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Order of Preliminary Approval and For Notice and Hearing (LARRIE GRANT PLYMEL)

Alice D. Bonner
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

LARRIE GRANT PLYMEL, *et al.*, **Plaintiffs,**	)	**CIVIL ACTION FILE NO. 2004-CV-84312**
v.	)	
TEACHERS RETIREMENT SYSTEM OF GEORGIA, *et al.*, **Defendants.**	)	**CLASS ACTION**

FILED IN OFFICE
MAY - 1 2009
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

ORDER OF PRELIMINARY APPROVAL AND FOR NOTICE AND HEARING

The Court has been advised that, on February 19, 2009, the Court of Appeals rendered a decision on the appeal from this Court's Final Order and Judgment of February 29, 2008. Since its initial decision, on March 23, 2009, the Court of Appeals denied motions for reconsideration and issued a substituted opinion. The Court of Appeals disagreed with this Court's ruling on the statute of limitations to be applied to this case 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 rulings on interest and attorneys' fees.

The parties have advised the Court that they will forego further pursuit of an appeal to the Supreme Court of Georgia, provided they act mutually. Class Counsel, on examining whether or not to seek to take a further appeal, have recognized that some class members could benefit from an appeal if the Supreme Court were to rule that a twenty-year statute of limitations applies. However, 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. In light of the differing potential impacts of the appeal on class members, the uncertainty and inability to predict the outcome of a further appeal, and the risk that certain benefits presently granted to class members under current rulings could be lost, Class Counsel have asked this Court, in the exercise of its authority to supervise the handling of a class action, to consider whether this case may be resolved by the Plaintiffs entering into an agreement with the Defendants whereby 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. Class Counsel recommend that the Court approve such a resolution.

The Court recognizes the difficulty inherent in the question presented for consideration. The Court has reviewed the Court of Appeals' opinion. From its prior review and knowledge of the briefs on file in this Court, and from its review of the copies of the appellate briefs provided to it 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. The Court further concludes preliminarily that, in the circumstances of this case, this uncertainty, on balance, makes this case well-suited for an agreement between the parties on the terms proposed. Accordingly, the Court preliminarily approves the proposed agreement (that further appeal not be pursued and the matter be permitted to become final on the terms and conditions provided in the opinion of the Court of Appeals). The Court therefore concludes that

it is proper and appropriate to send notice to class members and provide them with an opportunity to formally submit their objections to such a resolution.

Accordingly, the Court directs that notice be sent to class members as provided in this Order, that objections be submitted as provided in this Order, and that the matter shall come on for hearing on May 18, 2009, at 10:00 a.m., in Courtroom 9J of the Fulton Superior Court. In connection therewith:

1. The Garden City Group, Inc. ("GCG") shall promptly and expeditiously mail to class members (by first class mail) the notice attached hereto. GCG shall use the list previously used to provide notice of the pendency of this action and of certification of the class and shall add to that list information obtained in the course of administering that prior notice and other matters in this action as well as such additional information as Class Counsel and TRS may provide, with the goal and purpose of providing the most extensive and reliable distribution of the notice.

2. GCG shall also make the notice attached hereto available by downloading from the website www.trssuit.com, by toll-free telephone request, and by mail request to GCG. GCG shall send the notice attached hereto to each person who requests such notice from GCG promptly after GCG receives the request. To the extent practicable in the time available before the hearing scheduled by this Order, GCG shall also: (a) re-mail any notice returned by the United States Postal Service as undeliverable with a forwarding address; (b) research addresses for any notice returned without a forwarding address or retain an address research firm to research such addresses; and (c) re-mail a notice to any class member for whom an updated address is discovered through such research promptly after GCG receives the updated address. In addition, GCG shall conduct a computerized database search to identify, to the extent

reasonably practicable, the estate representative or a close relative of any deceased option-plan retiree or deceased option-plan beneficiary for whom such estate representative or close relative has not been identified; provided, however, that GCG, in the exercise of its reasonable discretion, may conclude that the similar search conducted pursuant to the Court's Order of October 22, 2007, need not be repeated in its entirety or at all in light of the recent date of that search, and it may conclude that a substantially more limited search or no search need be conducted. At the conclusion of the search if it is undertaken, a copy of the notice attached hereto shall be mailed to the estate representative or close relative identified by the search if such notice has not already been mailed to such person. It is further provided that failure of either a search pursuant to the terms of this Order or of the Court's Order of October 22, 2007 to identify an estate representative or a close relative shall in no way invalidate the propriety of the notice directed in this Order or in the Court's October 22, 2007 Order.

