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Final Order and Judgment (WILLIAM A. WILLIS)

Alice D. Bonner
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WILLIAM A. WILLIS, *et al.*,	)(	
	)(	CIVIL ACTION
Plaintiffs,	)(	FILE NO. 2007-CV-128923
	)(	
v.	)(	
	)(	
EMPLOYEES RETIREMENT SYSTEM OF GEORGIA, *et al.*,	)(	
	)(	CLASS ACTION
	)(	
Defendants.	)(	
	)(	

FINAL ORDER AND JUDGMENT

WHEREAS the Plaintiff, individually and as Class Representative, and the Defendants entered into a Settlement Agreement, with exhibits (collectively, the "Settlement Agreement"), dated May 1, 2009 to settle this Action; and

WHEREAS the Court entered a Preliminary Approval Order dated May 4, 2009, ordering First-Class Mail Notice and Publication Notice to Class Members and follow-up First-Class Mail Notice, scheduling a Fairness Hearing for July 8, 2009, and providing Class Members with an opportunity to object to the proposed settlement; and

WHEREAS the Court held a Fairness Hearing on July 8, 2009, to determine whether to give final approval to the proposed settlement; and

WHEREAS the Court has decided to grant final approval to the proposed settlement, dismissing the Class Members' claims (among other things).

Based on the submissions of the Parties and Class Members and the Fairness Hearing, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. **Incorporation of Other Documents.** This Final Order and Judgment incorporates and makes a part hereof:

(a) the Settlement Agreement submitted to this Court on May 1, 2009;

(b) the exhibits to the Settlement Agreement; and

(c) the Court's Preliminary Approval Order.

2. **Capitalized Terms.** Capitalized terms used in this Order but not defined shall have the meaning ascribed to them in the Settlement Agreement.

3. **Jurisdiction.** The Court has personal jurisdiction over all Class Members and has subject-matter jurisdiction over this Action including, without limitation, jurisdiction to approve the proposed settlement and dismiss this Action.

4. **Class Certification.** The Court has previously, in its Order of August 27, 2007, certified the Class as follows:

> All member beneficiaries and beneficiaries designated by members pursuant to O.C.G.A. § 47-2-121, and the estates of both groups to the extent they can be identified and located by Plaintiffs' counsel, who are owed either back-pay of benefits or prospective future correction of benefits, or both, in accordance with the ruling of the Georgia Supreme Court in its Order of October 30, 2006, *Plymel v. Teachers Retirement System of Georgia,* 281 Ga. 409, 637 S.E.2d 379 (2006), which the parties acknowledge constitutes binding precedent in this action, establishing that ERS has calculated optional retirement benefits that were not actuarially equivalent to the benefits otherwise payable to those beneficiaries had they selected the maximum plan of retirement upon their retirements.

A list of those persons who have excluded themselves from the Class and who therefore are not Class Members and are not bound by this Final Order and Judgment is on file with the Court and is incorporated herein and made a part hereof.

5. **Adequacy of Representation.** After conducting a rigorous analysis of the requirements of O.C.G.A. § 9-11-23(a)(4), the Court finds that Class Counsel and the Class

Representative have fully and adequately represented the Class for purposes of entering into and implementing the settlement and have satisfied the requirements of O.C.G.A. § 9-11-23(a)(4).

6. **Class Notice.** After completing the necessary rigorous analysis, the Court finds that the First-Class Mail Notice, Publication Notice and distribution of Class Notice Package in accordance with the terms of the Settlement Agreement and this Court's Preliminary Approval Order and, in addition, the notices provided for in this Court's Order of September 4, 2008 and distribution of those notices in accordance with the terms of the Court's Orders of September 4 and 25, 2008:

(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 pendency of this Action; (ii) the certification of the Class; (iii) their right to exclude themselves from the Class; (iv) the proposed settlement; (v) their right to object to any aspect of the proposed settlement (including the fairness, reasonableness or adequacy of the proposed settlement, the adequacy of representation by Plaintiff or Class Counsel, or the award of attorneys' fees, expenses of litigation, expenses of notice and of administration of the settlement, and an incentive award to the Class Representative); (vi) their right to appear at the Fairness Hearing, either on their own or through counsel hired at their own expense; and (vii) the binding effect of Orders and the Final Order and Judgment in this Action, whether favorable or unfavorable, on all persons who do not request exclusion from the Class;

(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.

