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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

SONOMA COUNTY ASSOCIATION OF  
RETIRED EMPLOYEES;

Plaintiff,

v.

SONOMA COUNTY,

Defendant.

No. CV 09-4432 CW

~~PROPOSED~~ ORDER GRANTING AS  
**MODIFIED** PLAINTIFF'S MOTION (1) FOR  
LEAVE TO FILE THIRD AMENDED  
COMPLAINT, (2) TO CONDITIONALLY  
CERTIFY SETTLEMENT CLASS, (3) FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENT, (4) FOR APPROVAL OF  
FORM AND METHOD OF CLASS NOTICE,  
(5) FOR APPOINTMENT OF CLASS  
COUNSEL, (6) FOR APPOINTMENT OF  
SETTLEMENT ADMINISTRATOR, AND  
(7) TO SET DATE FOR FINAL APPROVAL  
HEARING

Judge: Claudia Wilken

Having reviewed plaintiff's Motion for Leave to File Third Amended Complaint, to  
Conditionally Certify Settlement Class, for Preliminary Approval of Settlement, for Approval of  
Form and Method of Class Notice, for Appointment of Counsel for the Class, for Appointment of  
Settlement Administrator, and to set date for Final Approval Hearing; the Parties' Settlement

1 Agreement (attached hereto as Exhibit 1); along with the files and records of this case, the Court  
2 now FINDS, CONCLUDES, and ORDERS as follows:

3 **I. PLAINTIFF IS GRANTED LEAVE TO FILE THE THIRD AMENDED**  
4 **COMPLAINT**

5 To facilitate the settlement of this action, the Parties agree that Plaintiff should be permitted  
6 to file a Third Amended Complaint adding class allegations and adding Christopher Bauer,  
7 Margaret Childress, Ed Clites, Betty Secord, Kathy Wertz, and Gary Zanolini as additional  
8 plaintiffs and proposed class representatives (“Individual Named Plaintiffs”). A copy of the Third  
9 Amended Complaint is attached hereto as Exhibit 2. As Defendant Sonoma County (“Defendant” or  
10 “the County”) consents for settlement purposes only to the filing of the Third Amended Complaint,  
11 this amendment is proper under Fed. R. Civ. P. 15(a)(2) (“a party may amend its pleading only with  
12 the opposing party’s written consent or the court’s leave”).  
13

14 **II. CONDITIONAL CERTIFICATION OF CLASS UNDER RULE 23**

15 **A. Settlement Class**

16 In connection with the settlement of this action, the Court conditionally certifies the  
17 following Class for settlement purposes only under Federal Rule of Civil Procedure 23:  
18

19 The Class consists of “Eligible County Retirees”. “Eligible County Retirees” include all  
20 persons who meet the criteria set forth in either A, B, C, D, or E, below.

21 A. Retired former employees of Sonoma County (“County”) or County Special Districts  
22 who meet the following criteria:

- 23 1. Retired from the County or County Special District on or before June 30, 2016;  
24 and  
25 2. Were hired by the County or County Special District on or before December 31,  
26 1989, and had been a contributing member of the Sonoma County Employees  
27 Retirement Association ("SCERA") and retired directly from the County or County  
28 Special District service; OR

1 3. Were hired on or after January 1, 1990 through December 31, 2008, had at least  
2 10 consecutive years of full time paid County service, and had been a contributing  
3 member of the Sonoma County Employees Retirement Association ("SCERA") and  
4 retired directly from the County or County Special District service.

5 B. Retirees of the Sonoma County Superior Court who were County employees at the time  
6 of retirement before January 1, 2001 and who upon retirement, enrolled in a County Offered  
7 Medical Plan, were eligible to receive a monthly medical contribution, and met the  
8 eligibility criteria in Paragraphs A-2 or A-3, above.

