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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
FILED
JAN 29 2003
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, and)
EQUAL EMPLOYMENT OPPORTUNITY) CIVIL NO. 95-03022 CRB
COMMISSION,) SUPPLEMENTAL CONSENT DECREE
Plaintiff-Intervenor,)
v.)
CA. PUBLIC EMPLOYEES')
RETIREMENT SYSTEM (PERS), et al.,)
Defendants.)

SUPPLEMENTAL CONSENT DECREE

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 ("EEOC") intervened in this action following the remand; and
WHEREAS the court joined all those local public entity employers that are "contracting agencies," as defined by California Government Code section 20022 ("local public entity employers"), as defendants through the formation of a Federal Rule of Civil Procedure 23(b)(3) opt-out class ("the defendant class"); and
WHEREAS the defendant class was joined for the purpose of deciding two issues:
(1) whether CalPERS has the authority to enter into a settlement agreement pursuant to which the industrial disability retirement ("IDR") benefits of employees of local public entity employers

1 are increased, and (2) whether CalPERS has the authority to pass on to defendant class members
2 the costs of the increased IDR benefits mandated by the settlement (“the defendant class issues”);
3 and

4 WHEREAS, the Court on August 2, 2002 granted summary judgment in favor of
5 CalPERS and against the defendant class on the defendant class issues (the August 2, 2002
6 order); and

7 WHEREAS, by a separate stipulation in the form of Attachment A, the defendant class
8 will seek to waive its right to appeal the Court’s rulings on the defendant class issues and any
9 other rulings made by the Court, including, without limitation, the rulings defining and certifying
10 the defendant class and the ruling joining the class; and

11 WHEREAS the EEOC, the private plaintiffs, CalPERS, and the State defendants (“the
12 parties”) entered in a Consent Decree in Partial Resolution of Lawsuit filed on August 3, 2001,
13 and now wish to pursue further settlement of this action on the terms and conditions described
14 below; and

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

18 WHEREAS the parties to this action wish to settle all issues in this Age Discrimination in
19 Employment Act (“ADEA”) litigation in a prompt and cost-effective manner that promotes
20 judicial economy; and

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

23 THEREFORE, the parties stipulate to and submit this Supplemental Consent Decree for
24 approval by the Court, as follows:

25 1. This Supplemental Consent Decree states the terms and conditions of a further
26 settlement agreement among the parties in addition to those described in the Consent Decree in
27 Partial Resolution of Lawsuit entered in this case on August 3, 2001. The Consent Decree in
28 Partial Resolution of Lawsuit shall remain in effect, except to the extent otherwise provided in

1 this Supplemental Consent Decree. If this Supplemental Consent Decree is rendered ineffective,
2 the Consent Decree in Partial Resolution of Lawsuit shall continue to govern this litigation.

3 2. The parties hereby agree that retroactive relief for beneficiaries who commenced
4 industrial disability retirements at any time on or after October 16, 1992 and their survivors as
5 provided by law for payment of IDR benefits upon a beneficiary's demise ("IDR survivors") shall
6 be fifty percent (50%) of the difference between their benefits received from October 16, 1992
7 through July 1, 2001 as limited by Section 21417 and the benefits they would have received
8 during that period if Section 21417 had not limited their benefits. This retroactive relief shall be
9 paid by CalPERS to these beneficiaries, or to their survivors as provided by law applicable to
10 such benefits, as quickly as reasonably possible, but no later than July 1, 2003. Charging Party
11 Diane Militano will be treated as though her entitlement began on October 16, 1992, and her
12 retroactive relief will be limited to the time period of October 16, 1992 to July 1, 2001 and shall
13 be paid by CalPERS as quickly as reasonably possible, but no later than July 1, 2003. CalPERS
14 shall by July 1, 2003 provide the EEOC with a list of the names of all individuals entitled to this
15 retroactive relief, their Social Security Numbers, the amount of relief for each and when paid, the
16 old allowance, the new allowance, the effective date, a copy of the letter sent at the time of
17 payment explaining what the payment is and how the calculation was made, the roll CalPERS
18 paid the new allowance in, and any further information as is necessary to establish that the
19 required benefit adjustments were made and paid. This information (except for the copy of the
20 letter) shall be provided in Excel spreadsheet form and in hard copy. CalPERS shall
21 communicate directly with plaintiffs' expert Barthius Prien and Associates ("Prien"), including
22 but not limited to making Chris Nishioka available to talk with Prien, as is reasonable to enable
23 Prien to assist plaintiffs in determining that the requirements of this paragraph have been
24 accomplished.

