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Order of Final Approval (LARRIE GRANT
PLYMEL)

Alice D. Bonner
Superior Court of Fulton County

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resolution and directing that notice be sent to the Class of their right to object to the proposed resolution and of the hearing set by the Court for May 18, 2009;

WHEREAS the Court held a hearing on May 18, 2009, to determine whether to give final approval to the proposed resolution; and

WHEREAS the Court has decided to grant final approval to the proposed resolution, it is therefore **ORDERED, ADJUDGED AND DECREED:**

1. **Jurisdiction.** The Court has personal jurisdiction over all Class Members and has subject-matter jurisdiction over this Action.

2. **Class Notice.** After completing the necessary rigorous analysis, the Court finds that the notices attached to the May 1 Order and distribution of notice in accordance with the terms of the May 1 Order:

- (a) constituted the best practicable notice to Class Members under the circumstances of this Action;
- (b) was reasonably calculated, under the circumstances, to apprise Class Members of: (i) the proposed resolution; (ii) their right to object to any aspect of the proposed resolution (including the fairness, reasonableness or adequacy of the proposed resolution); (iii) their right to appear at the May 18 Hearing, either on their own or through counsel hired at their own expense; and (iv) the binding effect of the Court's ruling on the proposed resolution on Class Members, whether viewed by them as favorable or unfavorable;
- (c) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and

- (d) fully satisfied all applicable requirements of the Georgia Code, the Uniform Superior Court Rules, the Georgia Constitution, the United States Constitution (including the Due Process Clause), and any other applicable law.

3. **Proof of Compliance.** Class Counsel have submitted to the Court due and sufficient proof of compliance with the requirements of the May 1 Order with respect to notice to Class Members.

4. **Final Approval.** The proposed resolution has been entered into in good faith and is hereby fully and finally approved as fair, reasonable and adequate, and consistent with and in full compliance with all applicable requirements of the Georgia Code, the Georgia Constitution, the United States Constitution (including the Due Process Clause), the Uniform Superior Court Rules, and any other applicable law. The Parties and their counsel are hereby directed jointly to implement and consummate the proposed resolution as presented to the Court, *i.e.*, any further appeal that may be sought by writ of certiorari to the Court of Appeals' February 19, 2009 decision that affirmed in part and reversed in part this Court's Final Order and Judgment will be withdrawn or dismissed, and the matter will be permitted to become final on the terms and conditions provided in the opinion of the Court of Appeals. Pleadings submitted by the Parties through counsel implementing the resolution shall be filed as joint pleadings, and, pursuant to O.C.G.A. § 9-11-62(c), the Court **MODIFIES** the injunctive relief granted in its Final Order and Judgment to conform the directives contained therein to the periods of time for which the resolution permits recovery by Class Members.

This final approval is granted in the exercise of this Court's special authority and responsibility to supervise and manage class actions, and the Court's action is separate and apart from the merits of the action that are pending on appeal. This final approval is granted in light of a number of facts and considerations, including the following:

a. This is one of three class actions in this Court in which the Plaintiffs assert claims arising from failure by certain state retirement systems to properly calculate retirement benefits when a retiree chooses an "option plan" retirement. The other two class actions are Willis v. Employees Retirement System of Georgia, Civil Action No. 2007-CV-128923, and Anderson v. Public School Employees Retirement System of Georgia, Civil Action No. 2008-CV-154757.

Two of the questions to be resolved in the three cases are the correct statute of limitations to be applied to the claims of class members and the time at which the claims accrue.

b. After extensive briefing and argument, this Court ruled in its Final Order and Judgment dated February 29, 2008, on the statute of limitations and the time at which the claims of class members accrue. On February 19, 2009, the Court of Appeals of Georgia rendered its decision on appeal from this Court's Final Order and Judgment. The Court of Appeals disagreed with this Court's ruling on the statute of limitations and concluded that a six-year statute applies rather than a twenty-year statute. The Court of Appeals agreed with this Court's conclusion that the claims of class members accrue on a month-by-month basis. The Court of Appeals also issued a ruling on pre- and post-judgment interest and affirmed this Court's Order concerning attorneys' fees and costs of litigation. On