7. **Final Settlement Approval.** The terms and provisions of the Settlement Agreement, including all exhibits, have been entered into in good faith and are 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, and in the best interests of each of the Parties and the Class Members. The Parties and their counsel are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions.

8. **Binding Effect.** The terms of the Settlement Agreement and of this Final Order and Judgment 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, to the extent (and only to the extent) those claims, lawsuits or other proceedings involve claims that are released, waived and precluded by the Release.

9. **Release, Covenant and Preclusion.** The Release, which is set forth in the Settlement Agreement, is expressly incorporated herein in all respects and is effective as of the date of this Final Order and Judgment. In return for the consideration provided in the Settlement

Agreement, the Plaintiff, Class Members and all other Releasors release and discharge the Releasees and agree as follows:

a. Plaintiff and all other Class Members, on their behalf and on behalf of all other Releasors, release, acquit and forever discharge the Releasees from any and all past and present actions, suits, causes of action, claims, damages, awards, equitable, legal and administrative relief, interest, demands or rights, whether class, individual or otherwise, including any claims for costs, expenses, penalties, or fees (including attorneys' fees, expert fees, and consulting fees), for any kind of relief whatsoever (including injunctive relief, monetary relief, damages, punitive damages, restitution, reimbursements, disgorgement, and economic injury) that are based upon the failure of the Defendants to use the correct mortality tables to calculate option-plan retirement benefits for Class Members in accordance with the decision of the Supreme Court of Georgia in Plymel v. Teachers Retirement System of Georgia or upon the application to the calculation of such benefits of any rule or resolution of ERS or its Board that imposes a limit of ninety per cent (90 %) of a member's highest salary or compensation on the amount of retirement benefits ERS may pay. This release shall not extend to any other claim of any Class Member relating to the calculation or determination of benefits owed or claimed to be owed by ERS to such Class Member, including, without limitation, any claim relating to ERS' formulas for calculation of benefits; to any error or claimed error in calculating option-plan retirement benefits other than the error of using incorrect mortality tables or imposing a limit of ninety per cent (90 %) of a member's highest salary or compensation on the amount of retirement benefits; or to application of any limitation on the size or amount of retirement benefits other than the limit of ninety per cent (90 %) of a member's highest salary of compensation. By excluding matters from the scope of this release, the Parties do not agree or intend to suggest that meritorious claims relating to such matters may exist but rather agree that such matters (including not only the specific example provided above but also the other more generally described matters above) are outside the scope of this Action and are preserved, if any such claims exist;

b. Plaintiff and all other Class Members, on their own behalf and on behalf of all other Releasors agree, covenant and acknowledge that neither they nor anyone acting on their behalf shall now or hereafter initiate, participate in, maintain, or otherwise bring any action, suit, cause of action, claim, or demand, either directly or indirectly, derivatively, on their own behalf, or on behalf of the Class or the general public, or any other person or entity, against the Releasees based upon the failure of the Defendants to use the correct mortality tables to calculate option-plan retirement benefits for Class Members in accordance with the decision of the Supreme Court of Georgia in Plymel v. Teachers Retirement System of Georgia or upon the application to the calculation of such benefits of any rule or resolution of ERS or its Board that imposes a limit of ninety per cent (90 %) of a member's highest salary or compensation on the amount of retirement benefits ERS may

pay. This agreement, covenant and acknowledgment shall not extend to any other claim of any Class Member relating to the calculation or determination of benefits owed or claimed to be owed by ERS to such Class Member, including, without limitation, any claim relating to ERS' formulas for calculation of benefits; to any error or claimed error in calculating option-plan retirement benefits other than the error of using incorrect mortality tables or imposing a limit of ninety per cent (90 %) of a member's highest salary or compensation on the amount of retirement benefits; or to application of any limitation on the size or amount of retirement benefits other than the limit of ninety per cent (90 %) of a member's highest salary of compensation. By excluding matters from the scope of this covenant and acknowledgment, the Parties do not agree or intend to suggest that meritorious claims relating to such matters may exist but rather agree that such matters (including not only the specific example provided above but also the other more generally described matters above) are outside the scope of this Action and are preserved, if any such claims exist; and