25 3. CalPERS shall recalculate and pay the benefit entitlements of Charging Party Diane
26 Militano and all industrial disability retirement recipients as of July 1, 2001 who commenced
27 industrial disability retirements from January 1, 1980 to July 1, 2001 and whose benefits have been
28 limited by Section 21417; this recalculation shall increase said benefits by not limiting them as

1 provided by Section 21417. Payments shall be made to IDR beneficiaries or their IDR survivors.
2 Said payments will take effect as of July 1, 2001. CalPERS shall also so recalculate and pay IDR
3 entitlements for all recipients who became recipients after July 1, 2001 without regard to current
4 Section 21417. Recalculated payments for industrial disability retirement recipients who became
5 recipients between July 1, 2001 and the present will take effect as of when they first became
6 recipients. CalPERS shall apply such recalculations to payments of all future IDR benefits to
7 recipients for whom recalculations were performed. CalPERS will proceed in good faith to process
8 these recalculations and pay these benefits as quickly as reasonably possible, but shall complete
9 them by April 1, 2003. These payments shall be paid by CalPERS to these beneficiaries, or to their
10 IDR survivors. CalPERS shall by April 1, 2003 provide the EEOC with a list of the names of all
11 individuals affected by the recalculation of benefit payments, their Social Security Numbers, the
12 amount of relief for each and when paid, the old allowance, the new allowance, the effective
13 date, a copy of the letter sent at the time of payment explaining what the payment is, the roll
14 CalPERS paid the new allowance in, and any further information as is necessary to establish that
15 the required benefit adjustments were made and paid. This information, except the letter, shall
16 be provided in Excel spreadsheet form and in hard copy. CalPERS shall also calculate the
17 industrial disability retirement benefits for all future recipients of such benefits without regard to
18 current Section 21417, except with regard to those recipients employed by local public entities
19 that opted out of the defendant class in this case. CalPERS shall communicate with plaintiffs'
20 expert Prien, including but not limited to making Chris Nishioka available to talk with Prien, as
21 is reasonable to enable Prien to assist plaintiffs in determining that the requirements of this
22 paragraph have been accomplished. CalPERS agrees to negotiate in good faith with those entities
23 who have opted out to attempt to bar any reductions mandated by current Section 21417. Should
24 these negotiations fail, CalPERS shall, by the effective date of any such contract for IDR
25 coverage, notify Raymond Cheung of the EEOC, or such person as the EEOC may later
26 designate, of the failure, to allow the EEOC to institute timely action to enforce the ADEA
27 against such reductions. Reports made to the EEOC under paragraphs 2 and 3 of this
28 Supplemental Consent Decree shall also be made to private plaintiffs' counsel, with said counsel

1 agreeing not to use any information so divulged about any individual for any purpose other than
2 ensuring compliance with this Decree. Notice of this settlement, in the form of Attachment B,
3 shall be prominently posted on CalPERS' website, including a prominent link to it displayed on
4 the initially displaying screen of the home page.

5 4. Plaintiffs and the EEOC waive any interest on the payment of IDR benefits required
6 by this decree up until July 1, 2003. Any benefits (retroactive or prospective) not paid by August
7 1, 2003 shall bear interest at the rate of 10 percent from July 1, 2003. If, despite CalPERS'
8 reasonable best efforts, circumstances not within CalPERS' control prevent payments by August
9 1, 2003, CalPERS may apply to this Court for relief from paying this interest.

10 5. All parties agree that this Supplemental Consent Decree shall be effective, as
11 provided herein, notwithstanding that some local public entities have opted out of the defendant
12 class and have not been joined as defendants. CalPERS represents that none of the entities who
13 remain opted out of the defendant class have, or have had since 1980, any public safety officer
14 employees.

15 6. CalPERS shall amortize the costs of this case over thirteen years and pass them on to
16 State of California employers and local public entity employers through the rate process.

17 7. The parties agree that the State of California, including those California entities for
18 whom the IDR recipients worked, shall not be liable for any obligation of any local public entity
19 arising out of this Decree, including obligations attributable to the defendant class.