3. GCG shall promptly and expeditiously publish the notice attached hereto on two separate days in the ten (10) newspapers published in Georgia with the highest circulation in the State of Georgia.

4. GCG shall promptly and expeditiously add to the website www.trssuit.com a copy of this Order, of the notice attached hereto, of the Court of Appeals' order denying the motions for reconsideration and issuing a substituted opinion for the original opinion dated February 19, 2009, and of the Court of Appeals' substituted opinion. These items shall be displayed prominently on the website, with a notation that they are important developments and with a clear statement of the deadline for responding to the notice.

5. Upon compliance with the foregoing paragraphs 1-4, GCG shall promptly provide Class Counsel with due proof of such compliance. Class Counsel shall in turn submit such proof to the Court in connection with the scheduled hearing.

6. The Court finds as a matter of fact that GCG is a firm that regularly provides class action administration services and is qualified and authorized to provide services to carry out the requirements of this Order.

7. Having considered, among other factors: (a) the cost of giving notice by various methods; (b) the resources of the parties; (c) the stake of each class member; (d) the terms of the Court's prior order of October 22, 2007 directing notice (which notice the Court is advised has been implemented), and (e) the time remaining within which to effectuate the decision of whether or not to pursue a further appeal, the Court finds that notice given in the form and manner provided in the foregoing paragraphs of this Order is the best practicable notice and is reasonably calculated, under the circumstances, to apprise class members of the Court of Appeals' rulings and of the question presented as to whether or not a further appeal should be pursued. The Court further finds that the notice attached hereto is written in sufficiently simple terminology to be readily understandable by class members. In sum, the Court finds that the proposed notice text and methodology are reasonable; that they constitute due, adequate and sufficient notice to all persons entitled to be provided with notice; and that they meet 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.

8. Any class member who complies with the requirements of this paragraph may object to the proposed resolution. The class member may assert such objections either on his or

her own or through an attorney hired at his or her expense. Any class member who wishes to so object must file with the Clerk of Court and deliver to Class Counsel and Defendants' Counsel a written statement of objection that references this action and that also contains a statement of each objection being made and a statement of whether the class member or his or her attorney intends to appear at the hearing. The objection should be filed with the Clerk by 5:00 p.m. on May 14, 2009, and delivered to Class Counsel and Defendants' Counsel at the same time at the addresses provided in the notice attached hereto. Any member of the Class who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to taking or not taking a further appeal, and any untimely objection shall be barred.

9. If a class member hires an attorney to represent him or her, the attorney must file a notice of appearance with the Clerk of Court by 5:00 p.m. on May 14, 2009, and deliver a copy to Class Counsel and Defendants' Counsel at the same time at the addresses provided in the notice attached hereto or the attorney shall be barred from appearing at the hearing.

10. Any objection filed pursuant to Paragraph 8 of this Order may be deemed frivolous, and the Court reserves the right to award appropriate attorneys' fees, costs and expenses to Class Counsel or Defendants' Counsel.

11. Any class member who fails to comply with the orders of the Court, including the requirements set forth in Paragraph 8 of this Order, shall waive and forfeit any and all rights he or she may have to appear separately or to object and shall be bound by the decision of whether or not to resolve this matter.

12. Defendants' Counsel and Class Counsel shall serve on each other and on all other persons who have filed notices of appearance, at or before the hearing, any further documents in support of whether a resolution should or should not be agreed to.

13. The Court reserves the right to continue the hearing without further written notice. If the hearing is continued from the currently scheduled date of May 18, 2009, information regarding a rescheduled hearing will be posted on the website www.trssuit.com.

SO ORDERED this 1st day of ~~April~~ May, 2009.

Alice D. Bonner

ALICE D. BONNER
Senior Judge, Superior Court of Fulton County,
Business Case Division

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

LARRIE GRANT PLYMEL, *et al.*, **Plaintiffs,**	)	**CIVIL ACTION FILE NO. 2004-CV-84312**
v.	)	
TEACHERS RETIREMENT SYSTEM OF GEORGIA, *et al.*, **Defendants.**	)	**CLASS ACTION**

NOTICE OF HEARING IN CLASS ACTION ON MAY 18, 2009
AND OF OBJECTIONS DUE ON MAY 14, 2009

A court authorized this notice. This is not a solicitation from a lawyer.

