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I N D E X

OPENING STATEMENT BY MS. MOORE. . . .PAGE 10

EXAMINATION BY PLAINTIFFS

MEGUMI SUMITANI

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PROCEEDINGS

AUGUST 16, 2016

1
2
3
4 THE COURT: Good afternoon everyone. Please be
5 seated. Okay. Before we bring our jurors back, I wanted
6 to let you folks know about a brief comment that juror
7 number three made to my bailiff, which was that after
8 openings he, I guess, learned for the first time that the
9 workplace involved a call center, and I think he either
10 works in one now or used to. I didn't get the impression
11 that he thought it was a big deal, but he thought that we
12 should know, and I thought that's probably a good idea.
13 So I thought I would bring him out, and ask him whether
14 anything about that experience that would make it
15 difficult for him.

16 MR. SHERIDAN: It's not the call center, but just a
17 call center?

18 THE COURT: No. No. No. A call center. But he is
19 familiar with that workplace, and I just want to make
20 sure that we don't have some issue that -- should have
21 been explored earlier and wasn't. So let's bring him in
22 real quick.

23 THE BAILIFF: Okay. Please rise for juror number
24 three.

25 (Juror Number three present.)

1 THE COURT: Good afternoon, juror number three. Sit
2 wherever you want. This is your opportunity to have fun
3 and sit in someone else's chair.

4 JUROR NO. 3: Okay.

5 THE COURT: Just a quick question for you.
6 Mr. Morrison had told me -- do you want to stand?

7 JUROR NO. 3: Sure, your Honor.

8 THE COURT: You can sit or stand.

9 JUROR NO. 3: Okay.

10 THE COURT: You're not in trouble. I swear.

11 JUROR NO. 3: It's just easier to talk.

12 THE COURT: Okay. My bailiff mentioned that you
13 mentioned that following openings that you thought that
14 you should tell counsel and myself that you had either
15 previously worked in a call center or perhaps now?

16 JUROR NO. 3: I previously worked in a call center.
17 Now I work at retail sales, but I deal with employees --
18 with customer accounts constantly. So I'm always dealing
19 with billing and that kind of issues. Almost identical
20 to those things they had there. And also when I was
21 administratively separated from the Army I was put in a
22 situation where pressure was put on me to backdate policy
23 letters, and then all this stuff here which means --
24 leads me very heavily to identify with the -- I don't
25 know if they are the plaintiffs or the defendants.

1 THE COURT: Okay. So they are the plaintiffs in this
2 case. So I guess I just wanted to make sure you didn't
3 lean heavily with them. I want to make sure that you
4 know for one thing that opening statements are not facts,
5 right? That's argument.

6 JUROR NO. 3: Yes.

7 THE COURT: As the same where Defendant's opening
8 statements is just going to be argument as well. They
9 are not the evidence. But I want to -- I want to ask you
10 whether you think your experience working in a call
11 center or your experience with the military makes you
12 think that you won't be able to separate your experiences
13 from the facts and information that you learned in this
14 case involving different people, different parties, and
15 different circumstances?

16 JUROR NO. 3: No. This seems very much what I went
17 through to the point that I do not feel I would be an
18 impartial juror.

19 THE COURT: Okay. Even though you haven't heard any
20 evidence or facts yet?

21 JUROR NO. 3: I was thinking about this over lunch,
22 and I was thinking that the preponderance of the evidence
23 that the City of Seattle would have to present me would
24 be, I believe, beyond a regular amount of evidence that a
25 juror would have to see.

1 THE COURT: Okay. Well, thank you very much. Anyone
2 want to ask any questions?

3 MR. SHERIDAN: Let me just make a hundred percent sure
4 here. So bottom line, you can't -- you just can't be
5 fair?

6 JUROR NO. 3: I cannot.

7 MR. SHERIDAN: All right. Good enough for us. Thanks
8 very much for your candor.

9 THE COURT: Okay. Thank you very much. And I will --
10 you can get your personal belongings out of the jury
11 room, and head on back down to the jury assembly room.
12 And we thank you very much for your service.

13 JUROR NO. 3: All right. Thank you, your Honor.

14 THE BAILIFF: Please rise for the juror.

15 (Juror number three not present.)

16 THE COURT: Well, that was too bad that we didn't
17 discuss --

18 MR. SHERIDAN: We didn't do that beforehand.

19 THE COURT: Discuss the call center.

20 MR. SHERIDAN: Never thought about it.

21 THE COURT: Yeah, well...okay. Well, everyone be
22 comfortable and be seated. We have one alternate. And
23 what are your thoughts about that?

24 MR. SHERIDAN: Geez. Boy. Half hour ago we could
25 have grabbed somebody else.

1 THE COURT: I know. I know.

2 MR. SHERIDAN: I don't know. What do you think? It's
3 risky to go four weeks with one alternate.

4 THE COURT: I agree. What do you believe, Ms. Moore?
5 Ms. Tilstra?

6 MR. SHERIDAN: What would we have to do? Would we
7 have to start over on voir dire? Could we voir dire
8 somebody individually or...

9 THE COURT: Well, they've missed openings so...

10 MS. MOORE: Yeah.

11 MR. SHERIDAN: Yeah, they did.

12 MS. MOORE: Oh, my god.

13 MR. SHERIDAN: It's one of those things that you want
14 to take the gamble, and then three and a half weeks into
15 it you are like what was I thinking?

16 THE COURT: Right.

17 MR. SHERIDAN: So what do you think, Judge? I mean,
18 it's August. The weather's not crummy. We probably lost
19 everybody we are going to lose to some degree but...

20 THE COURT: So just a lot of time and effort to say
21 nothing of financial and other resources involved here,
22 and I am concerned about a four week trial with one
23 alternate.

24 MS. MOORE: Your Honor, what if we agree to nine out
25 of eleven?

1 THE COURT: I think that's a great solution.

2 MR. SHERIDAN: Well, if we have to, right? I mean, if
3 we have to.

4 MS. MOORE: If we have to.

5 THE COURT: All right. If you guys will get that,
6 draft up a stipulation tonight, and send that to the
7 Court that in the event we lose our last alternate, and
8 have our -- are down to it, you know.

9 MR. SHERIDAN: Eleven.

10 THE COURT: Eleven. That you folks will agree to have
11 it be -- did you just say nine?

12 MR. SHERIDAN: Nine. Okay. Does that seem correct?
13 Nine out of eleven? Is that the right number? Nine of
14 eleven?

15 THE COURT: Nine of eleven.

16 MS. MOORE: It's ten, twelve. So nine, eleven.

17 MR. SHERIDAN: Nine, eleven. Does that sound right?
18 That sounds right, I think.

19 THE COURT: Yeah, this is so pathetic that two people
20 can't figure out...

21 MS. MOORE: I was nervous for my opening statement,
22 your Honor. So...

23 THE COURT: You get a pass. Never mind. Mr. Sheridan
24 and I are ashamed of ourselves.

25 MR. SHERIDAN: I was a history major.

1 THE COURT: All right. Blah. Blah. Blah. I think
2 that's a very good solution. But I do want you guys to
3 put that in writing just in case, and let's just hope
4 everyone is really healthy, and I'll tell everyone to
5 take their vitamins.

6 MS. MOORE: We will try and get through this quickly.

7 THE COURT: Well, yes. Yes. Yes.

8 MS. MOORE: But my opening statement is coming up.

9 THE COURT: I missed that part.

10 MS. MOORE: I said my opening statement is going to be
11 long.

12 THE COURT: You said an hour, hour and a half. Let's
13 stick to that. Come on. Let's get the jurors.

14 MS. MOORE: Yes.

15 THE BAILIFF: All set, your Honor?

16 THE COURT: Yes. Thanks.

17 MR. SHERIDAN: Your Honor, before the jury comes in,
18 we noticed there are some witnesses in here for opening.
19 I don't ever object to them being here for closing, but
20 it seems for opening they are getting an outline of the
21 case. So I would object to witnesses in the courtroom
22 during opening.

23 MS. MOORE: Your Honor, you stated that openings are
24 not evidence so...

25 THE COURT: Yeah, they are not. They are not. I

1 often have people here during openings and closings who
2 wouldn't ordinarily be allowed in.

3 MR. SHERIDAN: Okay.

4 THE COURT: Okay.

5 THE BAILIFF: Please rise for the jury.

6 (Jury present.)

7 THE COURT: Okay. Everyone, welcome back from lunch.
8 Hope you had a nice one. And you'll notice that we lost
9 one of our jurors. So what I want to say is don't be
10 concerned about that, but be concerned with keeping
11 yourself really healthy. So hand sanitizer at all times.
12 You know, pads if you do any sports. Life preservers if
13 you do any water sports. Things like that. Okay. But
14 more importantly, let's ask you to give your full
15 attention to Ms. Moore.

16 MS. MOORE: Good afternoon, ladies and gentlemen. I
17 hope that you are not going to fall asleep having just
18 had lunch. So I'm going to try and keep you awake.
19 Mr. Sheridan told you during his opening that, quote, we
20 have a lot to go through, and I won't take time. I won't
21 take long.

22 Now, Mr. Sheridan is a very formidable adversary, and
23 he and I disagree on a lot of things. But on this we do
24 agree. We do have a lot to go through. And it's going
25 to take me a little bit longer than it took Mr. Sheridan.

1 I actually changed into flats out of my heels so that I
2 can do this.

3 So ladies and gentlemen, there are always two sides to
4 every story. Think about this for a minute. You hear
5 that a woman, 21 year old woman, two o'clock in the
6 morning is outside of a building and gets in a car with a
7 driver that she doesn't know. And the car drives away.
8 All of us are thinking what is that woman doing? Until
9 we hear the other side of the story and realize that this
10 woman left a nightclub. Called Uber. Got into an Uber
11 car with a driver, and the driver took her where she
12 wanted to go.

13 Much of what Mr. Sheridan told you, and he went
14 through a lot of information with you in a very short
15 period of time, but much of what he told you was either
16 flat out wrong or taken out of context. For example,
17 Mr. Sheridan told you that the Ethics Committee didn't
18 get to do any investigations in this case. The evidence
19 will show that that is just wrong.

20 Mr. Sheridan told you that Seattle City Light, and
21 Kelly Enright did not punish any Seattle City Light
22 employees for the same conduct that his clients engaged
23 in. That too will be shown to be flat out wrong.

24 And finally, Mr. Sheridan told you that Deborah
25 Russell, the supervisor in the call center, was able to

1 retire without any discipline. We will show you that
2 that too is wrong. Remember, ladies and gentlemen, there
3 will be two sides to the story.

4 So as you know my name is Portia Moore, and my
5 co-counsel Sarah Tilstra and GC Urey represent Seattle
6 Public Utilities. And so while you clearly know that I'm
7 an attorney, what you may not know is that I'm also the
8 mother of -- I have three sons, Zachary, Matthew, and
9 Lucas. And one of my hardest jobs as a mother is
10 teaching my sons about the importance of being honest. I
11 want them to take responsibility for the things that they
12 do, and when they do something wrong I want them to
13 accept the consequences of their actions even when they
14 don't like it. Now, my sons are still relatively young.
15 Lucas, my youngest is just 16. And his two brothers are
16 18 and 24. They are a work in progress, but it seems to
17 be getting it --

18 MR. SHERIDAN: Your Honor, I object at this point.

19 MS. MOORE: I'm done. I'm done.

20 THE COURT: I will sustain that.

21 MS. MOORE: So now you're probably asking -- I'm
22 sorry.

23 THE COURT: I'm sustaining the objection. Go ahead,
24 counsel.

25 MS. MOORE: So now you are probably asking yourself

1 why in the world is this woman up here talking about her
2 three sons? And there are two reasons, ladies and
3 gentlemen. First, despite having done this numerous
4 times I still get nervous when I have to get up and speak
5 with you, and talking about my family grounds me. But
6 second, and more important, when all is said and done,
7 the concept of taking responsibility for, and accepting
8 the natural consequences of your actions is what this
9 case is all about.

