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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

George Rudebusch, et. al,
Plaintiffs,
v.
State Of Arizona; Northern Arizona
University; The Arizona Board Of Regents,
Defendants.

NO. CIV 95-1313-PCT RCB and
NO. CIV 96-1077 PCT RCB

JUDGMENT

(Assigned to the Honorable Robert C.
Broomfield)

The parties jointly submitted the following proposed judgment. By jointly submitting this proposed judgment, the parties agree only that the form of judgment and damage calculations are correct based on the Court’s rulings. Neither party waives the right to appeal any other issue or prior ruling.

On June 30, 1995, Plaintiff’s George Rudebusch, et al., filed the first of two consolidated cases, CIV 95-1313 PCT RCB. In this class action Complaint, the Plaintiffs alleged violations of the Equal Protection Clause of the Fourteenth Amendment and Civil Rights Act violations pursuant to 42 U.S.C. §1981 and 42 U.S.C. §1983 suing Defendant Hughes in his individual capacity.

Thereafter, on May 2, 1996 forty individual plaintiffs filed a related action against Defendants in CIV96-1077 PCT RCB. In this Complaint, the Plaintiffs alleged violations

1 of Title VII of the Civil Rights act of 1964, as amended. The Court granted Plaintiffs'
2 motion to consolidate theses case on November 1, 1996.

3 Defendant Hughes responded to the Equal Protection claims by moving for
4 summary judgment on qualified immunity grounds. This Court granted the motion in
5 part, concluding that the law was clearly established and that Defendant Hughes was
6 reasonable in concluding that a compelling interest justified his actions. But this Court
7 reserved for trial the ultimate issue of qualified immunity because of factual issues
8 surrounding the remedy imposed.

9 On December 12, 2000, this case proceeded to a jury trial (Minute Entry (doc.233))
10 in which evidence was considered over the course of four days. *Id.* at 233-27. On
11 December 18, 2000, the jury rendered its verdict in Defendants' favor and Judgment was
12 entered thereon December 29, 2000. See doc.'s 241, 248. On January 24, 2000,
13 Plaintiffs filed their Notice of Appeal. Notice (doc. 250).

14 On December 18, 2003, the Ninth Circuit Court of Appeals issued a mandate which
15 affirmed in part, reversed in part, and remanded the case to this Court for additional
16 proceedings. Mandate (doc.259). The Ninth Circuit's decision affirmed the judgment in
17 favor of the Defendants in CIV 95-1313 PCT RCB, the class action equal protection claim
18 against Eugene Hughes and his spouse in their individual capacities.

19 The only case that survived the Ninth Circuit's decision was the Title VII claim by
20 the forty individual Plaintiffs. The sole issue remaining for determination upon remand
21 was whether Defendants could be held liable under Title VII of the Civil Rights Act of
22 1964, 42 U.S.C. §2000 et seq. *Id* at 32.

23 At a pretrial conference held on December 19, 2003, the parties stipulated to try the
24 remaining issues on remand to this Court, as opposed to a jury, at a trial which would
25 commence on January 6, 2004. Minute Entry (doc.267). Also, on December 19, 2003,
26 the parties stipulated that, for purposes of the January 6, 2004 trial, the Court would

1 determine the issue of “liability” under Title VII only, and that if a determination of
2 liability is made, “the Court will set a later trial date and will grant the parties an
3 opportunity to conduct additional discovery” as to the question of damages. Order
4 (doc.268) at 3.

5 On January 4, 2004, the Court conducted the trial to the issue of Title VII liability
6 as ordered by the Ninth Circuit’s mandate. Minute Entry (doc.269). On June 30, 2004,
7 the Court issued its Findings of Fact and Conclusions of Law on this matter, finding that
8 liability for Defendants’ violation of Title VII had been established. Order (doc.277).
9 The Court noted that damages in relation to this violation was a factual issue that the
10 parties stipulated would be present at a later trial after additional discovery was taken. *Id.*
11 at 20.

