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**F I L E D**

Clerk of the Superior Court

JUL 26 2004

By: PATRICIA F. LEGLER, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

JAMES F. GLEASON and DAVID W. WOOD,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

SAN DIEGO CITY EMPLOYEES'  
RETIREMENT SYSTEM, CITY OF SAN  
DIEGO, FREDERICK PIERCE, IV, JOHN  
TORRES, JOHN CASEY, DAVID CROW,  
MARY VATTIMO, RON SAATHOFF,  
TERRI WEBSTER, SHARON WILKINSON,  
DICK VORTMANN, RAY GARNICA, and  
DOES 1-100,

Defendants.

CASE NO: GIC 803779  
(Consolidated with Case Nos.  
GIC 810837 and GIC 811756)

~~PROPOSED~~  
**JUDGMENT APPROVING  
SETTLEMENT OF CLASS  
ACTION**

AND RELATED CONSOLIDATED ACTIONS

Pursuant to rule 1859(e) of the California Rules of Court, hearings were held on May 7, 2004, May 26, 2004, and July 7, 2004, in Department 67 of the Superior Court of the State of California for the County of San Diego, The Honorable Patricia A. Y. Cowett presiding. Michael A. Conger appeared for the plaintiffs in the consolidated actions and for the plaintiff class. Reg A. Vitek and Michael A. Leone of Seltzer Caplan McMahon Vitek appeared for defendant San Diego City Employees' Retirement System ("SDCERS"). Timothy R. Pestotnik

1 and Russell A. Gold of Luce, Forward, Hamilton & Scripps, LLP, appeared for defendant City of  
2 San Diego ("City").

3 The court has conducted an inquiry into the fairness of the proposed settlement of the  
4 consolidated action set forth in the Settlement Agreement and General Release ("Settlement  
5 Agreement"), as required by rule 1859(g) of the California Rules of Court. The court has  
6 considered factors relevant to fairness, including "[1] the strength of the plaintiffs' case, [2] the  
7 risk, expense, complexity and likely duration of further litigation, [3] the risk of maintaining  
8 class action status through trial, [4] the amount offered in settlement, [5] the extent of discovery  
9 completed and the stage of the proceedings, [6] the experience and views of counsel, [7] the  
10 presence of a governmental participant, and [8] the reaction of the class members to the proposed  
11 settlement." (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801.)

12 Based upon the evidence and arguments presented and the documents in the court's file,  
13 and after due consideration of the factors relevant to fairness, the court finds:

14 1. Due notice of the approval hearings have been given to the members of the  
15 plaintiff class pursuant to rule 1859(f) of the California Rules of Court.

16 2. The only "agreement, express or implied, that has been entered into with respect  
17 to the payment of attorney fees or the submission of an application for the approval of attorney  
18 fees" (Cal. Rules of Court, rule 1859(b)) is recited in Section II(3)(g) of the Settlement  
19 Agreement:

20 "The Parties understand that Plaintiffs will, at their  
21 election, file a motion to seek attorneys' fees in the Actions. All  
22 Parties reserve their rights with respect to such fee motion, and  
23 agree that the Court will decide all issues related to attorneys' fees  
24 and costs not otherwise set forth herein. The Defendants agree that  
25 the Plaintiffs' counsel is entitled to recover attorneys' fees and  
26 costs in the Actions under Code of Civil Procedure section 1021.5  
27 (hereinafter the "Entitlement"). If the amount of such fees and  
28 costs cannot be determined by agreement, the amount will be  
determined by the Court upon a duly noticed motion. In such  
motion, the Defendants reserve the right to contest the amount of  
the fees and costs that should be awarded to the Plaintiffs' counsel,  
and how the Court's award of fees and costs should be apportioned  
between the Defendants. Notwithstanding section 3.h below, all  
Parties shall be permitted to conduct discovery in connection with  
and related only to any fee and cost motion Plaintiffs file.  
Defendants will and do dispute that Plaintiffs' counsel is entitled to

1 any 'multiplier' of fees, though Plaintiffs' counsel will seek such  
2 multiplier. All parties agree that Plaintiffs counsel are not entitled  
3 to request or receive a 'multiplier' for any period after April 26,  
4 2004."

5 3. All parties, including the plaintiff class, are represented by experienced and able  
6 counsel.

7 4. Because the parties have substantially completed discovery, the plaintiffs and the  
8 City have filed cross-motions for summary judgment and/or summary adjudication, and the  
9 parties have substantially completed preparations for trial, all parties are in a position to have a  
10 clear view of the strengths and weaknesses of their cases and to make an informed compromise  
11 of disputed issues.

12 5. The terms of settlement were negotiated through a process of arm's-length  
13 bargaining in which all parties participated, and the parties were assisted by an experienced  
14 mediator, The Honorable Howard B. Wiener (Ret.).

