

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (“the Agreement”) is entered into between, on the one hand, the California State Senate, and Mr. Don Sweat (referred to collectively as “the Senate”) and, on the other hand, Linda Maybury (“Ms. Maybury”). The Senate and Ms. Maybury are sometimes collectively referred to as “the parties” and all promises and releases referred to as having been made between the parties are intended to be between Ms. Maybury and the Senate.

WHEREAS Ms. Maybury, presently on workers’ compensation leave, has been and remains employed by the Senate; and

WHEREAS a grievance by Ms. Maybury was brought to the attention of the Senate, and related claims were brought by Ms. Maybury before the California Department of Fair Employment & Housing (“DFEH”) and the California Workers Compensation Appeals Board (“WCAB”); and

WHEREAS all parties now agree that all disputes whether or not contained in Ms. Maybury’s grievances or claims, with the sole exception of her WCAB claim, have settled; and

WHEREAS in consideration for this Agreement, Ms. Maybury now wishes to release the Senate and its current and former members, employees, and agents from any and all liabilities and obligations related to or arising out of any matter whatsoever, unless expressly described as the sole exception in the paragraph above and in paragraph (1) below; and

WHEREAS each of the parties hereto declares and affirms that this Agreement is entered into voluntarily and that they have read this Agreement and are fully aware of its contents and of its effect;

NOW THEREFORE, for valuable consideration of the mutual covenants and Agreements described in this Agreement, the parties agree as follows:

GENERAL RELEASE

(1) Ms. Maybury, on behalf of herself and her heirs, estate, executors, administrators, successors and assigns, fully releases and discharges the Senate and all its current and former -- members, employees, agents, attorneys, affiliated entities, successors, and assigns, and each of them, from all actions, causes of action, claims, judgments, obligations, damages and liabilities, of whatsoever kind and character, occurring at any time prior to the date of this release including, but not limited to, any such claims arising out of or relating to Ms. Maybury's relationship with the Senate and/or any acts or events involving her and the Senate or its members, employees, or agents with the sole and exclusive exception that Ms. Maybury may, if permitted by law, notwithstanding this Agreement, proceed in her action before the Workers Compensation Appeals Board. Ms. Maybury also warrants that she has not assigned any such claim as is covered by this release on her behalf. Further, Ms. Maybury agrees that by this release she waives any claim for damages or other remedy, unless within the previously mentioned WCAB exception, incurred at any time after the date of this release because of alleged continuing effects of any alleged acts or omissions involving the Senate or its current or former members, employees, or agents, that occurred on or before the date of this release.

(2) Ms. Maybury understands and expressly agrees that (with the sole and exclusive exception mentioned in paragraph (1), this release extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, past or present, whether raised in the grievance or not, which existed before the execution of this release including, but not limited to,

any and all federal, state or local law claims. Ms. Maybury further understands and agrees that this release extends to all forms of damages or other relief of any kind whatsoever, including back-pay or benefits, punitive damages, compensation for emotional distress or other personal injury of any kind, injunctive or administrative relief, or any other remedy whatsoever.

WAIVER OF SECTION 1542

(3) Ms. Maybury hereby expressly waives and relinquishes all rights and benefits under Section 1542 of the California Civil Code which provides:

“Section 1542. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

(4) Ms. Maybury understands the language of Section 1542 of the California Civil Code but nevertheless elects to release the Senate from all claims, whether known or unknown, arising from the subject matter of this Agreement, and specifically waives any rights which she may have under that Civil Code Section. It is further agreed and stipulated by the parties that each fully understands that if the facts or law with respect to this Agreement are later found to be different from the facts now believed by them to be true, each expressly accepts and assumes the risk of such possible differences and agrees that this Agreement shall be and remain effective, regardless of any such differences.

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NON - WAIVER OF RIGHTS TO REINSTATEMENT

(5) The parties agree that by entering into this Agreement, Ms. Maybury does not waive or relinquish her rights to reinstatement from retirement or to exercise any option to return to her position or any other position with the Senate or her right to apply or otherwise seek employment with the Senate under California Government Code section 21193, or any other federal or state statutes or decisional authorities to the same affect as said statute, which provides:

“Section 21193. If the determination pursuant to section 21192 is that the recipient is not so incapacitated for duty in the position held when retired for disability or in a position in the same classification or in the position with regard to which he or she has applied for reinstatement and his or her employer offers to reinstate that employee, his or her disability retirement allowance shall be canceled immediately, and he or she shall become a member of this system.