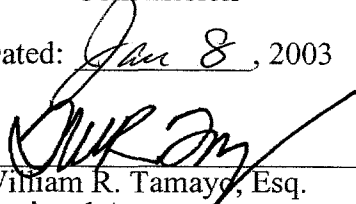
20 8. This Supplemental Consent Decree is contingent on the defendant class executing
21 and filing a full and final waiver, in the form of Attachment A, of its right, if any, to appeal all
22 decisions made in this case, and applying to the Court for guidance concerning whether any
23 notice to members of the defendant class should be given. This Supplemental Consent Decree
24 shall not be effective to any degree, and shall have no force and effect whatsoever, if a court
25 finally determines that the defendant class did not completely waive its right, if any, to appeal all
26 issues determined by the district court in this case. Notwithstanding the foregoing, this Decree
27 shall be fully effective and in force, or restored to full effectiveness, if (a) the district court's
28 August 2, 2002 order and the prior orders defining the scope of the class are upheld on appeal in


1 their entirety, or (b) the August 2, 2002 order is finally determined to be binding on all local
2 public entity employers who contracted with PERS for IDR benefits limited by Section 21417.

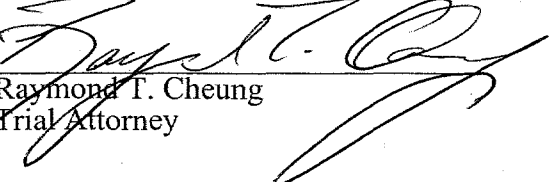
3 9. This Supplemental Consent Decree shall be filed with and entered as an Order
4 reviewed and approved by the Court, and the Court shall for five years retain jurisdiction to
5 enforce its provisions as set forth below. If any party believes that another party is violating its
6 obligations under this agreement, or believes a dispute has arisen as to the meaning of the
7 agreement, then the party shall give written detailed notice describing the claimed violation or
8 dispute to the other parties. The parties shall then attempt, within thirty days or such other time
9 as may be agreed to in writing, to resolve their differences over the claimed violation or disputed
10 meaning. If after such time the parties are unable to resolve said dispute, any party may file a
11 motion with the Court seeking a declaration determining whether there has been a violation, or
12 determining the meaning of the agreement, or both, and may simultaneously seek an appropriate
13 enforcement order. Any other party shall respond to the motion within the time allowed by the
14 Local Rules, unless the time is extended by agreement or court order. Upon the Court's
15 declaration and any enforcement order, the parties shall have a reasonable time, or such time as
16 the Court may direct, to perform their obligations as declared and ordered.

17
18 For the Plaintiff-Intervenor,
19 Equal Employment Opportunity
20 Commission

21 Dated: Jan 8, 2003

22 
23 _____
24 William R. Tamayo, Esq.
25 Regional Attorney

26 
27 _____
28 David F. Offen-Brown
Senior Trial Attorney



Raymond T. Cheung
Trial Attorney

For Defendants,
California Public Employees' Retirement
System, State, and State Employers

Dated: _____, 2003

By Their Attorney, Bill Lockyer
Attorney General

Miguel Neri
Supervising Deputy Attorney General

1 their entirety, or (b) the August 2, 2002 order is finally determined to be binding on all local
2 public entity employers who contracted with PERS for IDR benefits limited by Section 21417.

3 9. This Supplemental Consent Decree shall be filed with and entered as an Order
4 reviewed and approved by the Court, and the Court shall for five years retain jurisdiction to
5 enforce its provisions as set forth below. If any party believes that another party is violating its
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7 agreement, then the party shall give written detailed notice describing the claimed violation or
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9 as may be agreed to in writing, to resolve their differences over the claimed violation or disputed
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11 motion with the Court seeking a declaration determining whether there has been a violation, or
12 determining the meaning of the agreement, or both, and may simultaneously seek an appropriate
13 enforcement order. Any other party shall respond to the motion within the time allowed by the
14 Local Rules, unless the time is extended by agreement or court order. Upon the Court's
15 declaration and any enforcement order, the parties shall have a reasonable time, or such time as
16 the Court may direct, to perform their obligations as declared and ordered.

17

18 For the Plaintiff-Intervenor,
19 Equal Employment Opportunity
Commission

20 Dated: _____, 2003

21

22 _____
William R. Tamayo, Esq.
Regional Attorney

23

24 _____
David F. Offen-Brown
Senior Trial Attorney

25

26 _____
Raymond T. Cheung
Trial Attorney

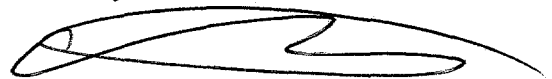
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28 _____
Arnett & EEOC v. PERS
Suppl. Consent Decree

For Defendants,
California Public Employees' Retirement
System, State, and State Employers

Dated: January 9th, 2003

By Their Attorney, Bill Lockyer
Attorney General



Miguel Neri
Supervising Deputy Attorney General

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For Plaintiffs,

Dated: JAN. 9, 2002

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

Dated: _____, 2002

Thomas E. Frankovich, Esq.