9 C. County or County Special District employees who retired on or before June 30, 2016 and  
10 upon retirement were eligible to receive a monthly medical contribution and upon retirement  
11 or thereafter waived coverage for themselves and the Eligible County Retiree's Eligible  
12 Dependent(s) (as defined in Paragraph 3.13 of the Settlement Agreement) and have a signed  
13 "Waiver of Medical Plan Acknowledgement" on file with the County. County employees  
14 who cancelled or dropped coverage in writing at the time of retirement, or at a later date,  
15 without a right to re-enroll are not Eligible County Retirees.

16 D. Any retired employees of a County Special District currently receiving a \$500 monthly  
17 medical contribution from the County as of June 30, 2016, including without limitation such  
18 retired employees of Sonoma County Transportation Authority, In Home Support Services  
19 Public Authority, or the Sonoma County Law Library.

20 E. Any surviving spouse of a deceased Settling County Retiree who is enrolled in a County  
21 Offered Medical Plan and was receiving a \$500 or less County Medical Contribution as of  
22 June 30, 2016.

23 Should for whatever reason the settlement of this action ("Settlement") not become final, the  
24 fact that the Parties were willing to consent to the filing of the Third Amended Complaint and to  
25 class certification as part of the Settlement shall have no bearing on, and shall not be admissible in  
26 any way whatsoever in this case or in any other proceeding including without limitation, in  
27 connection with, the issue of whether a class action should be maintained or certified in a non-  
28 settlement context.

**B. Findings Supporting Rule 23 Conditional Class Certification**

29 The Court finds on a preliminary basis that the Settlement appears to be fair and reasonable,  
30 and one that would merit, ultimately, final approval by this Court. The Court has reviewed the  
31 Settlement Agreement and recognizes the value thereof to the Class members. The Court finds, on a

1 preliminary basis, that the Settlement is fair, adequate and reasonable as to the Class when balanced  
2 against the probable outcome of further litigation. The Court further finds that the Settlement has  
3 been reached as the result of serious and non-collusive, arms-length negotiations between the  
4 Parties. The Court also finds on a preliminary basis that the Class meets the requirements of Federal  
5 Rules of Civil Procedure 23(a) and (b)(3).  
6

7 Accordingly, the Court hereby conditionally certifies the Class under Rule 23(a) and (b)(3)  
8 for purposes of the proposed Settlement. This conditional certification will be reviewed at the time  
9 of the final approval hearing.

10 **C. Class Representatives**

11 Christopher Bauer, Margaret Childress, Ed Clites, Betty Secord, Kathy Wertz, and Gary  
12 Zanolini are confirmed as representatives of the Class. The Court finds that the Class  
13 Representatives have claims that are typical of the Class, and that they will adequately represent the  
14 Class's interests.  
15

16 **D. Class Counsel**

17 The Court finds and concludes that Keller Rohrback L.L.P. ("the firm") and lead counsel  
18 Jeffrey Lewis have extensive experience and expertise in prosecuting class actions, including in the  
19 area of employee benefits. The Court appoints the firm as Class Counsel for the Class.  
20

21 **III. PRELIMINARY APPROVAL OF SETTLEMENT**

22 The Court has reviewed the terms of the Settlement, including the provisions setting forth  
23 benefits to Class Members and the release of claims. The Court has also read and considered the  
24 declaration of Jeffrey Lewis in Support of Preliminary Approval. The Court finds and concludes  
25 that the Settlement is the result of arms-length negotiations between the Parties conducted after  
26 Class Counsel had adequately investigated plaintiffs' claims and become familiar with their  
27 strengths and weaknesses. The assistance of an experienced mediator in the settlement process  
28

1 confirms that the Settlement is non-collusive. The Settlement has no obvious defects and falls  
2 within the range of possible approval as fair, adequate, and reasonable, such that notice to the Class  
3 is appropriate. Based on all of these factors, the Court concludes that the proposed Settlement meets  
4 the criteria for preliminary settlement approval. Accordingly, the Settlement is hereby preliminarily  
5 approved. Except as otherwise specified herein, the Court, for purposes of this Order, adopts all  
6 defined terms set forth in the Settlement Agreement.  
7