March 23, 2009, the Court of Appeals denied the parties' motions for reconsideration.

c. Under the Court of Appeals' rulings on the statute of limitations, certain Class Members who would have recovered under this Court's application of a twenty-year statute of limitations will not recover any amount. This group consists of Class Members that are the estates of TRS retirees and option plan beneficiaries who died before April 4, 1998, which is the date from which the six-year statute runs. On the other hand, the Court of Appeals' affirmance of month-by-month accrual permits Class Members who first received benefits before April 4, 1998 and lived past that date to recover. While the recovery of these Class Members will not include pre-April 4, 1998 underpayments, it will include benefits from April 4, 1998 to the present if they are still in life, or their estates will recover benefits from April 4, 1998 to their dates of death if they are not now in life. Notably, the ruling on accrual permits all living Class Members to receive adjustment of their future benefits. In contrast to these payments to Class Members that would occur under this Court's and the Court of Appeals' ruling on accrual, the Defendants' rejected theory of accrual would have cut off all recovery to any Class Member who first received benefits before the period of the six-year statute began.

d. If the Supreme Court were to agree to review the rulings of the Court of Appeals on writ of certiorari, such review would provide to some Class Members an opportunity to obtain a recovery that does not now exist under the six-year statute of limitations by reversing the Court of Appeals' rejection of the

twenty-year statute. Other Class Members would have an opportunity to enhance their recovery by this same reversal. On the other hand, the Defendants on further appellate review would have an opportunity not only to retain the reversal they obtained on the twenty-year statute in the Court of Appeals but also to extend it to the ruling on accrual and thus to deprive all Class Members (being about 10,000) for whom retirement benefits commenced before April 4, 1998 of *any* recovery based upon the Court of Appeals' ruling.

e. After having assessed the risks of further appeal, the parties agreed, subject to the procedures of O.C.G.A. § 9-11-23, to forego further pursuit of an appeal, provided they act mutually in this regard. The Court, on consideration of the proposed agreement, recognizes that some class members could benefit from an appeal if the Supreme Court were to rule that a twenty-year statute of limitations applies. The Court also observes that a substantial number of class members could lose the recovery that results from applying the Court of Appeals' ruling on accrual if the Supreme Court were to apply a six-year statute of limitations but were to disagree with the Court of Appeals on the time at which claims accrue. From its prior review and knowledge of the briefs on file in this Court, and from its review of the appellate record provided by Class Counsel, the Court recognizes that courts can differ on the answers to the questions now decided by the Court of Appeals and that the answers cannot be predicted with certainty. The Court concludes that this uncertainty affects both members of the Plaintiff Class and the Defendants.

f. The Court concludes that this risk of uncertain results, on balance, makes this case well-suited for an agreement between the parties on the terms proposed. Courts plainly could differ on the questions presented on the appeal (as evidenced by the differences between this Court's rulings and the Court of Appeals' rulings), and the outcome for either party from pursuing a further appeal cannot be predicted with certainty. The Court recognizes an appreciable risk to the existing substantial recovery on behalf of the Class on a further appeal, and it concludes that the resolution that the parties propose and that the Court approves appropriately accounts for and recognizes the risks of further appeal.

5. **Binding Effect.** The terms of the Court's Final Order and Judgment, as modified by this Order, shall be forever binding on the Plaintiff and all other Class Members, as well as their heirs, executors and administrators, successors and assigns, and anyone acting on behalf of Class Members or for their benefit, and those terms shall have *res judicata* and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons.

6. **Permanent Injunction.** All Class Members who have not been timely excluded from the Class, and anyone acting on their behalf or for their benefit, are hereby permanently barred and enjoined from: (a) filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction based on claims precluded by the Final Order and Judgment in this action, as modified by this Order; or (b) organizing or soliciting the participation of any such Class Members into a

separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit or other proceeding based on claims precluded by the Final Order and Judgment in this action, as modified by this Order.