12 On September 28, 2005, Defendants filed Motion for Summary Judgment on the
13 issue of damages. Motion (doc.16). Thereafter, Plaintiffs filed their response to this
14 Motion, as well as, a Cross-Motion for Summary Judgment. Cross-Motion (doc.305).
15 The Motions were fully briefed on January 23, 2006. P. Reply (doc.315).

16 IT IS HEREBY ORDERED that Defendants’ Motion for Summary Judgment
17 (doc.16 in case number CIV 96-1077 PCT RLB) is denied.

18 IT IS FURTHER ORDERED that Plaintiffs’ Cross-Motion for Summary Judgment
19 (doc.305 in case number CIV 95-1313 PCT RLB) is GRANTED in all respects but for
20 Plaintiffs’ request for attorneys’ fees which was not properly filed in accordance with Local
21 Rule 54.2.

22 IT IS FURTHER ORDERED that Plaintiffs shall be awarded damages as set forth
23 below:

24 The total sum designated as “lost salary” for each Plaintiff shall be subject to (a)
25 FICA taxes (Social Security and Medicare tax); (b) employment tax withholding, and (c)
26 reporting by NAU to the IRS on Form W-2 as Social Security and Medicare wages for the

1 calendar year in which it is paid.

2 For each Plaintiff except Plaintiff Riskin, the amount of “lost salary,” minus the
3 employee’s contribution to ASRS or the ORP shall be (a) taxable as “wages;” (b) subject
4 to federal and state income tax withholding; and (c) reported by NAU to the IRS on Form
5 W-2 for the calendar year in which it is paid. For Plaintiff Riskin, the amount of “lost
6 salary” shall be (a) taxable as “wages,” (b) subject to federal and state income tax
7 withholding; and (c) reported by NAU to the IRS on Form W-2 for the calendar year in
8 which it is paid.

9 For each Plaintiff except Plaintiff Riskin, the amount designated as “interest on lost
10 salary,” minus interest paid to the Arizona State Retirement System (ASRS) or the
11 Optional Retirement Plan (ORP) as interest on Plaintiff’s retirement contributions, will be
12 reported to the IRS on Form 1099-INT. The interest payment will not be subject to federal
13 income tax withholding. All lost interest awarded to Plaintiff Riskin will be reported to the
14 IRS on Form 1099-INT and shall not be subject to federal income tax withholding.

15 Subject to these provisions, judgment to the individual Plaintiffs shall be as follows:

16 **James Bartell**

17 Plaintiff James Bartell shall have Judgment against Defendants in the total sum of
18 \$46,211.61, attributed and to be paid as follows:

19 **Lost Salary:** \$23,345. Of that amount, \$752.20 shall be withheld as Plaintiff’s
20 contribution to the Arizona State Retirement System and submitted to ASRS on the
21 Plaintiff’s behalf.

22 **Interest on Lost Salary:** \$21,421. Of that amount \$693.41 shall be withheld and
23 submitted on Plaintiff’s behalf to the Arizona State Requirement System as interest
24 on Plaintiff’s share of the retirement contribution. The balance shall be paid
25 directly to the Plaintiff and shall be reported to the Internal Revenue Service on
26 Form 1099.

1 Plaintiff Burton Brown shall have Judgment against Defendants in the total sum of
2 \$74,177, attributed and to be paid as follows:

3 **Lost Salary:** \$40,063. Of that amount, \$2,804 shall be withheld as Plaintiff's
4 contribution to the Optional Retirement Plan and will be submitted to the Optional
5 Retirement Plan on the Plaintiff's behalf.

6 **Interest on Lost Salary:** \$29,262. Of this amount, \$2,048 shall be withheld and
7 submitted on the Plaintiff's behalf to the Optional Retirement Plan as interest on
8 Plaintiff's share of the retirement contribution. The balance shall be paid directly to
9 the Plaintiff and shall be reported to the Internal Revenue Service on Form 1099.