#### 8 **IV. APPROVAL OF THE CLASS NOTICE AND MANNER OF DISTRIBUTION**

9 The Parties have also submitted for this Court's approval a proposed Notice of Class Action  
10 Settlement (the "Class Notice") attached hereto as Exhibit 3. The Parties propose that the Settlement  
11 Administrator mail the Class Notice to Class Members by first class U.S. Mail to the last known  
12 addresses of the Class Members in the County's records, and that the Settlement Administrator take  
13 reasonable steps to find updated contact information for Class Members whose notices are returned  
14 without a forwarding address. The Court finds and concludes as follows:  
15

##### 16 **A. Best Notice Practicable**

17 The proposed Class Notice **as modified** is the best notice practicable under the  
18 circumstances and allows Class Members a full and fair opportunity to consider the Settlement, and  
19 decide whether or not to object or opt out.

20 The Class Notice **as modified** fairly, plainly, accurately, and reasonably informs Class  
21 Members of: (1) appropriate information about the nature of this action, the definitions of the Class,  
22 the identity of Class Counsel, and the essential terms of the Settlement, including the benefits  
23 provided to Class Members; (2) appropriate information about this Court's procedures for final  
24 approval of the Settlement, and about Class Members' right to appear through counsel if they  
25 desire; (3) appropriate information about how to object to the Settlement, if they so choose; (4)  
26 appropriate information about how to elect not to participate in the Settlement, if a Class Member  
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1 wishes not to participate; and (5) appropriate instructions as to how to obtain additional information  
2 regarding this action and the Settlement.

3 **B. Plan of Distribution of Class Notice**

4 The proposed plan for distributing the Class Notice is a reasonable method calculated to  
5 reach all individuals who would be bound by the Settlement. Under this plan, the County will  
6 provide the Settlement Administrator with the last known addresses of all Class Members. Because  
7 Class Members are former employees of the County, surviving spouses of former employees, or the  
8 dependents of former employees who are currently receiving medical benefits through the County,  
9 the County has address information for all Class Members. In the event that any Class Notice is  
10 returned to the Settlement Administrator undelivered, the Settlement Administrator will use  
11 reasonable methods to update Class Members' addresses. The Settlement Administrator will  
12 distribute the Class Notice to all Class Members by first-class mail to their last known or updated  
13 addresses. The proposed notice plan is reasonably likely to notify Class Members of the Settlement  
14 terms and of their rights and options.  
15  
16

17 **C. Approval of Form of Class Notice and of Plan of Distribution**

18 Accordingly, the Court finds and concludes that the proposed plan for distributing the Class  
19 Notice will provide the best notice practicable, satisfies the notice requirements of Rule 23(e), and  
20 satisfies all other legal and due process requirements. Accordingly, the Court hereby orders as  
21 follows:  
22

23 1. The form of the Class Notice is approved **with the following modifications:**

24 **A. On page 2, in the box entitled "Get out of this Lawsuit," edit the existing**  
25 **language from "you will keep your right to bring a lawsuit" to "you will keep any**  
26 **rights you may have to bring a lawsuit" and add the following language: "Any**  
27 **separate lawsuit may be time-barred or subject to other limitations."**  
28

1           **B. On page 3, in the box entitled “Go to the Fairness Hearing,” add**  
2 **language stating that the date and time of the approval hearing may change without**  
3 **further notice along with information about how to check to see if it has changed.**

4           **C. On page 4, under item 1, edit the first two sentences of the second**  
5 **paragraph to read: “The U.S. District Court for the Northern District of California**  
6 **conditionally certified the case . . .”**

7           **D. On page 7, under item 4, subsection 10, edit the first sentence to read: “If**  
8 **more than 5% of the Class Members . . .”**

9           **E. On page 8, under item 7, remove attorney “JACOB RICHARDS,” who**  
10 **has withdrawn from the case, and his email address.**