This notice relates to a class action in which retired members of the Teachers Retirement System of Georgia (TRS) who selected an option plan retirement seek to recover for miscalculation of their benefits. The class includes retirees who retired on or after August 1, 1983 but before February 1, 2003; persons named to receive benefits after those retirees' deaths if such persons survived the retirees who named them and in fact received benefits; beneficiaries of TRS members who died in service before retiring; and the estates of these persons. The Superior Court has previously ordered that notice be provided to class members about the case. You may already have received that notice, but if you have not or if you need an additional copy, you may obtain one by going to the website, www.trssuit.com, or by calling 1-888-420-1664. You should review that notice for additional background and information.

Two of the questions to be resolved in this class action are (1) the correct statute of limitations to be applied to the claims of class members; and (2) the time at which the statute of limitations begins to run on the claims of class members. Statutes of limitations are provisions that cut off or preclude a claim that arose at a time that, under the law, is considered to have been too long ago to be the subject of a lawsuit.

In this case, a number of class members have already received adjustments to their benefits because their claims fall within the period of a six-year statute of limitations that TRS does not contest. Resolution of the case for a number of other class members has been delayed pending the results of an appeal on the questions of (1) whether a longer twenty-year statute of limitations should be applied to the claims of the remaining class members; and (2) when the statute of limitations begins to run.

The Court of Appeals of Georgia has reached a decision that will provide for payments to class members for amounts that they should have been paid in the six years before the case was filed and amounts that they should have been paid in the years since the case was filed. In addition, the future benefits of all living class members would be eligible to be adjusted. The decision would also, however, cut off or limit the claims of some class members. The Court of Appeals also ruled on the rate of interest to be paid by TRS and on attorneys' fees to be paid from funds recovered for the Class.

The parties propose to resolve this matter by leaving the Court of Appeals' decision in place rather than by pursuing a further appeal to the Supreme Court of Georgia. This proposal is before the Superior Court for consideration and is the reason for this notice.

If you have already received an adjustment to your benefits because of this class action, the proposed agreement will not result in any reduction of the benefits that you have already received or are currently receiving. However, the agreement may result in your receiving an *additional* payment for added interest on underpaid back benefits that you have already received. Otherwise, the proposed agreement does not pertain to you.

If you are a class member and have not already received an adjustment to your benefits because of this class action, you should read the following carefully as the question before the Superior Court could affect whether you will be eligible for an adjustment to your benefits and, if so, the amount of any adjustment that may be available to you.

The Court of Appeals' Decision on the Statute of Limitations. The Court of Appeals ruled on February 19, 2009 that class members' claims are subject to a six-year statute of limitations. The Court of Appeals also ruled that the statute of limitations begins to run (or operates) such that, even if class members first began to receive benefits more than six years before the case was filed, they can recover amounts that they should have been paid beginning six years before the case was filed and coming forward to the present time. They can also recover an upward adjustment of their future benefits. Under the Court of Appeals' ruling, class members will not recover any amounts relating to benefits paid more than six years before the case was filed.

On March 23, 2009, the Court of Appeals denied the parties' requests that it should reconsider its rulings on the statute of limitations. You can review a copy of the Court of Appeals' opinion at the website at www.trssuit.com.

This case was filed on April 4, 2004 so that the date of April 4, 1998 begins the time for which recoveries are permitted under the Court of Appeals' decision. Under the Court of Appeals' ruling, class members who retired before April 4, 1998, as well as beneficiaries who first received benefits before April 4, 1998, should be able to seek some amount of increased back benefits but only for the period since April 4, 1998, as well as an adjustment of their future benefits. No estate of any TRS retiree or beneficiary who received benefits before April 4, 1998 and who also died before April 4, 1998 will receive any recovery under the Court of Appeals' ruling.

The following examples illustrate how the decision would be applied. They don't address all possible circumstances and are provided to assist with consideration of the impact of the decision on class members' individual circumstances:

> Example 1. If a TRS retiree retired on January 1, 1995, and is still living, TRS would be responsible for underpayments accruing to this retiree, with interest, from April 4, 1998 through the date of TRS' payment. In addition, TRS would be responsible for future monthly increases to the retiree.

Example 2. If a TRS retiree retired on January 1, 1995 and died on January 1, 2000 but his or her beneficiary is alive and receiving monthly payments, TRS would be responsible to the estate of the deceased TRS retiree for underpaid back benefits from April 4, 1998 through January 1, 2000, and TRS would be responsible to the retiree's beneficiary for underpaid back benefits accruing from January 1, 2000 until the time of payment. In addition, TRS would be responsible for future monthly increases to the retiree's beneficiary.