If the recipient was an employee of the state or of the university and is so determined to be not incapacitated for duty in the position held when retired for disability or in a position in the same class, he or she shall be reinstated, at his or her option, to that position. However, in that case, acceptance of any other position shall immediately terminate any right to reinstatement. A recipient who is found to continue to be incapacitated for duty in his or her former position and class, but not incapacitated for duty in another position for which he or she has applied for reinstatement and who accepts employment in the other position, shall upon subsequent discontinuance of incapacity for service in his or her former position or a position in the same class, as determined by the board under section 21192, be reinstated at his or her option to that position.

SENATE’S PROMISES

(6) The Senate agrees to pay Ms. Maybury the sum of Twenty-Five Thousand Dollars (\$25,000), plus Seven Thousand Dollars (\$7,000.00), earmarked as attorney fees, all to be delivered to Ms. Maybury’s attorney within ten (10) working days after execution of the Agreement. One hundred percent (100%) of the of the Twenty-Five Thousand Dollars (\$25,000)

shall be regarded and treated as compensation for emotional and physical injuries, because it is agreed by all parties that Ms. Maybury is entitled to no amount of back-pay damages. Said sum is intended by these parties to be the total consideration supporting *both* the DFEH Settlement Agreement and this Agreement.

(7) The Senate Rules Committee further agrees to continue to provide return rights to the Senate upon release by her doctors and the agents of WCAB, to a position in the Senate of equal or greater compensation, and that this Agreement shall have no effect on any periodic retirement, health, or other benefits that Ms. Maybury received from the Senate prior to execution of this Agreement.

(8) The Senate further agrees to provide to Ms. Maybury executed copies of the letter attached hereto as Exhibit A, upon execution of this Agreement.

(9) It is further understood and agreed that upon her release to return to work, the Senate will work with Ms. Maybury in good faith to find an appropriate position in the Legislature that will enable Ms. Maybury to use her skills and experience in a productive work environment. To that end, Ms. Maybury will be consulted about any proposed work environment to attempt to accommodate her desire to work independently from employees whose presence may cause her stress.

(10) The Senate further agrees to take all reasonable and lawful steps consistent with its obligation as Ms. Maybury's employer to apply for and assist and provide support to Ms. Maybury in her application for disability retirement with the California Public Employees Retirement System ("PERS"). Ms. Maybury understands, however, that the decision of whether to approve her disability retirement application remains within the sole discretion of PERS and

that the Senate has no authority or ability to determine the outcome of that decision.

Ms. Maybury further agrees to be bound by the terms of this Agreement even if her application for disability retirement is denied.

ADDITIONAL DOCUMENTS

(11) Each of the parties agrees to execute and provide, at the request of any other party, any other documents or other written instruments as may be reasonably necessary to effectuate the purposes of this Agreement.

APPLICABLE LAW

(12) This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

PARTIAL INVALIDITY

(13) If for any reason any provision of this Agreement shall be determined to be invalid or inoperative, the validity and effect of the other provisions of this Agreement shall not be affected thereby.

SUCCESSORS AND ASSIGNS

(14) All promises, covenants, releases, and obligations referred to in this Agreement shall bind and inure to the benefit of the respective heirs, executors, administrators, successors and assigns of the parties. Nothing in this settlement effects any benefits received pursuant to California Workers Compensation Law.

MERGER

(15) This Agreement incorporates the entire understanding among the parties, and recites the sole considerations for the promises exchanged in this Agreement. In reaching this

Agreement, no party has relied upon any representation or promise except those expressly set forth herein.

(16) THE PARTIES TO THIS AGREEMENT AFFIRM THAT THIS AGREEMENT IS ENTERED INTO VOLUNTARILY AND WITH THE OPPORTUNITY TO OBTAIN THE AID OF LEGAL COUNSEL AND THAT THEY HAVE READ THIS AGREEMENT AND ARE FULLY AWARE OF ITS CONTENTS AND OF ITS EFFECT.

DATED: November 20, 1997

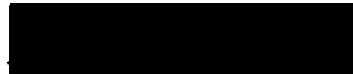
LINDA MAYBURY



DATED: November __, 1997

CALIFORNIA STATE SENATE RULES COMMITTEE

By:



Greg Schmidt
Chief Executive Officer

DATED: November __, 1997

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