11           **F. On page 9, under item 8, “DO NOTHING,” on the second to last line,**  
12 **change “Lawsuit” to “lawsuit.”**

13           **G. On page 9, under item 8, “OBJECT,” edit to read: “If you wish to object**  
14 **to any part or all of the Settlement Agreement . . .”**

15           **H. On page 9, under item 8, “EXCLUDE YOURSELF,” add language:**  
16 **“Any separate lawsuit may be time-barred or subject to other limitations.”**

17           **I. On page 9, under item 9, eliminate the email address in subsection (c)**  
18 **because it appears opt outs will not be accepted via email.**

19           **J. On page 10, under item 10, change the address for the Court to “1301**  
20 **Clay Street, Oakland, CA 94612.”**

21           **K. On page 12, under item 13, change “by visiting the office of the Clerk of**  
22 **the Court” to “by visiting any office of the Clerk of the Court.”**

23           **2. The manner of distributing the Class Notice to the Class is approved.**

1           3.       Promptly following the entry of this order, the Settlement Administrator will prepare  
2 final versions of the Class Notice, incorporating into the Class Notice the relevant dates and  
3 deadlines set forth in this order.

4           4.       Within 10 calendar days after entry of this Order, the County will provide to the  
5 Settlement Administrator a database that lists, for each Class Member, the Class Member's name  
6 and last known address. This data will be drawn from the County's business records and in a format  
7 acceptable to the Settlement Administrator. The County will consult with the Settlement  
8 Administrator prior to the date for providing this information to ensure that the format will be  
9 acceptable to the Settlement Administrator. The County also will provide Class Counsel with a list  
10 of each Class Member's name.  
11

12           5.       After December 20, 2016, but on or before December 24, 2016, the Settlement  
13 Administrator will mail, via first-class mail, the Class Notice to all Class Members at their current  
14 or last known addresses.  
15

16           6.       If any Class Notice is returned as undeliverable within thirty (30) calendar days of  
17 the mailing of the Class Notice with a forwarding address, the Settlement Administrator shall have  
18 seven (7) calendar days to re-mail a Class Notice to the forwarding address.  
19

20           7.       If any Class Notice is returned as undeliverable within thirty (30) calendar days of  
21 the mailing of the Class Notice without a forwarding address, the Settlement Administrator shall  
22 have seven (7) calendar days from receipt of the returned Class Notice to conduct a search for a  
23 more current address for the Class Member and to re-mail a Class Notice to the Class Member. The  
24 Settlement Administrator shall be responsible for taking all reasonable steps to trace the mailing  
25 address of any Class Member for whom a Class Notice is returned by the U.S. Postal Service as  
26 undeliverable. These reasonable steps will include, at a minimum, the tracking of all undelivered  
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1 mail, performing an address search for all mail returned without a forwarding address, and promptly  
2 re-mailing the Class Notice to Class Members for whom new addresses are found.

3 8. The Settlement Administrator shall provide weekly status reports to counsel for the  
4 Parties, including: (a) the number of Class Notices mailed; and (b) the number of Opt-Out Requests  
5 received.  
6

7 9. No later than fourteen (14) calendar days before the Final Approval Hearing, the  
8 Settlement Administrator shall serve on Class Counsel and defendant's counsel, for filing with the  
9 Court in support of Plaintiff's motion for final approval of the Settlement, a declaration setting forth  
10 its compliance with this section of this Order, and attaching all Opt-Out requests that it has  
11 received, together with envelopes showing the date on which each Opt-Out request was postmarked.  
12

13 10. The Settlement Administrator will take all other actions in furtherance of claims  
14 administration as are specified in the Settlement Agreement.