10 Each and every one of these seven women who are now
11 suing the City used their positions with SPU to gain some
12 type of financial benefit for themselves, for their
13 friends or for their family members when handling their
14 utility accounts. You will hear that Toni Williamson,
15 for example, chose to use her position with the City to
16 provide financial benefits that the general public could
17 not get. Not once. Not twice. But 65 times. 65 times,
18 ladies and gentlemen. You will hear that Luisa Johnson
19 also chose to use her position with the City to provide
20 financial benefits that the general public could not get
21 for herself and her husband. Again, not once. Not
22 twice. But 30 times. 30 times, ladies and gentlemen.

23 These women, and each of them, had the ability but not
24 the authority to enter into transactions on their own
25 utility accounts or the utility accounts of their family

1 members and friends. They had no right to do it. They
2 knew better and they did it anyway. And now they are
3 trying to use their race and their age as an excuse for
4 not doing the right thing, and performing their job
5 ethically and honestly. You have all heard of Martin
6 Luther King no doubt, and I'm sure you all remember his I
7 have a dream speech. And in that speech Mr. Martin
8 Luther King said, quote, that one day he hoped that my
9 four little children will one day live in a nation --

10 MR. SHERIDAN: Your Honor, I'm going to object again.
11 Opening.

12 THE COURT: Sustained.

13 MS. MOORE: Despite Mr. Sheridan's efforts to make you
14 feel guilty because you are not African-American, please
15 judge these women not by the color of their skin, but by
16 the content of their character. By what they chose to do
17 in these jobs. Did these plaintiffs, and each and every
18 one of them, use their position as a City employee to
19 give financial benefits to themselves, their friends or
20 their family members. Because if they did so, ladies and
21 gentlemen, that is wrong. No matter what color of your
22 skin, and no matter what age. And you must hold them
23 accountable.

24 There can be no doubt that the purpose of our City
25 government is to provide services to the citizens and

1 taxpayers of the City of Seattle. The citizens of
2 Seattle, all of us, are the employer of each and every
3 City employee. From the mayor to the City council on
4 down. And when any City employee, regardless of the
5 color of their skin or their age, misuses their position,
6 it's not some large corporation that absorbs the loss,
7 ladies and gentlemen. Rather it is every one of us who
8 is a citizen who is required to pay higher taxes and
9 higher fees for services. Working for the City of
10 Seattle comes with great benefits. The pay is usually
11 significantly higher than minimum wage. The health
12 benefits are great. The retirement benefits are even
13 greater, but with great benefits and pay comes great
14 responsibility. City employees, ladies and gentlemen,
15 are stewards of the City resources. Because of that,
16 every City employee is expected to perform their job
17 ethically, responsibly, and impartially.

18 The Seattle City Code of Ethics provides that public
19 officers and employees be independent, impartial, and
20 responsible. City employees may not participate in any
21 manner in which they have a financial interest. And City
22 employees may also not use their job for a purpose that
23 would appear to be primarily for their own benefit.

24 Now, the Code of Ethics, ladies and gentlemen, is not
25 a personnel policy. It is the law. It is a law. It has

1 been in existence since the 1970's. And it is a
2 colorblind law. It does not state that only persons of
3 color or older employees --

4 MR. SHERIDAN: Again, your Honor, objection.
5 Argumentative.

6 THE COURT: Overruled.

7 MS. MOORE: It does not state that only persons of
8 color or older employees are expected to do their job
9 impartially. It applies to every City employee, ladies
10 and gentlemen. And just like with any other law, City
11 employees are expected to know and follow the Code of
12 Ethics. They are told about it on day one when they
13 start their jobs with the City. The evidence will show
14 that each and every one of these seven plaintiffs chose
15 not to follow the Code of Ethics. They repeatedly used
16 their jobs to gain a financial benefit that in most
17 instances, the public, the regular taxpayers would not be
18 able to get. And in choosing to do so these plaintiffs
19 certainly were not performing their job impartially.
20 They certainly were not performing their jobs
21 responsibly, and there can be no question that they were
22 not performing their jobs ethically.

23 So this case has nothing to do about race or age. It
24 has nothing to do with retaliation. It has nothing to do
25 about implicit bias, ladies and gentlemen. This is a

1 case about City employees and holding them responsible
2 and accountable where the data, where the data shows that
3 they used their job to obtain a financial benefit.

4 So let me briefly review with you now some of the
5 evidence and key facts that Mr. Sheridan chose not to
6 share with you. And I want to begin by telling you where
7 the plaintiffs worked. What they did. And the
8 investigation that led to the discipline that they now
9 claim is discriminatory.

10 First, let's talk about where the plaintiffs work.
11 SPU is one of 21 separate departments that make up the
12 executive branch of the City of Seattle. And as you all
13 know SPU provides us with clean drinking water, solid
14 waste collection, and storm removal. SPU has its own
15 director, and its own employees, and at all times
16 throughout this case you are going to hear that the
17 director of SPU was an individual named Ray Hoffman.

18 Seattle City Light is another one of the 21 separate
19 departments that make up the executive branch of the City
20 of Seattle. And Seattle City Light provides electrical
21 power for residential and commercial customers. Like
22 SPU, Seattle City light has its own directors, and its
23 own employees, and because they are two separate
24 departments providing customers with two separate
25 services. Utility users. Those of us who live in

1 Seattle gets two bills. One from Seattle City Light and
2 one from SPU. But the one thing that SPU and Seattle
3 City Light share and have in common was a computerized
4 billing system called CCSS. You are going to be so sick
5 of that term by the time you get done with here, you will
6 be able to recite it in your sleep. The CCSS billing
7 system was first developed in 2001, and it contained
8 confidential and private financial information about
9 every single one of the City of Seattle's customers. SPU
10 and Seattle City Light. Before 1997 both Seattle City
11 Light and SPU had their own separate call centers where
12 customers could come in and ask questions about their
13 electricity bill or their water bill. Things like that.
14 But in 1997 the SPU and the Seattle City Light call
15 centers merged into one, and so since 1997 SPU employees
16 have staffed the call center where customers can call and
17 ask about either their SPU bill or their Seattle City
18 Light bill.

19 The SPU employees who work in the call center are
20 called utility account representatives. UARs. You are
21 also going to hear that term numerous times throughout
22 the course of this trial. But for our purposes I'm just
23 going to refer to them as account reps. Because their
24 job was to answer questions from customers about their
25 SPU or Seattle City Light bills, account reps had

1 something called read/write access to the CCSS system.

2 Read/write access meant that the account rep could go
3 on the computer and look at a utility bill. That's the
4 read part. But they also had the ability to go on the
5 computer, and go into the bill and adjust it. To lower
6 it. To waive it. That's called the write part.

7 Read/write access.

8 So now let me tell you what the evidence will show
9 about the CCSS investigation. How it started. And what
10 it uncovered. In late 2010, around November or so, SPU
11 discovered that two of its employees who had read/write
12 access to the CCSS system had made improper financial
13 adjustments to their own utility accounts. In effect
14 they had improperly lowered their other utility accounts.
15 Mr. Sheridan told you about that. Those employees were
16 Joe Phan, who Mr. Sheridan told you about that, went in
17 and lowered his account by about a thousand dollars.
18 Contrary to what Mr. Sheridan told you, Mr. Phan was not
19 a supervisor. He didn't work in the call center. He
20 worked for SPU as an engineer. The second employee that
21 SPU discovered was a woman named Sharon Howard.
22 Ms. Howard was a supervisor in the call center, and she
23 too went in and worked on her own utility account. Now
24 this was in November of 2010. A few months later in
25 February of 2011 the State Auditor found a third SPU

1 employee who had gone in and improperly worked on her own
2 account. That employee was a white UAR named Patty
3 Theopolis. Ms. Theopolis was also not a supervisor.
4 Now, you are going to hear all three of those names.
5 Phan, Howard and Theopolis throughout the course of this
6 case.

7 The only important thing that you need to remember is
8 that it was the actions of Mr. Phan, Ms. Howard, and
9 Ms. Theopolis that started the CCSS investigation. All
10 three of these employees, the black employee, the white
11 employee, and the Asian employee were terminated in 2011
12 for participating in a manner in which they had a
13 financial interest. They adjusted their own utility
14 accounts. That was in violation of the Code of Ethics.

15 But as a result of finding these three different
16 employees in early 2011 SPU decided that it needed to do
17 a comprehensive investigation to determine how big the
18 problem was. To determine if there were other employees
19 who were going in, and working on their own accounts.

20 So what exactly did the CCSS investigation cover?
21 Let's talk about that next. The evidence will show, and
22 this is important, ladies and gentlemen, that SPU did not
23 limit the CCSS investigation to employees in the call
24 center. Every one of those, you will see that there are
25 six different branches in SPU, every single one of those

1 highlighted areas had employees who had read/write access
2 to the CCSS system. And every single one of those
3 employees, 217 of them, were investigated to determine
4 whether they had made improper adjustments to their own
5 utility accounts. Can you see? Okay.

6 THE JUROR: Yeah.

7 MS. MOORE: Okay. The 217 SPU employees who were
8 investigated as part of this investigation more than half
9 of them worked in departments other than the call center
10 where the plaintiffs worked. Now, Mr. Sheridan has
11 suggested to you that the call center employees were
12 targeted. The evidence will show that that's simply not
13 the case. 114 SPU employees from other SPU divisions
14 were investigated, and 103 call center employees were
15 investigated. And remember the call center is where the
16 plaintiffs worked. So any suggestion that employees in
17 the call center were targeted as part of this CCSS
18 investigation is simply not true. Because more employees
19 were investigated who didn't work in the call center than
20 those who did.

21 So now let's talk about exactly what the CCSS
22 investigation covered. The primary purpose of the CCSS
23 investigation, as I told you, was to determine how big
24 the problem was. To see if there were any SPU employees,
25 other than Mr. Phan, Ms. Howard, and Ms. Theopolis who

1 were making improper adjustments to their own utility
2 account. The investigation began on February 2nd, 2011,
3 and it was not completed until the end of 2013. Why did
4 it take so long, ladies and gentlemen? Because SPU
5 looked at all CCSS transactions going back to 2001 when
6 the CCSS billing system was first created. They went
7 back and looked at everything for ten years. And SPU had
8 an absolute responsibility to do that because as
9 Mr. Sheridan told you in June of 2011 the State Auditor
10 came out with its report, and determined that SPU lacked
11 adequate processes to monitor adjustments. And the State
12 Auditor said that SPU did not have any way to know if any
13 employees were adjusting their own accounts. The State
14 Auditor was telling SPU you need to figure out what the
15 problem is and you need to do something about it. We
16 agree with Mr. Sheridan that as of June of 2011 the State
17 Auditor found this. And we agree that the State Auditor
18 found that we didn't have any way to know if our
19 employees were working on their own account. We have
20 never disputed that ladies and gentlemen. And we never
21 will. As of 2011 the CCSS computer system was and
22 indicated. It was ten years old and it lacked the proper
23 controls for us to determine if an employee was abusing
24 the system. Because the CCSS billing system was so old
25 in 2011 SPU didn't have an easy way to track exactly what

1 account relationships were doing on which accounts. And
2 that's why this investigation took so long. It started
3 in 2011. Didn't finish until the end of 2013.

4 Ms. Regan had to go into the CCSS system and first
5 look for transactions. Things that people had done on
6 their own account. And then she had to marry that up
7 with information that was taken from the human resources
8 system to see where people lived. To see the names of
9 their significant others and things like that. So it was
10 very, very data intensive. Clearly the scope and manner
11 of SPU's investigation was shaped by, and in response to
12 what the City auditor told us. But by the time this was
13 issued, ladies and gentlemen, in June of 2011 SPU had
14 already started to begin to try and address the problem.
15 Remember the CCSS investigation started in February of
16 2011, and remember, and you will hear, that CS-106, that
17 policy was issued in March 2011. So despite what
18 Mr. Sheridan tries to suggest there was no scapegoating
19 here.

20 So now let's talk about the four current or former SPU
21 employees who played a pivotal role in terms of the CCSS
22 investigation, and the discipline that followed from it.
23 Now, Mr. Sheridan has asked you to believe that implicit
24 bias was the reason why his clients were disciplined.
25 The evidence will show that this whole process, the CCSS

1 investigation and the discipline that led to the
2 employees who did something improper led to three layers
3 of independent review, ladies and gentlemen. Three
4 layers. And the three of the four people involved in
5 those three layers are diverse.