10 **Employer ORP Contributions:** \$2,804. This amount will be paid on Plaintiff's
11 behalf, by Defendants, directly to the Optional Retirement Plan.

12 **Interest on Employer ORP Retirement Contributions:** \$2,048. This amount will
13 be paid on Plaintiff's behalf, by Defendants, directly to the Optional Retirement
14 Plan.

15 **Craig Caldwell**

16 Plaintiff Craig Caldwell shall have Judgment against Defendants in the total sum of
17 \$3,315.76, attributed and to be paid as follows:

18 **Lost Salary:** \$1,243. Of that amount, \$39.03 shall be withheld as Plaintiff's
19 contribution to the Arizona State Retirement System and submitted to ASRS on the
20 Plaintiff's behalf.

21 **Interest on Lost Salary:** \$1,974. Of that amount \$59.73 shall be withheld and
22 submitted on Plaintiff's behalf to the Arizona State Requirement System as interest
23 on Plaintiff's share of the retirement contribution. The balance shall be paid
24 directly to the Plaintiff and shall be reported to the Internal Revenue Service on
25 Form 1099.

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Steven Funk

Plaintiff Steven Funk shall have Judgment against Defendants in the total sum of \$30,886.49, attributed and to be paid as follows:

Lost Salary: \$18,141. Of that amount, \$678.02 shall be withheld as Plaintiff's contribution to the Arizona State Retirement System through fiscal year 2006 and submitted to ASRS on the Plaintiff's behalf.

Interest on Lost Salary: \$11,679. Of that amount \$388.47 shall be withheld and submitted on Plaintiff's behalf to the Arizona State Requirement System as interest on Plaintiff's share of the retirement contributions through fiscal year 2006. The balance shall be paid directly to the Plaintiff and shall be reported to the Internal Revenue Service on Form 1099.

Employer ASRS Contribution: \$678.02. This amount will be paid on Plaintiff's behalf, by Defendants, directly to the Arizona State Retirement System for contributions through fiscal year 2006.

Interest on Employer ASRS Contribution: \$388.47. This amount will be paid on Plaintiff's behalf, by Defendants, directly to the Arizona State Retirement System for contributions through fiscal year 2006.

Raise in Current Salary: Plaintiff's current annual salary shall be raised by \$1,473.

Clarence Harrison

Plaintiff Clarence Harrison shall have Judgment against Defendants in the total sum of \$1,590, attributed and to be paid as follows:

Lost Salary: \$620. Of that amount, \$43 shall be withheld as Plaintiff's contribution to the Optional Retirement Plan and will be submitted to the Optional Retirement Plan on the Plaintiff's behalf.

1 on Plaintiff's share of the retirement contribution. The balance shall be paid
2 directly to the Plaintiff and shall be reported to the Internal Revenue Service on
3 Form 1099.

4 **Employer ASRS Contribution:** \$97.62. This amount will be paid on Plaintiff's
5 behalf, by Defendants, directly to the Arizona State Retirement System.

6 **Interest on Employer ASRS Contribution:** \$130.09. This amount will be paid
7 on Plaintiff's behalf, by Defendants, directly to the Arizona State Retirement
8 System.

9 **Gilbert Pogany**

10 Plaintiff Gilbert Pogany shall have Judgment against Defendants in the total sum of
11 \$23,657.06, attributed and to be paid as follows:

12 **Lost Salary:** \$9,234. Of that amount, \$320.12 shall be withheld as Plaintiff's
13 contribution to the Arizona State Retirement System.

14 **Interest on Lost Salary:** \$13,650. Of that amount \$452.94 shall be withheld and
15 submitted on Plaintiff's behalf to the Arizona State Requirement System as interest
16 on Plaintiff's share of the retirement contribution. The balance shall be paid
17 directly to the Plaintiff and shall be reported to the Internal Revenue Service on
18 Form 1099.