15 **V. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT**

16 **A. Final Approval Hearing**

17 The Court hereby schedules a hearing to determine whether to grant final approval of the  
18 Settlement (the "Final Approval Hearing") for **April 18, 2017**. Prior to the Final Approval Hearing,  
19 counsel for Defendant will file a declaration with the Court confirming that it complied with the  
20 notice requirements of the Class Action Fairness Act.  
21

22 **B. Deadline to Elect Not to Participate in the Settlement**

23 **1. Form of Election.**

24 Class Members may exclude themselves from participating in the Settlement. To do so, the  
25 Class Member must submit a written and signed statement that includes the Class Member's name,  
26 current contact information, and an explicit request not to participate in the Settlement.  
27  
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1           **2.       Deadline for Submitting Election not to Participate.**

2           Class Members will have sixty (60) days after the date on which the Settlement  
3 Administrator mails the Class Notice to submit to the Settlement Administrator a valid, written  
4 request not to participate in the Settlement. A valid, written request not to participate in the  
5 Settlement will be deemed timely submitted to the Settlement Administrator if it is (i) mailed to the  
6 Settlement Administrator by first-class mail and postmarked by not later than sixty (60) days after  
7 the Settlement Administrator first mails the Class Notice to Class Members, or (ii) it is delivered to  
8 the Settlement Administrator by the deadline for submission stated above, whether by mail,  
9 facsimile transmission, professional delivery, or personal delivery. Only those Class Members who  
10 submit a request not to participate in the Settlement within the time and by the manner set forth in  
11 this Order will be excluded from the Settlement. Pursuant to Federal Rule of Civil Procedure  
12 23(b)(3) and (c)(2), the Settlement will have no binding effect on any Class Member who properly  
13 elects not to participate in the Settlement in the manner required by this Order.  
14  
15

16           **3.       Settlement Administrator’s Reporting of Elections Not to Participate.**

17           The Settlement Administrator shall stamp the date received on the original of any Opt-Out  
18 request it receives and serve copies of the Opt-Out request on Class Counsel and County's Counsel  
19 not later than five (5) business days after receipt thereof and shall file the date-stamped originals of  
20 any Opt-Out Statements with the Court not later than ten (10) business days prior to the date set for  
21 the Fairness Hearing. The Settlement Administrator shall retain copies of all Opt-Out requests in its  
22 files until such time as the Settlement Administrator is relieved of its duties and responsibilities  
23 under this Order.  
24

25           **4.       The County’s Right to Void Settlement Agreement.**

26           If the number of Class Members opting out of the Settlement Agreement in the manner  
27 provided in the Settlement Agreement exceeds five percent (5%) of the total number of eligible  
28

1 Class Members, then the County, at its sole option and discretion, shall have the right to void the  
2 Settlement Agreement by electronically filing a Notice of its decision to void the Settlement  
3 Agreement in the Lawsuit on or before the sixtieth (60th) day after the Court requires individuals to  
4 return all Opt-Out requests.

5  
6 If the County exercises its option to void the Settlement Agreement, all of the Parties'  
7 obligations under the Settlement Agreement shall cease to be of any force and effect, and the  
8 Settlement Agreement and any orders entered in connection therewith shall be vacated, rescinded,  
9 cancelled, and annulled, and the Parties shall return to the status quo in this action as if the Parties  
10 had not entered into the Settlement Agreement, including resumption of the case based on the  
11 Second Amended Complaint as of March 17, 2016. In addition, the Settlement Agreement and all  
12 negotiations, Court filings, Court orders, and proceedings relating thereto shall be without prejudice  
13 to the rights of any and all Parties hereto, and evidence relating to the Settlement Agreement and all  
14 negotiations shall be protected in accordance with Federal Rules of Evidence 408 and shall not be  
15 admissible, discoverable or used in any manner in the Lawsuit.  
16

17 **C. Deadline for Filing Objections to Settlement**

18 Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the  
19 Settlement must do so in writing. The objection need not be in any specific form; a short and simple  
20 statement of the objection is sufficient. The objection may, but need not, be made with assistance of  
21 counsel. Class Members who have timely objected to the Settlement in writing may also appear at  
22 the Final Approval Hearing if they notify the Court and the Settlement Administrator of their intent  
23 to appear. Objections should be mailed to the Court, via first-class mail, postmarked not later than  
24 sixty (60) days after the date that the Class Notice is first mailed to Class Members by the  
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1 Settlement Administrator. Any Class Member who does not timely file and serve such a written  
2 objection will not be permitted to raise such objection, except for good cause shown, and any Class  
3 Member who fails to object in the manner prescribed by this order will be deemed to have waived,  
4 and will be foreclosed from raising, any such objection.  
5