6 The CCSS investigation starts with Guillemette Regan.
7 Ms. Regan, who is our -- who is our client rep.
8 Ms. Regan is a director of Risk and Quality Assurance,
9 and in her role as director of Risk and Quality Assurance
10 Ms. Regan was responsible for conducting the CCSS
11 investigation in this case. You will hear that
12 Ms. Regan's background is in engineering, and she is, by
13 her own admission, a data geek. She is reserved and
14 methodical in her approach to her job. She maintains a
15 professional demeanor in dealing with her coworkers.
16 There will be no doubt that Ms. Regan loves data. And
17 that is how she conducted this investigation. And she
18 was imminently qualified to conduct this investigation.

19 Now, while Ms. Regan may not be warm and fuzzy. She
20 is decent and fair. Ms. Regan will explain to you that
21 when -- that treating all employees fairly is something
22 that is very important to her. Because as a gay woman
23 she knows what it is like to be discriminated against.
24 Ms. Regan is not your privileged white person. She
25 herself is diverse --

1 MR. SHERIDAN: Your Honor, I'm going to object at this
2 point. Again, it's character. It's not --

3 THE COURT: Sustained.

4 MS. MOORE: Ms. Regan understands what it's like to be
5 discriminated against. The CCSS investigation that
6 Ms. Regan conducted was detailed, it was thorough, and it
7 was totally data driven. Totally data driven. Ms. Regan
8 looked at the data. The transactions that every one of
9 those 217 employees, SPU employees, who had read/write
10 access to the system had made, she looked at every single
11 one to determine if an employee had made an improper
12 charge or change to their own utility account or the
13 utility account of their friends and family members.

14 Now, I need to get a little technical because you are
15 going to hear this during the course of the case, and I
16 want to give you a road map. There are two types of
17 transactions that any SPU employee who has read/write
18 access to the CCSS system can do on a utility account.
19 One type of transaction is called an administrative
20 transaction. Changing an address. Changing a phone
21 number. Ordering an extra garbage can. Things like
22 that. When an account rep performs an administrative
23 transaction on their own account or the account of
24 friends or family members they are still violating the
25 Code of Ethics. And why is that? Because the Ethics

1 Code as you see requires all employees to perform their
2 job impartially. And I think that we can all agree that
3 if you are working on your own account, even if it's just
4 to change a phone number or order a garbage can, that is
5 not doing your job in a manner that's impartial.

6 But for those type of administrative transactions
7 Ms. Regan would write what she called a mini report, and
8 she would send it to HR to work with the employee's
9 supervisor. Any employee who worked on their own utility
10 account or the account of a friend and family member, but
11 just did an administrative transaction received something
12 called coaching and counseling. And you will hear that
13 coaching and counseling is not considered discipline.
14 They were told that they couldn't do it. They were
15 reminded of the Code of Ethics. And they were told that
16 they needed to comply. But if the employee was a
17 supervisor or manager, ladies and gentlemen, and they had
18 done an administrative transaction on their own account,
19 they did receive discipline because managers are held to
20 a higher standard. So those people received a verbal or
21 a written warning.

22 Now, I told you that there are two types of
23 transactions that Ms. Regan looked at. One was
24 administrative. The second type of transaction that an
25 SPU employee who had read/write access to the system

1 could perform was something called a financial adjustment
2 where changes were made to the utility account that
3 reduced the amount of money that was owed or paid to SPU.
4 In this case you are going to hear primarily about three
5 different types of financial transactions. First, an
6 employee to waive a late fee on a utility account.
7 Financial transactions because they're waiving a fee.
8 Second, an employee can waive extra garbage or extra yard
9 waste fees. Financial transactions because they are
10 waiving a fee. Third thing they can do is enter into
11 something called a payment arrangement. Now,
12 Mr. Sheridan talked about a payment arrangement, but
13 didn't describe what they were. A payment arrangement is
14 an arrangement where when you get your utility bill you
15 are required to pay it within 21 days, but if you are
16 having trouble paying it within 21 days you can call up
17 and say I would like to enter into a payment arrangement,
18 and get an extra 30 to 60 days to pay your bills. By
19 doing that, by entering into a payment arrangement,
20 rather than simply being late on your bills late fees are
21 waived, and in some instances, depending on how much
22 money you owe on your bill, interest fees can be waived.
23 So employees who had read/write access were expected to
24 do these type of financial transactions, ladies and
25 gentlemen, but they were expected to do them within the

1 written guidelines that showed how you waived, properly
2 waived a late fee, properly waived an extra garbage fee
3 or entered into an payment arrangement. And if you
4 entered into these transactions within the guidelines
5 that was something that was available to the general
6 public. But if you waived more late fees than what the
7 policy required or entered into a payment arrangement,
8 and didn't follow the terms for a payment arrangement,
9 you were giving yourself a financial benefit that I or
10 other members of the general public could not receive.

11 You will see throughout this case that it is those
12 written policies that show how you waive late fees or how
13 you entered into the payment arrangements that most of
14 these women chose to ignore when they worked on their own
15 utility accounts or the accounts of their friends and
16 family members.

17 So now let's talk exactly how Ms. Regan conducted the
18 CCSS investigation. Ms. Regan looked for three things.
19 First, whether the SPU employee had worked on their own
20 utility account or the account of friends and family
21 members, and that required a lot of work because remember
22 she had to marry up the CCSS transactions with
23 information from the -- her records. Second, if an
24 employee had done so, if they had made an improper
25 adjustment or transaction on their utility account,

1 Ms. Regan determined whether it was administrative,
2 changing a phone number, or whether it was a financial
3 adjustment. And third, when there was a financial
4 adjustment, waiving a late fee, waiving a garbage fee,
5 entering into a payment arrangement, Ms. Regan looked to
6 see whether these financial adjustments had been done
7 within SPU policy. So whether they followed the policy
8 or whether they had been done without -- outside of the
9 policy.

10 This is important, ladies and gentlemen. When looking
11 at all of that, when looking to see if an employee had
12 made some type of improper change or financial adjustment
13 to their own utility account, Ms. Regan had no idea if
14 the SPU employee was black, white or Asian. She had no
15 idea of the age of the employee. Why? Because Ms. Regan
16 did not have read/write access to the CCSS system.
17 Ms. Regan did not work in the call center. Ms. Regan had
18 never met any of the seven plaintiffs or any of the other
19 people who worked in the call center. And most
20 important, Ms. Regan did not have access to their
21 personnel records. There was no way she could go in and
22 look and see that. So Ms. Regan's determination that an
23 improper account transaction had been made was purely
24 data driven, and it was both color and age blind. And if
25 a decision is data driven I think that we can all agree

1 that it is much less likely to be tainted by implicit
2 bias.

3 As part of her investigation Ms. Regan met with each
4 and every SPU employee who she determined had made a
5 financial adjustment. Every single employee. So a
6 waived late fee, a waived extra garbage fee, payment
7 arrangements, Ms. Regan would show the employee what she
8 had found. She would ask the employee about it. Did you
9 do this? Why did you do this? She would give the
10 employee a chance to explain what they had done. And
11 after she did all of that, Ms. Regan wrote what we call
12 an investigative report. You will see these
13 investigative reports because they are going to be
14 introduced during the course of this trial, and when you
15 look at the investigative report you will see that
16 Ms. Regan doesn't say anything about the employee's age
17 or race.

18 The data from Ms. Regan's investigation revealed that
19 the overwhelming majority of SPU employees in all
20 divisions who had read/write access to the CCSS billing
21 system did the right and ethical thing. 140 employees,
22 ladies and gentlemen, did nothing wrong of the 217.
23 Remember I told you that 217 were investigated. Of the
24 relevant 217, 140 employees did nothing wrong.

25 And the data also revealed, ladies and gentlemen, that

1 of the employees in the call center, remember 103
2 employees in the call center were investigated, of the
3 103 call center employees who were investigated only a
4 small number of those employees, 25, made financial
5 adjustments to their accounts. 25, ladies and gentlemen.
6 So 78 out of the 103 employees in the call center who had
7 read/write access did the right thing.

8 So that brings us to the second layer of this whole
9 investigation and process. And that second layer is
10 Suzanne Sanchez. Ms. Sanchez is the department director
11 of the SPU customer service branch. And as you can see
12 as the customer service branch Ms. Sanchez has four
13 divisions that she is responsible for. Customer billing,
14 utility services, customer response, and customer
15 programs. Now, customer response is where employees in
16 the call center worked. That was a division where they
17 worked. But Ms. Sanchez had responsibility for all of
18 these divisions. About 240 employees in all.

19 You will hear that Ms. Sanchez is Hispanic, and
20 because she is a person of color she too believes in
21 treating employees fairly. Ms. Sanchez you will see is a
22 very thoughtful and deliberate person. She takes her
23 time answering questions not because she is trying to
24 make up an answer, but because she wants to make sure she
25 is giving accurate information.

1 For the CCSS billing investigation Ms. Sanchez focused
2 on those SPU employees where the data showed that they
3 had made financial adjustments, waived late fees or
4 entered into a payment arrangement. Ms. Sanchez would
5 review Ms. Regan's written report of the financial
6 adjustments that any SPU employee had made, including
7 each of these plaintiffs, and then working with Charlene
8 MacMillan-Douglas, who was in HR, another person of
9 color, Ms. Sanchez would make a written recommendation
10 for discipline, either suspension or determination. And
11 remember we are only talking about financial adjustments.
12 Not administrative. Financial adjustments. So
13 Ms. Sanchez would review it, and then make a written
14 recommendation to Ray Hoffman. For suspension or
15 termination.

16 Now, while Ms. Sanchez knew a few of the employees
17 working in the call center she didn't know them all.
18 Remember she had 240 employees that she had to supervise.
19 Ms. Sanchez did not have read/write access to the CCSS
20 system, and like Ms. Regan Ms. Sanchez did not have
21 access to any employee's personnel file. By the time she
22 made her formal recommendation to Ray Hoffman she did not
23 know the employee, in most instances she did not know the
24 employees, race or age. She did know a few employees in
25 the call center but not many. For any SPU employee who

1 had made a financial adjustment, waived a late fee,
2 waived an extra garbage fee, entered into a payment
3 arrangement that was consistent with SPU written
4 policies, that was consistent with the way they did it,
5 Ms. Sanchez recommended a suspension of anywhere from one
6 to 30 days. But for those employees who made financial
7 adjustments that were outside of SPU guidelines that
8 didn't follow what they were required to do Ms. Sanchez
9 recommended that the employee be terminated.

10 And why the difference? Because you will hear that
11 every SPU employee who had read/write access to the CCSS
12 system was expected to follow SPU's written policies and
13 guidelines for making those type of adjustments. And
14 where an SPU employee made a financial adjustment that
15 violated SPU policy, that conferred a financial benefit
16 to that employee, that you and I and other members of the
17 public would not be able to get.

