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Order Directing Provision of Notice to Class Members (SMITHA ANDERSON)

Alice D. Bonner
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SMITHA ANDERSON,	)(	
	)(	
On behalf of herself and all other members of her class similarly situated,	)(	**CIVIL ACTION FILE NO. 2008CV154757**
	)(	
Plaintiffs,	)(	
	)(	**CLASS ACTION**
v.	)(	
	)(	
PUBLIC SCHOOL EMPLOYEES RETIREMENT SYSTEM OF GEORGIA, *et al.*	)(	
	)(	
Defendants.	)(	
	)(	

FILED IN OFFICE
DEC 17 2008
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

ORDER DIRECTING PROVISION OF NOTICE TO CLASS MEMBERS

Plaintiffs having moved the Court to provide notice to members of the class pursuant to O.C.G.A. § 9-11-23, and the Court having considered the matter, the Court finds and ORDERS as follows:

1) Defendants shall furnish to Plaintiffs' counsel immediately, to the extent they have not already done so, the following information in computerized form with respect to each class member:

(a) The names and addresses of all living class members, including designated beneficiaries and spouses of members of the Public School Employees Retirement System ("PSERS") who died in service;

(b) The names, Social Security numbers, and last known addresses of (i) all deceased PSERS option plan retirees who retired on and between July 1, 1991 and February 28, 2007; (ii) all deceased option plan beneficiaries, for all option plan retirees who retired on and between July 1, 1991 and February 28, 2007; and (iii) all deceased option plan beneficiaries (including surviving spouses, if applicable), for all persons who died in service on and between July 1, 1991 and February 28, 2007.

PSERS shall also make available to counsel for the Plaintiff Class and to persons designated by counsel for the Plaintiff Class all information necessary to compile and to audit the information to be provided pursuant to the foregoing subparagraphs (a) and (b) of this Paragraph 1.

2) Pursuant to O.C.G.A. § 9-11-23(c)(2),[1] the Court orders that notice of the pendency of this action, in the form attached hereto as Exhibit A ("the

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[1] O.C.G.A. § 9-11-23(c)(2) provides that

> In any class action maintained under paragraph (3) of subsection (b) of this Code section, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that: (A) The court will exclude the member from the class if the member so requests by a specified date; (B) The judgment, whether favorable or not, will include all members who do not request exclusion; and (C) Any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

Notice"), shall be mailed by Plaintiffs' counsel or Plaintiffs' designee(s) to members of the class certified in this action by this Court's Order dated December 5, 2008.[2]

Notice shall be mailed to all living class members at the addresses furnished by Defendants, and shall further be mailed to the last known addresses of all deceased individuals identified in the class description.

With respect to any mailings returned non-deliverable with forwarding or corrected addresses provided, the Notices shall be re-mailed to such corrected and forwarding addresses.

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[2] The Court's Order dated December 5, 2008 defines the class as follows:

> All member beneficiaries and beneficiaries designated by members pursuant to O.C.G.A. §§ 47-4-102 and 47-[4]-104 and, 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 the Public School Employees' Retirement System of Georgia 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.
>
> The parties acknowledge that the class description set forth above is in the broadest terms, and that Defendants reserve and do not waive the defense of statute of limitations as to the class members identified herein. The form and the timing of notice to class members and the issue of payment shall be resolved by subsequent order of this Court.

The Notice has affixed a questionnaire requesting information regarding the heirs and estates of deceased retirees or beneficiaries to be completed and returned by recipients of notices mailed to deceased claimants. Upon receipt of completed questionnaires, the Notice shall be mailed to the additional addresses and persons identified therein.

