY \$250,000 IN
20 ADDITIONAL UNFORESEEN COSTS, AGAIN SUBJECT TO
21 COUNCIL APPROVAL. THIS WOULD BE THE FINAL
22 INCREASE OF THIS NATURE.

23 WAS IT THOSE STATEMENTS YOU THOUGHT WAS ADDITIONAL
24 EVIDENCE OF THE ARRANGEMENT?

25 A. YES.

26 MR. FINKELSTEIN: LET ME SEE IF THE JURORS HAVE
27 ANY QUESTIONS.

28 BY MR. FINKELSTEIN:

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1925

1 Q. NOW, A COUPLE MORE QUESTIONS. WHAT WAS THE RESULT
2 OF THE 2003 AUDIT; DID KPMG ALLOW THE TREATMENT OF THIS
3 MONEY AS A RECEIVABLE?

4 A. THEY DID.

5 Q. AND IN YOUR EXPERIENCE, IS IT UNUSUAL TO RECORD
6 REVENUE OR A RECEIVABLE WITHOUT SOME WRITTEN DOCUMENTATION
7 TO SUPPORT IT?

8 A. WHAT DO YOU MEAN BY WITHOUT WRITTEN DOCUMENTATION
9 TO SUPPORT IT?

10 Q. THERE WAS NO WRITTEN DOCUMENTATION HERE OF ANY
11 AGREEMENT WITH THE CITY TO REIMBURSE, CORRECT, NO CONTRACT?

12 A. THAT'S CORRECT.

13 Q. THAT'S WHAT I MEAN BY WRITTEN DOCUMENTATION. SO IN
14 YOUR EXPERIENCE, IS THAT SOMEWHAT UNUSUAL?

15 A. WELL, THIS SITUATION WAS UNUSUAL, YES.
16 Q. WHY DID YOU SAY THAT?
17 A. WHY --
18 Q. YOU JUST SAID THE SITUATION WAS UNUSUAL. I'M
19 ASKING YOU WHY YOU SAY THAT. WHAT SITUATION ARE YOU TALKING
20 ABOUT?
21 A. WELL, AGAIN, THE WHOLE SITUATION BEGINNING WITH THE
22 MEETING IN 2000 AND THE WAY IT PLAYED OUT.
23 Q. YOU FELT THE WHOLE SITUATION WAS SOMEWHAT UNUSUAL?
24 A. YES. IT DOESN'T HAPPEN EVERY DAY.
25 Q. I AM SIMPLY ASKING YOU WHY YOU BELIEVE THAT.
26 A. IT'S JUST NOT TYPICAL; DOESN'T USUALLY HAPPEN.
27 Q. OKAY. DID YOU FEEL THAT SINCE YOU WERE LOOKING AT
28 THIS ANTICIPATED MONEY AS REVENUE OR RECEIVABLE, YOU NEEDED

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1926

1 TO GENERATE SOME KIND OF INVOICE AS BOOKING IN A RECEIVABLE?
2 A. UH -- NO, SIR.
3 Q. OKAY.
4 A. BUT AGAIN, THERE WAS -- WE DID WORK WITH COUNSEL
5 AND THERE WAS ANOTHER DOCUMENT THAT'S ATTORNEY-CLIENT
6 PRIVILEGE.
7 Q. THERE WAS ANOTHER DOCUMENT?
8 A. THERE WAS A DOCUMENT WE RECEIVED FROM OUR LAWYERS.
9 Q. SO I GUESS YOU'RE SAYING ON ADVICE OF COUNSEL YOU
10 THOUGHT IT WAS OKAY TO TREAT IT THIS WAY?
11 A. YES.
12 MR. FINKELSTEIN: LET ME SEE IF THE JURORS HAVE

13 ANY OTHER QUESTIONS.

14 BY THE WAY, WHILE I HAVE THIS FEBRUARY 10, 2003
15 E-MAIL, DID I HEAR YOU SAY YOU THOUGHT THE 95-CENT FIGURE
16 WAS A MISTAKE?

17 A. I MISPOKE. I'M SORRY.

18 Q. IT WAS NOT A MISTAKE?

19 A. NO, I MISPOKE.

20 Q. DID YOU -- LET ME SHOW YOU ANOTHER DOCUMENT, WHAT'S
21 BEEN MARKED AS EXHIBIT 120. DID YOU RECEIVE A COPY OF THIS
22 MEMORANDUM FROM BILL JONES?

