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MAR 27 '13 PM 4:21

F I L E D
Clerk of the Superior Court

MAR 27 2013

8 Attorney for Plaintiffs John Frugoni, Diana Groff, and
9 Robyn L. Perlin, and All Others Similarly Situated

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

12 JOHN FRUGONI, DIANA GROFF, and
13 ROBYN L. PERLIN,

14 Plaintiffs,

15 v.

16 CAJON VALLEY UNION SCHOOL DISTRICT,
17 and DOES 1 to 10, inclusive,

18 Defendants.

CASE NO:

37-2013-00042617-CU-NP-CTL

CLASS ACTION COMPLAINT
FOR NEGLIGENCE

19 **THIS IS A CLASS ACTION LAWSUIT.**

20 1. This is a class action lawsuit brought by the plaintiffs John Frugoni ("Frugoni"),
21 Diana Groff ("Groff") and Robyn L. Perlin ("Perlin," and collectively "Plaintiffs") former long-
22 time teachers or administrators with the Cajon Valley Union School District ("CVUSD"). Each
23 of the plaintiffs, and those similarly situated, are members and beneficiaries of the California
24 State Teachers' Retirement System ("CalSTRS"). Plaintiffs bring this suit on their own behalf
25 and for all those others similarly situated. The definition of the class is set forth in paragraph 23
26 of this complaint.

27 2. This class action is brought pursuant to section 382 of the California Code of
28 Civil Procedure. The relief, including monetary damages, sought by the plaintiffs, both

1 individually and on behalf of the class, exceed the minimum jurisdictional limits of the Superior
2 Court.

3 3. Venue is proper in San Diego County because the acts which led to the claims in
4 this complaint occurred in San Diego County.

5 4. The true names or capacities, whether individual, corporate, associate, or
6 otherwise, of defendants DOES 1 to 10, inclusive, are unknown to plaintiffs, who therefore sue
7 said defendants by such fictitious names.

8 5. Plaintiffs are informed and believe and thereon allege that each of the defendants
9 designated herein as a DOE is responsible in some manner for the events and happenings herein
10 referred to, and caused injury and damages as herein alleged. Plaintiffs will seek leave of court
11 to amend this complaint, if necessary, to set forth the true names and capacities of such named
12 defendants when their identities become known to them.

13 6. Plaintiffs are informed and believe and thereon allege that each defendant named
14 in this action, including DOE defendants, at all relevant times, was the agent, ostensible agent,
15 servant, employee, representative, assistant, joint venturer, and/or co-conspirator of each of the
16 other defendants, and was at all times acting within the course and scope of his, her, or its
17 authority as agent, ostensible agent, servant, employee, representative, joint venturer, and/or
18 co-conspirator, and with the same authorization, consent, permission or ratification of each of the
19 other defendants.

20 7. Plaintiffs, and all of those similarly situated, were employed by the CVUSD,
21 either as teachers, in excess of 30 years, or administrators, in excess of 25 years.

22 8. Throughout the careers of the plaintiffs, and those similarly situated, the CVUSD
23 included as part of their compensation payments designed to reward district employees for their
24 service with the district and its students.

25 9. This compensation was consistently paid to district employees over the course of
26 their careers upon attainment of a certain number of years of service. These payments were
27 always included as part of the plaintiffs' pensionable compensation, and the plaintiffs and the
28 district paid employee and employer contributions, respectively, to CalSTRS at all times.

1 10. During the 2004/2005 school year, the CVUSD modified this portion of the
2 plaintiffs' compensation package in direct response to the steep decline in student enrollment
3 beginning in the 2003/2004 school year.

4 11. The 2004/2005 modified compensation package essentially provided that any
5 teacher who had completed at least 30 years of service with the district, or any administrator who
6 had completed at least 25 years with the district, would be paid a compensatory increment so
7 long as that person executed, on or before September 1, an irrevocable resignation or retirement
8 letter effective June 30 of the year in which the increment was paid (the "Modified Plan").

9 12. The CVUSD expressly informed the plaintiffs, and those similarly situated, that
10 compensation derived from the Modified Plan would be included in as pensionable pay, i.e.,
11 included in the plaintiffs' retirement calculations. Based on information and belief, the CVUSD
12 never checked with CalSTRS to determine if its representations were correct before informing its
13 long-time employees that payments under the Modified Plan would be included in pensionable
14 compensation.

15 13. The district's express purpose in adopting the Modified Plan was to reward long-
16 serving employees for their dedication to the district and its students, rather than to enhance the
17 plaintiffs' retirement allowances.

18 14. Between 2005 and 2011, approximately 77 CVUSD teachers and administrators,
19 including the plaintiffs and those similarly situated, retired with the express understanding, as
20 conveyed by the CVUSD, that compensation received under the Modified Plan would be
21 included in determining their pensions.

22 15. All of the Modified Plan payments were reported to CalSTRS as pensionable
23 compensation, and both the affected employees and the district made timely employee and
24 employer contributions, respectively, to CalSTRS.

25 16. At no time until May 29, 2012, did CalSTRS notify the CVUSD or the plaintiffs
26 (including those similarly situated), that the Modified Plan payments should *not* have been
27 included as pensionable compensation.

28 17. Before the plaintiffs retired, or submitted a resignation letter, each met with a

1 CalSTRS counselor for the purpose of determining, if the employee were to retire, the amount of
2 pension that retiring employee would receive from CalSTRS. The Modified Plan payments were
3 always conspicuously disclosed to CalSTRS in the data reviewed by the CalSTRS' counselor at
4 these meetings.

