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**FILED**  
AUG 03 2001  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RONALD ARNETT, et al.,  
Plaintiffs,  
v.  
CA. EMPLOYEES' RETIREMENT, et al.,  
Defendants.

CIVIL NO. 95-03022 CRB

**CONSENT DECREE IN PARTIAL  
RESOLUTION OF LAWSUIT**

**CONSENT DECREE IN PARTIAL RESOLUTION OF LAWSUIT**

WHEREAS the United States Court of Appeals for the Ninth Circuit issued a decision in this case remanding the issues of liability for consideration by the District Court; and

WHEREAS the Equal Employment Opportunity Commission (the EEOC) intervened in this action following the remand; and

WHEREAS the parties wish to adjudicate the rights and obligations of all interested parties, including all local public entity employers, fully and finally in this proceeding, thereby avoiding further litigation; and

WHEREAS the parties to this action wish to settle all issues in this Age Discrimination in Employment Act ("ADEA") litigation in a prompt and cost-effective manner that promotes

1 judicial economy; and

2 WHEREAS the parties desire that the Court maintain jurisdiction over this matter to  
3 resolve any disputes that may arise under this Consent Decree;

4 THEREFORE, the parties stipulate to and submit this Consent Decree in Partial  
5 Resolution of Lawsuit for approval by the Court, as follows:

6 1. Based on the decision in Arnett et al v. Cal. PERS, et al. ,179 F.3d 690 (9<sup>th</sup> Cir. 1999),  
7 CalPERS and the State of California stipulate to entry of a permanent injunction prohibiting the  
8 enforcement of current California Government Code Section 21417 (Section 21417) with regard to  
9 all State of California employers and with regard to all those local public entity employers that are  
10 "contracting agencies," as defined by California Government Code section 20022. With respect to  
11 local public entity employers (but not State of California employers), this injunction shall be  
12 implemented only if the district court makes a final determination, in the class action proceedings  
13 described in paragraph 8 *infra*, that CalPERS has the right to stipulate to the injunction as it affects  
14 local public entity employers and to recover resulting costs from them (hereafter referred to as the  
15 "local public entity employer determination"). After implementation, CalPERS shall not be obligated  
16 to proceed with this injunction with respect to local public entity employers if an appellate court does  
17 not uphold the district court's local public entity employer determination.

18 2. CalPERS shall recalculate the benefit entitlements of all current (as of July 1, 2001)  
19 industrial disability retirement recipients who commenced industrial disability retirements from  
20 January 1, 1980 to the present and whose benefits are limited by Section § 21417. CalPERS shall  
21 apply the recalculations to payments of all future benefits to recipients for whom recalculations were  
22 performed. Said payments will take effect as of July 1, 2001. CalPERS will proceed in good faith to  
23 process the adjustments as quickly as reasonably possible, provided that with respect to local public  
24 entity employees, no recalculations shall be made until the district court makes the local public entity  
25 employer determination. CalPERS shall not be obligated to proceed with and may recover increased  
26 benefits already paid to local public entity employees pursuant to this paragraph if an appellate court  
27 does not uphold the district court's local public entity employer determination. CalPERS shall  
28 provide the EEOC with a list of all individuals affected by the recalculation of benefit payments

1 and detail the difference in the amount of these individuals' first month's payments due to the  
2 above calculations.

3 3. Subject to paragraph 9, CalPERS shall calculate the industrial disability retirement  
4 benefits for all future recipients of such benefits without regard to current Section 21417.

5 4. The California State Defendants shall not assert further any defense based on the  
6 invalidity of the ADEA under the United States Constitution against plaintiff EEOC in this  
7 action only, including any claims of sovereign immunity or immunity under the Eleventh  
8 Amendment. However, the California State Defendants reserve the right to challenge, on any  
9 applicable ground, any factual finding made by the Court.