IT IS SO ORDERED AND APPROVED:

Dated: _____, 2002

Judge, United States District Court

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1 For Plaintiffs,

2 Dated: _____, 2003


3

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

5

6 Dated: 1/10/03, 2003

7



8 Thomas E. Frankovich, Esq.
Thomas E. Frankovich, A Professional Law Corp.

9


10

11 IT IS SO ORDERED AND APPROVED:

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13 Dated: January 29, 2003

14



Judge, United States District Court

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ATTACHMENT A

1 HENRY S. HEWITT, No. 40851
 ALICE M. BEASLEY, No. 56523
 2 ERICKSON, BEASLEY, HEWITT & WILSON, LLP
 483 Ninth Street, Suite 200
 3 Oakland, California 94607
 Telephone: (510) 839-3448
 4 Facsimile: (510) 839-1622

5 Attorneys for Defendant Class Representative
 CITY OF FREMONT

6 JEFFREY WERTHEIMER, No. 120378
 7 RUTAN & TUCKER, LLP
 611 Anton Boulevard, Fourteenth Floor
 8 Costa Mesa, California 92626-1950
 Telephone: (714) 641-5100
 9 Facsimile: (714) 546-9035

10 Attorneys for Defendant Class Representative
 CITY OF WEST COVINA

11
 12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15

16 RONALD ARNETT, et al.,

No. C 95 3022 CRB

17 Plaintiffs,

**DEFENDANT CLASS' WAIVER OF
 ALL APPEAL RIGHTS**

18 v.

19 CALIFORNIA PUBLIC EMPLOYEES'
 RETIREMENT SYSTEM (PERS), et al.,

20 Defendants.
 21
 22

23
 24
 25 **WAIVER OF ALL APPEAL RIGHTS BY THE DEFENDANT CLASS**

26 **FACTUAL RECITALS**

27 This Waiver of All Appeal Rights by the Defendant Class is based on the following
 28 facts:

- 1 1. The court joined all those local public entity employers that are "contracting
2 agencies," as defined by California Government Code section 20022 (local public
3 entity employers), as defendants through the formation of a Federal Rule of Civil
4 Procedure 23(b)(3) opt-out class ("the defendant class").
- 5 2. The City of Fremont and the City of West Covina have been designated as
6 representatives of the defendant class ("class representatives").
- 7 3. The defendant class was joined for the purpose of deciding two issues: (1)
8 whether CalPERS has the authority to enter into a settlement agreement pursuant
9 to which the industrial disability retirement (IDR) benefits of employees of local
10 public entity employers are increased, and (2) whether CalPERS has the
11 authority to pass on to defendant class members the costs of the increased IDR
12 benefits mandated by the settlement set forth in the consent decrees entered in
13 this case ("the defendant class issues").
- 14 4. The court on August 22, 2002 granted summary judgment in favor of CalPERS
15 and against the defendant class on the defendant class issues.
- 16 5. The EEOC, the private plaintiffs, CalPERS and the State defendants have made
17 the waiver by the class of all appeal rights a condition for settling the remaining
18 issues in this case pursuant to a Supplemental Consent Decree.
- 19 6. The class representatives have concluded that the settlement terms in the
20 Supplemental Consent Decree, including settling the restorative pay claim for
21 \$0.50 on the dollar and the plaintiffs' waiver of all interest claims, is in the best
22 interest of the class members.
- 23 7. Final settlement of this case with the resulting savings of the cost and expense of
24 continued litigation benefits the class members.

TERMS OF THE AGREEMENT

25 Based on the foregoing recitals and subject to the conditions set forth below, the class
26 representatives, on behalf of the defendant class, hereby fully and finally waive the class's right
27 to appeal the decisions made in this case, including, without limitation, the ruling on the
28

1 defendant class issues, the ruling defining and certifying the class, and the ruling joining the
2 class as a defendant.

3 This agreement to waive all appeal rights is null and void and of no force and effect
4 unless:

- 5 A. The court issues an order that there is no requirement under Rule 23(e) that
6 notice be given to the class members; or
7 B. the court orders that notice, in a form approved by the court, be given to the
8 class members under Rule 23(e); and that after notice is given and any objections
9 are considered by the court, the court approves this waiver of appeal and any
10 other matters covered by the notice.

11 This agreement to waive all appeal rights is also null and void and of no force and effect
12 if the court does not approve a Supplemental Consent Decree containing the terms set forth on
13 the record at the November 21, 2002 settlement conference with Magistrate Judge Joseph C.
14 Spero.