5 18. At no time did any CalSTRS' counselor disclose to the plaintiffs, or those
6 similarly situated, that the Modified Plan payments should not be included in pensionable
7 compensation. To the contrary, CalSTRS' counselor affirmatively calculated and informed the
8 plaintiffs (and those similarly situated) what his or her pension would be if that employee retired
9 at that time. These calculations by CalSTRS always included compensation paid under the
10 Modified Plan.

11 19. Each of the plaintiffs (and those similarly situated) made irrevocable decisions to
12 retire based on information provided to them by the CVUSD and CalSTRS, namely that
13 compensation received under the Modified Plan would be pensionable compensation and
14 included in calculating the plaintiffs' pensions.

15 20. In early 2013, CalSTRS informed the plaintiffs (and those similarly situated), then
16 irrevocably retired after a lifetime of dedicated service to the district and its students, that they
17 would all have their pensions reduced prospectively and retroactively, and be required to
18 reimburse CalSTRS because their pensions were incorrectly calculated including compensation
19 under the Modified Plan as pensionable compensation.

20 21. To the extent the plaintiffs, and those similarly situated, are required to exhaust
21 administrative remedies or comply with the Government Claims Act, they have done so.

22 **CLASS ACTION ALLEGATIONS**

23 22. This action is brought under California Code of Civil Procedure section 382.

24 23. The plaintiff class consists of "All retired teachers and administrators of the Cajon
25 Valley Unified School District affected by the California State Teachers Retirement System's
26 2013 recalculation (known as Project # SEA10-51)."

27 24. This action is brought and is maintained properly as a class action under Code of
28 Civil Procedure section 382 because:

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- (a) The questions and issues of law and fact raised herein are of a common and general interest affecting the class;
- (b) The plaintiff class is estimated to contain 78 individuals and it is impractical to bring all members of the class individually before the court;
- (c) The questions of law or fact common to the class are substantially similar and predominate over those questions that affect individual members. These common questions include:
 - (i) Was the CVUSD negligent in failing to check with CalSTRS when it created the Modified Plan to ensure that compensation paid under the plan was pensionable?
 - (ii) Was the CVUSD negligent in informing the plaintiff class that compensation paid under the Modified Plan was pensionable when it had no reasonable basis for so believing?
 - (iii) What is the appropriate remedy?
 - (iv) What is the proper method of calculating damages?
 - (v) Is the plaintiff class entitled to prejudgment interest?
 - (vi) What are the proper in limine rulings and evidentiary rulings?
 - (vii) Are the plaintiffs entitled to attorney fees?
- (d) The plaintiffs' claims are typical of those of the class;
- (e) The representative plaintiffs will fairly and adequately protect the interests of the class, have no interests which conflict with the class, and have retained an attorney experienced in the prosecution of class and multi-plaintiff pension litigation to represent the class herein;
- (f) The prosecution of separate actions by individual members of the class will create a risk of: (i) inconsistent or varying adjudications

1 with respect to individual members of the class which would
2 establish incompatible standards of conduct for defendants; or (ii)
3 adjudications with respect to some individual members which
4 would, as a practical matter, be dispositive of the interest of the
5 other members not parties to the adjudications; or (iii)
6 adjudications which would substantially impair or impede the
7 ability of individual members to protect their interests;

8 (g) A plaintiff class action is superior to other available methods for
9 the fair and efficient adjudication of the claims presented in this
10 complaint, and will prevent the undue financial, administrative and
11 procedural burdens on the parties and on this Court which
12 individual litigations would impose.

13 25. Proof of a common or single practice or factual pattern, of which the plaintiffs'
14 experience is representative, will establish the right of each of the members of the plaintiff class
15 to recover on the causes of actions herein alleged.

16 26. Plaintiffs were subject to a pattern of practice and was thereby treated by the
17 defendants in a similar manner, as is specifically alleged elsewhere in this complaint.

18 27. The plaintiff class is entitled in common to damages for which the defendants are
19 liable. This action is brought for the benefit of the entire class and will result in the creation of a
20 common fund. The representative plaintiffs will expend efforts and expense to prevail in this
21 action from which other plaintiffs and members of the class will derive benefits.

22 **FIRST CAUSE OF ACTION**

23 **NEGLIGENCE**

24 **AGAINST CVUSD AND DOES 1-10**

25 28. Plaintiffs incorporate by reference and reallege paragraphs 1 through 27 as though
26 fully set forth herein.

27 29. The CVUSD owed a duty to the plaintiffs, and those similarly situated, not to act
28 in a negligent manner.

1 determining the plaintiffs pensions.

2 40. The CVUSD's negligence caused the plaintiffs damages in an amount to be
3 proven at trial.

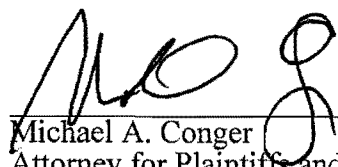
4 **WHEREFORE, plaintiffs pray that, following a duly noticed hearing:**

- 5 1. For damages according to proof;
- 6 2. For prejudgment interest;
- 7 3. For attorney fees;
- 8 4. For the costs of suit; and
- 9 5. Award such other and further relief as it deems necessary and proper.

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Dated: March 27, 2013

LAW OFFICE OF MICHAEL A. CONGER

By: 
 Michael A. Conger
 Attorney for Plaintiffs and
 All Others Similarly Situated

Jury Trial Demanded.