Example 3. If a TRS member died in service in 1995 before retiring and the member's death-in-service beneficiary is still in life, TRS would be responsible to the beneficiary for all underpaid back payments accruing from April 4, 1998 through the time of payment, and TRS would also be responsible for future increases to the beneficiary.

Example 4. If the TRS retiree retired on January 1, 1990 and died on February 1, 1995, and the retiree's sole beneficiary died on January 1, 1998, no payments would be owed to the estate of either the retiree or the beneficiary.

Example 5. If a TRS member retired on or after May 1, 1998, TRS would be responsible for all underpaid back benefits, and TRS would also be responsible for future increases to the retiree, if the retiree is still living.

The Proposed Agreement. Both sides in the case could pursue a request that the Georgia Supreme Court accept a further appeal, and the Supreme Court would decide whether to accept the appeal or not. For example, the Plaintiffs could ask the Supreme Court to consider whether the twenty-year statute of limitations should be applied instead of the six-year statute of limitation. The Defendants could ask the Supreme Court to consider whether the Court of Appeals' ruling on when the statute of limitations begins to run is correct. If the Supreme Court were to consider either or both of these questions, its rulings could substantially alter the outcome for a number of class members.

The Defendants are willing **not** to pursue a further appeal if the Plaintiffs will also **not** pursue a further appeal. Class Counsel, on examining whether or not to pursue a further appeal, have recognized that some class members could benefit from an appeal if the Supreme Court were to rule that a twenty-year statute of limitations applies. However, a number of class members could lose the recovery that results from applying the Court of Appeals rulings 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 the statute begins to run. In light of differing potential impacts of the appeal on class members, the uncertainty and inability to predict the outcome of a further appeal, and the risk that substantial benefits presently granted to class members under current rulings could be lost, Class Counsel have asked the Superior Court, in the exercise of its authority to supervise the handling of a class action, to consider whether or not this action may be resolved by Plaintiffs making an agreement with the Defendants whereby any further appeal will be dismissed or withdrawn and the matter will be permitted to become final on the terms and conditions provided in the opinion of the Court of Appeals. Class Counsel have recommended that the Superior Court approve an agreement on these terms. If the Superior Court approves such an agreement and that approval becomes final, then no party to the case will pursue an appeal from the Court of Appeals' decision.

Both the Plaintiffs and the Defendants have filed requests that ask the Supreme Court to consider taking a further appeal. These requests have been filed so that the time to do so will not expire while the

Superior Court is considering the proposed agreement. If the proposed agreement is approved and that approval becomes final, the Plaintiffs and the Defendants will seek to withdraw or dismiss their requests.

The Superior Court has preliminarily approved the proposed agreement and has directed that class members be given this notice and an opportunity to be heard on the question of whether to finally approve the agreement. You can review and obtain a copy of the Superior Court's Order at the website at www.trssuit.com. By following the procedures described below, class members can file objections to the proposed agreement, and they may also appear at the hearing the Superior Court has set at 10:00 a.m. on May 18, 2009, in Courtroom 9J of the Superior Court, 136 Pryor Street, Atlanta, Georgia 30316. Further requirements for attorneys are contained in the Superior Court's Order. If you don't object and the Superior Court finally approves the agreement, you will be bound by its decision.

If class members wish to file objections or appear, they should file with the Clerk of Court and deliver to Class Counsel and Defendants' Counsel, at the addresses provided below, a written objection which references the name and case number that appears at the beginning of this Notice and that also contains a statement of each objection being made and a statement of whether you intend to appear at the hearing. Class members may object or appear either on their own or through an attorney hired at their individual expense. **The objection should be filed with the Clerk by 5:00 p.m. on May 14, 2009 and delivered to Class Counsel and Defendants' Counsel at the same time. Further requirements for attorneys are contained in the Superior Court's Order.** The addresses to use are as follows:

Court	Class Counsel	Defense Counsel
Clerk of Court Superior Court of Fulton County Attention: _____ [Add address]	David A. Forehand, Jr., Esq. Gregory & Forehand 602 East 16th Avenue Suite D Cordele, GA 31015 Richard H. Sinkfield, Esq. Rogers & Hardin LLP 2700 International Tower 229 Peachtree St., NE Atlanta, GA 30303	Annette M. Cowart, Esq. Senior Assistant Attorney General Christopher A. McGraw, Esq. Assistant Attorney General Office of the Attorney General 40 Capital Square, S.W. Atlanta, GA 30334