6 **D. Deadline for Submitting Motion Seeking Final Approval**

7 Not later than thirty-five (35) days before the Final Approval Hearing, the Plaintiffs will file  
8 a motion for final approval of the Settlement. One week or more before the Final Approval Hearing,  
9 Plaintiffs may file a reply brief responding to any filed objections or otherwise supplementing their  
10 motion.

11 **VI. RELEASE OF CLAIMS**

12 If, at the Final Approval Hearing, this Court grants final approval to the Settlement, the  
13 Named Plaintiffs and every Class Member who does not validly and timely request not to  
14 participate in the Settlement will, pursuant to the Settlement, be adjudicated to have released the  
15 Released Claims, as defined in the Settlement Agreement.  
16

17 **VII. SETTLEMENT IS NOT AN ADMISSION**

18 The Settlement is not a concession or admission, and shall not be used against Defendant or  
19 any of the Released Parties as an admission or indication with respect to any claim of any fault or  
20 omission by Defendant or any of the Released Parties. Whether or not the Settlement is finally  
21 approved, neither the Settlement Agreement nor any document, statement, proceeding or conduct  
22 related to the Settlement, nor any reports or accounts thereof, shall in any event be:  
23

- 24 a. Construed as, offered or admitted in evidence as, received as or deemed to be  
25 evidence for any purpose adverse to the Settling Parties, including, but not  
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1 limited to, evidence of a presumption, concession, indication or admission by any  
 2 of the Settling Parties of any liability, fault, wrongdoing, omission, concession or  
 3 damage; or

- 4  
 5 b. Disclosed, referred to, or offered or received in evidence against any of the  
 6 Settling Parties in any further proceeding in the Action, or in any other civil,  
 7 criminal or administrative action or proceeding, except for purposes of settling  
 8 the Action pursuant to the Stipulation.

### 9 **VIII. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

10 Simpluris, Inc. is hereby appointed Settlement Administrator to carry out the duties set forth  
 11 in this Preliminary Approval Order and the Settlement.

### 12 **IX. TIMELINE FOR FINAL APPROVAL**

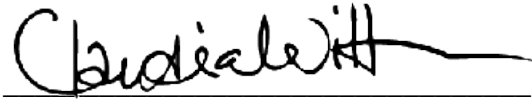
13 The Parties are therefore ordered to comply with the following deadlines:  
 14

15 <b>Deadline</b>	<b>Event</b>
16 December 17, 2016 (10 calendar days after entry of Preliminary Approval)	County Provides Class List to Settlement Administrator
17 December 24, 2016	Last Date for Settlement Administrator to Mail Class Notice
18 February 22, 2017 (60 calendar days after Notice Date)	Deadline for Class Members to Postmark Opt Out
19 March 7, 2017	Deadline to File Final Approval Motion
20 March 28, 2017	Last Date to File Objections to Settlement
21 April 4, 2017 (10 business days before the Final Fairness Hearing)	Settlement Administrator to File Opt Out Requests with the Court
22 April 4, 2017(14 calendar days before the Final Fairness Hearing)	Settlement Administrator to Provide Declaration of Compliance to Counsel and attaching the Opt Out Forms
23 April 11, 2017	Last Date for Plaintiff to file Reply to any Objections
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April 18, 2017	Final Fairness Hearing
April 23, 2017 (60 days after the Opt Out Deadline)	Deadline for Defendant to Void Settlement (if >5% opt out)

Dated: December 7, 2016



Hon. Claudia Wilken  
UNITED STATES DISTRICT JUDGE