The Court finds that issuance of this permanent injunction is necessary and appropriate in aid of the Court's jurisdiction over the action and to protect and effectuate the Court's Final Order and Judgment, as modified by this Order. Any person found in contempt of this injunction will be subject to sanctions.

7. **Objections to Resolution.** The Court provided all Class Members and a fair and adequate opportunity to object to the proposed settlement by either submitting written objections to the Court or by appearing for the final hearing on May 18. The Court received six written objections to the proposed resolution. The Court notes for the record that several Class Members also appeared at the final hearing. After being provided an opportunity to speak, the Court concluded that these Class Members appeared in order to ask clarifying questions about the impact of the proposed settlement on their potential recovery rather than to lodge formal objections. The Court, in approving the resolution of the parties, respectfully overrules the objections filed in compliance with the May 1 Order.

8. **Enforcement of Resolution.** Nothing in this Order shall preclude any action to enforce the terms of the resolution, nor shall anything in this Order preclude the Plaintiff or Class Members from recovering in this action if they are entitled to do so under the terms of the Final Order and Judgment, as modified by this Order.

9. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Order and to modify the terms of the injunction set out in its Final Order and Judgment.

Without affecting in any way the finality of its Final Order and Judgment as so modified, this Court expressly retains its jurisdiction as to all matters relating to the administration, enforcement and interpretation of its Final Order and Judgment as so modified, and for any other necessary purpose, including, without limitation:

(a) enforcing the terms and conditions of the Final Order and Judgment as so modified and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Final Order and Judgment as so modified (including, without limitation, whether a person or entity is or is not a Class Member and whether claims or causes of action allegedly related to this case are or are not barred by the Final Order and Judgment or this Order);

(b) entering such additional Orders as may be necessary or appropriate to protect or effectuate the Court's Final Order and Judgment and this Order and permanently enjoining Class Members from initiating or pursuing related proceedings; and

(c) entering any other necessary or appropriate Orders to protect and effectuate this Court's retention of continuing jurisdiction; provided, however, that nothing in this paragraph is intended to restrict the ability of the parties to exercise their rights under the Final Order and Judgment and this Order.

10. **No Admissions.** Entering into or carrying out the resolution approved by this Order, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed to be evidence of, an admission or concession as to the

Defendants' defenses and shall not be offered or received in evidence in any action or proceeding against any Party hereto in any court, administrative agency or other tribunal for any purpose whatsoever, except as evidence of the resolution or to enforce the provisions of this Court's Final Order and Judgment and of this Order; provided, however, that the Final Order and Judgment and this Order may be filed in any action against or by the Defendants to support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

Accordingly, it is hereby **ORDERED, ADJUDGED** and **DECREED** that the Court's Final Order and Judgment of February 29, 2008 is hereby modified as provided in this Order.

—Remainder of Page Left Intentionally Blank; Signature on following page—

SO ORDERED this 18 day of May, 2009

Alice D. Bonner
ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

Richard Sinkfield, Esq.
ROGERS & HARDIN
2700 International Tower, Peachtree Center
229 Peachtree Street, NE
ATLANTA, GA 30303-1602

Bobby Lee Cook, Esq.
COOK & CONNELLY
9899 South Commerce Street
P.O. Box 370
Summerville, Georgia 30747

Hardy Gregory Jr., Esq.
David Forehand, Jr., Esq.
DAVIS FOREHAND & LAWSON
602 16th Ave. E, Suite D
Cordele, GA 31015
229-276-1670
229-276-1680 fax
229-938-5156 cell

Thurbert Baker, Esq.
Dennis R. Dunn, Esq.
Annette Cowart, Esq.
Shellie Seinberg, Esq.
Christopher McGraw, Esq.
40 Capital Square, SW
Atlanta, GA 30334

Bryan Webb, Special Assistant Attorney General
233 E. Broad Street
P.O. Box 1884
Athens, Georgia 30603