3) In addition to the mailing specified above, Plaintiffs' counsel shall procure the assistance of a firm that regularly provides class action administration services to conduct a computerized database search (the "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. Thereafter, a copy of the Notice shall be mailed to the estate representative, if identified, or to the close relative identified by the Search, if any such estate representative or close relative is so identified. If an estate representative is identified by the Search, the copy of the Notice shall be mailed to such estate representative. If no estate representative is identified by the Search, the copy of the Notice shall be mailed to at least one close relative identified, if such relative is identified by the Search. It is further provided that failure of the Search to identify an estate representative or a close relative shall in no way invalidate the propriety of the notice directed in this Order.

4) Plaintiffs' counsel shall, with the assistance of a firm that regularly provides class action administration services, create and administer an Internet website at which the Notice is posted.

5) Defendants are further ordered to post and maintain prominently, at a reasonable time to be agreed upon between the parties, on the Internet website of Defendant PSERS, until further order of this Court, the following language, along with a computerized link to access a copy of the Notice:

> Pursuant to the Order of the Fulton County Superior Court in the class action case of *Smitha Anderson, et al., Plaintiffs v. Public School Employees Retirement System of Georgia, et al., Defendants*, Civil Action File No. 2008-CV-154757, all interested persons may obtain a copy of the Legal Notice approved by the Court in this case either by accessing the link provided to this Notice on this website or by contacting _____.

6) In addition to the foregoing, notice to class members in substantially the same form identified in Exhibit B hereto will be published on two separate days, including a Sunday, in the ten (10) newspapers published in Georgia with the highest circulation in the State of Georgia.

7) A call center with toll-free calling access will be established and maintained by a firm that regularly provides class action administration services to provide information about the case to class members.

8) The last day for members of the Class to make requests for exclusion from the class shall be a date selected by Plaintiffs' counsel, with the advice of

Defendants' counsel, but such date shall not be less than sixty (60) days after the date when mailing of notice to the class begins pursuant to Paragraph 2, above. This same date shall also be the date included in the questionnaire attached to Exhibit A.

9) Plaintiffs' counsel may retain The Garden City Group, Inc. to assist with all requirements of notice set forth in this Order. The Court finds as a matter of fact that The Garden City Group, Inc. is a firm that regularly provides class action administration services and is qualified and authorized to provide such services to Plaintiffs' counsel to carry out the requirements of this Order.

10) Plaintiffs' counsel shall, based upon information furnished to counsel by The Garden City Group, Inc., certify to the Court that the requirements of this order have been carried out. Plaintiffs' counsel shall provide such certification no later than ten (10) days before the final hearing in this action. Such certification by Plaintiffs' counsel shall satisfy any obligation on the part of Plaintiffs' counsel to identify and locate class members contained in the Order Certifying a Class dated December 5, 2008.

11) The costs of the notice provided for herein, whether provided by The Garden City Group, Inc. and/or any other firm or firms, shall be paid from the common fund. PSERS shall advance these costs in an amount not to exceed $250,000.00, unless otherwise ordered by the Court, and the total advanced shall

be deducted from the amounts ultimately to be paid to class members. The Court directs PSERS within seven (7) days of this Order to issue a check payable to "The Garden City Group, Inc." in the amount of $25,000.00. The Court further directs PSERS to pay within ten (10) days of its receipt from Class Counsel all invoices for services by The Garden City Group, Inc. In addition to the foregoing, PSERS shall immediately and not later than seven (7) days after its receipt from Class Counsel of an invoice pay the costs of any newspaper advertisement provided for in Paragraph 6, above.

12) The Court finds as a matter of fact that provision of notice as provided for herein is the best notice practicable under the circumstances within the meaning of and as required by O.C.G.A. § 9-11-23, and to the extent relevant, meets all constitutional requirements pertaining to notice.

13) The Court concludes as a matter of law that provision of notice as provided for herein fully complies with the requirements of O.C.G.A. § 9-11-23 and also fully satisfies the requirements of due process of law under the Constitutions of the State of Georgia and the United States of America.

SO ORDERED, this 17 day of Dec., 2008.

Alice D. Bonner

Alice D. Bonner, Senior Judge
Superior Court of Fulton County