18 So that brings us to the third independent layer of
19 the CCSS investigation and disciplinary process. While
20 Ms. Sanchez made a recommendation for either termination
21 or suspension she was not the final decision maker. The
22 final decision maker was Ray Hoffman. The director of
23 SPU. Mr. Hoffman held the position of SPU director from
24 2009 until July of 2016. Now, SPU does a lot of things
25 for us as we know. They provide us with clean water,

1 with working sewers, with garbage services, with
2 recycling. So for almost eight years Mr. Hoffman ran a
3 department that took in nearly a billion dollars in
4 revenue for the City a year. A billion dollars, ladies
5 and gentlemen. It was a huge operation. It was very
6 demanding. And Mr. Hoffman recently made the decision to
7 retire, not to avoid the lawsuit, but because he was just
8 tired. There is no document during his tenure as
9 director of SPU, Mr. Hoffman was a careful and deliberate
10 leader. He is a very smart man. You will hear he has
11 two Masters degree and a Ph.D. from the University of
12 Washington. But he is clearly not your suit and tie type
13 of executive. Mr. Hoffman bikes to work everyday at his
14 job at SPU. And while Mr. Hoffman is clearly a white man
15 he will tell you that he is a product of the 1960's. He
16 grew up in a time when the civil rights movement was in
17 full swing. There will be no doubt that Mr. Hoffman is
18 very passionate about environmental issues such as clean
19 water and recycling. He was part of the process that
20 started the robust recycling process that we have now in
21 Seattle. But Mr. Hoffman is equally as passionate about
22 treating all employees fairly. His commitment to a
23 quality and diversity is so sincerely that of his seven
24 person executive team four people are people of color.
25 Four people, ladies and gentlemen, out of seven people

1 Mr. Hoffman chose to put in positions of responsibility
2 at SPU.

3 As director of SPU you will hear that Mr. Hoffman
4 maintained an open door policy. He encouraged employees
5 to come in and sit down and talk to him about issues that
6 they had, and you will see that employees did that,
7 including the plaintiffs in this case. And in this case
8 before he made the final decision as to whether any SPU
9 employee would be terminated or suspended Mr. Hoffman
10 would meet with them, and would give them a chance to
11 tell him their side of the story. That's something
12 called a Loudermill hearing that you will hear about
13 during the course of this case. Mr. Hoffman met with
14 each and every one of the plaintiffs who asked to meet
15 with him, and not all of them did. Mr. Hoffman listened
16 to what the employees had to say about what they did. He
17 considered all the evidence. And in many instances he
18 imposed a lesser discipline than Suzanne Sanchez had
19 recommended. Why? Because he listened to his employees,
20 ladies and gentlemen. Mr. Hoffman will tell you that
21 terminating or suspending SPU employees was one of the
22 hardest parts of his job as director of SPU, but as head
23 of SPU Mr. Hoffman believes that every public employee
24 has a responsibility to protect and preserve the City's
25 assets, and when an SPU employee would make a financial

1 adjustment that did not follow SPU policy that employee
2 was in effect giving away our money.

3 So that leads us to the decision to suspend or to let
4 the plaintiffs in this case go. The data from the CCSS
5 investigation, the data, ladies and gentlemen, reveal
6 that every single one of these seven women performed some
7 type of financial adjustment to their own utility
8 accounts or to the utility accounts of their family and
9 friends. That is not an age or race based decision,
10 ladies and gentlemen. That is a decision based on what
11 the data showed. You will hear that the majority of the
12 financial adjustments that these plaintiffs made were in
13 violation of SPU's written policy.

14 Now, I'm not going to go through what each of these
15 seven women did because that will be presented to you
16 during the course of this trial, but as the evidence
17 comes in you will see that the discipline imposed on
18 everybody who made improper financial adjustments was
19 based on data. It was not based on race or age, and was
20 fair and reasoned.

21 As I told you, Ms. Sanchez recommended suspension for
22 any employee who had made a financial adjustment on their
23 own utility account or the utility account of a friend
24 and family member, but that adjustment was within policy.
25 So Ms. Sanchez would recommend that those employees be

1 suspended, that included two of the plaintiffs. Lynda
2 Jones and Carmelia Davis-Raines. Lynda Jones made seven
3 different transactions on family member utility accounts.
4 Only one of which was a financial adjustment. Everything
5 else was administrative. Mr. Hoffman made the decision
6 to suspend Ms. Jones for one day without pay. And his
7 decision to suspend Ms. Jones one day without pay was
8 less than what Ms. Sanchez had recommended. The data
9 from the CCSS investigation also revealed that another
10 plaintiff, Ms. Davis-Raines had made 17 transactions to
11 her own utility account or the utility account of friends
12 and family members. 14 of those transactions were
13 administrative but three were financial. And like he did
14 with Ms. Jones, Mr. Hoffman made the decision to suspend
15 Ms. Davis-Raines. Both Ms. Davis-Raines and Ms. Jones
16 remain employed by SPU today. But Ms. Jones and
17 Ms. Davis-Raines were not the only SPU employees who
18 received a suspension or a recommendation for suspension
19 because they were improperly making financial adjustments
20 to their own accounts.

21 You will see during the course of this trial that in
22 addition to the two plaintiffs 16 other SPU employees,
23 ladies and gentlemen, were suspended or recommended for
24 suspension for a total of 18. Those 16 other SPU
25 employees, ladies and gentlemen, you will also see were

1 of all races and ages. Both over 40 and under 40, and
2 white, and African-American and Asian.

3 But what about the decision to terminate someone's
4 employment? As I told you, Ms. Sanchez recommended
5 termination where the data showed that the -- that an SPU
6 employee who had made a financial adjustment to their own
7 utility account or the utility account of family and
8 friends did so outside of written SPU policies. You will
9 hear that Ms. Sanchez believed that providing a financial
10 benefit to themselves or people close to them that were
11 not available to the general public was a more serious
12 violation of the Ethics Code. For example, during the
13 course of this trial you are going to see that the
14 evidence showed, the data showed that plaintiff Cheryl
15 Muskelly manipulated the CCSS billing system to make at
16 least 24 financial adjustments to her own utility account
17 or the utility account of friends and family members, and
18 many of the adjustments that Ms. Muskelly made violated
19 SPU policy.

20 In October of 2013 Ms. Sanchez finalized her
21 recommendation that she sent to Mr. Hoffman and -- and to
22 Ms. Muskelly. But you will also see that three months
23 before Ms. Sanchez finalized her recommendation
24 Ms. Muskelly voluntarily chose to retire from SPU giving
25 them one day's notice. So there was no disciplinary

1 action imposed on Ms. Muskelly. She chose to retire.
2 Yet she is here suing the City for a decision that she
3 chose to make. The evidence will also show that both
4 plaintiffs Luisa Johnson and Toni Williamson heavily
5 manipulated the CCSS billing system, and made between 30
6 and 60, 30 and 60 financial adjustments to other own
7 utility account or the utility account of friends and
8 family members. And like Ms. Muskelly, many of the
9 adjustments that Ms. Jones and Ms. Williamson made
10 violated SPU policies. Decisions that they chose to
11 make, ladies and gentlemen. Ms. Sanchez recommended and
12 Mr. Hoffman agreed that both of these women should be
13 terminated. Not because of their age or not because of
14 their race, but because in entering into so many
15 transactions they were reaping a financial benefit for
16 themselves, and they were giving themselves or family
17 members something that you and I and the public could not
18 gain. And once again Ms. Muskelly, and Ms. Williamson,
19 and Ms. Johnson are not the only people who were
20 terminated as part of the CCSS investigation. You will
21 see that there were ten people, ten employees who were
22 terminated. And like the suspensions those employees
23 were of all races, and they were of all ages.

24 So as you listen to the evidence that comes in note
25 something important that Mr. Sheridan will not tell you.

1 He will not tell you that any of the plaintiffs denied
2 making the improper financial adjustments that Ms. Regan
3 identified as part of her investigation. He won't tell
4 you that because he cannot tell you that, ladies and
5 gentlemen. Each and every one of these women has
6 admitted under oath that they made the improper financial
7 adjustments that led to the discipline that they now
8 claim is discriminatory. Mr. Sheridan asked you to find
9 that implicit bias must have infected the disciplinary
10 decisions in this case because the majority of SPU
11 employees who were suspended or who were terminated were
12 African-Americans. And Mr. Sheridan is right about that.
13 Of the 28 employees who were either suspended or
14 terminated the majority of them were African-American.
15 Does that mean that the decision to discipline the
16 plaintiffs in this case was based on their race and their
17 age? The evidence will show absolutely not. These
18 employees were disciplined for the decisions that the
19 data showed they chose to make. And you will also see
20 evidence that between 2010 and 2012 more than 65 percent
21 of the people who worked in the customer service branch,
22 remember that's the branch where the call center is
23 located, more than 65 percent of the employees are people
24 of color. And while 25 call center employees chose to
25 make improper financial adjustments, 78 chose to abide by

1 the rules. Content and character, ladies and gentlemen.

2 The fact that a larger number of employees of color
3 versus white employees were suspended or terminated does
4 not show racism or discrimination, ladies and gentlemen.
5 That fact shows only that SPU has never hesitated to
6 employ a larger than average number of people of color.
7 And isn't that a good thing where the evidence will be
8 these are highly paid jobs with good benefits?

9 Despite Mr. Sheridan's claim, we will show you during
10 this trial that every SPU employee, black, white, Asian
11 or other was treated the same way. In a colorblind
12 investigation, ladies and gentlemen, where employees are
13 judged on their actions and not on their skin color you
14 need to ask yourself whether you are going to hold every
15 employee to the same standards or do employees of color
16 get a pass when they choose to violate the law and
17 policies of their employer? That will be for you to
18 decide.

19 So let me briefly discuss Mr. Sheridan's claim that
20 the City disciplined these people because of their age as
21 well as their race. As the Judge has told you the
22 plaintiffs bear the burden of proving that that age was a
23 substantial factor in the decision to terminate or
24 suspend them. And absolutely no evidence, ladies and
25 gentlemen, will be presented during this case that

1 supports that notion. That age played a role.

2 Ms. Regan, Ms. Sanchez, Mr. Hoffman are all well over 40
3 years of age themselves. Ms. Regan had no idea about the
4 age of the employee when she was preparing her
5 investigative report. Remember she did not have access
6 to the personnel records. The average age you will hear
7 of all SPU employees who were terminated or suspended as
8 a result of the CCSS investigation was 47. The average
9 age of the 140 SPU employees who did nothing wrong was
10 48. Clearly SPU employs a lot of mature employees. It
11 is a great place to work. But there will be no evidence
12 presented that shows any motive to terminate these people
13 because of their age. And Mr. Sheridan has admitted to
14 you that he's not claiming that financial factors for a
15 reason.

16 So now let's talk about plaintiff's third and final
17 claim that they were retaliated against for signing a
18 Petition for Solidarity. Five plaintiffs have signed
19 that. Where is the evidence supporting that claim?
20 There will be none. This is a Petition for Solidarity
21 that the plaintiffs signed in December 20th of 2010.
22 Five of the plaintiffs signed this. The plaintiffs who
23 signed this petition, if you read this petition for --
24 no, put the Petition for Solidarity back up. The
25 plaintiffs who signed this are clearly complaining about

1 policy CS-106.1 and the Code of Ethics. But we know,
2 ladies and gentlemen, that both policy CS-106 and the
3 Code of Ethics are colorblind. Each and every one of the
4 plaintiffs have -- has admitted, as they must, that both
5 the Code of Ethics and CS-106 was not limited to people
6 of color or people who were older. Ask yourself, exactly
7 what are the plaintiffs who signed this petition saying?
8 Are the five plaintiffs who signed this petition asking
9 you to find that SPU should not have investigated them?
10 Should not have even investigated them because of the
11 color of their skin? Or worse are they asking you to
12 find that SPU should have limited their investigation to
13 only those white SPU employees with read/write access to
14 the CCSS billing system? Ask yourself whether the five
15 plaintiffs who signed this petition are asking you to
16 find that SPU should not have disciplined them because of
17 the color of their skin or even worse that any discipline
18 should have been limited to white SPU employees?

19 In deciding plaintiffs' retaliation claim, ladies and
20 gentlemen, consider all the other SPU employees who did
21 not sign this petition, who also received some level of
22 discipline, including plaintiff Luisa Johnson. If SPU
23 disciplined these five employees in retaliation for
24 signing this petition why in the world were they -- would
25 they suspend and terminate that many other people?

1 Demand that the plaintiffs show you some credible
2 evidence, other than their own speculation that the
3 decision to terminate them was retaliatory. They won't
4 be able to do so.

5 Now, before I close I want to briefly discuss with you
6 some of the excuses that Mr. Sheridan raised during his
7 opening statement. The first thing Mr. Sheridan told you
8 was that improper manipulation of one's own utility
9 account was conduct that was permissible and approved.
10 He told you that it was approved that people could work
11 on their own accounts or accounts of their friends and
12 family members. There will be absolutely no evidence
13 presented during this trial that will show you that
14 working on your own utility account or the accounts of
15 other friends and family members was ever permitted or
16 ever approved. Demand that plaintiffs bring in one
17 witness or one piece of evidence, a supervisor or
18 somebody else who will tell you that they told the
19 plaintiffs that it was all right for them to work on
20 their own accounts or the accounts of their friends and
21 family members. They will not be able to do so. Each of
22 these seven women have admitted under oath that they
23 never asked a supervisor if it was all right for them to
24 work on their own accounts or accounts of their friends
25 and family members. They never asked, ladies and

1 gentlemen. They assumed that they could do so.