15

16 Dated: January 3, 2003

RUTAN & TUCKER LLP

17

18

By 

Jeffery Wertheimer

19

20

Attorneys for Defendant Class Representative
CITY OF WEST COVINA

21

22 Dated: January 2, 2003

ERICKSON BEASLEY HEWITT & WILSON, LLP

23

24

By 

Henry S. Hewitt

25

26

Attorneys for Defendant Class Representative
CITY OF FREMONT

27

28

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1 defendant class issues, the ruling defining and certifying the class, and the ruling joining the
2 class as a defendant.

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- 5 A. The court issues an order that there is no requirement under Rule 23(e) that
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9 are considered by the court, the court approves this waiver of appeal and any
10 other matters covered by the notice.

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12 if the court does not approve a Supplemental Consent Decree containing the terms set forth on
13 the record at the November 21, 2002 settlement conference with Magistrate Judge Joseph C.
14 Spero.

15
16 Dated: January __, 2003

RUTAN & TUCKER LLP

17
18 By _____
19 Jeffery Wertheimer

20 Attorneys for Defendant Class Representative
CITY OF WEST COVINA

21
22 Dated: January 13, 2003

ERICKSON BEASLEY HEWITT & WILSON, LLP

23
24 By _____
25 Henry S. Hewitt

26 Attorneys for Defendant Class Representative
CITY OF FREMONT

27
28 Q:\Fremont\Arnett v Cal PERS 685\Pld\Appeal Waiver.wpd

ATTACHMENT B

NOTICE TO "PUBLIC SAFETY" EMPLOYEES WHO ARE RECEIVING INDUSTRIAL DISABILITY RETIREMENT (IDR) BENEFITS THAT HAVE BEEN REDUCED UNDER CALIFORNIA GOVERNMENT CODE SECTION 21417.

As a result of litigation between the California Public Employees' Retirement System (CalPERS), the U.S. Equal Employment Opportunity Commission (EEOC), private plaintiffs, and a class of local public entities, a consent decree (settlement) has been reached which may entitle you to a recalculation of the Industrial Disability Retirement (IDR) benefits you have been receiving from CalPERS and, possibly, to retroactive benefits. In the past, your IDR benefits may have been reduced by the operation of California Government Code section 21417. The parties have agreed to a permanent injunction prohibiting the enforcement of section 21417 because the U.S. Court of Appeals for the Ninth Circuit has held that the statute may violate the federal Age Discrimination in Employment Act.

If your benefits were reduced because of Section 21417, the consent decree will affect you in one of the following ways:

1. If you are a state employee:

A. Your IDR benefits should have been recalculated effective July 1, 2001. By now you should be receiving a higher level of IDR benefits based on an allowance of 50 percent of your final compensation.

B. If your recalculation occurred after July 1, 2001, you should have been reimbursed so that your IDR payments since July 1, 2001 are based on an allowance of 50 percent of your final compensation.

C. If you first began receiving IDR benefits on or after October 16, 1992, you are entitled to retroactive relief for the period from October 16, 1992 or your effective retirement

date, whichever is later, to July 1, 2001. Retroactive relief will be fifty (50) percent of the difference between the benefits you actually received and those you should have received if section 21417 had not been in effect. CalPERS will pay you this retroactive relief no later than July 1, 2003.

2. If you are a local public entity employee:

A. Your IDR benefits will be recalculated so that you will be receiving a higher level of IDR benefits based on an allowance of 50 percent of your final compensation. CalPERS will complete this recalculation by April 1, 2003. Although this recalculation will occur in the future, it will be effective as of July 1, 2001. Accordingly, if you began receiving IDR benefits before July 1, 2001 or after July 1, 2001 but before the recalculation of your benefits, you will be reimbursed so that your IDR payments since July 1, 2001 are based on an allowance of 50 percent of your final compensation.

B. If you first began receiving IDR benefits on or after October 16, 1992, you are entitled to retroactive relief for the period from October 16, 1992 or your effective retirement date, whichever is later, to July 1, 2001. Retroactive relief will be fifty (50) percent of the difference between the benefits you actually received and those you should have received if section 21417 had not been in effect. CalPERS will pay you this retroactive relief no later than July 1, 2003.

If you have any questions about your rights under the consent decree, contact:

EEOC: David Skillman, Paralegal, 415/356-5087;

Private plaintiffs' counsel: Steven Pingel, 562/467-8908.

If you have any questions regarding the method of calculation or the amount of your benefits, contact CalPERS at 1-800-352-2238.