10 5. The parties hereby stipulate to waive a trial by jury as to retroactive relief and to  
11 submit the question of retroactive monetary entitlement for beneficiaries who commenced  
12 industrial disability retirements at any time on or after October 16, 1992 to the Court for  
13 determination without the necessity of live testimony. The parties further stipulate that  
14 retroactive monetary entitlement shall not be available to any beneficiary who commenced  
15 industrial disability retirement prior to October 16, 1992, and that such settlement, if any, is  
16 specifically waived. Charging Party Diane Militano will also be treated as though her entitlement  
17 began on October 16, 1992, however, her maximum retrospective relief will be limited to the  
18 time period of October 16, 1992 to the effective date of injunctive relief described in paragraph  
19 1, *supra*. Defendants retain the right to contest, including through appellate review, plaintiffs'  
20 entitlement to retroactive relief, and the amount of any such relief to which plaintiffs may be  
21 entitled for the period between October 16, 1992 and the effective date of the injunctive relief  
22 described in paragraph 1, *supra*. This procedure to determine the extent, if any, of retroactive  
23 relief shall not occur until and unless the district court makes the local public entity employer  
24 determination. CalPERS shall not be obligated to proceed with or be bound by this procedure with  
25 regard to local public entity employees if an appellate court does not uphold the district court's local  
26 public entity employer determination. The plaintiffs agree not to offer the local public entity  
27 employers better settlement terms than are offered the State Defendants.

28 6. Private Plaintiffs and Intervenor EEOC waive the right to claims for liquidated

1 damages and agree to limit the interest which may accrue on retroactive monetary awards to  
2 interest commencing on July 13, 2000, the date of EEOC's intervention.

3 7. Private plaintiffs' counsel may apply to the Court for an award of attorneys' fees and  
4 costs as permitted by the ADEA. Such application will be based on reasonable hours and costs  
5 actually expended in this litigation. Private plaintiffs' counsel may seek a multiplier not to  
6 exceed two times actual hours. State Defendants agree to pay the total amount of private  
7 plaintiffs' attorneys fees as finally determined in this action, except for said fees attributable to  
8 the class members, and said amount shall not be deducted from any award to beneficiaries  
9 pursuant to paragraphs 2 and 5, supra. Further, State Defendants shall not rely on any claims of  
10 sovereign immunity, including those arising under the Eleventh Amendment, in addressing  
11 private plaintiffs' attorneys' fee petition in this action only, except for said fees attributable to the  
12 class members. State Defendants reserve the right to oppose and contest (including through  
13 appellate review) any fee application or award in this case on all other grounds. Nothing in this  
14 consent decree shall be deemed assent by defendants or the class to the award of any attorneys'  
15 fees or fee multipliers in this case.

16 8. In order to resolve in a final manner the nature and extent of local public entity  
17 employer liability as a result of the agreements and rulings in this case, to provide the local  
18 public entity employers with an opportunity to be heard in this litigation, and to foreclose the  
19 potential of inconsistent obligations stemming from objections to or collateral litigation by local  
20 public entity employers to actions by CalPERS, the court will join the local public entity  
21 employers, as defendants through the formation of a Federal Rule of Civil Procedure 23(b)(3)  
22 opt-out class, via an order to show cause or other appropriate procedure, pursuant to Federal  
23 Rules of Civil Procedure 19 and 21. The district court will order the joinder of any prospective  
24 class member that opts out of the class. The purpose of the class proceeding will be to determine  
25 fully and finally the extent of CalPERS' authority to take the actions contemplated by this  
26 Consent Decree with regard to local public entity employers and employees, and the right of  
27 CalPERS to recover the costs of said actions from the local public entity employers. However,  
28 this Consent Decree does not bar the class from petitioning for the resolution of any additional

1 issues relevant to this litigation. Nor shall this Consent Decree or the Court require CalPERS to  
2 file a claim against or sue the local public entities.

3 9. If the district court fails to join the local public entity employers as defendants  
4 pursuant to the procedures set forth in paragraph 8, or fails to make the local public entity  
5 employer determination, or if that determination is not sustained on appeal, this Consent Decree  
6 shall have no force and effect whatsoever against CalPERS or any other State defendant, except  
7 with regard to State employers and employees.