2 The second thing that Mr. Sheridan told you was that
3 until policy CS-106 was created there were absolutely no
4 written policies which prohibited account reps from
5 working on their own account or the accounts of friends
6 and family members. The evidence is going to show
7 otherwise. In 2005 SPU created and redistributed a
8 document called Workplace Expectations for everybody.
9 This document went out to everyone, and you will hear
10 that it was rolled out with much fan fare because a lot
11 of work went into creating it. Here is what SPU
12 employees were told in this document about how they
13 should work. That they were expected to be honest and
14 trustworthy. Go to the next page. That they were
15 expected to comply with the City's Code of Ethics and to
16 be ethical. Go to the next page. That they were
17 expected to seek information regarding ethical standards,
18 conflict of interests, and appearance of conflict of
19 interest when you have questions about your job, or to
20 bring questions about ethics to the attention of your
21 supervisor.

22 Now, you will hear that by 2005 every single one of
23 these plaintiffs were working for SPU, and every single
24 one of these plaintiffs got this document. There is also
25 a document in 1999 called the UAR Expectations for

1 everybody. This is a document that you will see. August
2 18th of 1999, they are rolling out these expectations.
3 And look who is on the team that is rolling this out.
4 Plaintiff Toni Williamson. What are these 1999
5 expectations say? It says that UARs or account reps are
6 expected to read their e-mails at least three times a
7 day. That they are expected to negotiate payment of
8 delinquent balances according to SPU guidelines. And
9 that they are to ask a supervisor or a utility account
10 representative to provide maintenance to your own account
11 and the accounts of others.

12 Now, Mr. Sheridan is right that other UAR Expectations
13 were rolled out later that didn't create, that didn't
14 have that language, but that does not mean that that
15 still didn't apply. And none of the plaintiffs is going
16 to be able to tell you that anybody told them it was all
17 right for them to do so.

18 Once SPU became aware in 2011, once they found these
19 three employees, and they became aware that employees
20 were willing to use the system for their own personal
21 gain, they realized that they could not count on people
22 using common sense in performing their job. And so
23 Mr. Sheridan's right. CS-106 was rolled out in March of
24 2011, but that doesn't mean that because there wasn't a
25 specific policy using the specific words that you can't

1 work on your own account that doesn't mean that these
2 women lacked the common sense to know that as a public
3 employee they were prohibited from working on their own
4 utility accounts. Despite what they tell you, the
5 evidence will be clear and it will be convincing that
6 every single one of these women knew better. Every
7 single one of them has testified under oath that they
8 understood what a conflict of interest was. Yet they
9 still think it was a conflict of interest working on
10 their own accounts. Policy CS-106 was, in fact, issued
11 in March of 2011. So that something that was common
12 sense could now be reduced into writing. Could we please
13 have that up.

14 Should SPU have created a written policy like this
15 earlier? Perhaps. But SPU's biggest mistake here is
16 that they trusted every one of their employees to do the
17 right and proper thing until they had a reason to believe
18 otherwise. But remember, ladies and gentlemen, and this
19 is important, this whole CCSS investigation started with
20 the discovery that an account rep supervisor named Sharon
21 Howard had made improper adjustments on her own utility
22 account. That occurred in November or December of 2010.
23 How did SPU find out about Ms. Howard? Another SPU
24 employee made an anonymous complaint to the hotline. So
25 if SPU employees really did not understand that they

1 should not be working on their own accounts or the
2 accounts of others why was somebody calling to report
3 Ms. Howard four months before this policy was ever
4 issued?

5 Mr. Sheridan also told you that his clients had no
6 idea that Policy CS-106 was issued in March of 2011. You
7 remember he told you that they didn't know about it until
8 July or even later of 2012. Almost a year later. But
9 the evidence will show that if the plaintiffs truly were
10 ignorant of Policy CS-106 in March of 2011 they were
11 ignorant because they chose to be so.

12 You will hear testimony that meetings were held by
13 supervisors when CS-106 first came out in March of 2011
14 where employees were all told about the policy, and that
15 there were lots of questions about it. March of 2011.
16 Between April of 2011 and December of 2011 there were
17 numerous documents and e-mails that went out to employees
18 reminding them of that.

19 We are going to go through these very quickly. Here's
20 one. April 15th, 2011 from the director to all SPU
21 employees reminding everybody that it's important to be
22 familiar with the City's Code of Ethics, and SPU CS-106
23 policy. April 15th, 2011. Here's another one. This is
24 from Suzanne Sanchez to all employees in the customer
25 service branch where the plaintiffs worked. This is

1 April 19th, 2011. Ms. Sanchez is also reminding them
2 about the City's ethic code and policy CS-106. And when
3 you see this document you will see that Ms. Sanchez
4 actually quotes Policy CS-106 in her e-mail. Here's
5 another e-mail dated December 2nd, 2011 from Ray Hoffman
6 where he is again reminding people of CS-106. In fact,
7 every single one of these plaintiffs attended ethics
8 training in 2011. Every single one of them. We will
9 show you every single one of these documents. And all of
10 the plaintiffs will say that during ethics training they
11 weren't told about CS-106, about working on your own
12 account. We are going to bring in the person who taught
13 these ethics classes, and he will tell you that he
14 specifically told them about Policy CS-106, and reminded
15 them they shouldn't be working on their own account.

16 Finally, Mr. Sheridan claims that there were no
17 policies that showed people what they were supposed to do
18 with respect to entering into payment arrangements or
19 waiving late fees. That's not true, ladies and
20 gentlemen. Here's an example of one policy that's going
21 be presented to you. This is dated August 1st, 2008.
22 The purpose was to establish uniform, fair, and effective
23 procedures to implement Seattle Municipal Code. And
24 here's what it says. This is a procedure talking about
25 payment arrangements, ladies and gentlemen. And in

1 talking about payment arrangements it says if your
2 account is in urgent status, a customer will be required
3 to pay 50 percent of the full account balance, and then
4 enter into a payment arrangement. If your account was in
5 shutoff status, you had to pay even more. You had to pay
6 75 percent. And if you had two failed payment
7 arrangements in one year you were ineligible for another
8 payment arrangement. I'm going to show you policy, after
9 policy, after policy like this that's been in place since
10 at least 2000 that told these women how they were to
11 properly waive late fees, properly waive extra garbage
12 fees, and properly enter into the payment arrangements.

13 What is plaintiff's response to this? They are going
14 to tell you that each and every one of these documents
15 that we showed you was fabricated. Fabricated by SPU for
16 purposes of this case.

17 So, ladies and gentlemen, I have been talking a very
18 long time, and I am frankly tired, and if I'm tired I can
19 imagine that your minds must be spinning with all the
20 information that you have been given during these two
21 opening statements so let me close with this. The
22 plaintiffs are going to throw a lot of documents and
23 other evidence at you during this trial. And in doing so
24 they are going to try and make you feel guilty because
25 you are not African-American, and you are having to judge

1 this case --

2 MR. SHERIDAN: Your Honor, objection. Argumentative.

3 THE COURT: Sustained. Sustained.

4 MS. MOORE: As you listen to the plaintiff's evidence
5 and theories remember to keep an open mind, and remember
6 that there will be a second side of the story. And ask
7 yourself if the evidence that plaintiffs offer you has
8 anything to do with the key issue that you are here to
9 decide, was race or age a substantial factor in SPU's
10 decision to terminate or suspend these women?

11 The Judge will instruct you that the plaintiffs bear
12 the burden of proving their claim. It's not our burden,
13 ladies and gentlemen. It's their burden. They will not
14 have the evidence to do so. Do not let the plaintiffs
15 distract you or make you feel guilty.

16 MR. SHERIDAN: Same objection, your Honor.

17 THE COURT: Sustained. It's argumentative.

18 MS. MOORE: The evidence will show that race and age
19 was not only not a substantial factor in this case, it
20 was not a factor at all. These plaintiffs were
21 disciplined for what they voluntarily chose to do, use
22 their jobs to provide a financial benefit for themselves
23 and others. Hold the plaintiffs responsible for their
24 actions, and do not allow them to use their race or age
25 as an excuse for not doing the right thing. There are

1 plenty of legitimate cases of discrimination and
2 retaliation in a workplace --

3 MR. SHERIDAN: Your Honor, again, objection.

4 THE COURT: It's argumentative. It's argumentative,
5 counsel. And wrap it up.

6 MS. MOORE: All right. I am confident that after you
7 review all the evidence you will reach the conclusion
8 that what SPU did in this case was fair, it was
9 reasonable, it was data driven, and it was necessary.
10 Thank you, ladies and gentlemen.

11 THE COURT: Okay, folks. Time for our afternoon
12 recess. Thank you for your attention. We will see you
13 folks back here in 15 minutes. Don't discuss the case
14 amongst yourselves or do any kind of outside research or
15 social media discussions about the case. We'll see you
16 back in 15 minutes.

17 THE BAILIFF: Please rise for the jury.

18 (Jury not present.)

19 (A 15-minute recess was taken.)

20 THE COURT: Anything to take up before we bring our
21 jurors in? No? Okay.

22 THE BAILIFF: Please rise for the jury.

23 (Jury present.)

24 THE COURT: Okay, everyone, hope you had a good break.
25 Mr. Sheridan.

1 MR. SHERIDAN: Yes, your Honor. Plaintiff calls
2 Megumi Sumitani. And I will go get her. Oh, you will go
3 get her? Thanks so much.

4 THE COURT: I will have you come this way, and to my
5 left is the witness stand. And before you sit can I have
6 you raise your right hand for me. Do you solemnly swear
7 or affirm the testimony you are about to give will be the
8 truth, the whole truth, and nothing but the truth?

9 THE WITNESS: Yes.

10 THE COURT: Okay. Please be seated. And I'm going to
11 have you -- make sure to keep your voice nice and loud
12 for us, please. And if you could please say and then
13 spell your full name, and please provide a work address
14 for my clerk. But be seated. And then say and spell
15 your name, please.

16 THE WITNESS: My name is Megumi Sumitani. And it's
17 spelled M-E-G-U-M-I, S-U-M-I-T-A-N-I.

18 THE COURT: And your work address?

19 THE WITNESS: Suite 2410, Seattle Municipal Tower, 700
20 5th Avenue, Seattle, Washington, 98104, I believe.

21 THE COURT: Thank you. Whenever you are ready,
22 counsel.

23 MR. SHERIDAN: Thanks, your Honor.

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DIRECT EXAMINATION

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EXAMINATION BY

MR. SHERIDAN:

Q. Good afternoon.

A. Hello.

Q. Could you tell us with whom you are employed?

A. I'm employed by the City of Seattle. I'm in the City Auditor's Office.

Q. What's your job title there?

A. Assistant City auditor.

Q. And how long have you had that position?

A. Since about September 2000.

Q. Okay. And does an auditor get any special training?

A. Yes.

Q. What type of training have you had?

A. In my case it's -- it was primarily on-the-job training. Auditing standards. Different kinds of auditing methodologies. Report writing. Analysis. That type of thing.

Q. All right. In 2011 to whom did you report?

A. To whom?

Q. Yes.

A. To David Jones, the City Auditor.

Q. And David Jones being City auditor is that an appointed position, to your knowledge?

1 A. Yes.

2 Q. All right. And so did he assign you work to do?

3 A. Yes.

4 Q. All right. And as part of your work in 2011 did you
5 become involved in an SPU customer adjustments fraud
6 investigation?

7 A. Yes.

8 Q. All right. And as part of your practice and what you do
9 in such investigations does you -- do you keep records of
10 meetings that you have with -- with people who are
11 relevant to your investigation?

12 A. Yes.

13 Q. All right. And do you have something called notes
14 relative to investigation that's sort of a form that you
15 create and keep in the usual course of business regarding
16 such investigations?