15 6. The Settlement Agreement is not the product of fraud, or overreaching by, or  
16 collusion between, negotiating parties.

17 7. All counsel to the parties have recommended and approved the terms of the  
18 Settlement Agreement.

19 8. The Settlement Agreement has been approved by the San Diego City Council,  
20 which is charged with protecting the interests of all citizens of the City, as well as the active  
21 employees of City, and by the 13-member Board of Administration ("Board") of SDCERS, an  
22 independent board of trustees who owe fiduciary duties to the retired, deferred, and active  
23 members of SDCERS and their beneficiaries. (Cal. Const., art. XVI, § 17.) As required by its  
24 terms, the Settlement Agreement has also been reviewed and approved by SDCERS' actuarial  
25 firm, Gabriel, Roeder & Smith, by its special fiduciary counsel, Jan Webster, Esquire, Daniel N.  
26 Riesenber, Esquire, and William Waller, Esquire, of Pillsbury Winthrop, and by its independent  
27 litigation representative, Nell Hennessy, the President of Fiduciary Counselors Inc., a registered  
28 investment advisor and benefits consulting firm in Washington, D.C., that acts as an independent  
fiduciary for employee benefit plans.

1           9.       The percentage of objectors is extremely low.

2           10.       The court has reviewed and considered the Settlement Agreement and the  
3 consideration set forth in the Settlement Agreement is fair in relation to the strength of the  
4 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, and the  
5 risk of maintaining class action status through trial.

6           Based upon these findings, and the evidence presented at the fairness hearings of May 7,  
7 May 26, and July 7, 2004, the court concludes that the settlement, taken as a whole, is fair,  
8 adequate, and reasonable to the plaintiff class and all named parties and should therefore be  
9 approved.

10           IT IS ORDERED, ADJUDGED AND DECREED that the proposed settlement, as set  
11 forth in the Settlement Agreement attached as Exhibit 1 to this judgment, is approved by the  
12 court. Pursuant to Code of Civil Procedure section 664.6 and rule 1859(h) of the California  
13 Rules of Court, the court shall retain jurisdiction over the parties in order to enforce the terms of  
14 this judgment and the Settlement Agreement.

15  
16 DATED: July 26, 2004

**PATRICIA YIM COWETT**  
\_\_\_\_\_  
THE HONORABLE PATRICIA A. Y. COWETT  
Judge of the Superior Court

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19 Approved as to Form and Content:

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21 Dated: July 9, 2004

**LAW OFFICES OF MICHAEL A. CONGER**

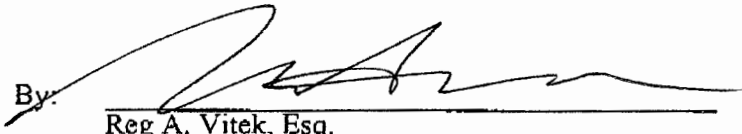
22  
23 By: MDA-C  
24 MICHAEL A. CONGER  
Attorney for Plaintiffs

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Dated: July 9, 2004

**SELTZER CAPLAN McMAHON VITEK**

By: 

Reg A. Vitek, Esq.  
Michael A. Leone, Esq.  
Attorneys for Defendant SAN DIEGO CITY  
EMPLOYEES' RETIREMENT SYSTEM

Dated: July \_\_\_\_\_, 2004

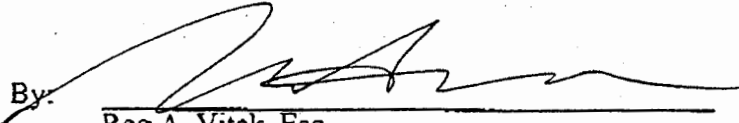
**LUCE, FORWARD, HAMILTON & SCRIPPS, L.L.P.**

By: \_\_\_\_\_  
Timothy R. Pestotnik, Esq.  
Attorneys for Defendant THE CITY OF  
SAN DIEGO

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Dated: July 9, 2004

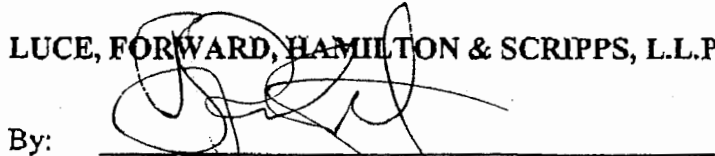
**SELTZER CAPLAN McMAHON VITEK**

By: 

Reg A. Vitek, Esq.  
Michael A. Leone, Esq.  
Attorneys for Defendant SAN DIEGO CITY  
EMPLOYEES' RETIREMENT SYSTEM

Dated: July 19, 2004

**LUCE, FORWARD, HAMILTON & SCRIPPS, L.L.P.**

By: 

Timothy R. Pestotnik, Esq.  
Attorneys for Defendant THE CITY OF  
SAN DIEGO