8 10. This Consent Decree shall be filed with and entered as an Order reviewed and  
9 approved by the Court, and the Court shall retain jurisdiction to enforce its provisions as set forth  
10 below. This Consent Decree shall apply with regard to CalPERS' rights and duties regarding  
11 local public entity employers once the federal courts fully and finally uphold the right of  
12 CalPERS to take all the actions contemplated by this agreement on behalf of local public entity  
13 employers and to recover the resulting costs from them. If any party believes that another party  
14 is violating its obligations under this agreement, or believes a dispute has arisen as to the  
15 meaning of the agreement, then the party shall give written detailed notice describing the claimed  
16 violation or dispute to the other parties. The parties shall then attempt, within thirty days or such  
17 other time as may be agreed to in writing, to resolve their differences over the claimed violation  
18 or disputed meaning. If after such time the parties are unable to resolve said dispute, any party  
19 may file a motion with the Court seeking a declaration determining whether there has been a  
20 violation, or determining the meaning of the agreement, or both, and may simultaneously seek an  
21 appropriate enforcement order. Any other party shall respond to the motion within the time  
22 allowed by the Local Rules, unless the time is extended by agreement or court order. Upon the  
23 Court's declaration and any enforcement order, the parties shall have a reasonable time, or such  
24 time as the Court may direct, to perform their obligations as declared and ordered.

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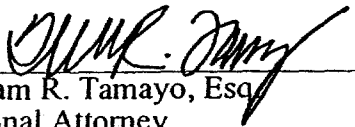
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For the Plaintiff-Intervenor,  
Equal Employment Opportunity  
Commission

Dated: July 16, 2001

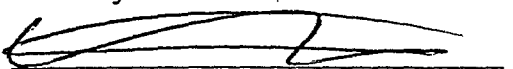


William R. Tamayo, Esq.  
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Raymond Cheung  
Linda Ordonio-Dixon  
Equal Employment Opportunity  
Commission

For Defendants,  
California Public Employees  
Retirement System

Dated: July 20, 2001

By Their Attorney, Bill Lockyer  
Attorney General

  
Miguel Neri, Esq.  
Supervising Deputy Attorney General  
Office of the Attorney General

For Plaintiffs,

Dated: 7/23, 2001



Steven Pingel, Esq.  
Lemaire, Faunce, Pingel & Singer

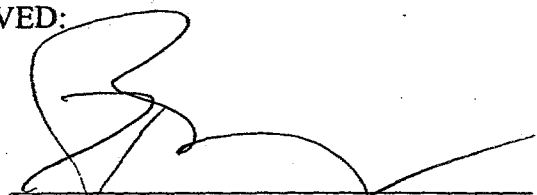
Dated: 7/17, 2001



Thomas E. Frankovich, Esq.

IT IS SO ORDERED AND APPROVED:

Dated: August 3, 2001

  
Judge, United States District Court

1 PROOF OF SERVICE

2 Arnett et al. v. California Public Employees' Retirement System (PERS), et al.  
3 USDC No. C 95 3022 CRB

4 THE UNDERSIGNED STATES:

5 I am a citizen of the United States of America and am employed in the County of  
6 Alameda, State of California; I am over the age of 18 years, and am not a party to the above-  
7 entitled action; that on September 5, 2001, I caused the attached:

8 **CONSENT DECREE IN PARTIAL RESOLUTION OF LAWSUIT**

9 to be served on the parties in this action as follows:

10 **SEE ATTACHED SERVICE LIST**

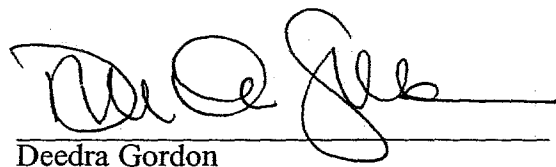
11 XX (BY MAIL) I placed a true copy thereof enclosed in a sealed envelope with postage  
12 thereon fully prepared for first-class mail, for collection and mailing at ERICKSON,  
13 BEASLEY, HEWITT & WILSON, Oakland, California, following ordinary business  
14 practices. I am readily familiar with the practice of ERICKSON, BEASLEY, HEWITT  
15 & WILSON, for collection and processing of correspondence, said practice being that in  
16 the ordinary course of business, correspondence is deposited in the United States Postal  
17 Service the same day as it is placed for collection.

18 (BY PERSONAL SERVICE) I caused a sealed envelope to be delivered by hand to the  
19 addressee(s) noted above.

20 (BY FACSIMILE) I FAXED a true and correct copy of the aforementioned  
21 document(s) from ERICKSON, BEASLEY, HEWITT & WILSON, Oakland, California,  
22 to the party(ies) at the above-listed fax numbers.

23 I declare under penalty of perjury that the foregoing is true and correct.

24 Executed in Oakland, California on September 6, 2001.

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Deedra Gordon

1 SERVICE LIST

2 Arnett et al. v. California Public Employees' Retirement System (PERS), et al.  
3 USDC No. C 95 3022 CRB

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