17 A. Well, the title, which you just mentioned right now,
18 notes relative to an investigation.

19 Q. Yes.

20 A. That's not usually something that I use, but we do have
21 meeting templates, and depending on the auditor who
22 writes up the meeting notes --

23 Q. Okay.

24 A. -- he or she may title it differently.

25 Q. Okay.

1 A. Yeah.

2 Q. Well, I'm going to show you what's been marked for
3 identification as Exhibit 129.

4 MR. SHERIDAN: May I approach the witness, your Honor?

5 THE COURT: Yes.

6 MR. SHERIDAN: Usually is it best to place it on the
7 -- the desk next to the witness or in front of the
8 witness?

9 THE COURT: In front of the witness.

10 MR. SHERIDAN: Okay. Then I'm going to move the cups
11 and water, your Honor, if I may.

12 THE COURT: You said Exhibit 129?

13 MR. SHERIDAN: Yes, your Honor. You might have to
14 hold this side of it.

15 THE WITNESS: Okay.

16 EXAMINATION BY

17 MR. SHERIDAN:

18 Q. All right. So I'm showing you what's been marked as
19 Exhibit 129, and I see that, under reviewed by auditor, I
20 see your name there as March 8th -- on March 8th, 2011;
21 is that right?

22 A. Yes, I see that. Uh-huh.

23 Q. So it's true, is it not, that part of the practice is
24 that somebody draft notes, drafts notes, and then
25 somebody reviews those notes, right?

1 A. Yes.

2 Q. And you reviewed these notes, correct? And that's why
3 your name is there?

4 A. My name is here.

5 Q. Okay. All right. And would you agree with me that this
6 is a document that's basically kept at your offices at
7 the City Auditor Office, right?

8 A. Yes.

9 Q. And I see by the date that it was created about January
10 11th, and it was prepared on March 7th. So it's typical
11 to make the notes and create the document sometimes --
12 sometime around the time of the meetings, right?

13 A. Yes.

14 Q. All right. And then they are stored electronically
15 within the files at the Seattle Auditor Office, right?

16 A. Yes; uh-huh.

17 Q. All right. And just looking this document over do you
18 have any reason to think that there is anything wrong
19 with this document? It's not authentic?

20 A. It looks just like something that our office would have.

21 Q. Okay.

22 MR. SHERIDAN: And, your Honor, plaintiff offers
23 Exhibit 129.

24 THE COURT: Any objection?

25 MS. TILSTRA: We are conditionally admitting it

1 subject to Ms. Howe's coming to testify.

2 THE COURT: Okay. Well, 129 is admitted.

3 MR. SHERIDAN: Thank you.

4 EXAMINATION BY

5 MR. SHERIDAN:

6 Q. All right. I'm going to take that away from you for a
7 second. Oh, wait. Before I do. Let me just start my
8 timeline here. So what's the date of the interview?

9 A. It says on this document January 11, 2011.

10 Q. All right. All right. And what does it say to be the
11 purpose of the interview?

12 MR. SHERIDAN: Go ahead to purpose, Melanie. Purpose.

13 THE WITNESS: Just read it?

14 EXAMINATION BY

15 MR. SHERIDAN:

16 Q. Yeah.

17 A. Oh, to discuss SPU's request for the office of City
18 Auditor and, paren, OCA, to assist with investigating,
19 slash, verifying the two suspected SPU employee abuse
20 situations.

21 Q. All right. And that's on the top of the document. It
22 calls it a fraud investigation?

23 A. Oh.

24 Q. Yeah. It says -- it says in parentheses fraud?

25 A. Yes, I see that.

1 Q. What does that mean to you? A fraud investigation?

2 A. There -- well, fraud can encompass a number of things,
3 but just generally some type of wrongdoing.

4 Q. Okay. And in this particular case do you have any memory
5 as to how it is that SPU got involved in this?

6 A. How SPU got involved?

7 Q. I'm sorry. My mistake. Do you have any memory as to how
8 the City Auditor department got involved in doing -- in
9 assisting in this fraud investigation?

10 A. I wasn't a part of -- SPU never contacted me personally,
11 but my understanding is that our office was requested to
12 assist in this investigation.

13 Q. All right. All right. Let me take that book away from
14 you.

15 MR. SHERIDAN: May I approach the witness, your Honor?

16 THE COURT: Sure.

17 MR. SHERIDAN: Thanks.

18 EXAMINATION BY

19 MR. SHERIDAN:

20 Q. All right. I'm now going to hand you Exhibit 24, which
21 is marked for identification and --

22 MR. SHERIDAN: Again, may I approach?

23 THE COURT: Yes.

24 EXAMINATION BY

25 MR. SHERIDAN:

1 Q. All right. And Exhibit 24 is -- and this is a -- this is
2 another one of those notes and it's dated March 21st,
3 2011; do you see that as the date prepared?

4 A. Date prepared; uh-huh.

5 Q. Okay. And the interview was February 28th, 2011; is that
6 right?

7 A. That's what it says here.

8 Q. All right. And again you are one of the reviewers,
9 right?

10 A. Yes.

11 Q. All right.

12 A. My name's on here as a reviewer, yes.

13 Q. All right. And --

14 MR. SHERIDAN: Plaintiff would like to offer Exhibit
15 24, your Honor.

16 THE COURT: Any objection?

17 MS. TILSTRA: The same note that Ms. Howe will testify
18 at some point, and since she is the author of the
19 document, but we are conditionally admitting it.

20 THE COURT: 24's admitted.

21 EXAMINATION BY

22 MR. SHERIDAN:

23 Q. All right. And could you tell us again is it still a
24 fraud investigation on the date of this interview? 2/28?

25 A. Is it still a fraud?

1 Q. Yes.

2 A. It says so at the top here that it --

3 Q. Okay. So and this is a meeting with Ms. Regan. And how
4 do you abbreviate your organization? OCA?

5 A. OCA.

6 Q. And that's Exhibit 24. All right. Am let me track down
7 270. Let me take that book from you.

8 MR. SHERIDAN: Your Honor, shall I approach each time
9 or just once every time --

10 THE COURT: Each witness -- not each witness every
11 single time.

12 MR. SHERIDAN: All right. Thanks.

13 EXAMINATION BY

14 MR. SHERIDAN:

15 Q. All right. Now, show you what's been marked as 270
16 marked for identification. All right. And Exhibit 270
17 is another document just like the two before it with a
18 date interview April 21st, 2011; is that right?

19 A. That's what it says here.

20 Q. And again you are one of the reviewers, right?

21 A. Yes. My name is down as a reviewer.

22 Q. All right. And this is a meeting between Ms. Regan and
23 other persons, including the Seattle Auditor; is that
24 right?

25 A. State Auditor's Office.

1 Q. Okay. All right.

2 MR. SHERIDAN: I'm going to offer Exhibit 270 into
3 evidence.

4 THE COURT: Any objection?

5 MS. TILSTRA: Same.

6 THE COURT: Okay. 270's admitted.

7 EXAMINATION BY

8 MR. SHERIDAN:

9 Q. All right. And it's May -- April 2011. All right. So
10 on April of -- 21st, 2011. And that's up on the screen
11 now. And that's Ms. Regan met at the Seattle Auditor's
12 Office. Okay. And that was Exhibit 270. Okay. All
13 right. 629.

14 A. Says Regan met at SAO. I don't believe -- I mean, I
15 wasn't here but I don't believe --

16 Q. Oh, please.

17 A. But it doesn't have a location necessarily. Does it?

18 Q. Oh, I should say with. Met with. Thank you. Thanks for
19 the clarification. Okay. Now I'm going to take that
20 book back from you, if I may. Thanks. And I'm going to
21 hand you Exhibit 629, and this is another one of those
22 notes. All right. All right. And 629 is another note
23 of -- this is basically documenting a date of interview
24 of May 26, 2011, is it not?

25 A. That's what it says here.

1 Q. All right. And this is a meeting again between SAO and
2 Guillemette Regan and other persons, right?

3 A. Just a second. I don't see SAO on here as an attending.

4 Q. Okay. You see auditing staff present Robin Howe?

5 A. Yes.

6 Q. Okay. Did I say something wrong? Was I --

7 A. Oh, I thought you said SAO. Did you say something else?

8 Q. Oh, I may have just said it wrong. I'm sorry. So it's a
9 meeting between the Seattle Auditor and Ms. Regan and
10 other persons?

11 A. Seattle Auditor's Office.

12 Q. Right.

13 A. And -- well, according to this. Yeah.

14 Q. Okay?

15 MR. SHERIDAN: Plaintiff offers 629.

16 THE COURT: Any objection, counsel?

17 MS. TILSTRA: Well, Ms. Sumitani was neither present,
18 nor reviewed this document. So I would object on that
19 basis.

20 THE COURT: She is not on here.

21 THE WITNESS: I'm not on here.

22 MR. SHERIDAN: She is not on here, but I can lay
23 further foundation.

24 THE COURT: Okay.

25 EXAMINATION BY

1 MR. SHERIDAN:

2 Q. This a document that looks like the typical document kept
3 in the usual course of business at your office just as
4 the other ones are?

5 A. Typical, yes.

6 Q. All right.

7 MR. SHERIDAN: And, your Honor, there is no 901
8 objection. So it's just the same. So...

9 THE COURT: Okay. Any response, counsel?

10 MS. TILSTRA: I mean, she wasn't at the meeting. She
11 didn't review it. Certainly open to him asking Mr. Jones
12 about it.

13 THE COURT: You are trying to enter it as a business
14 record, right?

15 MR. SHERIDAN: Yep.

16 THE COURT: 629 is admitted.

17 MR. SHERIDAN: Okay.

18 EXAMINATION BY

19 MR. SHERIDAN:

20 Q. All right. And that was May 26, 2011.

21 A. Date of interview. That's what it says.

22 Q. All right. And that's Exhibit 629. This is -- again,
23 this is a meeting with Ms. Regan and Ms. Howe, right?
24 And others?

25 A. Well, that's what it says on this document.

1 Q. All right. Okay.

2 A. Well, that's what it indicates anyway.

3 THE COURT: I can't hear you. I'm sorry.

4 THE WITNESS: I'm sorry. I'm saying that's what it
5 indicates what's on the document.

6 THE COURT: If you wouldn't mind, please speak nice
7 and loud.

8 THE WITNESS: Oh, okay. Sorry.

9 EXAMINATION BY

10 MR. SHERIDAN:

11 Q. May I retrieve that from you? Thank you. Okay. The
12 next document is Exhibit 55. You may have to hold it a
13 little different. And Exhibit 5 is another --

14 MS. MOORE: 55, counsel.

15 MR. SHERIDAN: 55. Thanks.

16 EXAMINATION BY

17 MR. SHERIDAN:

18 Q. Is another business record of the interactions at the
19 Seattle Auditor's Office?

20 A. I'm sorry. I didn't hear that. What?

21 Q. Is this another business record of the Seattle Auditor's
22 Office dating --

23 A. This is a record -- it's a write-up of meeting notes.

24 Q. Write-up of meeting notes. Okay. And what's the date of
25 it?

1 A. It says July 21, 2011.

2 Q. Okay. All right.

3 MR. SHERIDAN: Plaintiff offers 55.

4 THE COURT: Any objection?

5 MS. TILSTRA: No.

6 THE COURT: 55 is admitted.

7 EXAMINATION BY

8 MR. SHERIDAN:

9 Q. Okay. And that's July 21st 2011. And these are notes of
10 -- how would you describe those notes?

11 A. These notes? I would describe these notes as notes taken
12 from like a -- based on the people who are present, based
13 on some brainstorming of queries that we might consider
14 not CCSS datamining project.

15 Q. Got it. And I did want to ask you about that title. I
16 notice that the heading has changed. It's no longer a
17 fraud investigation. Do you see that up at auditor title
18 and number?

19 A. Yes.

20 Q. What's the difference between the fraud investigation
21 that we were talking about earlier and this investigation
22 to 106 CCSS datamining investigation?

23 A. Well, the other one that, the one that you referred to as
24 a fraud investigation --

25 Q. Yes.

1 A. -- that is the project that Robin Howe, who is another
2 auditor in our office, was in charge of. And this is a
3 different -- different audit project. This is called
4 CCSS datamining investigation and it's a different
5 project.

6 Q. Okay.

7 A. Yeah. Uh-huh.

8 Q. And who was in charge of this project?

9 A. I was. I was the auditor in charge.

10 Q. And who assigned you the project?

11 A. The City Auditor.

12 Q. All right. And can you tell me what is it you were
13 supposed to do?

14 A. Well, we had acquired new software, datamining software
15 called ACL, and I had volunteered to learn, to try to use
16 it for projects in our office. And it turned out that
17 this was the first project that came up, and decided to
18 use it for that purpose.