c. Plaintiff and all other Class Members and all the other Releasors, and anyone acting on their behalf or for their benefit, without limitation, are precluded and estopped from bringing any action, suit, cause of action, claim, or demand in the future based upon the failure of the Defendants to use the correct mortality tables to calculate option-plan retirement benefits for Class Members in accordance with the decision of the Supreme Court of Georgia in Plymel v. Teachers Retirement System of Georgia or upon the application to the calculation of such benefits of any rule or resolution of ERS or its Board that imposes a limit of ninety per cent (90 %) of a member's highest salary or compensation on the amount of retirement benefits ERS may pay. This preclusion and estoppel shall not extend to any other claim of any Class Member relating to the calculation or determination of benefits owed or claimed to be owed by ERS to such Class Member, including, without limitation, any claim relating to ERS' formulas for calculation of benefits; to any error or claimed error in calculating option-plan retirement benefits other than the error of using incorrect mortality tables or imposing a limit of ninety per cent (90 %) of a member's highest salary or compensation on the amount of retirement benefits; or to application of any limitation on the size or amount of retirement benefits other than the limit of ninety per cent (90 %) of a member's highest salary of compensation. By excluding matters from the scope of this preclusion and estoppel, the Parties do not agree or intend to suggest that meritorious claims relating to such matters may exist but rather agree that such matters (including not only the specific example provided above but also the other more generally described matters above) are outside the scope of this Action and are preserved, if any such claims exist.

The Court further finds and determines that:

a. Nothing in the Release shall be deemed (1) to release a Class Member's right to assert any claims or causes of action that arise from acts, facts, or circumstances

arising exclusively after February 28, 2007; or (2) to preclude any action to enforce the terms of the Agreement;

b. Nothing in the Release shall be deemed to release a Class Member's right to assert any claims or causes of action that relate to the calculation or determination of benefits owed or claimed to be owed by ERS to such Class Member other than the claim that the calculation or determination is not correct because of the failure of the Defendants to use the correct mortality tables to calculate option-plan retirement benefits for Class Members in accordance with the decision of the Supreme Court of Georgia in Plymel v. Teachers Retirement System of Georgia or because of the application to the calculation of such benefits of any rule or resolution of ERS or its Board that imposes a limit of ninety per cent (90 %) of a member's highest salary or compensation on the amount of retirement benefits ERS may pay; and

c. The Release may be raised as a complete defense to and will preclude any action or proceeding that is released, waived and precluded by the Release.

10. **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 released, waived and precluded by the Release; 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 released, waived and precluded by the Release. 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. Any person found in contempt of this injunction will be subject to sanctions. Any Releasee who must seek from the Court the compliance of a Releasor who is in violation of this injunction is

entitled to reimbursement of his or her or its attorneys' fees incurred as a result of seeking such compliance.

11. **Objections to Settlement.** The Court provided all Class Members and their representatives who complied with the requirements for objections and appearance at the Fairness Hearing set forth in the Preliminary Approval Order a fair and adequate opportunity to object to the proposed settlement.

12. **Enforcement of Settlement.** Nothing in this Final Order and Judgment shall preclude any action to enforce the terms of the Settlement Agreement, nor shall anything in this Final Order and Judgment preclude the Plaintiff or Class Members from participating in the settlement if they are entitled to do so under the terms of the Settlement Agreement.

13. **Attorneys' Fees and Expenses.** Class Counsel's application for an award for attorneys' fees, expenses of litigation, and an incentive award for the Class Representative is granted for the reasons stated in the Court's separate Order prepared in accordance with *Friedrich v. Fidelity Nat'l Bank*, 247 Ga. App. 704, 707-08, 545 S.E.2d 107, 110 (2001). As set out in the separate Order, the Court awards 25% of the common fund as the Fee and Expense Award. The Court further orders that the expenses of notice and administration of the settlement and the incentive award to the Class Representative shall have first priority of payment from the Fee and Expense Award, and the remainder shall be paid to Class Counsel for their expenses of litigation and fee award. Within thirty (30) days of entry of this Order, the Settlement Administrator shall account to Class Counsel for fees and expenses already deducted from or allocated to the Fee and Expense Fund or the Fee and Expense Award and shall estimate the reasonable expenses that it expects will be incurred over the remaining period of administering Settlement Sum # 1 and any other funds that the Settlement Administrator has by that time