23 A. YES, I DID.

24 Q. AND DID YOU RECEIVE IT IN APPROXIMATELY JANUARY,
25 2002?

26 A. I WOULD ASSUME SO.

27 Q. AND DID YOU ATTEND THE FUNDRAISER THAT'S REFERENCED
28 IN THE MEMO AT BLAKE'S STEAKHOUSE IN DOWNTOWN SAN JOSE ON

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1927

1 THE EVENING OF JANUARY 28, 2002?

2 A. I DID.

3 Q. AND DID YOU MAKE A \$500 CONTRIBUTION?

4 A. I DID.

5 Q. WAS THAT OF YOUR OWN FUNDS?

6 A. YES, IT WAS.

7 Q. DO YOU LIVE IN SAN JOSE?

8 A. NO, I DO NOT.

9 Q. DID YOU LIVE IN SAN JOSE BACK IN 2002?

10 A. NO, I DID NOT.

11 Q. AND WHY IS IT THAT YOU MADE A CONTRIBUTION AND
12 ATTENDED THIS FUNDRAISER?

13 A. WE DO THESE THINGS FROM TIME TO TIME.

14 Q. THIS IS SORT OF PART OF THE PUBLIC RELATIONS
15 EFFORT?

16 A. YES.

17 Q. HOW MANY NORCAL PEOPLE ATTENDED THIS FUNDRAISER?

18 A. QUITE A FEW; I WOULD SAY MAYBE 15.

19 Q. AND WHEN YOU MADE YOUR CONTRIBUTION, DID YOU GIVE
20 THE CHECK TO MR. JONES TO BE TURNED IN TO MAYOR GONZALES?

21 A. I GAVE IT TO SOMEBODY, SURE.

22 Q. YOU DON'T REMEMBER WHO YOU GAVE IT TO?

23 A. I DON'T KNOW WHO I GAVE IT TO SPECIFICALLY. THAT
24 WOULDN'T BE UNREASONABLE.

25 MR. FINKELSTEIN: ANY OTHER QUESTIONS?

26 MR. LOMELE, THANK YOU VERY MUCH. YOU'RE NOT
27 EXCUSED; YOU'RE FREE TO GO, HOWEVER. WHAT THAT MEANS IS YOU
28 ARE SUBJECT TO BEING RECALLED DURING THE COURSE OF THIS

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1928

1 INVESTIGATION SHOULD THE GRAND JURY HAVE ADDITIONAL
2 QUESTIONS FOR YOU. BUT OTHER THAN THAT, YOU'RE FREE TO GO
3 ABOUT YOUR BUSINESS.

4 IF WE DO NEED TO RECALL YOU, I DON'T THINK IT IS
5 LIKELY, BUT IT IS TECHNICALLY POSSIBLE, WE'LL ADVISE YOUR
6 COUNSEL OF THAT.

7 THE FOREPERSON WANTS TO READ YOU AN ADMONITION
8 ABOUT GRAND JURY SECRECY, SO PLEASE LISTEN CAREFULLY.

9 THE FOREPERSON: YOU ARE ADMONISHED NOT TO REVEAL
10 TO ANY PERSON, EXCEPT AS DIRECTED BY THE COURT, WHAT
11 QUESTIONS WERE ASKED OR WHAT RESPONSES WERE GIVEN OR ANY
12 OTHER MATTERS CONCERNING THE NATURE OR SUBJECT OF THE GRAND
13 JURY'S INVESTIGATION WHICH YOU LEARNED DURING YOUR
14 APPEARANCE BEFORE THE GRAND JURY, UNLESS AND UNTIL SUCH TIME
15 AS THE TRANSCRIPT OF THIS GRAND JURY PROCEEDING IS MADE
16 PUBLIC. VIOLATION OF THIS ADMONITION IS PUNISHABLE AS
17 CONTEMPT OF COURT.

18 DO YOU UNDERSTAND THAT?

19 THE WITNESS: YES, I DO.

20 MR. FINKELSTEIN: MR. LOMELE, LET ME JUST GIVE YOU
21 A CAUTION ON THAT. YOU ARE FREE TO DISCUSS THIS INFORMATION
22 WITH YOUR COUNSEL, PROVIDED YOUR COUNSEL AGREES NOT TO
23 FURTHER DISCLOSE THIS INFORMATION; DO YOU UNDERSTAND THAT?

24 THE WITNESS: YES, I DO.

25 MR. FINKELSTEIN: LET ME ASK YOU ONE OTHER
26 QUESTION.

27 Q. DO YOU TYPICALLY ATTEND MEETINGS OF THE NORCAL
28 BOARD OF DIRECTORS?

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1929

1 A. YES.

2 Q. DO YOU KNOW WHETHER OR NOT THE ISSUE ABOUT ANY OF
3 THE MATTERS RELATING TO THE OCTOBER 9, 2000 ADDENDUM,
4 REIMBURSING CWS FOR THESE EXTRA LABOR COSTS OR ANY OF THOSE
5 RELATED ISSUES WERE EVER DISCUSSED WITH THE NORCAL BOARD OF
6 DIRECTORS?

7 A. UH -- I'M CERTAIN, FOR EXAMPLE, IN THE 2003 TIME
8 FRAME THAT THERE WERE DISCUSSIONS WITH THE BOARD.

9 Q. RELATING TO WHAT EXACTLY?

10 A. THE RECORDING OF THE RECEIVABLE.

11 Q. AND DO YOU KNOW -- DO YOU TYPICALLY GET A COPY OF
12 THE BOARD MINUTES?

13 A. I DO NOT.

14 Q. WHAT IS THE DISTRIBUTION ON THE BOARD MINUTES?

15 A. I DON'T KNOW.

16 Q. WHY ARE YOU CERTAIN THERE WERE DISCUSSIONS OVER
17 RECORDING THE RECEIVABLE?

18 A. AGAIN, IT WAS A BIG AUDIT ISSUE FOR THAT YEAR, SO
19 WE APPRISED THE BOARD OF ISSUES RELATED TO THE AUDIT, AND
20 THAT WOULD HAVE BEEN TOP ON THE LIST.