19 Q. And tell us how you went about that? What was it you
20 were trying to discover?

21 A. Well, we wanted to use the datamining software to, I call
22 it mine, M-I-N-E, in the data -- CCSS databases. CCSS
23 database.

24 Q. Okay. And the CCSS database, that's citywide?

25 A. My understanding is that it was a consolidated customer

1 service CCSS system. And it's a system for billing --
2 for billings from Seattle City Light and Seattle Public
3 Utilities.

4 Q. So the datamining you did --

5 A. So it's not for the whole city, yeah. My understanding
6 of it anyway. Yeah.

7 Q. So the datamining that you were assigned to do was not
8 for the whole city, correct?

9 A. Well, it didn't cover departments. It didn't contain --
10 I'm not understanding that question.

11 Q. Sure. So you have got this new software and you are --
12 you are going to go use it, and there is a bunch of
13 departments, but you are not going to use it on every
14 department, right? You are not looking at every
15 department?

16 A. No. The CCSS database does not, as I understand it,
17 relate to all City departments.

18 Q. Okay. And what was it you were looking for?

19 A. Well, we wanted to use the software that we had acquired
20 to do statistical analysis of how often certain kinds of
21 transactions happened in the CCSS system. We also --

22 Q. I'm sorry. I didn't mean to interrupt you. For example,
23 like adjustments?

24 A. It included adjustments.

25 Q. Okay. What else did it include, Ma'am?

1 A. How many transactions overall. How many accounts are out
2 there. What types of accounts are out there. Just to,
3 you know, to use that database to understand, you know,
4 what the -- the -- I don't know what you call that. The
5 overall -- what the CCSS database contains.

6 Q. Okay.

7 A. Uh-huh.

8 Q. So let's say, for example, I'm in the parks department,
9 and I have fees. I have some kind of ability to look at
10 people's fishing license fees, right? Would you have
11 datamined my files?

12 A. My understanding is that the CCSS database or the system
13 does not contain data on fishing licenses.

14 Q. Okay. So you -- am I right -- am I right that the
15 datamining that you did was limited to Seattle Public
16 Utility and Seattle City Light?

17 A. Well, the system is owned by, my understanding, is that
18 the system is owned by Seattle City Light.

19 Q. Okay.

20 A. And both Seattle City Light and Seattle Public Utilities
21 use that system in their billing.

22 Q. Okay.

23 A. Of customers.

24 Q. All right. And so did you come up with some sort of
25 large number of names of people who had done things

1 according to your criteria?

2 A. It had done things --

3 MS. TILSTRA: Objection. Vague.

4 THE WITNESS: I don't understand that question.

5 MR. SHERIDAN: It's vague.

6 THE COURT: Sustained.

7 EXAMINATION BY

8 MR. SHERIDAN:

9 Q. Let me try again. So you said one of the things you
10 looked at was adjustments. People -- people -- employees
11 who had done adjustments on accounts, right?

12 A. Oh, all right.

13 Q. So what I'm trying to understand is how many names came
14 up?

15 A. I don't recall.

16 MS. TILSTRA: Objection. Vague.

17 THE COURT: I'm sorry. I'm going to need you -- I can
18 barely hear you. So here's the rule in the courtroom.
19 Anyone going to object you are going to stand up, and you
20 are going to just say it nice and loud.

21 MS. TILSTRA: All right. Objection. Vague.

22 THE COURT: Okay. Sustained.

23 MR. SHERIDAN: Okay. She did already.

24 THE COURT: Terrific.

25 EXAMINATION BY

1 MR. SHERIDAN:

2 Q. So you don't know? All right. When were you assigned to
3 do this project?

4 A. When?

5 Q. Yes.

6 A. I'm sorry. I don't recall a specific date but --

7 Q. Okay.

8 A. -- I believe that it was, you know, it's -- I don't know
9 exactly, but it's around that time.

10 Q. Okay. As the person in charge of this datamining
11 process --

12 A. Uh-huh.

13 Q. -- who did you answer in terms of the time frame, and the
14 products? The product, once it was done?

15 A. Ultimately the City Auditor.

16 Q. All right. Did you have any liaison with people at SPU
17 in terms of this datamining?

18 A. Liaison? I'm not exactly understanding what you mean by
19 liaison.

20 Q. I will try again. My apologies.

21 A. Okay.

22 Q. Here's what I'm trying to understand. You are actually
23 entering sort of queries into a system, right? And then
24 the system is doing a search, right?

25 A. Basically.

1 Q. What I'm trying to understand is how did you get the key
2 words to search? Who did you rely on for those key
3 words?

4 A. Well, it wasn't -- it wasn't as simple as querying key
5 words. I worked closely with the CCSS, I don't know
6 exactly -- his exact title, but in IT, and he is in SCL,
7 in Seattle City Light. Seattle City Light runs the --
8 what do you call it? Information technology end of CCSS.

9 Q. What's the -- do you remember the fella's name?

10 A. Yes.

11 Q. What is it?

12 A. I worked closely with Glen Amy.

13 Q. Mr. Amy?

14 A. Yes.

15 Q. All right. And did he help you basically shape the
16 queries that would be put into the program?

17 A. He did -- I'm not sure exactly what you mean by shape the
18 queries, but we worked with him to understand how we
19 could mine for, search data within CCSS because he knew
20 how to do it in sequel form and CC and ACL -- I work with
21 some people at ACL. They were able to take this, and use
22 that to sort of translate it so that you could use ACL to
23 do the datamining within the database.

24 Q. And for the benefit of the jury, what's ACL?

25 A. Boy, what's it called? ACL is a datamining software. I

1 believe it's called Audit Command Language. And what it
2 is is it's a software to look for patterns. Look for --
3 basically look for results. To obtain results from very
4 large databases.

5 Q. All right. Thanks very much. May I retrieve that?

6 A. Oh.

7 Q. Thank you. All right. Let me show you Exhibit 272
8 marked for identification. This again is off balance a
9 little. Okay. Exhibit 272 is another one of those
10 notes. This -- this is a fraud investigation note again,
11 is it not?

12 A. It says that.

13 Q. Okay. And this is a --

14 MS. TILSTRA: Let her finish her answer, Mr. Sheridan.

15 THE WITNESS: I just wanted to clarify that I believe
16 that that's the way that Ms. Howe titled her -- titled
17 the audit title. Yeah.

18 EXAMINATION BY

19 MR. SHERIDAN:

20 Q. Okay. All right. And then go -- is this -- is -- these
21 are other meeting notes, and it looks like you are one of
22 the attendees in this case, right?

23 A. I'm down as an attendant, yes. All staff present.

24 Q. And same group of business records that we have been
25 talking about before?

1 MR. SHERIDAN: Plaintiff offers Exhibit 272.

2 THE COURT: Any objection?

3 MS. TILSTRA: No objection.

4 THE COURT: 272 is admitted.

5 EXAMINATION BY

6 MR. SHERIDAN:

7 Q. And that's dated July 29th?

8 A. Well, actually date of interview says July 25.

9 Q. 25. Thank you.

10 A. And then date prepared says July 29.

11 Q. Okay. July 25th. All right. And that's Exhibit 272.

12 And this is -- this is basically the notes of a meeting
13 to discuss strategy for drafting a memo, right? For the
14 CCSS?

15 A. That's what it says here.

16 Q. Okay. All right. Thank you. All right. See if 285 is
17 in that book, if you wouldn't mind, Ma'am.

18 A. Oh, okay.

19 Q. Thanks.

20 A. Yes.

21 Q. All right. And 285 is what?

22 A. It's what?

23 Q. Yes. It's another set of notes, but this time it's about
24 CCSS investigation, right? Or the CCSS datamining. I'm
25 sorry.

1 A. Well, it says both -- it has both project titles.

2 Q. Oh.

3 A. On here. It says -- it's SPU CCSS transaction controls
4 review and CCSS datamining.

5 Q. Okay. All right. And this again is a document that's
6 kept in the usual course of business. It's a business
7 record of the organization, right?

8 A. It's typical meeting notes. Using a typical meeting
9 notes template.

10 MR. SHERIDAN: Plaintiff offers 285.

11 MS. TILSTRA: Your Honor, based on the date prepared
12 and how long it is after the actual date of the meeting,
13 it's over a year and a half.

14 THE COURT: Okay. So that's --

15 MS. TILSTRA: Just not satisfying the business record
16 aspect of it.

17 MR. SHERIDAN: Well, that goes to weight and not
18 admissibility. It's still a document kept in --
19 electronically kept in the usual course of business. So
20 we ask to --

21 THE COURT: Okay. 285 is admitted.

22 EXAMINATION BY

23 MR. SHERIDAN:

24 Q. All right. And date of interview is August 4th, 2011?

25 A. That's what it says here.

1 Q. And -- all right. And this is a -- these are the notes
2 to review the first completed employer reports and
3 supporting documents to the CCSS investigation, right?

4 A. That's what it says here, yes.

5 Q. Okay. All right. And let's see. Exhibit 285. Okay.
6 All right. And may I retrieve that from you, Ma'am.

7 A. Oh, sure.

8 Q. Thanks. And we are now going to look at Exhibit No. 144.
9 All right. And this is an e-mail. This is heavy on the
10 wrong side. Okay. So be careful. Okay. Take a look at
11 Exhibit 144. And this is an e-mail, is it not?

12 A. Yes.

13 Q. And you were --

14 A. Well, yes, it appears to be. Yes.

15 Q. Okay. And you're copied on the e-mail, right?

16 A. Yeah. My name is there.

17 Q. All right. And it appears to be the typical form used
18 for e-mails exchanged, right?

19 A. Yes.

20 Q. All right. And it's from Robin Howe to David Jones,
21 which are people whose names you recognize, right?

22 A. Yes.

23 Q. And your company, your organization keeps these documents
24 electronically in the usual course of the business,
25 right?

1 A. Yes.

2 MR. SHERIDAN: I'm going to offer Exhibit 144.

3 THE COURT: Any objection?

4 MS. TILSTRA: No.

5 THE COURT: Okay. 144 is admitted.

6 EXAMINATION BY

7 MR. SHERIDAN:

8 Q. Okay. And this is -- this basically is a meeting or a
9 discussion, and the date of the e-mail is February 6th,
10 2012, is it not?

11 A. Yes, that's what it says here.

12 Q. Okay. Exhibit 144. And -- All right. We have this up
13 on the screen, and I would like to trouble you to take a
14 look -- you don't have to look at the screen. You can
15 just look at your book. It's the same thing.

16 A. Oh.

17 Q. And so this is dated in February of 2012, and if you look
18 at that first bullet there. It's Robin Howe to David
19 Jones. And it says, Dave will clarify with Guillemette
20 that OCA is no longer serving in a quality assurance type
21 role for the SPU CCSS investigation or serving as a team
22 member on the project. Can you tell us whether or not
23 you have any recollection of these events?

24 A. Not specific to this e-mail but...

25 Q. But more generally? Please tell us.

1 A. More generally?

2 Q. Tell us what you know.

3 A. Well, we had initially started assisting SPU, and at some
4 point we just went ahead with our work, internal work,
5 datamining work.

6 Q. Okay. Do you know whether or not there came a time that
7 OCA stopped serving in a quality assurance role for the
8 SPU CCSS investigation process?

9 A. We were -- there did come a time when we were no longer
10 working together with SPU.

11 Q. Were you privy to the discussions that led to that?

12 A. No, not personally.

13 Q. All right. I will take that back. Thanks very much.

14 All right. I'm going to show you Exhibit 57. This is
15 also off balance so be careful. Okay. All right. You
16 have Exhibit 57 in front of you, Ma'am?

17 A. Yes.

18 Q. Okay. All right. And 57 is another e-mail. And this is
19 from you to Ms. Howe, is it not?

20 A. Yes.

21 Q. And it's -- again, it's just another one of those
22 business records that you keep at -- at the Auditor's
23 Office, right?