19 **Employer ASRS Contribution:** \$320.12. This amount will be paid on Plaintiff's
20 behalf, by Defendants, directly to the Arizona State Retirement System.

21 **Interest on Employer ASRS Contribution:** \$452.94. This amount will be paid
22 on Plaintiff's behalf, by Defendants, directly to the Arizona State Retirement
23 System.

24
25 **Timothy Porter**
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1 Plaintiff Timothy Porter shall have Judgment against Defendants in the total sum of
2 \$29,326, attributed and to be paid as follows:

3 **Lost Salary:** \$16,792. Of that amount, \$1,175 shall be withheld as Plaintiff's
4 contribution to the Optional Retirement Plan and will be submitted to the Optional
5 Retirement Plan on the Plaintiff's behalf.

6 **Interest on Lost Salary:** \$10,616. Of this amount, \$743 shall be withheld and
7 submitted on the Plaintiff's behalf to the Optional Retirement Plan as interest on
8 Plaintiff's share of the retirement contribution. The balance shall be paid directly to
9 the Plaintiff and shall be reported to the Internal Revenue Service on Form 1099.

10 **Employer ORP Contributions:** \$1,175. This amount will be paid on Plaintiff's
11 behalf, by Defendants, directly to the Optional Retirement Plan.

12 **Interest on Employer ORP Retirement Contributions:** \$743. This amount will
13 be paid on Plaintiff's behalf, by Defendants, directly to the Optional Retirement
14 Plan.

15 **Raise in Current Salary:** Plaintiff's current annual salary shall be raised by
16 \$1,328.

17
18 **Loren Reser**

19 Plaintiff Loren Reser shall have Judgment against Defendants in the total sum of
20 \$44,042, attributed and to be paid as follows:

21 **Lost Salary:** \$24,980. Of that amount, \$1,749 shall be withheld as Plaintiff's
22 contribution to the Optional Retirement Plan and will be submitted to the Optional
23 Retirement Plan on the Plaintiff's behalf.

24 **Interest on Lost Salary:** \$16,180. Of this amount, \$1,133 shall be withheld and
25 submitted on the Plaintiff's behalf to the Optional Retirement Plan as interest on
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1 Plaintiff's share of the retirement contribution. The balance shall be paid directly to
2 the Plaintiff and shall be reported to the Internal Revenue Service on Form 1099.

3 **Employer ORP Contributions:** \$1,749. This amount will be paid on Plaintiff's
4 behalf, by Defendants, directly to the Optional Retirement Plan.

5 **Interest on Employer ORP Retirement Contributions:** \$1,133. This amount will
6 be paid on Plaintiff's behalf, by Defendants, directly to the Optional Retirement
7 Plan.

8 **Raise in Current Salary:** Plaintiff's current annual salary shall be raised by
9 \$2,002.

10 **Adrian Riskin**

11 Plaintiff Adrian Riskin shall have Judgment against Defendants in the total sum of
12 \$12,326, attributed and to be paid as follows:

13 **Lost Salary:** \$5,341. Professor Riskin was a member of the ASRS, but terminated
14 his membership and withdrew all funds. No retirement contributions are being
15 made on his behalf.

16 **Interest on Lost Salary:** \$6,985.

17
18 **George Rudebusch**

19 Plaintiff George Rudebusch shall have Judgment against Defendants in the total
20 sum of \$140,130, attributed and to be paid as follows:

21 **Lost Salary:** \$78,333. Of that amount, \$5,483 shall be withheld as Plaintiff's
22 contribution to the Optional Retirement Plan and will be submitted to the Optional
23 Retirement Plan on the Plaintiff's behalf.

24 **Interest on Lost Salary:** \$52,630. Of this amount, \$3,684 shall be withheld and
25 submitted on the Plaintiff's behalf to the Optional Retirement Plan as interest on
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1 Plaintiff's share of the retirement contribution. The balance shall be paid directly to
2 the Plaintiff and shall be reported to the Internal Revenue Service on Form 1099.