received under the Settlement Agreement. The Settlement Administrator shall also within this same time period (1) set aside from the Fee and Expense Award an amount equal to twice the amount of its estimate and hold that sum from which to make payment of expenses, if any; (3) set aside from the Fee and Expense Award the amount of the incentive award to the Class Representative; and (4) disburse to Class Counsel, pursuant to the directions of Class Counsel, the remainder of the funds that it then holds that are part of the Fee and Expense Award. Within thirty (30) days of receipt by the Settlement Administrator from ERS of other or additional funds under the Settlement Agreement and this Order, the Settlement Administrator shall estimate the reasonable expenses that it expects will be incurred over the period of administering such funds under the Settlement Agreement. The Settlement Administrator shall provide its estimate to Class Counsel, and, within thirty (30) days of providing such estimate, the Settlement Administrator shall (1) set aside from the Fee and Expense Award an amount equal to twice the amount of its estimate and hold that sum from which to make payment of expenses, if any; and (2) disburse to Class Counsel, pursuant to the directions of Class Counsel, the remainder of such other or additional funds that it then holds that are part of the Fee and Expense Award.

14. **No Other Payments.** The preceding paragraph of this Order covers, without limitation, any and all claims for attorneys' fees and expenses of litigation, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Class Members, or incurred by Plaintiff or the Class Members, or any of them, in connection with or related in any manner to this Action, the settlement of this Action, the administration of such settlement, or the claims released, waived and precluded by the Release except to the extent otherwise specified in this Order and the Settlement Agreement.

15. **Incentive Award to the Class Representative.** Plaintiff Willis is hereby awarded an incentive award as Class Representative in the amount of seventy-five thousand dollars ($75,000.00), in addition to any amount that he is owed as a Class Member. The incentive award is to be paid by the Settlement Administrator within ten (10) business days after the Final Settlement Date, subject to any conditions set forth in the Settlement Agreement. Any other amount due to the Class Representative (for example, any back benefits or future adjustment of benefits) is to be paid as provided in the Settlement Agreement.

16. **Modification of Settlement Agreement.** The Parties are hereby authorized, without further approval from the Court and without further notice to the Class, to agree to and adopt such amendments to, and modifications and expansions of the Settlement Agreement as are consistent with this Final Order and Judgment and that do not limit the rights of Class Members under the Settlement Agreement.

17. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Final Order and Judgment. Without affecting in any way the finality of this Final Order and Judgment, this Court expressly retains jurisdiction as to all matters relating to the administration, consummation, enforcement and interpretation of the Settlement Agreement and of this Final Order and Judgment, and for any other necessary purpose, including, without limitation:

(a) enforcing the terms and conditions of the Settlement Agreement and resolving any disputes, claims or causes of action that, in whole or in part, are related to or arise out of the Settlement Agreement and this Final Order and Judgment (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 this Final Order and Judgment);

(b) entering such additional Orders as may be necessary or appropriate to protect or effectuate the Court's Final Order and Judgment approving the Settlement Agreement, dismissing all claims, and permanently enjoining Class Members from initiating or pursuing related proceedings, or to ensure the fair and orderly administration of this settlement; 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 Settlement Agreement.

18. **No Admissions.** Entering into or carrying out the Settlement Agreement, 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 settlement or to enforce the provisions of this Final Order and Judgment and the Settlement Agreement; provided, however, that this Final Order and Judgment and the Settlement Agreement may be filed in any action against or by the Defendants or the Releasees 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.

19. **Dismissal of Action.** All claims in this Action that are released, waived and precluded by the Release, including individual and Class claims, are hereby DISMISSED ON THE MERITS AND WITH PREJUDICE against Plaintiff and all other Class Members who have not excluded themselves from the Class. To the extent that the Complaint could be read to

plead any claim that is not released, waived and precluded by the Release, this Action, including individual and Class Claims, is DISMISSED WITHOUT PREJUDICE against Plaintiff and all other Class Members who have not excluded themselves from the Class. This dismissal is without fees or costs to any party except as otherwise provided in this Final Judgment and Order.

Accordingly, finding no just reason for delay and upon express direction for the entry of Judgment, it is hereby **ORDERED, ADJUDGED** and **DECREED** that **FINAL JUDGMENT** is hereby entered this 8 day of July, 2009.

Alice D. Bonner

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