24 A. Yes.

25 MR. SHERIDAN: Plaintiff offers 57.

1 THE COURT: Any objection?

2 MS. TILSTRA: No.

3 THE COURT: 57 is admitted.

4 MR. SHERIDAN: Okay. Go ahead and put that up.

5 THE COURT: So counsel, I'm not getting the documents
6 that are going up.

7 MR. SHERIDAN: You are not -- you are not getting
8 them --

9 THE COURT: Weren't they supposed to be or just the
10 document -- Defendant's documents that are...

11 MR. SHERIDAN: I think just the defendants. That may
12 change, but for now that's all we got.

13 THE COURT: Okay. All right.

14 EXAMINATION BY

15 MR. SHERIDAN:

16 Q. All right. So this is -- would you take a moment to take
17 a look at that first paragraph. This is a February 7th,
18 2012 e-mail, is it not?

19 A. Yes.

20 Q. All right.

21 A. Yes.

22 Q. And just take a moment and then don't read it. Just if
23 you would tell us why you wrote it to Ms. Howe? What was
24 it you wanted to communicate to her?

25 A. Well, my recollection is that there was a -- I mean, it

1 doesn't say here, but probably it was a counsel briefing
2 of some kind by Moss Adams. And she wasn't -- it's
3 something that she typically would watch, and she was not
4 available that day or not -- yeah, able to watch it that
5 day for whatever --

6 Q. Would you tell us for the record who is Moss Adams?

7 A. What are they? They are like an accounting firm. Large
8 accounting, auditing firm.

9 Q. Okay.

10 A. Who --

11 Q. Okay. And you said -- you write in here that they said
12 they would look at CCSS, and they being Moss Adams?

13 A. Yes.

14 Q. Are they outside consultants?

15 A. They are an -- well, my understanding is yes.

16 Q. All right. And they said they would look at CCSS, and
17 then it says they didn't call it that, but they referred
18 to the billing system?

19 A. Billing system, yeah.

20 Q. Because that's where fraud might occur, right?

21 A. That's what I had written.

22 Q. To your knowledge, did Moss Adams the consulting firm
23 ever do any work on determining whether there was fraud
24 as a result of your datamining project?

25 MS. TILSTRA: Objection. Calls for speculation.

1 THE COURT: Sustained.

2 EXAMINATION BY

3 MR. SHERIDAN:

4 Q. Well, do you have any knowledge as to whether they did
5 any work on that top subject matter?

6 A. No, I do not.

7 Q. All right. But certainly no one came to you to discuss
8 them doing such work?

9 A. No.

10 Q. All right. Could we look at Exhibit 145? I don't think
11 that's in your book. And I know it's not. Thanks. All
12 right. What's Exhibit 145?

13 A. Is that a question to me?

14 Q. Yes.

15 A. Oh, it's an -- it appears to be -- I'm sorry. I was
16 looking at it.

17 Q. Okay. It's an e-mail string?

18 A. An e-mail. Yeah. Uh-huh. An e-mail string.

19 Q. E-mail string in the February 2012 time frame with
20 various persons involved in the -- in that subject
21 matter, including Mr. Jones, Ms. Regan and others, right?

22 A. Yes.

23 Q. And it's just another one of the business records that's
24 kept at your offices, right?

25 A. Yes.

1 Q. All right.

2 MR. SHERIDAN: Plaintiff offers 145.

3 THE COURT: Any objection?

4 MS. TILSTRA: No.

5 THE COURT: Okay. 145 is admitted.

6 EXAMINATION BY

7 MR. SHERIDAN:

8 Q. 21. Okay. And looking at the second from the top
9 e-mail, the one that is from Guillemette Regan to David
10 Jones; do you see that there?

11 A. Yes.

12 Q. All right. She writes, thanks David for talking about
13 this with me this morning. Per that conversation I would
14 add to your statement that SPU also felt that the work
15 that City Auditor is undertaking in 2012 overlaps too
16 much with their continued investigations into CCSS
17 billing system transactions, and would benefit from
18 greater separation in order to avoid conflict or risk of
19 outcomes or risk an outcome of the investigations. Can
20 you tell us if the investigations being referred to in
21 this e-mail are the investigations that Ms. Regan was
22 conducting?

23 MS. TILSTRA: Objection. Calls for speculation. She
24 is not a recipient of that e-mail.

25 THE COURT: I can't --

1 MS. TILSTRA: Sorry. She was not a recipient of that
2 original e-mail.

3 THE COURT: Objection sustained.

4 MR. SHERIDAN: All right.

5 EXAMINATION BY

6 MR. SHERIDAN:

7 Q. Do you have any knowledge as to whether or not there came
8 a time that Ms. Regan basically took the position that
9 your continued work in this area would somehow jeopardize
10 her investigation?

11 A. No.

12 Q. All right. All right. Let's take a look at Exhibit 1.

13 Do you have Exhibit 1 in there?

14 A. One?

15 Q. You may not.

16 A. No. It -- it starts at --

17 Q. I have it here. I'm sorry.

18 A. Okay. It's much higher.

19 Q. Let's do the swap. Thanks. All right. If you will turn
20 to Exhibit 1, please. And -- and Exhibit 1, once again,
21 some of the notes regarding the datamining investigation,
22 this one dated -- date of meeting is 5/20, 2012?

23 A. Yes.

24 Q. All right.

25 MR. SHERIDAN: And plaintiff offers Exhibit 1.

1 THE COURT: Any objection?

2 MS. TILSTRA: No objection.

3 THE COURT: Exhibit 1 is admitted.

4 EXAMINATION BY

5 MR. SHERIDAN:

6 Q. Okay. All right. 5/22. All right. And tell us about,
7 if -- if you would, the purpose of the interview that
8 day?

9 A. Can I just read this?

10 Q. Yes. Go ahead.

11 A. Oh, okay. To provide Guillemette with the names of
12 Seattle Public Utility employees identified in our
13 datamining process as having worked on their own account
14 or having an unusual number of broken payment
15 arrangements on their own account.

16 Q. All right. It says reviewed by, and it says audit staff
17 present, and it has your name in it, right?

18 A. Yes.

19 Q. Can you just take a look at this and see if it refreshes
20 your recollection as to what happened on that day in
21 general terms?

22 MR. SHERIDAN: And if you will go down -- go down the
23 exhibit of the body. Right there.

24 EXAMINATION BY

25 MR. SHERIDAN:

1 Q. So I want to draw your attention to the section that
2 begins discussion of notifying the City ethics; do you
3 see that?

4 A. Yes; uh-huh. On page one?

5 Q. Yes. And it's written there, Guillemette said -- I'm
6 halfway down the third line.

7 A. Okay.

8 Q. Guillemette said that if ethics comes too soon it can
9 impede and potentially destroy SPU's investigation
10 process, because SPU's discipline process with the
11 employees is incomplete. Now, did you have a discussion
12 with Ms. Regan at this meeting to the effect that ethics
13 needed to back off?

14 A. Did I have a conversation with Ms. Regan?

15 Q. I said it poorly. Let me ask again. Were you present
16 during such a conversation?

17 A. Well, I was present at this meeting.

18 Q. Okay.

19 A. I don't recall that specifically. I'm sorry.

20 Q. That's what I was going to ask. All right. Let me
21 retrieve that from you. Thanks.

22 THE COURT: So counsel, you have about two more
23 minutes of the day.

24 MR. SHERIDAN: Yeah, I have two more documents. Can I
25 do one a minute, and then I'm pretty much done with this

1 witness.

2 THE COURT: Yeah. Okay.

3 EXAMINATION BY

4 MR. SHERIDAN:

5 Q. Okay. All right. I now show you Exhibit 40. And let's
6 see if you can hold this. All right. Did I -- is
7 that --

8 A. Is this the same?

9 Q. Yeah, it's the same thing, right?

10 A. As one --

11 MS. TILSTRA: What exhibit number?

12 MR. SHERIDAN: Exhibit 40, please.

13 THE WITNESS: 40.

14 EXAMINATION BY

15 MR. SHERIDAN:

16 Q. It's a -- it's the notes of a May 22nd, 2012 meeting, is
17 it not?

18 A. Yes, it's dated that.

19 Q. All right. It's just another business record.

20 MR. SHERIDAN: Plaintiff offers Exhibit 40.

21 THE COURT: Isn't that identical to what we just
22 entered in before?

23 MR. SHERIDAN: Say again?

24 THE COURT: Isn't that identical to what we just
25 entered in before?

1 MR. SHERIDAN: If it is, it's a mistake on our part.
2 If it is the exactly the same, we will withdraw it.

3 MS. TILSTRA: It appears to be the same.

4 THE WITNESS: Yeah, it appears to be.

5 MR. SHERIDAN: We will withdraw it for now, and if
6 there is any differences we will let the Court know.

7 THE COURT: Fair enough.

8 EXAMINATION BY

9 MR. SHERIDAN:

10 Q. Okay. And then 638.

11 MR. SHERIDAN: And your Honor, that's all the
12 documents I have to admit, and all the questions I have
13 for this witness.

14 THE COURT: Okay. So well, let me ask, how much
15 cross-examination did you have, counsel?

16 MS. TILSTRA: I'm not sure. But...

17 THE COURT: Well, if you are not sure, then that means
18 it's not going to happen this afternoon.

19 MS. TILSTRA: Sorry, your Honor.

20 THE COURT: Don't be sorry. That's it for the day,
21 folks. Thanks for all your attention today and have a
22 terrific evening. And of course as always don't discuss
23 this case with anyone, including amongst yourselves or
24 with any family or friends, and don't do any outside
25 research or engage in any kind of social media about this

1 case or the issues in this case or anything that has been
2 said in this courtroom. Have a terrific evening. And we
3 will see you back tomorrow at 8:50.

4 THE BAILIFF: Please rise for the jury. Go ahead and
5 leave your note pads on the chairs. Okay.

6 (Jury not present.)

7 THE COURT: Okay. Anything to review before we leave
8 for the day?

9 MR. SHERIDAN: I don't think so. I think we are all
10 set, your Honor.

11 THE COURT: Okay.

12 MS. MOORE: Do we have enough witnesses for tomorrow?

13 MR. SHERIDAN: So just so you know we are backed up
14 one now so that our new witness will be Mr. Jones as our
15 first witness. Okay?

16 MS. TILSTRA: Then Mr. Hoffman?

17 MR. SHERIDAN: Then Mr. Hoffman. When is that
18 appointment?

19 MS. COLE: She goes for migraines. She can't miss it.

20 MR. SHERIDAN: So we'd just ask then when she's done
21 with the meeting, then come to the court. Okay.

22 MS. TILSTRA: So...

23 THE COURT: Sorry. Go ahead.

24 MS. MOORE: Your Honor, her doctor appointment is at
25 one o'clock. So you can have her before? I'm not sure

1 if she will be able to get back after.

2 MR. SHERIDAN: I think just play it by ear.

3 MS. MOORE: Okay. Just want to make sure you have
4 enough witnesses.

5 THE COURT: Just so you folks know, I won't do this
6 after every witness, but you were 15 minutes past point
7 five.

8 MR. SHERIDAN: Yeah. This is Ms. Howe's not in.

9 THE COURT: Yeah, okay. No problem. I will remind
10 you folks so you know you allocated point five for
11 Ms. Sumitani and --

12 MR. SHERIDAN: Yes.

13 THE COURT: And you did 45. Just so you know.

14 MR. SHERIDAN: Thank you. Thanks.

15 THE COURT: No big deal. Okay. I think that's all
16 for today, and we will see everyone tomorrow at 9:00.
17 Have a great evening.

18 MS. MOORE: Thank you, your Honor.

19 MR. SHERIDAN: Thanks, Judge.

20 THE CLERK: Please rise.

21

22 (Court adjourned.)

23

24

25

C E R T I F I C A T E

STATE OF WASHINGTON)

) SS.

COUNTY OF KING)

I, Kimberly H. Girgus, Certified Court Reporter; in and for the State of Washington, do hereby certify:

That to the best of my ability, the foregoing is a true and correct transcription of my shorthand notes as taken in the cause of MARIA LUISA JOHNSON, CARMELIA DAVIS-RAINES, CHERYL MUSKELLY, PAULINE ROBINSON, ELAINE SEAY-DAVIS, TONI WILLIAMSON, and LYNDA JONES versus SEATTLE PUBLIC UTILITIES, a department of the CITY OF SEATTLE, a municipality, on the date and at the time and place as shown on page one hereto;

That I am not a relative or employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney of counsel, and that I am not financially interested in said action or the outcome thereof;

Dated this 16th day of August, 2016.

Kimberly H. Girgus

Certified Court Reporter