3 **Employer ORP Contributions:** \$5,483. This amount will be paid on Plaintiff's
4 behalf, by Defendants, directly to the Optional Retirement Plan.

5 **Interest on Employer ORP Retirement Contributions:** \$3,684. This amount will
6 be paid on Plaintiff's behalf, by Defendants, directly to the Optional Retirement
7 Plan.

8 **Raise in Current Salary:** Plaintiff's current annual salary shall be raised by
9 \$6,096.

10 **Howard Salisbury**

11 Plaintiff Howard Salisbury shall have Judgment against Defendants in the total sum
12 of \$79,965, attributed and to be paid as follows:

13 **Lost Salary:** \$37,611. Of that amount, \$2,633 shall be withheld as Plaintiff's
14 contribution to the Optional Retirement Plan and will be submitted to the Optional
15 Retirement Plan on the Plaintiff's behalf.

16 **Interest on Lost Salary:** \$37,122. Of this amount, \$2,599 shall be withheld and
17 submitted on the Plaintiff's behalf to the Optional Retirement Plan as interest on
18 Plaintiff's share of the retirement contribution. The balance shall be paid directly to
19 the Plaintiff and shall be reported to the Internal Revenue Service on Form 1099.

20 **Employer ORP Contributions:** \$2,633. This amount will be paid on Plaintiff's
21 behalf, by Defendants, directly to the Optional Retirement Plan.

22 **Interest on Employer ORP Retirement Contributions:** \$2,599. This amount will
23 be paid on Plaintiff's behalf, by Defendants, directly to the Optional Retirement
24 Plan.

25 **Michael Sanera**

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1 Plaintiff Michael Sanera shall have Judgment against Defendants in the total sum of
2 \$14,787, attributed and to be paid as follows:

3 **Lost Salary:** \$5,662. Of that amount, \$396 shall be withheld as Plaintiff's
4 contribution to the Optional Retirement Plan and will be submitted to the Optional
5 Retirement Plan on the Plaintiff's behalf.

6 **Interest on Lost Salary:** \$8,158. Of this amount, \$571 shall be withheld and
7 submitted on the Plaintiff's behalf to the Optional Retirement Plan as interest on
8 Plaintiff's share of the retirement contribution. The balance shall be paid directly to
9 the Plaintiff and shall be reported to the Internal Revenue Service on Form 1099.

10 **Employer ORP Contributions:** \$396. This amount will be paid on Plaintiff's
11 behalf, by Defendants, directly to the Optional Retirement Plan.

12 **Interest on Employer ORP Retirement Contributions:** \$571. This amount will
13 be paid on Plaintiff's behalf, by Defendants, directly to the Optional Retirement
14 Plan.

15 **James Simmerman**

16 Plaintiff James Simmerman shall have Judgment against Defendants in the total
17 sum of \$152,359, attributed and to be paid as follows:

18 **Lost Salary:** \$85,486. Of that amount, \$5,984 shall be withheld as Plaintiff's
19 contribution to the Optional Retirement Plan and will be submitted to the Optional
20 Retirement Plan on the Plaintiff's behalf.


21 **Interest on Lost Salary:** \$56,906. Of this amount, \$3,983 shall be withheld and
22 submitted on the Plaintiff's behalf to the Optional Retirement Plan as interest on
23 Plaintiff's share of the retirement contribution. The balance shall be paid directly to
24 the Plaintiff and shall be reported to the Internal Revenue Service on Form 1099.

25 **Employer ORP Contributions:** \$5,984. This amount will be paid on Plaintiff's
26 behalf, by Defendants, directly to the Optional Retirement Plan.

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IT IS FURTHER ORDERED that post-judgment interest shall be awarded in accordance with 28 U.S.C. § 1961.

DATED this 23rd day of February, 2007.



Robert C. Broomfield
Senior United States District Judge