21 Q. IN TERMS OF THE DOLLAR AMOUNT OF THIS ISSUE, THIS
22 WAS APPROXIMATELY A \$2 MILLION A YEAR ISSUE, \$2 MILLION A
23 YEAR RECEIVABLE OVER FIVE YEARS. HOW SIGNIFICANT WAS THAT
24 TO THE COMPANY'S TOTAL FINANCIAL STATEMENT? CAN YOU GIVE US
25 SOME SENSE OF THAT?

26 A. NOT REAL SIGNIFICANT BUT, YOU KNOW, IT'S A BIG ITEM
27 FOR ONE ISSUE.

28 Q. SO BEARING IN MIND THE SIZE OF NORCAL AND ITS TOP

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1930

1 LINE, THIS WAS A SIGNIFICANT ISSUE?

2 A. AN IMPORTANT ISSUE. I DON'T WANT TO SAY IT WAS
3 SIGNIFICANT IN TOTAL DOLLARS.

4 Q. BUT IT WAS IMPORTANT?

5 A. IMPORTANT ISSUE.
6 Q. IMPORTANT ENOUGH TO APPRISE THE BOARD OF IT?
7 A. YES.
8 Q. OKAY. THANK YOU VERY MUCH.
9 MR. FINKELSTEIN: ANY OTHER QUESTIONS?
10 THANK YOU VERY MUCH, MR. LOMELE.
11 WELL, WE HAVE NO MORE WITNESSES TODAY. WE WILL
12 NOT BE IN SESSION FRIDAY; WE WILL NOT BE IN SESSION MONDAY,
13 AND AT THIS POINT IT DOES NOT LOOK LIKE WE WILL BE IN
14 SESSION TUESDAY BECAUSE WE HAVE MANAGED TO GET A LOT OF
15 WITNESSES ON THIS WEEK. WE DO HOPE TO RESUME ON WEDNESDAY.
16 IF FOR SOME REASON WE NEED TUESDAY AVAILABLE,
17 WE'LL TRY TO NOTIFY YOU WHETHER OR NOT THAT'S POSSIBLE, BUT
18 MONDAY IS ABSOLUTELY NOT GOING.
19 THE FOREPERSON: IF WE MEET TUESDAY THE 9TH, WE
20 ARE AVAILABLE IN THE MORNING ONLY ON THAT DATE. AND ON
21 WEDNESDAY THE 10TH, WE'RE AVAILABLE IN THE AFTERNOON ONLY.
22 MR. FINKELSTEIN: OH. YOU'RE ONLY AVAILABLE IN
23 THE AFTERNOON?
24 THE FOREPERSON: YES. THERE WERE COMMITMENTS THAT
25 INDIVIDUAL JURORS HAD FOR HALF DAYS.
26 MR. FINKELSTEIN: NO WEDNESDAY AFTERNOON, ALL DAY
27 THURSDAY --
28 THE FOREPERSON: AND ALL DAY FRIDAY, WHICH IS THE

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1931

1 12TH. I THINK YOU HAD MR. JONES ON THE TELEPHONE.
2 MR. FINKELSTEIN: YES.

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THE FOREPERSON: WE ALSO HAVE TIME NEXT WEEK.

MR. FINKELSTEIN: BARRING LAST MINUTE CHANGES, I
GUESS WE' LL REASSEMBLE WEDNESDAY THE 10TH AT 1: 30.

(COURT WAS ADJOURNED FOR THE DAY.)

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1932

REPORTER' S CERTIFICATE

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I, SUE HERFURTH, DO HEREBY CERTIFY THAT THE FOREGOING IS A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HAD IN THE WITHIN-ENTITLED ACTION HELD ON THE 3RD AND 4TH DAYS OF MAY, 2006.

THAT I REPORTED THE SAME IN STENOTYPE, BEING THE QUALIFIED AND ACTING OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, APPOINTED TO SAID COURT, AND THEREAFTER THE SAME WAS TRANSCRIBED BY COMPUTER UNDER MY DIRECTION AS HEREIN APPEARS.

I HAVE ADHERED TO CIVIL CODE OF PROCEDURE SECTION 237(1)(2), SIXTH DISTRICT COURT OF APPEAL MISCELLANEOUS ORDER 96-02, BY SEALING THROUGH REDACTION OF ALL REFERENCES, IF ANY, TO JUROR-IDENTIFYING INFORMATION, INCLUDING BUT NOT LIMITED TO NAMES, ADDRESSES AND TELEPHONE NUMBERS.

DATED THIS 28TH DAY OF JUNE, 2006.

SUE HERFURTH, C. S. R.
CERTIFICATE NO. 9645

SUE HERFURTH, CSR #9645